

11 October 2019

Mr Harry Robson
By email: fyi-request-11220-0cedbeba@requests.fyi.org.nz
Ref: H201908161

Dear Mr Robson

Response to request for official information

Thank you for your request of 14 September 2019 to the Ministry of Health (the Ministry) under the Official Information Act 1982 (the Act) for:

“(1) Does the Ministry of Health have any data / info on the practice and prevalence of conversion therapy in NZ? If so, could you please share it?”

Of particular interest:

(A) How many licensed or registered health professionals in NZ (including those that lost their license or registration for doing so) practiced conversion therapy, or were alleged to have practiced conversion therapy, at all in the 2017 - 2018 period?

(B) How many said professionals have done so at all since 2000?

(C) Could you categorise these by profession (e.g. psychologists, psychiatrist, counsellor etc.)?

(D) Does the Ministry of Health have a list of, or any kind of information regarding, providers of conversion therapy (e.g. 'therapists' or institutions such as churches) in NZ? If so, could you please share it?

(2) Has the Ministry of Health ever produced a report (including those unpublished) on conversion therapy? If so, could you please share it?

(3) What is the Ministry of Health's view of conversion therapy?

(4) Has the Ministry of Health ever conducted research regarding conversion therapy? If so, what were the findings of said research?”

I will answer your request in four parts.

1. *“Does the Ministry of Health have any data / info on the practice and prevalence of conversion therapy in NZ? If so, could you please share it?”*

How many licensed or registered health professionals in NZ (including those that lost their license or registration for doing so) practiced conversion therapy, or were alleged to have practiced conversion therapy, at all in the 2017 - 2018 period?

How many said professionals have done so at all since 2000?

Could you categorise these by profession (e.g. psychologists, psychiatrist, counsellor etc.)?

Does the Ministry of Health have a list of, or any kind of information regarding, providers of conversion therapy (e.g. 'therapists' or institutions such as churches) in NZ? If so, could you please share it?"

Part one of your request (as above) is refused under section 18(g) of the Act, as the Ministry does not hold any of this information.

2. *"Has the Ministry of Health ever produced a report (including those unpublished) on conversion therapy? If so, could you please share it?"*

The Ministry has produced one report regarding conversion therapy, titled *Initial Advice on the prohibition of conversion therapy in New Zealand*. This report was provided to the Minister of Health, Hon Dr David Clark, and the Associate Minister of Health, Hon Julie Anne Genter, on 9 August 2018.

This report is being partially released to you. Please find it attached to this response. Some information is withheld under section 9(2)(a) of the Act, to protect the privacy of natural persons.

3. *"What is the Ministry of Health's view of conversion therapy?"*

The Ministry recognises extensive international evidence that the practice of conversion therapy is ineffective and harmful.

4. *"Has the Ministry of Health ever conducted research regarding conversion therapy? If so, what were the findings of said research?"*

The Ministry has not conducted research regarding conversion therapy. For this reason, your request for findings of any such research by the Ministry is refused under section 18(e) of the Act, as this information does not exist. You may like to contact the Health Research Council at info@hrc.govt.nz to enquire if they can provide you with any information about research regarding conversion therapy that may have been undertaken in New Zealand.

Under section 28 of the Act, you have the right to ask the Ombudsman to review any decisions made in this response.

Yours sincerely



Maree Roberts
Deputy Director-General
System Strategy and Policy



Security classification: In-Confidence

Health Report: Initial advice on the prohibition of conversion therapy in New Zealand

Date: 9 August 2018	Report No:	20181509
	File Number:	AD62-14-2018

Action Sought

	Action Sought	Deadline
Minister Clark	N/A	
Minister Genter	Agree	
Minister Salesa	N/A	

Contact for Telephone Discussion (if required)

Name	Position	Telephone	Contact Order
Caroline Flora	Group Manager, Population Outcomes	9(2)(a)	1st Contact
Ian Soosay	Deputy Director of Mental Health	9(2)(a)	2nd Contact

Actions for the Minister's Office Staff

Return the signed report to Ministry of Health

Note any feedback on the quality of the report

Security classification: In-Confidence

Quill record number: H201805055
 File number: AD62-14-2018
 Action required by: Routine

Initial advice on the prohibition of conversion therapy in New Zealand

To: Hon Julie Anne Genter, Associate Minister of Health

Copy to: Hon Dr David Clark, Minister of Health

Purpose

In response to your request, you will find a briefing containing initial advice on the banning of conversion therapy in New Zealand, and initial options for further exploration.

