OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 16 November 2021

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 16 November 2021

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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE

8th Meeting 2021, Session 6

CONVENER

*Joe FitzPatrick (Dundee City West) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)
*Pam Duncan-Glancy (Glasgow) (Lab)
*Pam Gosal (West Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Nathan Despott (La Trobe University, Melbourne)
Dr John Greenall (Christian Medical Fellowship)
Anthony Horan (Catholic Parliamentary Office of the Bishops Conference of Scotland)
Dr Timothy Jones (La Trobe University, Melbourne)
Dr Adam Jowett (Coventry University)
Peter Lynas (Evangelical Alliance)
Ivan McKee (Minister for Business, Trade, Tourism and Enterprise)
Dr Christine A Ryan (External Office of the United Nations Special Rapporteur on Freedom of Religion or Belief)
Piers Shepherd (Family Education Trust)

CLERK TO THE COMMITTEE

Katrina Venters

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 16 November 2021

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Joe FitzPatrick): Welcome to the eighth meeting in session 6 of the Equalities, Human Rights and Civil Justice Committee. No apologies have been received.

The first agenda item is to agree whether to take in private items 6 and 7, which are consideration of today's evidence on a petition and consideration of our work programme. Are we agreed?

Members *indicated agreement.*

Subordinate Legislation

Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2021 (Draft)

Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2021 (Draft)

10:00

The Convener: The next item on our agenda is consideration of two affirmative instruments: the draft Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2021 and the draft Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2021.

I welcome to the meeting Ivan McKee, who is the Minister for Business, Trade, Tourism and Enterprise, and his officials, who are joining us virtually. Pamela Berry is team leader for South of Scotland Enterprise sponsorship in the directorate for economic development, and Jennifer Singerman is a solicitor in the Scottish Government legal directorate.

I refer members to paper 1 and I invite the minister to make opening remarks on both instruments.

The Minister for Business, Trade, Tourism and Enterprise (Ivan McKee): Good morning. It is great to be here.

The two Scottish statutory instruments that you are considering today are routine. They concern the application of the public sector equality duty and of the Scotland-specific equality duties to our newest enterprise agency, South of Scotland Enterprise. South of Scotland Enterprise was established in April last year; the SSIs will bring it into line with Scottish Enterprise, Highland and Islands Enterprise and a large number of other non-departmental public bodies.

The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2021 will add South of Scotland Enterprise to the list of public authorities that are required to comply with the public sector equality duty. That duty requires public authorities, when exercising their functions, to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations between persons who share a protected characteristic and persons who do not.

The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2021 will apply the Scotland-specific equality duties to South of Scotland Enterprise by adding it to the Equality Act 2010 (Specific Duties) (Scotland)

Regulations 2012. That will require South of Scotland Enterprise to, for example, publish equality outcomes and report on progress towards achieving those outcomes; report on mainstreaming equality; and publish information on the gender pay gap and equal pay. I recognise the importance of ensuring that South of Scotland Enterprise exercises its functions with regard to the equality duties, and I consider the SSIs to be the best approach to achieving that.

I hope that that provides a useful overview to the committee. I am happy to answer questions.

Pam Duncan-Glancy (Glasgow) (Lab): Good morning, minister, and thank you for setting that out. My question is probably quite basic. Why, given that South of Scotland Enterprise was created in 2019, are we adding it to the list only now? Has the Government done any assessment of the time that we might have lost in that, and of whether there is a risk that we could have lost some vital work?

Ivan McKee: That is a good question. The provision cannot be put in primary legislation; it needs to be in an SSI, in a separate process.

Your question about the time gap is very valid. Clearly, a lot of this has happened during Covid time, when the focus was elsewhere. It is important that we correct that now. When it comes to concerns about the implications of that, I assure you that South of Scotland Enterprise has, in any event, complied in all regards with the requirements, and was set up on that basis. The board and management are very clear about the requirements in the SSIs, which have been baked into their operation right from the start. We have not lost any time in that regard. This is, in effect, a tidying-up exercise, to bring the body into line with the legislation that applies to other enterprise agencies.

The Convener: As there are no further questions, we move to items 3 and 4, which is the formal business on the instruments. I invite the minister to move motions S6M-01530 and S6M-01531.

Motions moved,

That the Equalities, Human Rights and Civil Justice Committee recommends that The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2021 be approved.

That the Equalities, Human Rights and Civil Justice Committee recommends that the Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2021 be approved.—[*Ivan McKee.*]

Motions agreed to.

The Convener: The committee will make a short factual report on our deliberations on the instruments that we have considered today.

That completes consideration of the instruments. I thank the minister and his officials for attending.

10:05

Meeting suspended.

10:07

On resuming—

Conversion Therapy (PE1817)

The Convener: The next item is for the committee to continue to take evidence on petition PE1817, which seeks to end conversion therapy. Today we are hearing from organisations that have raised concerns about the petition. I welcome to the meeting Peter Lynas, who is the UK director of the Evangelical Alliance, and Dr John Greenall, who is associate chief executive officer of the Christian Medical Fellowship, both of whom are joining us virtually. I also welcome Piers Shepherd, who is senior researcher at the Family Education Trust, and Anthony Horan, who is the director of the Catholic parliamentary office of the Bishops Conference of Scotland, both of whom join us in the meeting room today. You are all welcome.

I refer members to papers 2, 3, 4 and 5, and invite each of our witnesses to make a short opening statement, starting with Piers Shepherd.

Piers Shepherd (Family Education Trust): Thank you for inviting the Family Education Trust to give evidence today. As a charity that is interested in protecting the welfare of families and children, we are deeply concerned about the potential impact on children of a ban on so-called conversion therapy. The law needs to protect the right of parents to bring up their children in a way that is consistent with their moral and/or religious beliefs. Parents must not be reluctant to discuss issues around sexuality and gender with their children for fear of being accused of conversion therapy.

As they grow up, and especially during puberty, children and young people often have questions about their sexuality and identity, so it is important that they are supported to explore their feelings and beliefs around that without fear of those who are providing support being accused of conversion therapy, whether it is in an informal family or pastoral support context, or in a more formal counselling or therapeutic context.

There is no consistent definition of what conversion therapy is. Coercive and abusive practices are clearly wrong, but the proposed ban is so broad that it appears to attempt to impose highly contested social and political views in a manner that discriminates against those who do not share such views. The recent resignation of Professor Kathleen Stock is but one recent example of that.

To us, the statements that are made by those who are promoting a broadly scoped ban would criminalise anything other than immediate acceptance, encouragement and celebration of a child's sexual or gender identity, regardless of their age. The freedom of parents to discuss these issues sensitively with their children needs to be protected, and parents should not have to fear prosecution for doing so.

Thank you very much. I look forward to the committee's questions.

Anthony Horan (Catholic Parliamentary Office of the Bishops Conference of Scotland): The Bishops Conference of Scotland is grateful to the committee for the opportunity to contribute to its consideration of the petition, and we thank you for the invitation to join you today.

There is broad consensus that conversion therapies that are coercive and abusive, and thus harmful, should be banned, and we agree with that. Forcing people to change their sexual orientation is abhorrent and wrong. Christianity teaches us that every human being is made in the image and likeness of God. That profound principle means that each one of us reflects the divine and that, as a result, we have inviolable dignity. Crucially, that dignity is not dependent on sexuality or gender, race, religion or belief or anything else.

As a church, our ordinary day-to-day life might be summed up in this way: we worship, we pray, we provide pastoral care and we preach. That is what we do. What is of genuine concern is that some of that day-to-day practice will be consumed by a sweeping definition of conversion therapy. The committee has already heard the claim that prayer and pastoral guidance are harming people, with the suggestion that prayer ought to be banned. Indeed, one witness told a newspaper that "gentle, non-coercive prayer" should be banned.

A law that reaches into the realm of the ordinary work of churches to criminalise ordinary women and men for praying, explaining religious teaching or offering appropriate pastoral care and support seems to be disproportionate. A sweeping ban that consumes prayer, including gentle prayer, and pastoral support risks breaching article 9 of the European convention on human rights. The law is clear that Christian belief and the expression of those beliefs are worthy of respect in a democratic society.

None of this should compromise the protection of people from harmful therapies or practices that seek to change or fix them. We want to get to a place where people are protected from harm, if the law does not do so, while at the same time protecting those who wish to pray and follow their religion and those who voluntarily seek spiritual support. A clear and precise definition that takes

account of established law and the fundamental rights of all people is key to achieving both aims.

Peter Lynas (Evangelical Alliance): I thank the committee for allowing me to appear by videolink, thereby saving creation from two more flights, given that I am based in Northern Ireland.

The Evangelical Alliance is the largest and oldest body representing the United Kingdom's 2 million evangelical Christians. We are in our 175th year and have relationships with approximately 500 churches and about 50,000 church attenders.

We have been involved in discussions about conversion therapy for some time now and have consistently made two points that we have set out in our submission and in our letter to the Prime Minister at Westminster. First, we absolutely support a ban on coercive and abusive behaviours. Secondly, there is a need to safeguard spiritual support for those who choose it. That is based on the belief that everyone is made in the image of God and is worthy of dignity and value.

We are engaging with the issue right across the UK. We are aware that Westminster has recently released its consultation on ending coercive practices while allowing prayer and pastoral support. That consultation acknowledges the importance of consent, and it is clear that people can consent to practices that others might well disagree with. On balance, we think that such an approach is correct, from a human rights perspective, in recognising the different rights that are engaged.

We are concerned about lack of clarity in any definition of conversion therapy, the application of consent and the understanding of coercion.

The Westminster proposals talk about the importance of all human rights, including religious freedom, but are light on the details of how those would be protected. Many people, including the petitioners in their own evidence, have said that they do not want everyday religious practices to be banned. However, as Mr Balfour, who is a substitute committee member, found when he asked about his own past as a church minister, the legality of praying with somebody depends on definitions.

10:15

Our concern is that the petition could find itself at odds with the science and with human rights law and could, ironically, legalise discrimination in certain situations. Definitions that are too wide will be struck down and found to be unworkable. Clarity is in everybody's interests, in the matter.

Dr John Greenall (Christian Medical Fellowship): On behalf of the Christian Medical Fellowship, I am grateful to the committee for inviting us to contribute, as you consider the petition.

We acknowledge and regret the harm that LGBT+ people have experienced because of coercive and even abusive attempts to change their sexual orientation. We fervently believe, with the petitioners, that such practices should be stopped.

We are an association of more than 5,000 doctors, medical students, nurses and midwives who are united by our Christian faith, and we represent a range of mainstream denominational beliefs. It is a particular sadness to us that the practices that we are discussing have sometimes been experienced in Christian churches. We wish to distance ourselves from such mistreatment and to play our part in helping to remove the prejudice, ignorance and misunderstanding that have contributed to it.

For the sort of deep-level change that is required to protect LGBT+ people to take place, freedom to teach, discuss and change is needed. However, the petition raises troubling questions. Conversion therapy is not clearly defined. There is reference to gender, but conflating gender and sexuality when it comes to conversion therapy could cause more problems than it solves, in particular for vulnerable young people.

