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31 January 2020

Mr Aaron Harper
Chair
Health, Communities, Disability Services and
Domestic and Family Protection
Via email: health@parliament.qld.gov.au

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Dear Mr Harper

Thank you for providing AMA Queensland with the opportunity to provide feedback on the new *Health Legislation Amendment Bill 2019* (the Bill).

AMA Queensland is the state's peak medical advocacy group, representing over 9600 medical practitioners across Queensland and throughout all levels of the health system.

AMA Queensland acknowledges the harm that the practice of conversion therapy has on LGBTIQ people. AMA Queensland supports the ban on conversion therapy. AMA Queensland also supports the inclusion of all unregulated practitioners involved in conversion therapy.

AMA Queensland provides comments about two sections of the *Health Legislation Amendment Bill 2019* (the Bill):

- i. Amendment of the *Public Health Act 2005* – specifically, Chapter 5B (213E; definitions/213F; meaning of conversion therapy and 213H; Prohibition of conversion therapy. The issue of gender dysphoria is important for AMA Queensland as a number of our members currently work in this specialised area and have experience assisting children and adolescents who present with gender dysphoria, and
- ii. Amendment of *the Hospitals and Health Boards Act 2011* - Last year, AMA Queensland provided feedback about the governance structure of Queensland's public health system around industrial relations and the need for consistency across various policy areas and implementation of the same. AMA Queensland is keen to be fully briefed on the practical effect of the proposed changes.

Amendment of the Public Health Act 2005 – specifically, Chapter 5B (213E; definitions/213F; meaning of conversion therapy; 213H Prohibition of conversion therapy)

AMA Queensland is opposed to the amendments recommended in the *Health Legislation Amendment Bill 2019*, on the basis that the legislation could lead to the prosecution of health professionals providing evidence based practices and have the potential to limit therapeutic approaches supporting children and adolescents presenting with gender dysphoria. Our main concerns are:

- i. The legislation could lead to the prosecution of health professionals providing evidence based practices.***
 - ii. Potential for the legislation to limit therapeutic approaches supporting children and adolescents who present with gender dysphoria***
 - iii. Definitions in sections 213E and 213F***
- i. The legislation could lead to the prosecution of health professionals providing evidence-based practices.***

AMA Queensland is concerned that the wording of the legislation could lead to the prosecution of health professionals providing evidence based practices. As one of our members, Dr Cary Breakey wrote in his submission (submission 107):

“the legislation effectively puts any psychotherapy and family therapy practitioners at risk of offending if not “affirming” the child’s (or even adults) gender preference. Even Gender Clinics who do comprehensive evaluations of family and dynamic drivers of the child’s gender feelings could be vulnerable, especially if they identify powerful parental dynamics heavily influencing the child’s expression.”

This view is supported by another AMA Queensland member, Dr Peter Parry, who wrote in his submission (submission 117):

“Gender dysphoria varies with circumstances in any particular individual and some cases persist, whilst many desist and become more comfortable with birth gender or a same-sex orientation. In my view, the bill as it currently is written, does not provide sufficient protection for therapists to assist young people – in the area of gender dysphoria – to explore possible family, psychological or social dynamic causes of their gender dysphoria.”

AMA Queensland strongly supports the view of Dr Philip Morris (President of the National Association of Practicing Psychiatrists, NAPP) and a member of AMA Queensland, when he writes, (submission 1):

“Questions arise about the capacity of the child to make decisions related to medical interventions (hormonal and surgical) necessary to transition to the preferred gender. These interventions have long-term consequences and are often permanent. Some will have adverse effects on the health of the individual. At what age and at what level of cognitive sophistication does a child have the competence to make these decisions?”

And:

“medical interventions used to transition children to the preferred gender are now shown to be not without harm”.

AMA Queensland would suggest all medical colleges who have member doctors involved in treating gender dysphoric children (paediatricians, general practitioners, surgeons, endocrinologists, gynaecologists, psychiatrists), the National Health and Medical Research Council, the Medical Board of Australia, along with the Australian Medical Association, the NAPP and other representative medical bodies, to form a joint committee to develop a set of practice guidelines for the assessment and treatment of children and adolescents under the age of 18 years presenting with gender dysphoria.