Key points

- Conversion therapy is a topical issue in New Zealand following the UK's commitment to explore legislative and non-legislative means for banning gay conversion therapy. This has led to local media attention and two petitions to ban conversion therapy.
- There is considerable evidence that the practice is ineffective and harmful. Any therapy that is provided should affirm people's sexuality or gender.
- While there are a number of protections that prevent this practice in the health and disability sector, it is understood that most practice occurs in private and faith-based institutions. In these settings it is still to be tested whether the protections apply, and is likely to be dependent on the intent of the service. Spiritual reasons are unlikely to be covered.
- The Ministry of Justice have provided input into this briefing. They advise that further work is needed to explore the human rights implications associated with this practice. New Zealand's human rights framework promotes rights such as freedom of religion and freedom of assembly. The provisions under the Human Rights Act 1993 are unlikely to be able to prevent the practice from occurring, as people can freely engage in religious practice.
- When the practice encroaches upon a person's bodily integrity it may be covered by existing laws.
- Due to the current protections that are in place, and the need to balance the rights of people with preventing harm, it is not recommended that a legislative ban of conversion therapy would be the most effective way to reduce the harm it causes.
- Promoting the protections that are already in place, educating people on the ineffectiveness of the practice, and where to seek help if harm has been caused can be undertaken immediately.
- We can assist in the development of communications, including a potential public statement with stakeholders.
- You will find information in the briefing on where people can access help if they have been harmed by the practice.

Contacts:	Caroline Flora, GM- Population Outcomes, Strategy & Policy	9(2)(a)
	Ian Soosay, Deputy Director Mental Health	9(2)(a)

Initial advice on the prohibition of conversion therapy in New Zealand

Recommendations

The Ministry recommends that you:

- | | Yes/No |
|---|--------|
| a) agree to meet with officials to discuss your preferred approach to conversion therapy | |
| b) note that the United Kingdom has committed to explore legislative and non-legislative measures to ban conversion therapy | |
| c) note there is extensive evidence that the practice is ineffective and harmful | |
| d) note the practice of conversion therapy is not permitted in the health sector due to the health sector specific protections | |
| e) note conversion therapy is understood to occur within faith based institutions and in the private sector | |
| f) note that people have the freedom to willingly engage in the practice | |
| g) note the briefing contains advice on where people can seek help if they have been harmed by the practice. | |



Caroline Flora
Group Manager, Population Outcomes
Strategy & Policy

Minister's signature:

Date:

Initial advice on the prohibition of conversion therapy in New Zealand

1. This report provides initial advice on considerations for the prohibition of conversion therapy, as well as contextual information on the harm and effectiveness of the practice and global responses to the practice.
2. Conversion therapies are any treatments that attempt to change an individual's sexual orientation from homosexual or bi-sexual to heterosexual, or gender identity from transgender to cis-gender. Other terms for this practice include sexual orientation change efforts and sexual reorientation therapies, among others. They cover a spectrum of activities from prayer and religious guidance to the more extreme end where there have been overseas accounts of physical and sexual violence and restraint.
3. There have been a number of overseas studies of the harm and effectiveness of this practice. The 2009 American Psychological Association taskforce on Appropriate Therapeutic Response to Sexual Orientation concluded that mental health professionals should avoid telling clients that they can change their sexual orientation due to a lack of evidence that such change is possible and the potential for such efforts to harm the patient's mental health. This report has been supported by numerous studies since then.
4. Research supports the view that any therapy provided should be affirming of people's sexuality or gender identity. We know that Rainbow New Zealanders experience disproportionately poorer mental health and are at higher risk of suicide than the general population. Mental health issues and suicidal inclinations often arise from the stigma and discrimination that they experience.
5. Due to the fundamental importance of human rights in both the practice and prohibition of conversion therapy, the Ministry of Justice has contributed to this paper. The Ministry of Justice has advised that the human rights implications need to be thoroughly explored when options for addressing this issue are identified and scoped.

Context

6. The practice of conversion therapy in New Zealand has recently been scrutinised in the media, and two petitions have been presented to Parliament. This follows the release of the United Kingdom's LGBT Strategy, in which they commit to exploring legislative and non-legislative options for banning conversion therapy.
7. In New Zealand, there have been a number of anecdotal cases of this practice with indications in the media that the number of cases may be in the hundreds or more. However, as it is typically practiced in religious settings we do not have a clear indication of how common the practice is.
8. There are a number of accounts where people are coerced into the therapy, or other situations where it is unlikely that individuals have given free and informed consent. This is particularly likely to apply to minors who receive the therapy.
9. We have considered how the practice is regulated internationally. A number of countries or states have banned, or are in the process of passing legislation to ban, this practice, particularly for children and youth.