Then there is the possibility of unintended consequences for people in the medical profession of a too broadly framed ban, in addition to consequences for responsible churches and organisations. Indeed, in our experience, the people who currently offer acceptance, community, help and support in healthcare and voluntary settings may well be paralysed through being fearful of being reported and prosecuted.

We ask the Scottish Government to distinguish carefully between abhorrent and coercive practices that should be banned and the pastoral care, counsel and prayer that help many LGBT+ people and should lie outside the scope of any ban.

The Convener: It is worth putting on the record that, as well as having the four panel members before us, we have received evidence from a wider range of people from various religions. That is part of our written evidence, which members of the public can access.

Most of the witnesses said that clarity is important. That might be a really important point for us to understand. My first question is about what conversion practices are. If a ban were to be introduced, what practices to try to change someone's gender identity or sexuality do each of the witnesses think should still be allowed?

Piers Shepherd: Anything that is abusive or coercive should obviously not be allowed. However, if somebody voluntarily goes for a particular kind of counselling or, if it is in a religious context, prayer, the law should not interfere with that. It should only act if something is clearly abusive or coercive.

The Convener: Are you able to help us with what that might look like?

Piers Shepherd: The really horrifying things that they sometimes mention, such as corrective rape or that sort of thing, would be covered by already existing law—rape is a criminal offence, as is committing violence and abuse against another human being. We are pretty confident that anything of an abusive or coercive nature would already be covered under current law.

Based on the statements of people who have advocated a ban, we feel that there seems to be a particular attack on even voluntary forms of conversion therapy. Blair Anderson, for example, said in a previous evidence session that even consensual conversion therapy should be against the law, which

"should cover non-affirmative forms of therapy for trans people."—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 7 September 2021; c 3.]

The specific inclusion of gender identity and the potential impact on children and young people is another thing that we are very worried about. The Care Quality Commission's report earlier this year talks about abuses at the Tavistock gender identity development service and is highly critical of the service's failure to assess the competency and capacity of young people receiving treatment for gender dysphoria, and the lack of respect for staff who raised concerns. We feel that a ban would make such situations more difficult and multiply the deficits and errors that the report found.

The report also found that parents had said that

"they felt like they were being pushed into doing things they didn't want to do",

and we feel that a ban would exacerbate that sort of thing.

Dr David Bell, a former employee of the Tavistock, said that 35 to 40 per cent of children who presented for gender dysphoria at the Tavistock were on the autistic spectrum. The CQC has a specific criticism about insufficient attention being paid to the needs of those children. We feel that a ban would exacerbate that, too, especially if it is to cover the whole area of gender identity.

Of course, there is also the Keira Bell case. Although we acknowledge that the original decision was subsequently overturned, permanent damage was done to that young woman's body. She said:

"I don't know if I will ever really look like a woman again ... I feel I was a guinea pig at the Tavistock, and I don't think anyone knows what will happen to my body in the future."

That is an example of somebody who actually changed their gender identity: from identifying as a transgender person, she then repudiated that identity. Under a broad ban that covered those areas of gender identity, would anyone have been allowed to help Keira Bell?

Laws have consequences, and we really need to be careful with any kind of law that we pass. We certainly recommend that people at least wait to see what comes out of Dr Hilary Cass's review, which is looking into the whole area of gender identity.

Anthony Horan: I have already touched on some of the things that we are concerned about. I feel that some of the evidence that has been given to date is putting praying, explaining religious teaching and offering appropriate pastoral care and support into the realm of something that should be banned with regard to conversion therapy, which I do not think is the correct road to go down.

Christian teaching—especially Christian teaching on sexuality and marriage—might not be fashionable to the modern ear, but it is mainstream, and the courts have consistently regarded such beliefs as protected by article 9 of the European convention on human rights and thus worthy of respect.

It might help to give a few examples that have been in my mind, where someone could be criminalised—in my view, unjustly and disproportionately. The legislation that has been passed in the Australian state of Victoria has oft been cited by previous committee witnesses. If we followed that, what would that mean for a priest or even a layperson within a parish or a church in relation to praying for someone? For example, a person might be same-sex attracted and aware of the teaching of the Catholic church, which is that there is nothing sinful about having same-sex attraction but that when it goes into the realm of acting on that attraction and engaging in sexual activity, it becomes sinful. If that person is feeling that temptation, they might want to speak to a priest privately to say, "I'm aware of the teaching of the church and I struggle with it. I feel that I should not act out these desires but I find it very difficult." Then—this is a very common thing for Christians to say—they might ask, "Will you keep me in your prayers," or, "Will you pray for me?". That is an innocent, benevolent thing to do. If the priest then went away and prayed for that person, I would be concerned that that could be caught by an all-encompassing definition of conversion therapy.

Similarly, if that same priest delivered a sermon a few weeks later on Christian sexual ethics and that person happened to be in the congregation at the time, would they think, "Wait a minute, the priest is having a pop at me—he is trying to convert me," for example?

I am just thinking of potential problems that could arise in relation to an all-encompassing definition. It could apply to school teachers as well, when they teach Christian sexual ethics in the curriculum. A young pupil who was same-sex attracted could feel that, in teaching and delivering that class, the teacher was trying to convert them. Piers Shepherd has talked about private family life, where a child might approach a parent in similar circumstances.

The petitioners' definition of conversion therapy—the forced conditioning of a person's sexuality or gender identity—is a useful starting point, but I think that it is just a starting point.

I referred to the Victoria legislation, which is very broad. It bans prayer, including consensual prayer, that suppresses an individual's sexual orientation or gender identity. To go back to my original example of the person who is same-sex attracted approaching their priest or minister and their priest then praying for them, there is a danger that that could be viewed as an attempt to suppress someone's sexuality, which it is not. I have been quite clear about Catholic teaching, which does not seek to change anyone or fix anyone's sexual orientation. However, there is a danger that that is open to legal challenge, so we need to be clear, precise, accessible and intelligible in terms of the law and our definitions.

Jason Coppel QC and Rupert Paines have written an opinion on the human rights implications of the proposal to ban conversion therapy. They say that if the Victoria legislation is used

"as the basis for the prohibition of conversion therapy in this country"—

the UK—

"the definitions we have been asked to consider would be likely to violate Convention rights".

There are a lot of hurdles to overcome and a lot of issues that we need to look at; it is a very complex matter.

As Piers Shepherd touched on, you have heard a lot of evidence, and I will not rehearse it, but Barbara Bolton, Dr Moon, Tristan Gray and Megan Snedden all spoke quite reasonably about trying to achieve an appropriate definition that does not ban or prohibit ordinary religious teaching.

The Convener: Can I just probe a tiny bit into some of what you have said in relation to whether a practice is trying to change someone's sexual orientation or gender identity? If a ban came into place on the attempt to change a person's gender identity or sexual orientation and that was the extent of what was prohibited, would you be generally comfortable with that?

10:30

Anthony Horan: Yes, but although I am sure that the committee will speak to legal experts—I know that a legal adviser to the United Nations special rapporteur will be giving evidence later in the meeting—it might be helpful for it also to speak to Scots law experts in relation to this, if it has not already arranged to do so.

The issue is how this is defined. What would be considered as conversion therapies? I said earlier that coercive, abusive and thus harmful practices would be wrong, in my view. To get back to your main point, forcibly trying to change someone's sexual orientation is abhorrent and wrong, as I said earlier. That is where I am, and I think that that is a very useful starting point.

Dr Greenall: I will comment on the definition of "harm". At one extreme is severe physical and sexual violence, which is abhorrent and a serious crime. "Harm", when it is more broadly defined, needs to be distinguished from legitimate freedoms, and it needs to be based on evidence. We would want the committee to examine the definition, particularly when it comes to what constitutes harm and the evidence for that.

Secondly, I will comment on the bidirectionality of any such law. Would the law cover those who have been pushed towards an LGBT identity, as well as away from it? For example, could a gay man who has been pushed to identify as a trans woman, perhaps by a therapist, be deemed to be subject to conversion therapy? That is just a clarification. In both directions, it is important that we honour people and that we have fairness and equality for all, rather than just having things in one direction.

I have a final point regarding definitions. One troubling thing for me personally as a medic and a paediatrician is that the category of gender identity conversion therapy is very broad. It conflates two quite distinct phenomena. There is a lot of rhetoric around "harm" and transitioning for children. For example, someone might say, "Unless you transition, it will result in irreparable harm." I am talking here about gender transition. We have seen that in the 2017 memorandum of understanding—the rewriting of that, if you like.

I will give some specific examples. Many of our members report that they feel unable to have open discussions with young patients and their families for fear of being labelled transphobic. I will not rehash what Piers Shepherd has already talked about regarding the rates, with children in many

cases “outgrowing” trans identities. There is a lot of fear with any such legislation, making it even more difficult to openly discuss children presenting in a truly holistic sense. The figure for autistic children being referred to the gender identity service—those with a diagnosis of an autism spectrum disorder—is 48 per cent. Children with inflexible thinking need time and space to explore and to talk.

The Cass review has been mentioned in this discussion, and it is on-going, but it has not been mentioned in some of the studies that the committee is considering. I think that that will be a key review that is looking at the range of services, and it will be important to wait for it to report.

The Convener: I ask Peter Lynas to respond on the same question about definitions.

Peter Lynas: As a Northern Ireland man, I do not want to keep pointing to Westminster in any way, shape or form, but it has begun the process of trying to put these things into writing. It has been very clear that physical acts of violence are already covered in law, and it has added a motivation clause in its proposals, which seems a very sensible way to go.

However, in trying to define conversion therapy, Westminster has begun to use the new phrase “talking conversion therapies”, and its definition of that is not particularly clear. It seems to want to add two tests. The first is on coercion, which seems sensible, and it is pointing to section 76 of the Serious Crime Act 2015. Some clear criteria already exist in law—it usually applies to domestic abuse situations: repeated behaviour, personal connection and the knowledge that the behaviour will have a “serious effect”. Westminster is seeking to minimise those things, which would be of concern of us. The coercion test is the right one; indeed, people have consistently said to us that anything coercive should be banned, and there are clear ways of doing that, drawing on the 2015 act.

The second test is on choice and consent. According to YouGov polling carried out in the past few weeks, the majority of UK adults—58 per cent—believe that individuals exploring their sexual orientation and gender identity should be able to choose from a range of different forms of support or therapy. In the same survey, 29 per cent of the population at large did not know what a ban would entail or, indeed, what conversion therapy meant, but the vast majority—58 per cent in the UK, and 57 per cent in Scotland—said that people should be able to choose and give consent. To us, that seems incredibly important.

Perhaps the most contested aspect of this relates to the under-18s, and the Keira Bell case leans into that. As a result of the Court of Appeal ruling, under-18s are able to consent to a lot of things. That is based on Gillick competency—and I am sure that we are all very familiar with the fact that the law allows under-18s to consent to a whole range of things based on their competency.

This is so important, because when someone comes to talk to me after, say, I have spoken on the subject, the risk is that I end up treating a heterosexual person differently from a same-sex-attracted person. I can counsel and pray with the former without any risk, but depending on how the law is framed and brought into play, I can be put at risk of coming up against the ban if I speak to, pray with or engage with a same-sex-attracted person. Andrew Bunt, who works for Living Out, has written a piece about coming forward as a same-sex-attracted young man and finding his church to be incredibly supportive, and he has made it very clear that, with what has been proposed at Westminster, he would not be able to get the same support.

