**Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity with focus on practices of so-called “conversion therapy”**

**Submission by Shaneel Shavneel Lal for the Conversion Therapy Action Group.**

**1. What different practices fall under the scope of so-called “conversion therapy” and what is the common denominators that allow their grouping under this denomination?**

Conversion therapy is any practice that aims to change a LGBTQIA+ orientation to heterosexual and/or cisgender. It is also known as:

· Reparative Therapy

· Ex-gay Therapy

· Sexual Orientation Change Efforts (SOCE)

· Sexual Attraction Fluidity Exploration in Therapy (SAFE-T)

· Eliminating, reducing or decreasing frequency or intensity of unwanted Same-Sex Attraction (SSA)

· Sexual reorientation efforts

· Addressing sexual addictions and disorders

· Healing sexual brokenness

Conversion therapy has existed in the past in many forms including extreme measures such as institutionalization, sectioning, castration, and electroconvulsive shock therapy to try to stop people from being lesbian, gay, bisexual, or transgender (LGBT). In the past, health professionals have also turned to extremely harmful forms of aversive therapy - inducing nausea, vomiting, or paralysis while showing them homoerotic material.

Aversion therapy also includes having the ‘patients’ snap an elastic band around the wrist or taking icy cold showers when aroused by same-sex erotic images or thoughts.

Many have now turned to practices like psychoanalysis and talk therapy where ‘patients’ are hammered with the idea that their LGBTQIA+ orientation is a mental illness that can be healed. This is most prevalent in faith-based groups where individuals are told that their LGBTQIA+ orientation is a choice, result of a trauma or anti-God and told to ‘pray the gay’ away, when the message should be: legislate away the hate.

**2. Are there definitions adopted and used by States on practices of so-called “conversion therapy”? If so, what are those definitions and what was the process through which they were created or adopted?**

The New Zealand Justice Select Committee defines conversion therapy as “any practice or treatment that seeks to change, suppress, or eliminate a person’s sexual orientation, gender identity, or gender expression. It may include traditional counselling, therapy, teaching, or group discussion. We heard that it can be damaging to the mental and physical health of those subjected to it.

Conversion therapy is usually based on a belief that people with diverse sexual orientations or gender identities are abnormal and should be changed so they fit within heteronormative standards.

Such therapy can be harmful because it perpetuates the idea that sexuality and gender identity are an individual’s choice rather than something they are born with. We note that this idea is inconsistent with mainstream scientific consensus, the New Zealand Bill of Rights Act 1990, and internationally recognised human rights.”

While Marja Lubecks member’s bill, Prohibition of Conversion Therapy defines conversion therapy as “a practice or treatment that seeks to change, suppress, and/or eliminate a person’s sexual orientation, gender identity and, or gender expression. It is a practice that has been outlawed in a number of countries. It is opposed by numerous organisations, including the United Nations Committee against

Torture, the Royal College of Psychiatrists London, the Canadian Psychological Association, and the

Australian Medical Association.”

1. **What are the current efforts by States to increase their knowledge of practices of so-called**

**“conversion therapy”? Are there efforts to produce information and data on these practices?**

The Ministry of Health produced a report, Health Report number: 20181509 which detailed the Ministry’s position and recommendations for the Government, the Ministry of Justice made an input into this report.

Two petitions with over 20,000 signatures calling for a ban on conversion therapy were accepted at the steps of Parliament by Labour List MP Marja Lubeck which she later used to support her member’s bill, Prohibition of Conversion Therapy.

Rainbow network at parliament accepted Counting Ourselves report, first ever study into the prevalence of conversion therapy in New Zealand.

1. **What kinds of information and data are collected by States to understand the nature and extent of so-called “conversion therapies” (e.g. through inspections, inquiries, surveys)?**

The Ministry of Health confirms that the Ministry has not conducted any research regarding conversion therapy. However, the Counting Ourselves report found that 17% of 1,178 trans and non-binary participants had been subjected to conversion therapy by a medical professional, while 12% didn’t know whether they had conversion therapy.