Country or jurisdiction where the practice is banned	Nature of the ban	Minors/ adults
Victoria, Australia	Requested the Health Complaints Commissioner conduct an inquiry into the practice, and prosecute practitioners - including people within faith-based institutions	All
ACT, Australia	Pledged to ban the practice	All
European Parliament	'Welcomes initiatives prohibiting LGBTI conversion therapies and banning the	All

	pathologisation of trans identities and urges all Member States to adopt similar measures that respect and uphold the right to gender identity and gender expression'	
Half of Canadian states	Banned under local jurisdictions	All
Malta	Ban on anyone trying to 'change, repress or eliminate a person's sexual orientation, gender identity and/or gender expression', and they would be subject to fines and/or prison, with professionals facing higher penalties.	All
Many US states, and a number of municipalities	Laws or regulations to protect minors from being subjected to conversion therapy by state-licensed mental health providers.	Minors
Ireland, Lebanon and India and others	Oppose the practice, but no formal ban in place.	All

10. In New Zealand, the practice has been condemned by key stakeholders including: the Human Rights Commission; Royal Australian and New Zealand College of Psychiatrists; New Zealand College of Clinical Psychologists; New Zealand Association of Counsellors; Aotearoa New Zealand Association of Social Workers; and Rainbow Youth.

Current legal protections around conversion therapy in the health sector

11. There are a number of protections that prevent conversion therapy from occurring in the health sector. The legislative protections around conversion therapy are case dependent, depending on the nature of the 'therapy', the intent and the practitioner who provides it.
12. There are protections in the health system for Rainbow New Zealanders to access safe and welcoming health care services. For example, the Health and Disability Service Standards, which are mandatory for health and disability service providers. The standards specify that an individual's sexuality must be respected. In addition, professional bodies for a range of regulated professions have rights affirming codes of practice, including explicitly banning the practice by their members.
13. Whether these rights are covered by the Health and Disability Commissioner Act will depend on whether gay conversion therapy is considered to be a health service performed by a health care provider, which will depend on the facts of a particular case and how the therapy is described. If a practitioner is providing a "therapy" to "cure" individuals they may be covered, however if they are providing a service with a religious intent it may not be. It is important that services lacking a therapeutic evidence base are not regulated under relevant legislation as there is a risk it would give them unintended legitimacy.
14. The Health and Disability Commissioner Act 1994 may enable those who receive conversion therapy to complain to the Health and Disability Commissioner on the basis that the provider of the therapy has breached the Code of Patients' Rights. This protects patients' rights, including the right to be treated with respect, the right to freedom from discrimination, coercion, harassment, and exploitation, and the right to make an informed choice and give informed consent.

Rights protections in legislation

15. The New Zealand Bill of Rights Act 1990 and Human Rights Act 1993 protections against discrimination are unlikely to provide much protection against gay conversion therapy. The New Zealand Bill of Rights Act applies to acts done by: a) the legislative, executive, or judicial branches of Government; or b) any person or body performing a public function, power, or duty. It does not apply to private individuals or institutions that are not performing a public function.
16. The Human Rights Act applies to the private sector in specified areas of public life, including the provision of goods and services. It is not clear whether gay conversion therapy would fall within the definition of a service or whether it would meet the discrimination test in the Act (i.e. refusing to supply the service, or treating a person less favourably, by reason of a prohibited ground of

discrimination). Accordingly, although the practice is discriminatory in a general sense, the Human Rights Act is unlikely to provide a viable remedy to someone who is subject to this practice.

17. There is likely to be a wide spectrum of severity and coercion in terms of the actions involved in gay conversion therapy. Additionally, the extent to which the individual who is the subject of the therapy gives free and informed consent to the therapy also varies. The more coercive and/or violent practices along this spectrum may be able to be prosecuted under New Zealand's existing criminal law, which contains existing protections for individual's bodily integrity. A relevant consideration in most of the crimes against a person is the element of consent, as the law generally enables people to consent to activities in respect of their bodies that may be seen as harmful. For example, relevant crimes may include assault, kidnapping, failure to protect children from harm and sexual violation depending on the circumstances of the case.
18. As the practice typically occurs in faith based institutions, an individual has rights to freely engage with the practice, and practitioners to perform it as long as it is for religious reasons. Where people are coerced into the practice, and/or the practice impedes on a person's bodily integrity, it may be treated as a crime dependent on the case.
19. The Human Rights Commission notes that people have the right to not be subject to any forms of therapy that are carried out in an attempt to change their sexual orientation or gender identity. The Commission has publicly stated that it would be willing to support any initiatives to prevent this harmful practice.
20. Young and vulnerable people may be particularly susceptible to the harms and coercion that can be linked to conversion therapy. There may be a role for Oranga Tamariki if the practice amounts to emotional abuse of a child or young person.