Another guy called Ed Shaw has said the same thing. He is a minority within a minority; as a same-sex-attracted Christian, he would not get the same support as an opposite-sex-attracted person. That leads to discrimination against those who are same-sex-attracted but who are also trying to live in response to their faith. That is the most concerning issue.

We need to tighten up the definition, introduce a clear clause on coercion and have a consent clause to allow people to choose these treatments, even if others disagree. There are all sorts of things that we allow people to consent to, even if we do not agree with their choices. We think that people should be able to consent to these things and that that will bring clarity to the law.

The Convener: Let me probe the issue again. Are you saying that if a gay member of an evangelical church, say, were to come forward, it would be okay for a therapy or practice to proceed that had the intention of making that person straight—to use plain English?

Peter Lynas: We would be much clearer and say, “This is all about informed consent, so there must be clarity about what that means.” For most people, this is about suppression or repression, and that is my concern about the use of the language that is used in the Victoria legislation. Andrew Bunt is not saying that the treatment made him straight; such language is not helpful, and it does not reflect his story or what he has articulated. He is saying, “I want help to be able to live in response to my faith”, which usually is—and, for him and for Ed Shaw, was—celibacy. The concern is that the proposal pushes things right to the boundaries and bans that sort of thing.

One of your previous witnesses, Jayne Ozanne, made it very clear: she wants "gentle, non-coercive prayer" to be included in a ban. That is deeply unhelpful; in fact, it actually muddies the waters. I make it clear that we are not talking about forced or coercive practices or anything that seeks to change somebody permanently; instead, we are talking about helping somebody live in response to their understanding of the Christian faith. They should be able to make an informed choice and give consent.

Pam Duncan-Glancy: Good morning, panel. To be honest, I do not know quite where to start, so I will begin with the issue of definition, if that is all right.

I am interested in hearing a bit more about, and in unpicking, the notion of forced and coercive practices. We have heard from various people that a person cannot consent to something that is considered to be torturous, and the committee has certainly heard about some horrific experiences that people have gone through. Some of those experiences, such as corrective rape, have been in the realm of what Piers Shepherd mentioned, but some of them have brought about psychological harm over a number of years in a much gentler way that allows someone to internalise deep-seated oppression and discrimination. We have heard that that has been incredibly harmful for people, so I am very keen to understand what you think the difference is between forced and coercive practices, if you think that there is a difference. If you do, can you define "forced"?

Can you also tell us more about your understanding of consent? The independent forensic expert group advised not only that a person cannot consent to torture but that they cannot consent to a practice if they do not understand its outcome. The group believes that there is no medical or scientific basis whatsoever for conversion therapy that aims to change or suppress someone's sexual orientation or gender identity. Given that a person can consent only if they have all the facts and that the facts seem to suggest that change and suppression are not possible, how do you suggest that we consider the issue of consent?

Piers Shepherd: I think that a distinction needs to be made between adults and children. In the case of an adult, I think that it would be pretty clear whether somebody was coerced or they consented. For an adult, it is ultimately voluntary. If somebody would like a particular type of counselling or spiritual help, or whatever it is, we do not feel that the law should be going into that.

However, our greatest concern is about the effects on families and children. When a child is under 16, their parents are responsible for them, and we believe that parents have the right to bring up their children according to the moral beliefs that they have. We feel that, were a ban such as this passed, it would make it a lot more difficult for parents to have conversations with their children in order to, for example, get help for a gender-dysphoric child.

With regard to gender identity, I have mentioned that gender dysphoria in children is often fleeting. For example, the American Psychological Association found that only 2 to 30 per cent of biological females with gender dysphoria persist in having it into adulthood; the rest desist. For males, between 12 and 50 per cent persist and the rest desist. According to research by NHS England, 12 to 27 per cent persist.

We are very worried. We feel that anything that is not immediately affirmative and encouraging towards a particular sexual orientation or gender identity is going to be criminalised. We see that in what people have said, including those who have advocated a ban in previous committee evidence sessions, such as Jayne Ozanne. She wrote an article, which appeared in *The Guardian* just the other day, that was titled "The UK must ban 'conversion therapy'—even for adults who claim to want it".

I think that it is very extreme to use the term "torture"—to say that somebody who asks for help with a particular area of their life is consenting to be tortured. I find that to be very extreme language.

The Convener: We have certainly heard evidence from people who have said that that happened to them—they consented in theory to something that they now realise was torture. Peter Lynas wants to come in on that question before Pam Duncan-Glancy comes back in.

10:45

Peter Lynas: That was a great question from Pam Duncan-Glancy. Coercion has a legal definition in the context of domestic violence, and the Serious Crime Act 2015 gives a good, legally robust starting point for what it is, to which we can turn. It is about informed consent: a person needs to understand what they are consenting to.

We allow people to do all sorts of activities that we might not think are a good idea, as long as they consent. The flipside of the question is the question that Andrew Bunt and Ed Shaw pose: they would ultimately be denied support if the legislation were to become too expansive. Andrew is in his 20s and Ed is in his 40s. They have been on this journey for a long time, and they are saying that the proposed legislation would end the support that they wanted—they would be

discriminated against on the basis of their religion and sexual orientation.

We have to look at both sides and try to find a balance, because we could end up banning people from getting the support that they want basically by implying that people do not know their own minds and do not understand what they are asking for. Andrew and Ed—the committee should call them as witnesses—are very confident in what they are saying, and they have been thinking about the issue for a long time. That does not mean that other people have not struggled—they absolutely have struggled. However, a consequence of legislation could be a ban on such people getting any support or help at all.

Pam Duncan-Glancy: Thank you. As a person who has experienced quite a lot of oppression and discrimination in my time, I understand how someone can internalise a view to such an extent that they believe that they are consenting to something that is the right thing to do.

However, my understanding from witnesses that we have heard from is that the support that you described in relation to the two people you mentioned would not be prohibited. For example, Dr Moon, whom Anthony Horan mentioned, said:

"Affirmative therapy is the way that therapists work flexibly with clients—children and adults—to ensure that they are in a safe space with an accredited registered therapist".—[*Official Report*, *Equalities, Human Rights and Civil Justice Committee*, 21 September 2021; c 26.]

Vic Valentine told us that affirmative therapy

"is about holding the space for the individual to find out who they are and ensuring that they can come to that decision themselves."—[*Official Report*, *Equalities, Human Rights and Civil Justice Committee*, 14 September 2021; c 5.]

It is not about forcing someone down a particular route; it is about holding the space, so that the person can have the conversation.

In that context, do you accept that affirmative therapy could help people to have more supportive conversations, particularly with their families, and begin to address some of the discrimination and oppression that children and adults have experienced, in some cases as a result of deep-seated homophobic and transphobic views?

Piers Shepherd: I suppose that, in the case of an adult, it is a matter of choice. However, I think that there is a problem when we are dealing with children. As I said, we believe that parents should be able to bring up their children according to their moral convictions—and that includes people who do not have the same views as us. Some parents might feel that an affirmative form of therapy is the right thing.

However, when a person is very young, what is the problem with waiting until they reach adulthood? We find it very problematic that, in the past 10 years or so, the number of children, especially teenage girls, who present for treatment for gender dysphoria has increased by, I think, nearly 5,000 per cent. Regardless of your view on sexual orientation or gender identity issues, that is quite extraordinary; it is not normal to see such a rise in such a short space of time. We feel that the Government should spend more time investigating that area instead of pursuing the matter of conversion therapy.

Maggie Chapman (North East Scotland) (Green): Good morning to all the panellists. You have all, in different ways, expressed concerns about the potential criminalisation of pastoral care, prayer and those kinds of things. The United Nations special rapporteur on freedom of religion or belief has said that there is no conflict between the right to freedom of religion or belief and the obligation of the state to protect the life, dignity, health and equality of LGBT+ people. We have just heard quite a lot about definitions. What exceptions, if any, do you think should be defined in order to protect religious freedoms?

I will go to Piers first.

Piers Shepherd: As we have said, protections of religious freedoms are essential. One of the reasons that we are uncomfortable with the ban as it has been proposed is that we do not feel that it would protect religious freedoms.

As you know, the United Kingdom Government is currently consulting on a ban and is using as its basis a study from Coventry University that focuses almost entirely on conversion therapy in a religious context. There did not appear to be a lot of evidence that harm had been done in the vast majority of cases that the study cites. It seemed that somebody had gone to their priest or pastor with a particular problem and they had perhaps been asked to go on a retreat, to pray or to read particular types of literature. We do not see how that constitutes abuse or how that is harmful.

The Family Education Trust is not a religious organisation, so perhaps the Evangelical Alliance or the other panellists could better answer your question. As far as we can see, much of what that study cited seemed to be pretty standard practice in a religious setting, whether the issue was spiritual or moral.

The other panellists might want to say something about that.

The Convener: I think that Peter Lynas does.

Maggie Chapman: I am interested in hearing what Peter has to say, but I am curious about the research that Piers referenced. He said that, in the vast majority of cases, no harm had been done. However, the state has an obligation to protect

those in the minority of cases in which harm is caused. That is what we are seeking to work our way through.

Does Peter want to respond to that question, too?

Peter Lynas: The religious freedom point is important. It is not a loophole, and we are not seeking special protection—that would be an unhelpful way to understand it. It relates to teaching and prayer, and prayer-based and religious practices are explicitly included in the Victoria legislation, so it comes down to definitions.

One part of me says yes to the UN rapporteur. We agree that it is absolutely possible to navigate the issue—to ban coercive practices and continue to allow everyday religious practices. Many speakers, petitioners and those who have given evidence have said that they want to do the latter, so it comes down to definitions. The risk comes if talking therapies and prayer are included in the ban.

The two QCs—it is not just Jason Coppel; there is another opinion—both say that the Victoria legislation would be in breach of articles 9, 10, 11 and 8 of the ECHR. Jason Coppel's opinion is publicly available, and it makes that point. It did not need to, but Victoria has done things in such a way that such legislation would be in breach of four rights, two of which are to do with religious freedom and religious liberty. The risk is that, unless it is done well, it will tip into the wrong space.

I do not want special protection, and I do not want special rights to do something that is illegal or wrong. I want the balance to find and be able to pray with people, and to offer the spiritual support that people such as Andrew Bunt and Ed Shaw are asking for, consenting to and making a free choice to enter into.

Anthony Horan: I am grateful to Maggie Chapman for the question. I am not sure that I would use the description of an exception under any proposed law, as that would suggest that something legally questionable was somehow being tolerated. Peter Lynas touched on the fact that the impression might be given that religions are being afforded some sort of special protection, which is not something that we are necessarily looking for. I do not think that certain practices or values should be under consideration or in scope anyway.

Peter referred to an individual wanting to follow the teachings of their faith. That, essentially, should not be included in any ban.