1. **Has there been an identification of risks associated with practices of so-called “conversion therapy”?**

The global scientific consensus confirms that conversion therapy does not work and largely denounces it as a practice causing significant and sometimes, irreparable harm. The “Declaration on the Impropriety and Dangers of Sexual Orientation and Gender Identity Change Efforts,” by leading health bodies stated, “We, as national organizations representing millions of licensed medical and mental health care professionals, educators, and advocates, come together to express our professional and scientific consensus on the impropriety, inefficacy, and detriments of practices that seek to change a person’s sexual orientation or gender identity, commonly referred to as “conversion therapy.” They further “emphasize the dangers of sexual orientation and gender identity change efforts, particularly for youth, which include increased risk of anxiety, depression, decreased self-esteem, social withdrawal and isolation, homelessness, substance abuse, and suicidality.”

In 2007 research on the Impacts of Reparative Therapy, Harms Caused by Societal Prejudice undertook by American Psychological Association noted "results of scientifically valid research indicate that it is unlikely that individuals will be able to reduce same-sex attractions or increase other-sex sexual attractions through SOCE,” however, due to lack of data, the report did not make claims on the psychological implications of conversion therapy.

In the “Weighing the evidence: Empirical assessment and ethical implications of conversion therapy,” report, Cramer, R. J., Golom, F. D., LoPresto, C. T., & Kirkley, S. M make it evident that “there is no credible research that indicates you can change a person’s sexual orientation or gender identity, rather what research does tell us is these so-called change efforts can have devastating impacts on its victims, including increased anxiety, depression, self-hatred, compromised mental health, post-traumatic stress disorder, suicide or suicidal thoughts, and many other lifelong psychological and social issues.”

The Family Acceptance Project: San Francisco State University published in 2018 included 245 LGBT young adults between ages 21 and 25 who had been subjected to parent-initiated sexual orientation change efforts during adolescence. The study found “Rates of attempted suicide by LGBT young people whose parents tried to change their sexual orientation were more than double (48%) the rate of LGBT young adults who reported no conversion experiences (22%). Suicide attempts nearly tripled for LGBT young people who reported both home-based efforts to change their sexual orientation by parents and intervention efforts by therapists and religious leaders (63%).”

The Family Acceptance Project: San Francisco State University also found that “High levels of depression more than doubled (33%) for LGBT young people whose parents tried to change their sexual orientation compared with those who reported no conversion experiences (16%), and more than tripled (52%) for LGBT young people who reported both home-based efforts to change their sexual orientation by parents and external sexual orientation change efforts by therapists and religious leaders.”

Not only does conversion therapy amplify rates of depression and suicide, the Family Acceptance Project: San Francisco State University found that conversion therapy “were associated with lower young adult socioeconomic status, less educational attainment, and lower weekly income.”

Harvard Medical School and The Fenway Institute – Transgender Conversion Therapy found “attempts to change a person’s sexual orientation, conversion therapy that targets transgender individuals is not supported by research and is ineffective, harmful, and unethical. Attempts to change a person’s gender identity can have devastating lifelong consequences including compromised mental health, self-harming behaviours, and suicide.”

In 2013, the American Psychiatric Association (APA) stated, no trustworthy “research evidence exists that any mental health intervention can reliably and safely change sexual orientation; nor, from a mental health perspective does sexual orientation needs to be changed.” The APA also stated that opposing to offer gender and sexual orientation affirmative care and treatment is a form of conversion therapy.

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

**6. Is there a State position on what safeguards are needed, and what safeguards are in place to protect the human rights of individuals in relation to practices of so-called “conversion therapy”? This question includes the following:**

1. **Safeguards to protect individuals from being subjected to “conversion therapies”.**

The Ministry of Health New Zealand states there are legislative protections around conversion therapy but they are case dependent.

