21 November 2019

Rebecca Falkingham
Secretary
Department of Justice and Community Safety
1 Treasury Place
Melbourne VIC 3000

Via online submission

Dear Secretary,

**Re: Legislative options to implement a ban of conversion practices**

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is the principal organisation representing the medical specialty of psychiatry in Australia and New Zealand and is responsible for training, educating and representing psychiatrists in policy issues. The RANZCP Victorian Branch represents over 1500 members including over 1000 qualified psychiatrists and around 400 members who are training to qualify as psychiatrists.

Thank you for the opportunity for the RANZCP Victorian Branch to provide feedback into the Department of Justice and Community Safety (DJCS) consultation into legislative options to implement a ban of conversion practices. We hope our consultation will be valuable in informing the Victorian Government legislation prohibiting conversion practices in a manner which sees LGBTIQ+ Victorians protected and supported.

The RANZCP Victorian Branch does not support the use of sexual orientation change efforts of any kind. There is currently no scientific evidence that sexual orientation can be changed and sexual orientation change efforts risk causing significant harm to individuals as well as contributing to the misrepresentation of certain sexualities as mental disorders. As the professional organisation for psychiatrists, our comments in the attached submission focus on the mental health system in Victoria and how we can contribute to LGBTIQ+ mental health.

Should you wish to discuss any matters raised in this submission, please contact Lily Edwards, Policy and Advocacy Advisor – Victorian Branch, on 9236 9105 or Lily.Edwards@ranzcp.org.

Yours sincerely

Dr Kerryn Rubin
Chair, RANZCP Victorian Branch
Victorian Government Department of Justice and Community Safety

Legislative options to implement a ban of conversion practices

Improve the mental health of communities
About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people affected by mental illness and advises governments on mental health care. The RANZCP is the peak body representing psychiatrists in Australia and New Zealand and as a bi-national college has strong ties with associations in the Asia-Pacific region.

The RANZCP has approximately 6000 members bi-nationally including more than 4000 qualified psychiatrists and over 1500 members who are training to qualify as psychiatrists.

Introduction

Thank you for the opportunity for the RANZCP Victorian Branch to provide feedback into the Department of Justice and Community Safety (DJCS) consultation into legislative options to implement a ban of conversion practices. We hope our consultation will be valuable in informing the Victorian Government legislation prohibiting conversion practices in a manner which sees LGBTIQ+ Victorians protected and supported.

The RANZCP recognises that members of the LGBTIQ+ community are valued members of society with rights to equal access to health care, marriage and procreating and bringing up children as well as freedom from harassment or discrimination in any sphere and a right to protection from therapies that are potentially damaging, particularly those that purport to change sexual orientation.

The RANZCP Victorian Branch does not support the use of sexual orientation change efforts of any kind. There is currently no scientific evidence that sexual orientation can be changed and sexual orientation change efforts risk causing significant harm to individuals as well as contributing to the misrepresentation of certain sexualities as mental disorders (1-6). For further information on the RANZCP position on conversion practices, please see RANZCP Position Statement 60: Sexual orientation change efforts.

The RANZCP Victorian Branch endorses an evidence-based approach to mental health care, treatments and support. Mental health care for people who are experiencing distress associated with their sexual orientation or gender identity can be supported with evidence-based approaches that involve acceptance, support, and identity exploration, and approaches that aim to reduce the stigma associated with alternative sexual identities, and demonstrate respect for the person’s religious, spiritual and/or cultural beliefs. Where there is limited or developing evidence a more cautious approach should be considered in line with relevant evidence-based treatment guidelines (7).

The RANZCP Victorian Branch represents over 1500 members including over 1000 qualified psychiatrists and around 400 members who are training to qualify as psychiatrists. As the professional organisation for psychiatrists, our comments focus on the mental health system in Victoria and how we can contribute to LGBTIQ+ mental health. The RANZCP Victorian Branch has prepared this submission based on the questions outlined in the DJCS Discussion Paper: Legislative options to implement a ban of conversion practices (‘the Discussion Paper’).

Please see overleaf for the RANZCP Victorian Branch responses.
Legislative options to implement a ban of conversion practices

1. Do you agree with the HCC’s definition? Would you suggest any changes? Should the definition of conversion practices be broad enough to capture the practices that do not involve health services or counselling? What treatments and practices should be expressly excluded from the definition?

The RANZCP Victorian Branch supports the intent of the definition of conversion practices provided in the Discussion Paper, as below, with one key amendment:

   i. any practice or treatment that seeks to change, suppress or eliminate an individual’s sexual orientation or gender identity,
   ii. including efforts to eliminate sexual and/or romantic attractions or feelings toward individuals of the same gender, or efforts to change gender expressions.

It is essential that evidence-based psychiatric practice which meets accepted professional standards and is intended to provide support and facilitation for individuals undergoing identity exploration and development is excluded from the definition of conversion therapy. This includes the clinical process of assessments, diagnosis and formulation leading to any appropriate treatment or interventions.

The definition provided above is relatively broad, and could, under some circumstances, be perceived to include some evidence-based psychiatric practice, even though the intent of the treatment may not be to change, suppress or eliminate an individual’s sexual orientation or gender identity. Importantly, this could lead to unintended consequences whereby clinical practice may be seen as possibly at risk of legal action despite there being no use of conversion practices.

To ensure such practices do not fall under the definition provided, the RANZCP Victorian Branch would recommend that the definition be amended to exclude the following:

- treatments and practices that provide evidence-based acceptance, support, and understanding for the facilitation of an individual’s coping, social support, and identity exploration and development.

To clearly demonstrate this exclusion, it may also be appropriate to remove the word “treatment” from the definition provided above. This would ensure that all conversion practices are still captured, while removing any association with evidence-based mental health care and support.