Maggie Chapman: Before I come to John Greenall, I will add something to the question around the potential impact not only on religious practices or what may be excluded from any ban. I am thinking about medical practitioners in your position in the organisation that you are here to represent. What might be the impact on the type of therapy provided by medical practitioners to someone—adult or child—who has concerns about their sexuality or gender identity? What are the potential impacts, and would you see any of those therapies being excluded?

Dr Greenall: It is really important that, as healthcare professionals, we are able to treat the whole person. That very much includes understanding the beliefs that they come into the consulting room with and respecting them equally, wherever they are coming from, as well as understanding that those beliefs may shape some of how they have thought about themselves—whether that is deemed to be a positive thing or a negative thing for that person, or a mixture of the two.

To pick out religion and say that it may be a facet of the person's history and background is reasonable, but that sits alongside the other parts of who they are. Ensuring that there is freedom and that therapists and medics feel free to explore those various factors as part of their holistic assessment is vital. A sense that this one area is being singled out or is a no-go area could be to the detriment of the patient and their being able to express how they have come to their position. That is certainly a concern.

This is partly outside my area of expertise as a medic, but there are those who want to see a therapist who shares some of their background convictions. For example, they may wish to see and have a conversation with someone who holds views that they, too, hold, which are in line with Christian teaching. I would argue that, in the society that we live in, it would be a good thing for them to be free to do that on the understanding that they are seeking out that person's support, advice and counsel on the basis that they hold the same convictions. I would find it troubling to remove, in any way, the freedom for them to do that, thinking about the person as a whole person.

Maggie Chapman: Thank you. I think that Pam Duncan-Glancy covered affirmative spaces and affirmative action previously.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I am going to ask about consent, although it has been broadly covered already. First, though, I want to reflect on something. Although this evidence session has—as you said at the outset, convener—involved hearing from organisations that are raising concerns about possible legislation, from what I have heard so far, there is actually quite a lot of common ground in recognising conversion therapy

or practice as detrimental and not something that we would want to do.

11:00

As I said, the subject of consent has been broadly covered, but it might be helpful if I ask the question directly and from another side. We have heard a lot of evidence about consent, both today and before, and we have heard that it is not possible to consent to conversion therapy, because it can be classified as torture.

Bearing that in mind, and given the discussion that we have had about consent, how do you rectify that, if you like, based on what you are saying? We have heard quite clearly that conversion therapy in any of its forms is torture, and a person cannot consent to torture. How does that play into what you are suggesting? I am happy for the witnesses to respond in any order.

The Convener: Peter Lynas has indicated that he would like to speak. We do not have to hear from everybody on every question, but the witnesses can indicate if they want to respond.

Peter Lynas: Both of the QCs that I mentioned said in their opinions that torture is a very tightly defined idea. Conversion therapy would meet that definition in an extremely small number of circumstances, and they would almost certainly, although not exclusively, involve physical violence. They have not said that it is a key issue at play.

Section 74 of the Sexual Offences Act 2003 sets out what consent looks like. It says:

> "a person consents if he agrees by choice, and has the freedom and capacity to make that choice."

That is in relation to offences. There may be a variety of sexual practices and we may all have different views on them, but people can consent to them no matter what views we take.

The law has done quite a lot of work in relation to what consent looks like and understanding what torture is, which is right on the periphery of this. I would want to push back on the line that conversion therapy "in any of its forms" might meet the definition of torture. That is not my understanding of nearly all the definitions.

The issue goes to the heart of what conversion therapy is. Talking conversion therapy as defined by the Westminster Government does not come close to torture. That Government says that, even though it does not like talking conversion therapy, it should be allowed if people consent to it and that consent is informed and meets the legal definition. We would say that that is right in a free society.

The Convener: On the subject of legal language, I note that this Parliament struggled with the issues around consent when we looked at legislating on domestic abuse, and we came to a slightly different and more finessed answer.

Does Piers or Anthony want to respond to Fulton's question?

Piers Shepherd: I would just repeat what I said earlier about the language. Describing counselling or prayer or talking to people about these issues as torture is very extreme language. As Peter Lynas said, torture involves physical violence. In this case, people are simply consenting to a form of counselling or prayer or whatever it is. I said that earlier, and I repeat it.

Pam Gosal (West Scotland) (Con): Good morning. Today, we have heard from the opposite side. Previously, we heard from survivors and organisations that are for a ban on conversion therapy. It is very useful to hear from your side about how a ban could end up infringing on religious practices and parental rights. My question is about that issue.

We have listened to a lot of survivors, including people who went through conversion therapy when they were younger and some who did so much later on. Those who were younger when they went through it did not know that it was conversion therapy until much later, when they understood that such practices were happening. How do you see that being policed, if you are looking for a ban not to be put in place? I ask Anthony Horan to respond first.

Anthony Horan: As I said in my opening remarks, forcing someone to change their sexual orientation, whether that is done over a long or short period of time, is something that we find to be abhorrent and wrong, and it should not happen. We are not against a ban on conversion therapy, but we should be very careful about how that is defined. I do not want to rehearse again my thoughts on the definition, but we need to make sure that it is clear, accessible and intelligible and that it does not include the practices that I mentioned earlier.

Peter Lynas: Pam Gosal suggested that there are two sides. I understand that on one level, although I think that there are actually a variety of sides, and there are many areas of agreement. A point that I have been making in wider conversations on the subject is that, in relation to some of what the petitioners have said and other conversations and jurisdictions, there are significant areas of agreement on what should be banned and there is significant agreement that things such as prayer and pastoral support should not be included in a ban.

It comes down to the definitions, which are difficult, and then there is an education piece that goes beyond that. The definitions need to be tight or there will be a chilling effect around the issue in

religious bodies and institutions. On the education piece, there have been significant changes in the way that these things are done. Ten or 15 years ago, religious bodies did things that were deeply unhelpful. They have acknowledged parts of that, but we need to do a better job of acknowledging that. That is where better research comes into play, because some of that was historical.

We need to understand what campaigners want to be banned that is not currently covered in law, how they want that to be done, and how we can balance that with religious liberty and freedoms. It is a relatively fine needle to thread, but it is possible to do that.

Pam Gosal: Piers, you talked about younger children and parental rights. How do you see that playing out, especially when a lot of younger children will not know what has happened to them until much later on, because they believe their parents? How do you see them speaking out and that being policed?

Piers Shepherd: There may be individual cases in which action could be taken, but it would be dangerous to have a blanket ban whereby we say, "Anything of this kind is against the law."

In the case of young children and their parents, very careful and sensitive discussions are needed, whether something is done through a church or with counsellors. There may be individual cases in which something abusive has happened, and in those cases action would need to be taken, but the danger with what is proposed is that it would cover such a broad area. Ordinary parents and possibly counsellors and people in religious settings would become victims of the new law, rather than individual cases of abuse being sought out.

As I think Peter Lynas said, there is a fine line in some ways, but we think that a very broad ban, as has been proposed, is not consistent with respect for parental rights or the welfare of children. However, I take your point.

The Convener: Anthony Horan wants to come back in.

Anthony Horan: I will be brief. What Piers Shepherd said brought to mind a couple of examples where the proposal could potentially be dangerous. A Catholic Christian family, for example, might regularly read up on the teaching of the church, and of course there are certain sexual ethics and values in the Catholic church. There could be a danger if the family discusses those issues with the children over time. We have to be very careful that that is not caught under a broad idea that the family are attempting to convert a child or force them down a particular path.

The same could perhaps be said for teaching in schools in religious education, as the Christian sexual ethic is taught in Catholic schools. Could it be argued that, over time, children and young people are being forced down a particular road? They are not, as they are being opened to all sorts of religions and belief systems. I just raise that as a potential issue. Basically, I do not think that a ban should cover that kind of thing.

Alexander Stewart (Mid Scotland and Fife) (Con): You have all touched on areas of anxiety, fear and risk, and we have now moved to talking about danger. To try to manage some of that, you require clarity of research, evidence and definition. Do you believe that more research evidence is required to manage those anxieties, fears and risks? If so, what type of evidence should be looked at or examined? The language that we have heard today is potentially inflammatory in some ways, because some people do not see the proposal as a danger or as creating anxiety or a risk; they see it as a right. I ask each one of you to tell me what further evidence you would like that would be used to support your approach. Maybe Piers Shepherd can go first.

The Convener: Can we go to John Greenall first? We did not bring him in for the previous question, so he has been waiting.

Alexander Stewart: Sure, convener.

Dr Greenall: I will respond to that question and refer back to a couple of the previous questions.

I hear what Alexander Stewart is saying and I guess that I have a question for the committee. I appreciate that the committee has heard harrowing stories from people. As has been mentioned, part of the Government's mandate is to protect those who are in the minority. However, to respond to the question about evidence, my question back to the committee is: have you heard from those who have been through what might be defined as conversion therapy—or conversations that involved bringing their sexuality under their views as evangelical Christians, for example—about that experience and how they then experienced living out?

In surveys, a number of people respond in the affirmative and say that they have been through the process and, actually, they have found it to be a positive experience. Although the harrowing stories that I mentioned are significant and we must not ignore them, the numbers are actually very small—it is a very small number on which to base legislation. That is one question that I would ask.

Another point is about making sure that the evidence that is already out there is fully considered. Evidence is presented in the Coventry University report, for example, but I am aware of a

lot of evidence in peer-reviewed journals that is not included. For example, there have been two studies this year looking at detransitioners and at the internalised homophobia that many of the participants experienced. In the two studies, 23 per cent and 52 per cent of participants respectively said that internalised homophobia was part of their journey of medical transition, and that, in turn, caused a lot of pain and suffering in their lives as they then detransitioned.

Finally, we need to look at the robustness of the evidence. We certainly have a lot of case studies and questionnaires that got a response from a certain group of people, but we have to ensure that the evidence is robust and that we can, as far as possible, have some randomised control trials to help us understand things a bit better. Speaking as a medical professional looking on, I feel that the evidence is not robust enough to base such significant decisions on.

With children, which is more my area of expertise, the Cass review is, from what I can see, doing a very good job of gathering that kind of evidence, and I urge that we pause and see what it recommends with regard to children.

11:15

Piers Shepherd: I would pretty much repeat what John Greenall has just said. It would be good to hear from people who feel that they have benefited from this sort of therapy. Groups such as the Core Issues Trust specialise in that area and are staffed by people who have gone through this. In the area of gender identity, there are thousands of detransitioners who have a lot of stories to tell. It would be very useful to hear from them. I have already mentioned Keira Bell, and we have also said that it would be good to wait and see what the Cass review comes out with. That is the sort of evidence that needs to be taken further.

Anthony Horan: First, I should clarify that, when I used the word “danger” earlier, it was in the context of our being careful not to criminalise innocent acts and behaviours.

I agree with John Greenall on the need for robust evidence. People have already referred to the Cooper report and the fact that it does not have a clear definition of “conversion therapy”, and I think that that needs to be looked at.

As I did earlier, I urge the committee to talk to legal experts in Scotland, particularly about how all this will interplay with the law in Scotland, including, of course, the European convention on human rights. I believe that the Victoria legislation, which we have already talked about, does not come into force until next February, and there might be merit in seeing how that plays out. Of course, the UK Government is 12 to 18 months ahead of us, having released its consultation on the matter, and perhaps the committee can think about that and see how things play out in that respect.