The New Zealand Psychological Society, NZ College of Clinical Psychologists and the New Zealand Psychologists Board all have adopted a code of ethics that prioritise the well-being of patients and nondiscrimination as core tenants to ethical practice. Under these guidelines, conversion therapy does not constitute ethical practice, according to clinical psychologist Rita Csako. Counselling on the basis that LGBTQIA+ identities are unnatural is discriminatory and does not demonstrate respect for the patient, and engaging in a practice that has a mostly negative impact on mental health means a practitioner is not prioritising the patient’s well-being. However, this code is not legally binding, and does not apply to the many non-professionals who practice conversion therapy either.

1. **Broader statutory rules or administrative policies to ensure accountability of health care and other providers.**

Rainbow New Zalanders under the Bill of Rights Act 1990, Human Rights Act 1993, **Guidelines to the**

**Mental Health (Compulsory Assessment and Treatment) Act 1992** and Health and Disability Commissioner Act have the right to live a life free from discrimination while accessing health care services.

The Health and Disability Service Standards specify that an individual’s sexuality must be respected when accessing health care services. However, whether conversion therapy is illegal under the Health and Disability Commissioner Act 1994 is case dependent on the basis that the provider of the therapy has breached the Code of 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.

The protections in Bill of Rights Act 1990 and Human Rights Act 1993 fail to protect individuals from conversion therapy.

The Human Rights Act 1990 applies to:

1. the legislative, executive, or judicial branches of Government
2. any person or body performing a public function, power, or duty
3. it does not apply to private individuals and institutions that are not performing a public function

It is unclear whether there are enough protections against conversion therapy in the Bill of Rights Act 1990.

In New Zealand we have an “informed consent model,” which means that when anyone is giving consent to anything, they must be fully aware of the potential outcomes and consequences. No one goes into conversion therapy fully aware that it will lead to a severe case of anxiety, depression, loss of sexual functions and in the worst cases, suicide. This goes against the very nature of **Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992 and** Health and Disability

Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 which state clearly that patient must be FULLY aware of the likely benefits and all likely consequences of the treatment.

**Section 67 of the Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992 states that “**patients are entitled to receive ‘an explanation of the expected effects of any treatment ... including the expected benefits and the likely side-effects’ (section 67). This right supplements the general right of all health service consumers to receive all the information about treatment options and risks that any reasonable person, in the same circumstances, would expect to receive (rights 6(1) and 6(2), Code of Rights).

The quantity and quality of the information given will depend on the nature of the situation. In an emergency situation when it is necessary to treat a patient without their consent, a very limited explanation of what is happening will be sufficient. At all other times that treatment is given, the information provided should be comprehensive. Because clinicians should always try to seek the consent of patients, it is important that clinicians attempt to give a patient enough information as would allow a reasonable person to make an informed decision. This information should include:

* details of the drug, dose and method of administration proposed (if a proposed treatment is pharmaceutical)
* the likely course of the treatment
* the intended effects of the treatment on the mental state of the patient • the possible side effects of the treatment
* any other relevant information.

If the information provided is not sufficient, there may be grounds for judicial review.

Patients are entitled to effective communication in a form, language and manner that enables them to understand the information provided, and in an environment that enables open, honest and effective communication (right 5, Code of Rights). It is essential that the information about the treatment be comprehensive. Consideration should always be given to the patient’s present mental state, and information should be repeated as appropriate if that state alters. Information communicated in written form should also be explained verbally. Under right 6(4) of the Code of Rights, ‘every consumer has the right to receive, on request, a written summary of information provided’.”

**And the Health and Disability Commissioner (Code of Health and Disability Services Consumers'**

**Rights) Regulations 1996 in Rights 6 and 7 state as following**

**Right 6** *Right to be fully informed*

(1) Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive, including— (a) an explanation of his or her condition; and

1. an explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option; and
2. advice of the estimated time within which the services will be provided; and
3. notification of any proposed participation in teaching or research, including whether the research requires and has received ethical approval; and
4. any other information required by legal, professional, ethical, and other relevant standards; and
5. the results of tests; and
6. the results of procedures.
7. Before making a choice or giving consent, every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, needs to make an informed choice or give informed consent.
8. Every consumer has the right to honest and accurate answers to questions relating to services, including questions about—
9. the identity and qualifications of the provider; and
10. the recommendation of the provider; and
11. how to obtain an opinion from another provider; and (d) the results of research.