AMA Queensland believes these guidelines, which would set the necessary practice guidelines for the assessment and treatment of children and adolescents under the age of 18 years presenting with gender dysphoria for all health practitioners, would eliminate any non-therapeutic practices which are occurring in this field overnight.

213H Prohibition of conversion therapy and 213I Proceedings for indictable offence

When the Queensland Abortion Law was passed by the Queensland Parliament, it moved abortion from the criminal code to the health code, so if a woman presents with an unplanned pregnancy, if there is inappropriate behaviour by a health professional, they are referred to the regulators (OHO) or Medical Board of Australia and not the police.

However, members believe this legislation is doing the reverse; moving the evidence based therapeutic approaches of gender dysphoria from the health code to the criminal code. AMA Queensland believes there are insufficient grounds nor evidence for offences contained within the Bill to be prosecuted under the Criminal Code. Some members of AMA Queensland believe these offences should be managed by AHPRA and other health regulators such as the Health Ombudsman.

AMA Queensland membership proposes that the recommendation by Queensland Law Society be considered (submission 137):

“Where outdated and harmful therapeutic practices are used in medicine, these are almost always dealt with by way of health practitioner regulation and not by criminal offences. We consider that the practice of conversion therapy is already capable of being targeted by the relevant health regulators and referred to the Health Ombudsman.”

ii. **Potential for the legislation to limit therapeutic approaches supporting children and adolescents who present with gender dysphoria**

Our members are concerned that there is potential for the legislation to limit therapeutic approaches supporting children and adolescents who present with gender dysphoria. The

Bill suggests that the evidence for conversion therapy occurring is clear and settled but this is far from the truth.

Queensland Health Director General, Dr John Wakefield, concedes that the evidence is scant. The Queensland Government is basing their entire case on a single publication from Latrobe University¹ with 15 people involved, of which only 2 had gender dysphoria, one of whom was not treated with conversion therapies.

Section 3.4.1 from this publication confirms:

“There are no studies on conversion practices in contemporary Australia”.

Section 7.2.1 from this publication confirms:

“It is highly unlikely that health professionals in Australia practice conversion therapies.”

In the recommendations section of the publication from La Trobe, under the section entitled “Appropriate sanctions and penalties”:

The recommendations do not request that conversion practices be criminal offences. The recommendations suggest that regulatory bodies enforce the provisions

The other area of concern to AMA Queensland is that in the Queensland Parliament Committee meeting with Queensland Health on 9 December 2019, QH Director General says that conversion therapies are defined by the **intent** of the practitioner. However, the legislation defines conversion therapies as:

“Conversion therapy is a treatment or other practice that attempts to change or suppress a person’s orientation or gender identity”

AMA Queensland would suggest that more research is needed across all the domains of care for children and adolescents who present with gender dysphoria, and while the evidence is limited, there are significant publications that need to be brought to the attention of the government. For instance, the August 2018 edition of the Medical Journal of Australia (MJA 2018) features an article by Michelle M Telfer et al² called, *Australian standards of care and treatment guidelines for transgender and gender diverse children and adolescents*. The authors state:

“There is growing evidence to suggest that for children, family support is associated with better mental health outcomes.³ Where there is a lack of family understanding or support for a child’s gender diverse expression, a clinician may work with family members to help develop a common understanding of the child’s experience.

¹ La Trobe University (2018) *Preventing Harm, Promoting Justice* LaTrobe University 10/18

² Michelle Telfer, Michelle Tollit, Carmen Pace, Ken Pang *Australian standards of care and treatment guidelines for transgender and gender diverse children and adolescents – position statement summary* Med J Aust 2018; 209 (3): ||

³ Olson K, Durwood L, DeMeules M, McLaughlin K. Mental health of transgender children who are supported in their identities. *Pediatrics* 2016; 137:e20153223.