2. Who do you think should be protected? Should protection be limited to children and people experiencing vulnerability? If so, what vulnerable groups should be included? Should protection be available to all members of the community? In what ways do you think the issue of consent is relevant to determining who should be protected?

The RANZCP Victorian Branch considers it essential that children, adolescents and people experiencing vulnerability are protected from conversion therapy and any associated harms. Evidence demonstrates that young people can experience heightened vulnerability to mental health issues, and experiences of homophobia, transphobia and heteronormativity can be particularly harmful (8, 9). On this basis, any legislation should include wording which reflects whether or not the person who has been subject to the conversion therapy has given consent or has the capacity to give consent. This is to ensure that protection is offered to children, adolescents and people who may be experiencing vulnerability.
Additionally, given the evidence of harms associated with conversion therapy, the RANZCP Victorian Branch supports further regulation which encompasses all members of the community and suggests that further consideration be given to whether this broader regulation is through criminal law, civil regulatory schemes or civil laws (1-6).

3. **Who do you think should be banned from providing conversion practices? Specific professionals or persons? Or everyone who offers conversion practices? Do you think conversion practices should be regulated wherever they occur or only in certain contexts or places?**

There exists no credible scientific evidence that conversion therapy has any clinical utility or effectiveness. In contrast, evidence suggests that conversion therapies can produce significant and long-term harm in LGBTIQ+ individuals (1-6).

While the expertise of the RANZCP Victorian Branch primarily relates to the practices of health professionals, we believe the clear lack of evidence for the efficacy and utility of conversion practices in any form demonstrates the need for a ban which encompasses all conversion practices (1). Additionally, the evidence of the harmful impacts of conversion therapies suggests that the practice should be condemned in any form.

4. **Do you think conversion practices should be regulated through criminal law, civil regulatory schemes or civil laws, or a combination of these? What aspects of each approach would be effective in regulating conversion practices? What aspects of each approach would be less effective in regulating conversion practices?**

The RANZCP Victorian Branch notes the legislative complexities of regulating conversion practices in Victoria, as outlined in the Discussion Paper provided by the DJCS. The RANZCP Victorian Branch supports measures which clearly demonstrate the unacceptability of conversion practices in Victoria, whether this be through criminal law, civil regulatory schemes or civil laws. In developing an appropriate regulatory scheme, the RANZCP Victorian Branch encourages the Victorian Government to consider the following:

- whether a person who has been subjected to conversion practices should have access to a redress scheme
- the body or organisation to which a person who has been subjected to conversion practices would present their complaint or report
- the degree of punishment associated with schemes enacted through criminal law, civil regulatory schemes or civil laws respectively.

Additionally, it is important that any scheme enacted is easily accessible to individuals who have experienced conversion therapy. Depending on the scheme implemented, barriers for reporting, prosecuting and/or claiming redress should be minimised for people who have experienced conversion therapy. All processes for reporting, prosecuting and/or claiming redress for people who have experienced conversion therapy should encapsulate a trauma-informed approach.
5. What rights do you think are relevant to consider when determining how best to implement a ban of conversion practices? Can the impact on these rights be justified in light of the harm conversion practices cause?

The RANZCP Victorian Branch supports legislation which is necessary, effective and proportionate. It is noted that in the Discussion Paper there is a focus on concerns around freedom of religion and how a ban on conversion therapy may impact on the right to freedom of religion. The RANZCP Victorian Branch believes that when enacting the ban on conversion practices, the right to freedom of religion must be balanced with legislation that protects LGBTIQ+ people from harm. The lack of evidence supporting efficacy or clinical utility of conversion practices, as well as the evidence demonstrating the harms of such practices, justifies the implementation of a ban on conversion practices.

As the Victorian Government would be aware, there are currently ongoing actions at a Federal level to introduce greater protections for religious freedoms. The RANZCP Victorian Branch notes that the Victorian Government will need to consider any potential interactions and impacts changes of this nature may have. For further information on the RANZCP feedback on this religious freedoms the RANZCP submission on the Religious Discrimination Bill 2019 is available on the RANZCP website.

6. Are there other matters that you consider critical for the design of legislation or effective implementation?

People who identify as LGBTIQ+ are at increased risk of exposure to institutionalised and interpersonal discrimination and marginalisation which in turn increases vulnerability to mental illness and psychological distress. Notably, mental health outcomes for the LGBTIQ+ populations of Australia and New Zealand are amongst the lowest of any demographic. It is essential that LGBTIQ+ people are supported with evidence-based approaches that involve acceptance, support, and identity exploration, and approaches that aim to reduce the stigma associated with LGBTIQ+ identities, and demonstrate respect for the person’s religious, spiritual and/or cultural beliefs. Within this, the RANZCP Victorian Branch emphasises the importance of practices according to evidence-based treatment guidelines. In particular, where evidence may be limited or minimal, a more cautious approach is implemented to avoid unintended consequences, and open discourse around evidence based treatments and outcomes should be supported. Further information on recognising and addressing the mental health needs of the LGBTIQ+ population is available in the RANZCP Position Statement 83.

The RANZCP Victorian Branch would also like to emphasise the importance of ensuring that appropriate services, including psychiatric care and support, are available specifically for people who have experienced conversion practices. This requires the Victorian Government to sufficiently fund services which are appropriately targeted to the LGBTIQ+ population, and should be a key focus for the Victorian Government in correlation with the ban on conversion practices.

Other issues which the Victorian Branch would like to raise for consideration by the Victorian Government include:

- liability with respect to the person carrying out the actual conversion practice versus the organisation which allowed it to be carried out
- whether there should be a mandatory requirement to report conversion practices if a person is aware that they are occurring.
References