Human rights considerations in legislative means to prevent conversion therapy

21. Section 15 of the New Zealand Bill of Rights Act 1990 states that 'every person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private' and other rights including freedom of assembly. Depending on how the potential legislation was framed, it could be inconsistent with these rights and subject to a report to the House by the Attorney-General.
22. Conversion therapy occurs along a spectrum from freely sought spiritual guidance, to non-consensual practices that encroach on a person's bodily integrity. Some practices could be banned while others are likely to involve an infringement on the right to practice religion which is not proportionate to the nature of the harm. Measures to ensure that participation is based on full and informed consent or measures which target harmful behaviours are more likely to be consistent with the New Zealand Bill of Rights Act.
23. It is also important to consider international obligations. Article 16 of the Convention Against Torture requires parties to prevent cruel, inhuman or degrading treatment or punishment, in any territory under a state's jurisdiction and this may apply to non-state practices. International law can be helpful in guiding future options but is unlikely to be decisive due to the competing rights involved.

Options for prohibiting conversion therapy

24. This advice provides a brief initial analysis of options. We are happy to explore any option in more detail at your request.
25. There are non-legislative and legislative means that could be used to prevent this practice. One option is health promotion, for example, releasing a public statement that this practice is harmful and ineffective.
26. A joint public statement with key stakeholders that the practice is unacceptable and ineffective could be a suitable initial step. The statement would also provide an opportunity to inform the public about support that is available, and how to report the practice. Leading a process to develop and make a joint statement is something that we could achieve relatively quickly.

27. Banning conversion therapy or committing to explore the banning of therapy sends a strong message. It would reinforce that normatively it is not acceptable practice in New Zealand and that a person's sexuality is something that should not and cannot be changed. It may also increase the grounds for recourse for those who have been coerced into the practice.
28. Banning conversion therapy also comes with a number of risks. It would require the establishment of a regulatory regime that could be difficult to police, given the somewhat secretive and non-regulated environments in which the practice occurs. A statutory ban may also involve Bill of Rights implications. While we do not recommend this course of action, we can further explore legislative means to banning conversion therapy if that is your preferred option.
29. In light of the wide spectrum of activities that may be part of gay conversion therapy, if legislation was sought to be introduced, it would be necessary to consider the specific activities that ought to be prohibited, and whether existing criminal law provisions would already apply. It would also be important to consider whether the focus should be on banning particular practices outright, or whether the regulatory focus should be on ensuring that participants are exercising free and informed consent. As outlined above, the focus of most of our existing criminal law protections of the person are focused on preventing non-consensual conduct.
30. Identifying where along this spectrum it would be proportionate and necessary to implement a prohibition would be an important part of ensuring consistency with the New Zealand Bill of Rights Act 1990, which provides for rights of assembly, free speech and rights to freedom of religion.
31. If you wished to further explore a legislative ban, officials could provide further advice about the exploration process, which could mimic the approach taken by the United Kingdom (which is yet to be specified publicly).

Responding to the harms caused by conversion therapy

32. In any public messaging around this, it is important to reiterate what people can do to seek help to address the harms caused.
33. In this instance, help can be provided to people who have experienced conversion therapy by:
 - a. contacting the Need to talk? 1737 free call or text 24 hour counselling service;
 - b. contacting Outline (0800 688 5463), the free support line for LGBTIQ+/ Rainbow people, friends, and whānau, or professionals who care for them. They are available 10am to 9pm weekdays, 6pm – 9pm weekends;
 - c. visiting their GP;
 - d. contacting police in appropriate cases.
34. Note that we will also prepare a response for the Ministry webpage in line with any public messages that you and/or Minister Clark release. The webpage would reiterate our stance on gay conversion therapy, and outline what people can do if they encounter the practice and where they can access support.

Proposed response

35. Based on initial analysis, due to the current protections that are in place and the need to balance the rights of people with preventing harm, it is not recommended that a legislated ban on conversion therapy would not be the most effective way to improve the wellbeing of current and potential future subjects of the practice.
36. We recommend that rather than developing a new ban, we focus on promoting the protections that are already in place and educating people on the ineffectiveness of the practice and where to seek help if harm has been caused.
37. We can work with your office to support public messaging around this issue, and would welcome a discussion with you about your preferred next steps.

END.