(4) Every consumer has the right to receive, on request, a written summary of information provided.

**Right 7** *Right to make an informed choice and give informed consent* (1) Services may be provided to a consumer only if that consumer makes an informed choice and gives informed consent, except where any enactment, or the common law, or any other provision of this Code provides otherwise. (2) Every consumer must be presumed competent to make an informed choice and give informed consent, unless there are reasonable grounds for believing that the consumer is not competent. (3) Where a consumer has diminished competence, that consumer retains the right to make informed choices and give informed consent, to the extent appropriate to his or her level of competence. (4) Where a consumer is not competent to make an informed choice and give informed consent, and no person entitled to consent on behalf of the consumer is available, the provider may provide services where— (a) it is in the best interests of the consumer; and

(b) reasonable steps have been taken to ascertain the views of the consumer; and (c) either,—

1. if the consumer's views have been ascertained, and having regard to those views, the provider believes, on reasonable grounds, that the provision of the services is consistent with the informed

choice the consumer would make if he or she were competent; or

1. if the consumer's views have not been ascertained, the provider takes into account the views of other suitable persons who are interested in the welfare of the consumer and available to advise the provider.
2. Every consumer may use an advance directive in accordance with the common law.
3. Where informed consent to a health care procedure is required, it must be in writing if— (a) the consumer is to participate in any research; or
4. the procedure is experimental; or
5. the consumer will be under general anaesthetic; or
6. there is a significant risk of adverse effects on the consumer.
7. Every consumer has the right to refuse services and to withdraw consent to services.
8. Every consumer has the right to express a preference as to who will provide services and have that preference met where practicable.
9. Every consumer has the right to make a decision about the return or disposal of any body parts or bodily substances removed or obtained in the course of a health care procedure.
10. No body part or bodily substance removed or obtained in the course of a health care procedure may be stored, preserved, or used otherwise than (a) with the informed consent of the consumer; or
11. for the purposes of research that has received the approval of an ethics committee; or
12. for the purposes of 1 or more of the following activities, being activities that are each undertaken to assure or improve the quality of services:
13. a professionally recognised quality assurance programme:
14. an external audit of services:
15. an external evaluation of services.

1. **Are there any State institutions, organizations or entities involved in the execution of practices of so-called conversion therapy? If so, what criteria have been followed to consider these as a form of valid State action?**

**N/A.**

1. **Have any State institutions taken a position in relation to practices of so-called “conversion therapy”, in particular:**

1. **Entities or State branches in charge of public policy;**
2. **Parliamentary bodies;**

In New Zealand, there are no laws directly prohibiting gay and gender conversion therapy for minors or adults.

On 14 September 2018, the Petition of Max Tweedie for Young Labour and the Young Greens: Ban Gay Conversion Therapy and on 8 August 2018, the Petition of Amanda Ashley - Ban Conversion Therapy in New Zealand

were presented to the Justice Select Committee, both calling for a ban on gay and gender conversion therapy.

On 18 October 2019, the Justice Select Committee (JSC) at Parliament, reported on the two petitions. In recommendation the JSC “agree with the argument that conversion therapy is harmful. However, we believe more work needs to be done before any decision is taken to ban it. In particular, thought must be given to how to define conversion therapy, who the ban would apply to, and how to ensure that rights relating to freedom of expression and religion were maintained.”

The JSC committee points out that “Balancing harm reduction and human rights The Bill of Rights Act affirms, protects, and promotes human rights and fundamental freedoms in New Zealand. It allows all

New Zealanders to live free from discrimination, including in relation to their sexual orientation. New Zealanders also have the right to freedom of religion. This protects those who offer and seek out conversion therapy because of their religious views,” however, doesn’t take note that section 5 of **New Zealand Bill of Rights Act 1990 states, “**the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

Meaning religious rights are subject to justifiable limitations - given conversion therapy is known to cause anxiety, depression and suicide, banning conversion therapy for the protection of the wellbeing of queer people is a justifiable limitation.