Peter Lynas: I am happy to echo the comments that have been made. The Westminster consultation acknowledges the lack of reliable research in its text, referring to self-selecting surveys and small sample sizes and raising concern about data quality issues. It also acknowledges that most of the research gives no definition of conversion therapy. Indeed, in the largest survey that was carried out, which had the 2 per cent response that was referred to earlier, there was no such definition. The fact that there is no understanding of that is problematic and obviously significant, and further research could be done in that respect.

I also want to highlight that this is about concerns rather than fears. Living Out is an excellent organisation in that space, and some of the people that I named earlier work with it.

Anthony Horan has just referred to Westminster. As someone based in Northern Ireland, I am always reluctant to point in that direction too much, but the reality is that Westminster has been exploring this issue further and is trying to work things out. The ECHR issue has been coming up, and it certainly has been highlighted in our discussions with the Government Equalities Office, which is now aware that this will be more difficult to do than was perhaps anticipated. The Victoria legislation simply will not fly here, as I know a number of witnesses who have previously given evidence have suggested. In our view, and in the view of the two legal experts, that sort of approach cannot be sustained in the UK because it is incompatible with the European convention on human rights on four separate counts. Working out what can be done is a real legal challenge.

If we are serious about moving forward on the issue, there are ways in which we could find agreement and a pathway through. All sides are probably closer together than it might appear at times. If we could tighten up definitions by making them legally meaningful and robust, that would be good.

Karen Adam (Banffshire and Buchan Coast) (SNP): Choice and consent are two of the key points, and there has been a discussion about the protection of children. Many of our previous witnesses have testified that coercion was used to try to persuade them to change their sexual orientation or gender identity as children and young people, and that that early intervention caused them the most tremendous harm. Do you believe that children can consent to conversion practices?

Piers Shepherd: There is a problem with the term "conversion therapy" in that it is being used, in essence, to describe anything that is not immediately affirmative or encouraging towards particular sexual orientations and gender identities. We are dealing with children, so we have to be very sensitive. We have to remember that children under the age of 16 are under the age of consent and cannot vote or drive a car—there are many things that people cannot do before they are 16 or 18. Their parents are responsible for them at that age.

As I said, there is a problem with calling everything that does not immediately affirm particular identities "conversion therapy". If a child is struggling with such issues, it is the responsibility of their parents and those who are close to them to deal with those issues in a sensitive way. If abuse came into it, action would obviously have to be taken, but we are not convinced that a ban would be helpful. We fear that innocent parents could be victimised by that.

Again, it comes back to the definition of "conversion therapy". It is a very difficult issue when you are dealing with a child, but we have to remember that we are talking about people who are below the age of consent and that, principally, their parents are responsible for them. We need to give a certain level of freedom to parents and to those who know the child to deal with such issues in a sensible way. If abuse was involved, action would obviously have to be taken.

Anthony Horan: The major problem that we have is that we do not have an agreed or settled definition of "conversion therapy", so it is quite hard to answer the question fully. I take Piers Shepherd's point about the need to be careful about parental rights and the right to a private family life, and that parents need to be able to raise their children how they wish to. As far as I understand it, the law already protects children from abuse and harm, so I am not sure what gaps, if any, we are looking to fill in that regard. Before we can explore the matter further, the starting point has to be finding a clear and settled definition of "conversion therapy".

The Convener: John and Peter would like to respond. Please try to keep it short because we are running well over time.

Dr Greenall: I completely agree that the issue is around the definitions. At the moment, people are throwing around big words and saying that the affirmative trans pathways are a new gay conversion therapy. Those are big, emotive words, and we need to pause and look at a decision to affirm a child immediately and say, "No, actually, this is not a same-sex attraction; it's because you are a different gender." That is a big call for children to make at a young age. We need to hear the stories—Keira Bell is the headline example—of children who are saying, "Actually, the medical professionals may not be making the right decisions." Before we say that parents might be getting it wrong and that medical professionals might have the answers, let us pause and sagely look at what is going on in our medical profession. We need to look at ourselves a little bit before we go too far.

Peter Lynas: In response to Karen Adam's question, if the consent and choice aspect is clearer for adults, that is a much bigger piece of the equation. We can then say, "Yes, they can make that decision." For everybody, then, the decision is informed, voluntary and there is capacity to make the decision. Those are the three standard legal criteria for consent to be valid.

The question is about capacity in relation to children. They can be informed and make a decision voluntarily, but do they have the capacity to do so? That is where Gillick competence and the Fraser guidelines come into play. There is a reasonably established medical and legal precedent—the Keira Bell case touched on this—about whether children can make such decisions. I think that those aspects can be adopted and brought into the pathways. Therefore, you would say yes to an adult, but a young person would have to meet those levels of competence, and you would look to the law for guidance on that.

The Convener: I think that we are out of time, unless Pam Duncan-Glancy, who indicated earlier that she wanted to come in, is still very keen to do so. Are you, Pam?

Pam Duncan-Glancy: Yes, please.

The Convener: Okay—on you go.

Pam Duncan-Glancy: Thank you, convener. I also thank the witnesses for their patience. I have a couple of points about the research question. John Greenall said that we need more randomised control trials. We have heard quite a lot of evidence from people that, because of the numbers that are involved, we also need to focus on a lot of the qualitative evidence. It is important to put that point on the record.

I want to ask about prayer. Forgive me for probing the issue at this time, but I think that it is important to do so. I am really pleased to hear from Anthony Horan that his office has said that the focus should be on all therapies that claim to change or suppress sexual orientation or gender. Can you explain how that could work in relation to prayer or teachings in harmony with the teaching of the church? What would the goal of the prayer be? Does the church offer prayer support for heterosexual people having sex outwith marriage?

In addition, I have some concerns about the group Courage. From comments made by the church to the media, I understand that:

"Courage provides pastoral support for those experiencing same-sex attraction who want to grow in holiness by living live chaste lives."

Can you can confirm whether the work of Courage seeks to suppress parts of someone's sexuality? Is that targeted at LGBT people only?

Anthony Horan: I am not a spokesperson for Courage—the Courage apostolate is a separate entity from me in my role with the Bishops Conference of Scotland. However, there are Courage chapters in Scotland.

The aim of the Courage apostolate is, essentially, to support same-sex attracted people to live in accordance with the teaching of the church, which I briefly mentioned earlier. It is a call to live a chaste life—that is, a sexually pure life. That is not exclusive to people who are same-sex attracted; it applies to all baptised Christians. Everyone—even married people—is called to live a chaste life.

As I said earlier, there is nothing in the teaching of the Catholic church that says that someone who is same-sex attracted needs to be changed and made straight or anything like that. That does not exist in our teaching. However, it suggests that sexual acts in a same-sex relationship are sinful and therefore are discouraged. Courage supports those Catholics—men and women who are same-sex attracted—who voluntarily want to remain chaste and live their Catholic life. There is no suggestion of suppression or forcing them to do anything. It is completely voluntary.

I will quote something from the resources on Courage's website. There is a resource for parents of children who are same-sex attracted. Courage encourages parents to read

"as much as you can on this subject, but do it for your own benefit"

and to

"Resist the urge to inundate your child with books and studies in an attempt to change or heal them."

The teaching of the Catholic church is not that people who are same-sex attracted need to be changed or healed. That is an important point.

The Convener: I thank all four of the witnesses. We could continue asking questions but there is only so much time and we have another two panels of witnesses to hear from today.

We will suspend briefly to change witnesses.

11:30

Meeting suspended.

11:32

On resuming—

The Convener: We will now hear from our second panel of witnesses, who will give a short presentation on the legislation that operates in Australia.

I welcome to the meeting our witnesses, who join us virtually. They are: Nathan Despott, who is on the steering committee of the Brave Network and an honorary research fellow at La Trobe University in Melbourne; and Dr Timothy Jones, associate professor at La Trobe University. I apologise for the slightly late start, which will affect them more than it does us. We are delighted that they are both able to join us and I hand over to Nathan Despott.

Nathan Despott (La Trobe University, Melbourne): I will share my screen so that you can see my presentation. Can you see my slides?

The Convener: Yes, thanks.

Nathan Despott: I am a survivor of 10 years of conversion practices and speak on behalf of Brave Network Melbourne and Sexual Orientation & Gender Identity Change Efforts—SOGICE—Survivors. I am also part of the research team at La Trobe University that has been working on a research project in the past year.

I apologise that I will probably speak a little bit quickly because there is a lot to get through, so speak up if you need me to slow down or repeat anything.

I acknowledge the Wurundjeri and Bunurong peoples of the Kulin nation as the traditional owners of the unceded and colonised lands from which I speak with you today. I pay my respects to their elders past, present and emerging.

I will give a bit of background about the state of Victoria. It has about 6.5 million people. The religious composition is important to note because it is distinct from that of the UK, Scotland or other parts of Australia. It is 40 per cent non-religious, a bit under a quarter Roman Catholic, only 9 per cent Anglican, about 5 per cent evangelical, Baptist or Pentecostal and then a range of other faiths in slightly larger proportions than you might find in other states in Australia.

It is important to note that Victoria is distinct from New South Wales, of which the capital is Sydney, where there are some fairly large, well-known evangelical movements such as Hillsong and the Anglican diocese of Sydney, which have a much smaller presence in Victoria.

I will refer to the SOGICE Survivor statement at several points. Sexual Orientation & Gender Identity Change Efforts Survivors produced a statement in 2018 in response to misinformation being circulated by the media about the experience of conversion survivors. The statement gives a history and explanation of conversion practices in Australia as well as recommendations and has been used widely by Governments in Australia and around the world. It was developed using participatory policy development approaches and included a range of multifaith voices. Our website also includes media guidelines for journalists who are interviewing survivors and reporting on conversion practices. I will briefly run through the core content of the statement, as it provides background to the legislation.

First, we call conversion ideology an ideology not a theology. We see it as a pseudoscience blended with theological aspects. Many tenets of conversion ideology are mentioned in the statement but I will mention the core five.

First, humans are born with the potential of developing into heterosexual people whose gender identity reflects their sex assigned at birth and, secondly, if a person is same-sex attracted or gender diverse, that can be caused by factors such as abuse, neglect, inappropriate parenting dynamics or even the demonic.

Another tenet of the ideology is that same-sex attracted, trans and gender diverse people should live celibate lives or seek healing for their sexual brokenness—the word "brokenness" is a commonly known term among people who have experienced conversion practices.

The ideology also claims that, through consistent, long-term devotion, spiritual mentoring, the avoidance or suppression of queer influences and on-going practices that I will mention in a moment, a person can experience change in their sexual orientation or gender identity or can overcome the causes of, or drivers behind, the same-sex attraction or trans identity and that they can remain celibate—that would be the suppression aspect.

Another way that we characterise conversion ideology is that it is a set of false and misleading claims about the origins, causes and dysfunctional nature of, or solutions to, LGBTQA+ attraction or identity.