When a child's medical, psychological and/or social circumstances are complicated by coexisting autism spectrum disorder, mental health problems, learning or behavioural difficulties, trauma, abuse or significantly impaired family functioning, a more intensive approach with input from a skilled mental health clinician with expertise in child cognitive and emotional development and child psychopathology, and experience in working with children with gender diversity and gender dysphoria, is required.

Increasing evidence demonstrates, that with supportive, gender affirming care during childhood and adolescence, harms can be ameliorated and mental health and wellbeing outcomes can be significantly improved".⁴

iii. Definitions section 213E and 213F

Our members find the definitions in section 213F ambiguous and are concerned that the wording of the legislation is not clear and our concerns are that doctors working in this area (Psychologists, Endocrinologists, Paediatricians, Surgeons and General Practitioners) may inadvertently fall foul of the legislation. Should the committee proceed to recommend with Chapter 5B of the proposed Bill, AMA Queensland strongly recommends changes to ensure any legislation provides clarity and certainty for our members.

In this circumstance, similar to the NAPP position, AMA Queensland is recommending an amendment to 213F (1), the definition of conversion therapy to read:

*Conversion therapy is a treatment **for which the only intent** is to attempt to change or suppress a person's sexual orientation or gender identity*

In addition, we are recommending the addition of the following examples in 213F (2):

- *Treatments and practices that provide empathetic acknowledgement and evidence based support and understanding for the facilitation of an individual's coping, social support and identity exploration and development;*
- *Treatment of any identified psychiatric comorbidity.*

Even the Health Ombudsman, an appointment made by the Health Minister, is confused and is requesting change, indicated in his submission to the Inquiry (submission 135) i. AMA Queensland agrees with the Health Ombudsman who suggested incorporating more detail from the explanatory notes into clause 213F (3):

⁴ de Vries A, McGuire J, Steensma T, et al. Young adult psychological outcome after puberty suppression and gender reassignment. *Paediatrics* 2014; 134: 696-704; Simons L, Schrager S, Clark L, et al. Parental support and mental health among transgender adolescents' *Adolesc Health* 2013; 53: 791-793; Olson K, Durwood L, DeMeules M, McLaughlin K. Mental health of transgender children who are supported in their identities. *Pediatrics* 2016; 137:e20153223.

⁵ Littman, L. Rapid-onset gender dysphoria in adolescents and young adults: A study of parental reports. *PLoS ONE* 2018; 13(8): e0202330. <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0202330>

“The exclusion will protect practitioners who, acting reasonably, in good faith and in accordance with relevant professional standards, treat a patient in a manner that could be subjectively perceived as not affirming or supporting their sexual orientation or gender identity. For example, a doctor may advise against surgery because a patient has a pre-existing condition that means the surgery is not safe.

A doctor may also be required to advise a patient about potential side effects of drugs. In cases such as these, health service providers will be able to rely on the reasonable professional judgment exception to ensure that the health services provided are delivered in a safe and clinically appropriate manner.”

Summary of AMA Queensland’s recommended changes to the proposed amendments:

1. an amendment to 213F (1), the definition of conversion therapy to read (amendment underlined):

Conversion therapy is a treatment for which the only intent is to attempt to change or suppress a person’s sexual orientation or gender identity

2. Add the following examples in 213F (2):

- Treatments and practices that provide empathetic acknowledgement, evidence based support and understanding for the facilitation of an individual’s coping, social support, identity exploration and development;
- Treatment of any identified psychiatric comorbidity.

3. Amend sections 213 H and 213 I to remove the indictable nature of the offences.

Finally, AMA Queensland is requesting a briefing from Queensland Health on the practical implications of the Amendment of the Hospitals and Health Boards Act 2011, especially the IR and HR amendments.

If you require further information or assistance in this matter, please contact Mr Jeff Allen, AMA Queensland Policy Manager on 3872 2262.

Yours sincerely



Dr Dilip Dhupelia
President
AMA Queensland