The Ministry of Justice “advise that further work is needed to explore the human rights implications associated with this practice, New Zealand 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.” However, “when the practice approaches upon a person’s bodily integrity it may be covered by existing laws.” The Ministry of Health advises that “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.”

On 31 October 2018, Labour List MP Marja Lubeck introduced the Prohibition of Conversion Therapy Bill in the members bill ballot proposing that “This Bill creates an offence for any person who advertises, offers, or performs conversion therapy on another person. Under this Bill, any person is guilty of an offence if they remove another person from New Zealand for the purposes of conversion therapy. No one should, or even can, have their sexual orientation, gender identity, or gender expression changed through the pseudo-psychology of conversion therapy.”

The Conversion Therapy Action Group (CTAG)was founded on 6 September 2018. The CTAG advocates for a blanket ban on conversion therapy for all ages in New Zealand. The founding members of the group are Shaneel Lal, Shannon Novak, Harry Robson, Neihana Waitai and Max Tweedie.

On 5 December 2019, Hon Andrew Little (Minister of Justice) confirmed there’s no government position on conversion therapy.

1. **The Judiciary;**
2. **National Human Rights Institutions or other State institutions;**

The Conversion Therapy Action Group was in contact with Amnesty International New Zealand who stated that they “got some advice from our SOGISEC rights team in London on the Bill. We absolutely recognise that these practices obviously often can lead to deep harm, however, we can't get behind the specific campaign to directly criminalise conversion therapies/practices, which is what the NZ Bill seeks to do,”referring to Marja Lubeck’s Prohibition of Conversion Therapy bill.

“The reason for this is that in our experience, criminalised approaches have a way of having unintended and disparate impacts on the people who the law aims to protect (in this case, the LGBTQ community). These types of practices can go underground with even less oversight by state agencies which can be even more harmful,” however, these practices are already pushed underground and as conversion therapy remains legal, there are little to no accountability to providers.

“However, whilst we are unable to support the criminalisation call, we would be able to support the following:

· calling for an inquiry into the extent, prevalence and harm of conversion therapy in New Zealand;

· Ensuring that there is effective regulation of mental health professionals, counsellors, and other practices to ensure that conversion therapy is prohibited

· supporting LGBTIQ+ and mental health organisations' capacity to boost awareness and support survivors.

We don't have the resources or time to be involved specifically, however if you wanted to use our name for the above calls we would be able to support in this way.” - Amnesty International NZ.

The Conversion Therapy Action Group is also pleased that the New Zealand Human rights Commission supports a ban of conversion therapy, “*Currently there are no specific legislative provisions prohibiting conversion therapy in New Zealand but it is difficult to see how any health care provider could offer it in a manner that complies with legal, ethical or professional standards.* *The Human Rights Commission notes that conversion therapy was recently banned in the UK. We strongly encourage the Government and our MPs to do the same and ensure the end of this harmful practice in New Zealand.”*

**e. Any other entities or organizations.**

The New Zealand Psychological Society, NZ College of Clinical Psychologists and the New Zealand Psychologists Board all have adopted a code of ethics that prioritise the well-being of patients and nondiscrimination as core tenants to ethical practice. Under these guidelines, conversion therapy does not constitute ethical practice, according to clinical psychologist Rita Csako. Counselling on the basis that LGBTQIA+ identities are unnatural is discriminatory and does not demonstrate respect for the patient and engaging in a practice that has a mostly negative impact on mental health means a practitioner is not prioritising the patient’s well-being. However, this code is not legally binding, and does not apply to the many non-professionals who practice conversion therapy either.

In New Zealand, conversion therapy has been condemned by key stakeholders including: the Human

Rights Commission; Royal Australian and New Zealand College Psychiatrists; New Zealand College of Clinical Psychologists; New Zealand Association of Counsellors; Aoteroa New Zealand Association of Social Workers; and Rainbow Youth.

**END.**

This submission has been made by Shaneel Shavneel Lal on behalf of the Conversion Therapy Action Group – a group working towards a complete ban on conversion therapy for all ages in Aotearoa New Zealand.