The definition of conversion practices on the SOGICE Survivors website is a bit different from that in the Victoria legislation. It is:

"Any formal or informal practice, activity or treatment (in any setting) that seeks, or is used, to suppress, eliminate or change a person's sexual or romantic orientation, gender identity, or gender expression, where that change is deemed necessary due to the instigator's belief in or adherence to conversion ideology".

I will run through a bit of background to how we define practices. These definitions of practices have been adopted widely in Government policy in Victoria.

We use the word "practices". We find it more helpful than the word "therapy", as most practices do not resemble therapy in the common use of the word. The main reason for emphasising that is not because the practices are not therapeutic, even though many people claim that that is the best reason for using the word "practices". We say that the most important reason for using the word "practices" is that using the word "therapy" might prevent some survivors from realising that they are survivors because they might not recognise what they went through as being therapy, particularly if it was in a quiet, gentle prayer context.

We also find the word "torture" to be somewhat inconsequential in survivor discourse. We do not feel that it should or should not be used; we just do not think that it is relevant in the context of a global north, developed country even though some people have experienced conversion practices in a way that resembles torture.

We also feel that conversion practices are not so much about the form—prayer, talk therapy or group work—as they are about the ideology and intentions present behind whatever form the practices take. We note that, often, conversion practices are disguised as prayer or talk therapy. We often say among survivors in Victoria that conversion practices look like a pseudoscientific talk therapy session with "Dear Lord Jesus" at the beginning and "Amen" at the end.

Conversion practices are distinct from non-consensual surgeries for intersex infants in this context, although some global critique exists on that issue. One major jurisdiction—Malta, which is probably the only jurisdiction to investigate that area of law—has passed two separate pieces of legislation and Victoria is considering doing the same.

We also note that conversion practices are distinct from conversations that are based on seeking advice or guidance, seeking to clarify a theological position or asking genuine questions based on concern. Those would not be conversion practices.

Conversion practices usually take place in pastoral care settings that mimic or look similar to talk therapy or modalities that, if used in a psychological setting, would be regulated by our peak health regulators in Australia and subject to the code of ethics held by the regulatory body.

In relation to the terms coercion and consent, we find that it is deeply problematic and ambiguous rhetoric to use such terms in the way that we have just heard in recent evidence, particularly as we find that those terms are usually used in discourse created by people in favour of conversion ideology. Perhaps a more accurate term is that conversion practices usually involve misinformed consent or consent that has been obtained through fear or the fear of being rejected from a community. Either way, it is not informed consent. Participation usually comes through internal drivers within the person as a result of having internalised conversion ideology as well as a bit of community influence, so coercion is a fuzzy term in this context. Voluntary participation does not really equate to consent or non-coercion.

Next, I will look at some myths and areas of confusion. The idea that any queerphobic message or action is automatically a conversion ideology or practice was shared by people from a range of diverse cultural and religious backgrounds. We would say that even though religious homophobia, biphobia and transphobia can be painful for queer people, including queer people of faith, they do not necessarily equal conversion practices and ideology, which are a subset of religious queerphobia.

Conversion practices and ideology are often seen as western constructs. Again, we would say that we have seen conversion practices and ideology manifested in most major faith communities in Victoria. They are distinct but they still cause similar harms, regardless of the culture or the faith.

Another misconception is that the harms caused by conversion practices and long-term exposure to conversion ideology are the same as the harms caused by general religious queerphobia. Again, we would say that conversion practices and ideology cause a unique combination of harms that have been found to leave significant damage in survivors.

There is also a misconception that conversion practices have developed separately in Muslim, Jewish, Roman Catholic, Protestant, Eastern Orthodox, and other major faith communities and that they incorporate different methods, resources and ideology. However, we have found that conversion practices and ideology are remarkably similar, regardless of the faith tradition, even if, on the surface, they appear different. The practice might look a bit different, but usually the ideology is somewhat similar. In Victoria, we have seen that often, conversion proponents across faiths have colluded with each other and even shared resources, manuals and guides.

The last misconception I will cover is the idea that conversion practices primarily occur in isolation or in paid healthcare settings, whereas we have found that the vast majority of conversion practices occur in unpaid religious contexts, particularly in “pastoral care” settings and in faith communities in which conversion ideology is regularly communicated.

On the screen now is an infographic that our team developed with Amnesty International. I will not run through it, but it proved to be extremely helpful in helping folks to understand some of what I have just been talking about in a simple infographic form and I am happy to share it with you.

I am a steering committee member of the Brave Network, which is Australia’s survivor support and advocacy group. We use trauma-informed approaches to support survivors of conversion practices and facilitate safe spaces for survivors to discuss and deconstruct their experiences. We support queer people of faith to tell their stories in the media, in churches and at public events and we host confidential and private spaces for leaders from various faith backgrounds to discuss some of their questions and meet survivors in a safe environment.

What has worked in supporting survivors and in our advocacy is helping survivors to understand the ideology that they have ingested and been immersed in over time. Many survivors do not understand that what they have been immersed in is an ideology and not necessarily time-honoured traditional theology.

We make sure that we set boundaries for journalists so that survivors do not find themselves sharing such deep information from their lives that they become triggered and retraumatised afterwards. We also create opportunities for allies and affirming faith leaders to network with each other for solidarity, because often they are our strongest supporters.

Tim Jones will speak in a moment about our national conversion ideology and practices research project. Survivors were involved in that project and the research is probably one of the most significant pieces of work in Australia so far relating to conversion practices and ideology.

On the screen, there is a diagram that has been useful in helping to explain the prevalence of different types, contexts and settings of conversion practices in Australia. The size of each square or rectangle equals the weighting of prevalence. For the vast majority of survivors, conversion practices have taken place in contexts that we call unpaid, informal or religious settings and have been carried out on adults. There is a much smaller prevalence of paid, informal or religious practice settings, such as cash in hand to a pastor or minister who might pray with the person.

11:45

In the middle of the diagram, in orange, there are programmes. You might be aware of some of those programmes, which are more popular in the United States and were popular, in the past, in Australia. Again, there are paid and unpaid programmes, which are perhaps led by a non-profit organisation. On the left, there are practices that are delivered to minors; again, those are informal or religious practices and programmes. At the bottom of the diagram, in blue and also in the grey bar for adults, there are regulated settings, which are formal practices that might be delivered by a regulated professional such as a psychologist. We meet very few survivors who have been through conversion practices in regulated health practitioner settings.

We also find that a significant driver of conversion practices is a system of referrals, inducements and networking. It might not be clear where a person goes to when they are directed by their church community to undergo conversion practices, but we know that there is usually a pastor, representative, minister or someone in the church or other faith community, who has made a referral of some kind or is the person to go to when people want to refer someone to conversion practices. We also find that advertising, such as pamphlets, flyers, leaflets and posts on social media, drive the conversion movement.

Virtually all conversion practices breach a range of business, consumer, professional and health sector codes or standards, but there is little to tie that together in one legal instrument, and that is the strength of the Victoria legislation. I will not read through all the text that is on the screen now, but it is safe to say that most conversion practices incorporate false and misleading claims about the cause of a person's queer identity and the potential outcomes from treatment or practices, as well as therapeutic fraud regarding the non-existence of evidence for the false claims of the efficacy of conversion practices. In most religious denominations in Australia, that misinformed consent aspect of conversion practice is an ideology breach of pastoral care guidelines. The failure to refer a queer person to competent, confident and affirmative treatment—such as a psychologist referring someone to another person—is considered a breach of the code of ethics for psychologists in Australia. There is a range of other types of false and misleading claims and false representations.

The foundations of the legislation in Victoria and advocacy in recent years have been: at least 50 survivor-led articles over several years in major online, print, radio and television; 15 years of survivor support groups in Victoria through two major organisations; trans document equality legislation, which was passed a few years ago; and, in 2017, a fairly high majority of 65 per cent of people in Victoria voting yes in a marriage equality vote—or plebiscite or chook raffle, as some of my friends called it.

In 2016, Victoria passed health complaints legislation—the Health Complaints Act 2016—which gave power to investigate to a health complaints commissioner, but the commissioner found that her powers were insufficient to address conversion practices, that conversion practices required tighter, dedicated legislation, that conversion ideology was central to harm and that gaps existed in current consumer health and human rights legislation and for regulatory bodies in dealing with conversion practices. As well as consumer affairs legislation in Victoria, we have the consumer affairs regulatory body, Consumer Affairs Victoria, which investigates false and misleading claims in trade and commerce, including paid and unpaid services that are offered.

We also have a code of ethics in Australia for psychologists. The code of ethics for the function, engagement or application of conversion practices in Victoria requires an Australian Health Practitioner Regulation Agency—AHPRA—registered practitioner to refer a patient or client onwards if they are unable to treat that patient competently, confidently and affirmatively. Affirmative treatment does not mean agreeing with what the patient or client says; it means treatment that is free from predetermined intention or agenda and is practised in a manner that enables informed consent.

We also have substantial evidence in Victoria—and there is more coming. In 2019, there was the Victorian Government consultation. There were also funded research projects in 2016 and 2020, as well as a literature review, focus groups, and several interviews that were part of the latest research project. Putting that together, one of the things that survivors advocated for was legislation that covered that funny-coloured diagram that I showed earlier; members can see that towards the left and middle of the screen at the moment. On the right, we added on to that diagram the intervention that we wanted to see in the legislation. We wanted to see a civil scheme that had power to investigate; criminal penalties; and a restriction placed on removing a person from Victoria to go to another jurisdiction where conversion practices are not curtailed through legislation. We also wanted to see the Government commission research, community education and survivor support.

When we looked at other states in Australia as well as in the United States, we saw that most legislation focused very narrowly on regulated

practices delivered to minors, and usually focused only on criminal penalties in those contexts. We found that doing so, in essence, gave licence for the other contexts of conversion practices to proliferate. For example, unpaid informal conversion practices delivered to adults can continue without the practitioners experiencing the fear of Government intervention, because there is legislation that a lot of effort has gone into that covers only regulated practices delivered to minors.

In Victoria, we have a law that has avoided that, and covers most of the things that advocates wanted. The objects of the legislation—which I will not read through in detail—outline a definition of conversion practices and the intentions behind the legislation, which are in line with the SOGICE Survivors statement, research, and advocacy.

I will quickly read through the intentions of the Parliament, as outlined in the act. They are:

"to denounce and give statutory recognition to the serious harm caused by"

conversion practices; to affirm that queer people are not "broken" and that queer identity and experience do not constitute

"a disorder, disease, illness, deficiency or shortcoming";

and to affirm that "change or suppression practices"—as they are called in the legislation—are

"deceptive and harmful both to the person subject to the change or suppression practices and to the community as a whole."

The definition of a "change or suppression practice" in the act is

"a practice or conduct directed towards a person, whether with or without the person's consent"—

which we have already discussed—

"(a) on the basis of the person's sexual orientation or gender identity; and (b) for the purpose of"

change or suppression or inducing the person to undergo change or suppression. It also lists examples that include but are not limited to psychiatric or psychotherapeutic practices, prayer-based practices—including exorcism, deliverance or religious practices—and giving a referral.

The exclusions are really important, because they pretty much blow out of the water many of the things that we heard from some of our lovely previous givers of evidence. Exclusions include, first, any practices that support or affirm a person's gender identity or sexual orientation—which is, I guess, obvious—and, second, the practice or conduct of a health service provider that is, in the health provider's reasonable professional judgment, necessary to provide a health service or to comply with the legal or professional obligations of the health service provider. That means that, if they are not making false or misleading claims according to consumer law and are providing competent, confident and affirmative treatment that allows the making of informed consent according to the code of ethics, they are fine to ask as many investigative questions as they would like to. That includes asking investigative questions relating to the nature of the person's gender identity or a child's gender identity. Those exclusions are therefore quite sufficient to deal with some of the concerns that are often raised by health practitioners and psychologists, particularly those working with young trans people.

It is important to note that the legislation is primarily focused on the civil scheme that is currently being assembled and is under development by the Victorian Equal Opportunity and Human Rights Commission. The criminal elements and penalties in the legislation are—in many ways—really just a very small part of the legislation. We feel that the civil scheme is the primary innovation of the legislation.

First, it empowers VEOHRC—which is the acronym for the commission—to commission and undertake research and education, including community education, and to be a front door for referrals, survivor-led and trauma-informed interaction with survivors and referring people to support. It has a much stronger focus on voluntary processes and facilitated outcomes. However, it can also make investigations and issue enforceable undertakings.

The indicators for investigation are still in development, although Brave Network has advised the commission that it should include or make reference to the presence of ideology and issues relating to duty of care. In other words, if a community, person or body is investigated and it is found that conversion ideology is regularly being communicated, you can be pretty sure that the practices are occurring somewhere nearby, if in secret.

The criminal penalties are based on the Crimes Act 1958 and the principles of negligence—in other words, duty of care—and injury or serious injury beyond reasonable doubt, measurable and confirmed by a suitable expert. For engaging another person in a change or suppression practice in which duty of care is owed, there are penalties for injury, including psychological injury, and serious injury, and members will see the figures with regard to imprisonment on the current slide. There is also the strict liability offence of advertising paid or unpaid conversion practices and a penalty for taking a person from Victoria to undergo change or suppression practices. Finally, failure to comply with a notice or to produce evidence during an investigation under the civil

scheme can be converted into a criminal offence and penalty.

I am almost finished, convener. With regard to opposition to the legislation, there was significant backlash from organised conservative religious groups such as the Australian Christian Lobby, but the rhetoric that was used was found not to be relevant when one looked at the detail of the legislation. Unfortunately, there was also opposition from conservative representatives of the Australian Medical Association, many of whom made recommendations about exemptions that found their way into legislation. I guess that, in the media and public-facing environment, one or two appeared neutral or at least amenable to conservative supporters, and we were a bit disappointed by that duplicitous representation by medical bodies.

Concerns about the legislation fell into two major categories, the first of which was that a person might go to jail for praying with queer people. However, for someone to be sent to jail, they would need to have caused injury or serious injury that was grounded in intent and was not inadvertent or unintentional. Moreover, neither providing advice nor informing someone of a theological position come under the scope of the legislation, as they are not intended change or suppression practices. Prayer must in and of itself be intended as part of the change or suppression practice. In other words, even if the minister, pastor or rabbi leading the prayer held a belief in relation to conversion ideology, their praying with someone for guidance would most likely not come within scope of the legislation, if they did not share that belief during the prayer. A conversion practice or the person delivering it would be investigated under the civil scheme only if there were evidence that the practices had resulted in something serious or were systemic, for example, if a person were delivering conversion practices to 20 or 30 people who all then came forward to make a report to the civil scheme.

The second concern that was raised was that health professionals would not be free to treat trans kids properly, which is an issue that I have already touched on. We can see that as long as a health professional complies with the code of ethics they are allowed to ask investigative questions. If a trans child is being treated by a person under a predetermined agenda, that person is already in breach of the code of ethics in Australia, and the legislation is really just adding another layer to that.

Making fraudulent claims about causes, origins or the supposed dysfunction of queer people and identities is already covered under consumer law and health complaints legislation in Victoria, and this legislation simply adds more targeted penalties and the civil scheme, which allows for improved education and research.

I have already mentioned the concerns of the Australian Medical Association, and it must also be noted that many of the organisations and psychologists who provided support for the legislation behind the scenes did not come forward to defend it. It was often left to survivors to do so and to speak directly to community forums, which was painful and excruciating.

As for the legislation's passage through Parliament, it cleared the Scrutiny of Acts and Regulations Committee—or SARC—of the Parliament of Victoria, having been found fully compliant with the Victorian Charter of Human Rights and Responsibilities, which, I might add, is a fair bit stronger than the European convention on human rights. It passed the Lower House of Parliament in December 2020 by a margin of 37 to 0—the Opposition did not vote. However, the Opposition did vote on the legislation in the Upper House earlier this year, and it still passed by a margin of 27 to nine, with several crossing the floor to vote in favour.

I acknowledge the groups of brave survivors who worked tirelessly over many years for the legislation, and who threaded the needle many times with politicians, bill writers and public servants to get the wording, definitions and exclusions right.

12:00

The Convener: Dr Jones, would you like to come in?

Dr Timothy Jones (La Trobe University, Melbourne): Thank you for the opportunity to speak to you. I will speak briefly about the research project that I have been leading. It is being carried out by researchers at La Trobe University and Macquarie University, in partnership with Brave Network and the Australian GLBTIQ Multicultural Council, and is funded by the Victorian Government and the Australian Research Council.

We have published two major research reports and several scholarly articles. Our research has had a focus on documenting the nature, scope and impacts of attempts to change or suppress a person's sexuality or gender identity. Its historical focus was to explain the origins and changes of those practices in Australia, and respond to gaps in international literature in order to have a better understanding of the nature of the harms of such practices. That is what I will focus on now.

We have done in-depth life history interviews with 40 survivors of conversion practices in Australia, and with more than 20 mental health

practitioners, to understand the survivor support needs. We found evidence of the range of conversion practices that Nathan Despott described in sectors of all faith communities, so far with minimal contextual differences in either the ideological basis or change and suppression methods.

Most participants in our research had sought out change efforts themselves, based on misinformation about the possibility for change, and under pressure from their religious and cultural communities and families, including threats of expulsion, excommunication and impaired belonging. Only a minority were forced, pressured or tricked into engaging in conversion practices.

Often, involvement in change or suppression practices was the first or only context in which participants were able to acknowledge their diverse sexualities or gender identities in their faith or cultural community. Some people expressed relief at the opportunity at the time for such acknowledgement. However, for all participants, experiences of conversion practices were strongly associated with mental ill health. All participants had experienced major and chronic episodes of mental ill health and suicidality related to their distress at experiencing their faith or culture and their gender or sexuality as being incompatible.

Mental ill health was more severe for participants who wished to retain their faith and membership of their faith and cultural community—being environments in which they were often only conditionally welcome or affirmed—than for participants who had left or ceased participation in non-affirming communities.

Health practitioners described the impacts of experiences of change and suppression practices in terms of chronic complex trauma, with the symptoms of post-traumatic stress disorder. Such impacts were similar for people who had experienced formal conversion practices or informal gentle conversion practices, such as were described in earlier statements of evidence.

Our research suggests that participants' voluntary, though misinformed, involvement in actions that harmed them in efforts to resolve conflicts between their sexuality, gender and faith was a distinctive feature of survivors' experience, and could usefully be understood in terms of moral injury. Moral injury is defined as the moral anguish caused by

"perpetrating, failing to prevent, or bearing witness to, or learning about acts that transgress deeply held moral beliefs and expectations".

In this case, the moral injury is occasioned when a person's own sexual and gender subjectivity transgresses their deeply held moral beliefs and expectations, and they attempt to change or suppress their sexual orientation or gender identity in an attempt to maintain their beliefs. Such moral distress is perhaps more complex than typical applications of moral injury, because it might include existential distress as well as distress caused by both perpetrating and witnessing profound moral failure.

LGBTQA+ people who hold non-LGBTQA+-affirming religious beliefs and expectations face a terrible dilemma. They are forced to choose between precious and sacred parts of themselves—a choice in which moral injury and spiritual harm are inevitable.

Recovery from the harms of conversion practices can be long term. It involves a process for the integration of a person's spiritual and sexual or gendered selves. In that recovery, survivors may have diverse goals about resolving conflict between faith, gender and sexuality. That may involve continued ambiguity about their faith, sexuality or gender identity. They may want to leave, retain or change their faith. Similarly, self-acceptance may not always involve survivors coming out publicly about their sexuality or gender identity, especially if their LGBTQA+ status, culture and ethnicity intersect in complex ways.

Survivors may need support to deal with shame, misinformation about LGBTQ+ people and communities, unhelpful coping strategies that they have developed, and sex and relationship difficulties. They may need support in navigating their relationships with old and new communities of belonging, and in recovering from the impact that involvement with conversion practices has had on their civic and economic participation.

All of that shows that the concerns—[*Inaudible*.]—consent and physical violence are not very meaningful in addressing the major part of the phenomenon.

The focus that we have developed on understanding the harms of conversion practices and the support needs of survivors in recovery has been very useful when engaging with the religious and cultural communities in which conversion practices may be present.

Research has shown that religious leaders in Australia are very poorly equipped to support their members in the area of gender and sexuality. A 2017 report showed that two thirds of Christian ministers are not confident to provide counselling and support in the area, which is more than for any other pastoral issue. Although few, if any, non-LGBTQA+-affirming religious leaders want to cause harm to their queer members, the passage of the Victoria act has had the positive effect of forcing religious leaders and pastors to re-examine

their pastoral care and improve their understanding of those issues.

Following the passage of the act, many clergy and church groups were fearful about their ability to discuss their beliefs with children and parishioners and to continue day-to-day spiritual practices. I was pleased to have the opportunity to dispel those fears in workshops that were held throughout this year with various clergy in Victoria, exploring how conservative faith leaders can provide appropriate pastoral care to queer parishioners without attempting to reorient or deny their sexuality or gender.

Those discussions revealed an appetite among conservative religious leaders to rethink their pastoral practices and to develop supports for their LGBTQ members that are faithful to their traditions but that recognise and support, rather than try to change or suppress, queer people of faith. Significantly, as Nathan Despott emphasised, that process of education and facilitation is a key part of the Victoria legislation, and is a function that has been granted to the Victorian Equal Opportunity and Human Rights Commission.

The Convener: I thank Timothy Jones and Nathan Despott very much. That was really helpful and useful, and covered a wide range of topics. I fear that it would not be possible to do justice to the evidence that you have given us by asking questions now. I therefore wonder whether it is okay with members that we do not do that but consider some of the evidence—the documents that relate to Nathan's presentation will be published on the Scottish Parliament's website—and, if we have any questions, write to both witnesses on the specifics. That would give us a bit more time to consider the range of evidence that you have provided.

I say a huge thank you to the witnesses for giving us their time. I know that it is very late in Australia just now.

I suspend the meeting briefly, before the next evidence session.

12:09

Meeting suspended.

12:10

On resuming—

The Convener: We will now hear from our third panel. The witnesses, both of whom are joining us virtually, will be able to speak to us more about how other jurisdictions are addressing conversion therapy practices.

I welcome to the meeting Dr Christine Ryan, senior legal adviser to the United Nations special rapporteur on freedom of religion or belief; and Dr Adam Jowett, associate head, school of psychological, social and behavioural sciences, Coventry University. Dr Jowett is the lead author of UK Government-commissioned research into conversion therapy.

I invite the witnesses to make short opening statements.

Dr Christine A Ryan (External Office of the United Nations Special Rapporteur on Freedom of Religion or Belief): Good morning, and thank you for having me at the meeting.

I am an international human rights lawyer, and I have served as senior legal adviser to the mandate of the UN special rapporteur on freedom of religion or belief for over three years. In addition, I advise non-governmental organisations, states and other UN mechanisms on human rights issues regarding gender, sexuality, freedom of religion or belief, and international law.

I welcome the opportunity to answer the questions that I know the committee will have about how to take a human rights-based approach to ending conversion practices. In advance of that opportunity, I will make three quick points.

First, I wish to clearly state that, in order to safeguard individuals from harm and uphold their rights to life, equality, health, dignity and freedom from ill treatment, states have an obligation to protect individuals from practices that are aimed at changing or suppressing their sexual orientation or gender identity. Just as one's sexual orientation or gender identity should not be criminalised, under international human rights law it must not be pathologised, stigmatised or subverted by others because it differs from that of the majority or conflicts with moral or religious teachings.

Secondly, fulfilling the state's duty to end conversion practices will require more than a legislative or regulatory ban. Conversion practices stem from the systemic privileging of a heterosexual cisgender norm and from discriminatory belief systems according to which sexual orientations and gender identities that differ from that norm can and should be changed. States need to take measures to affirm sexual orientation and gender diversity.

In that regard, I welcome the Scottish Government's commitment to make the necessary changes to the Gender Recognition Act 2004 to improve and simplify the process through which trans and gender-diverse persons can obtain easier recognition of their gender. From a human rights perspective, efforts to prevent conversion practices should go hand in hand with support for survivors. We heard that in the previous evidence session, and I hope that we get to talk about it.

Finally, as we have heard, regulating conversion practices in religious settings can be very challenging. However, the right to freedom of religion or belief under international law is not a barrier to ending conversion practices. In some situations, the harms that are caused by conversion practices justify infringing on the freedom of religion or belief of some, but any constraint on that right must be capable of being justified as necessary, proportionate and non-discriminatory.

Dr Adam Jowett (Coventry University): I thank the committee for inviting me to attend the meeting and to give evidence.

I am an associate head of the school of psychological, social and behavioural sciences at Coventry University, and I led a team of researchers that was commissioned to conduct research by the UK Government equalities office. We conducted an evidence review on conversion therapy and interviewed people who had undergone conversion therapy in the UK.

12:15

In the report, we use the term "conversion therapy" to refer to any efforts to change, modify or suppress a person's sexual orientation or gender identity, irrespective of whether it takes place in healthcare, religious settings or other contexts. Conversion practices are premised on the idea that being lesbian, gay, bisexual or transgender is a disorder or deficit and are based on pseudoscientific ideas.

The evidence suggests that most conversion therapy is delivered by faith groups, including in the form of non-professional talking therapies, although mental health professionals and family members are sometimes also involved.

We found no robust evidence that conversion therapy can change a person's sexual orientation or gender identity, but there is a growing body of evidence that exposure to conversion therapy is associated with poor mental health, including depression and suicidal thoughts. People told us that conversion therapy made them feel worse about themselves by reinforcing their internalised stigma and feelings of shame and self-hatred. When no change occurred, they often felt hopeless. Some people reported some benefits, but such benefits could equally be provided by ethical forms of support and therapy, such as the ability to talk to somebody about their feelings.

We reviewed measures that have been taken around the world to tackle conversion therapy. We found that approaches vary widely in scope, from laws that focus specifically on protecting children and those that ban only conversion therapy by professionals, to more comprehensive bans such as those that we have already heard about.

I support the principles of the petition and urge the Scottish Government to introduce measures to end conversion therapy. Given that conversion practices appear to often take place in religious contexts and that people often undergo them voluntarily due to internalised stigma, guidance from people in positions of authority and other powerful social influences such as fear of rejection and ostracism, I expect that a ban that does not cover consenting adults will have only a limited impact on ending conversion therapy. Such a ban would not have protected most of the people to whom we spoke from the harm that they endured.

Most of the people to whom we spoke supported measures to end conversion therapy in order to prevent others from experiencing what they have been through. I will end my opening statement with the words of one of the people to whom we spoke who had undergone conversion therapy in a religious context. They said:

> "I was a vulnerable young person engaging in something I knew very little about and I needed safeguarding … I'm completely in agreement that it should be illegal because what they're doing is preying on people's insecurities and vulnerabilities. It's unproven, it's unscientific and it's unethical and I would class it as spiritual abuse".

The Convener: Thank you both for your opening statements. I apologise for the fact that, because of my bad convening, we are running over time, but the evidence that we have been hearing has been quite extensive.

The first question is from Pam Gosal.

Pam Gosal: Good afternoon—I was about to say good morning. I thank the witnesses for their opening statements. My question is for Dr Ryan. One aspect of the legislative ban on conversion therapy that has been raised with the committee by religious organisations is that, although they support a ban on forced and abusive conversion practices, any ban should not extend to someone who seeks voluntary pastoral support. How might a ban on conversion practices impact on the support that is provided by such religious practices?

Dr Ryan: The sound went for a minute, but I believe that I know what your question is about. On whether freedom of religion or belief in international law is infringed by a ban on conversion practices, it depends on the scope of the ban. It is much easier to regulate healthcare providers or social workers through imposing licensing requirements, codes of conduct or fines. The main challenge is regulating conversion practices in religious contexts. The challenge arises most regularly when definitions include terms such as "prayer", "religious counselling" or

"viewpoints" that aim to change or suppress someone's sexual orientation or gender identity.

There are a couple of things to say in that regard. It would be contrary to international law to include terms such as "viewpoints" in a definition, because the ability of a religious leader or other individual to believe that homosexuality or gender variance requires treatment is protected by international human rights law.

Even if a belief is abhorrent to some, an individual's freedom to believe is absolute and cannot be infringed by the state. However, there are contexts in which religious leaders are involved in providing state services, perhaps as chaplains in schools or in hospitals. In those instances, it would be possible to impose codes of conduct to ensure that affirmative care is provided.

As was mentioned, there is an understanding that affirmative care is about providing the space for somebody to have an open discussion with their religious leader, therapist, psychiatrist or healthcare provider. I would include that in the legislation. Rather than provide blanket exemptions for conversion practices in religious settings, you can include safeguards to ensure that there are no unnecessary infringements on freedom of religion or belief.

For example, that would include an exemption to make it clear that individuals cannot be prohibited from discussing or exploring their sexuality or gender identity with their faith leaders, or with their family or healthcare providers, as the case may be. Under international law, parents have the right to raise their children in accordance with their religious beliefs, and individuals have the right to seek counsel about their sexuality. Nor can the state compel religious leaders to change their beliefs or teachings on discriminatory matters.

That does not, however, mean that no measures can be imposed. The committee has just heard how, in Australia, the legislature prohibits the advertising of conversion practices and referrals, and there always needs to be an ability for individuals—it might be adults or children—to report harmful practices. For you as legislators, the question is whether one law and policy can adequately address the different forms of conversion practices. Should they be treated differently, or should there be different provisions in the law to ensure that freedom of religion or belief is not infringed?

Maggie Chapman: I thank Christine Ryan and Adam Jowett for their evidence. I have a couple of questions for each of them.

The first is for Christine. You clearly articulated three points that we have to bear in mind when considering what approach to take in legislation and more broadly. I am interested in the second point. To paraphrase, you said that legislation and regulation are all well and good, but that there is a broader cultural question for us to consider about how we ensure that our obligation to protect people's dignity and individual rights applies across all aspects of society. Can you say a little more about that from a legal point of view? How much of that can we write into legislation, and how much of it has to come as a kind of wraparound thing that involves cultural change?

Dr Ryan: Thank you for the question—I am delighted to receive it. In terms of a human rights-based approach and efforts towards cultural change in legislation, many measures can be taken and provided for in legislation or other forms of regulation. The measures might go beyond a specific ban on conversion therapy. Good practices internationally include measures such as having appropriate training modules on sexual orientation and gender identity for health professionals and religious leaders, and ensuring that there are public education campaigns to illustrate the dangers that are involved with conversion practices. There should be support and resources for survivors, including mental health care—resources should be put towards that—and there should be comprehensive sexuality education in public and private schools.

Throughout the morning—it is still morning for me; I am in New York—we have heard a lot about concerns about children. It is really important to think about the education that children receive, what happens when a child goes through conversion therapy and what the appropriate mechanism is. Consideration needs to be given to whether the reporting mechanism should be the same for children as the one that is used for adults. It is most likely that that will not be the case. I am aware that you have an ombudsman for children. Maybe that resource can be used for children, rather than other, inaccessible processes.

Efforts have been made to research the support that survivors need, but I urge members of Parliament to commit resources to expanding that research and to ensure that resources and support are available for survivors of conversion practices.

Maggie Chapman: Thank you—that was really helpful.

Adam, could you give us a bit more detail on elements of your research? How do you see those elements being translated into the legislation that is proposed in England and Wales? How might they be applied in Scotland?

We have heard hints that there are differences between the form, and people's experiences, of conversion practices that relate to gender identity and those that relate to sexual orientation. Did

your research uncover any such distinctions, or are we safe to take gender identity and sexual orientation together? Linked to that is the question of consent and the differences between adults and children in that regard. Could we hear your thoughts on those issues, please?

Dr Jowett: I will start with the question about gender identity. Obviously, sexual orientation and gender identity are distinct. There are similarities between the experiences of transgender people and lesbian, gay and bisexual cisgender people, but there are also differences.

Conversion efforts have been practised on transgender people since around the 1960s and the methods that have been employed are often the same as those used to try to cure homosexuality. Although there is less evidence around gender identity change efforts, it is clear from reading the literature by conversion therapy proponents that they conflate sexual orientation and gender identity. For example, a very influential British conversion therapist wrote in her book that the difference between gay and transgender people is one of degree rather than kind.

Conversion therapists often claim that gay people have what they call gender identity deficits and that transgender people have a more severe version of those deficits. Therefore, conversion therapists often do not make a distinction between sexual orientation and gender identity, and conversion efforts that are aimed at transgender people are often based on the same unscientific claims and theories, apply the same methods and are often conducted by the same groups and people. For example, one of the transgender people we spoke to was given ex-gay literature and was told that that applied equally to transgender people. I hope that that explains why it is important to include sexual orientation and gender identity in a ban.

I turn to the issue of consent. As I mentioned, many of the people we spoke to said that they had undergone conversion therapy voluntarily, but that was under the guidance of people in positions of trust and authority, and under immense internalised social pressure and fear that they might be rejected by their community. A ban that would allow consensual conversion therapy would not protect the people we spoke to.

12:30

Many of those people were critical of the idea that someone could consent to conversion therapy. One of our participants said:

"I don't think anybody chooses conversion therapy. I feel like they're forced to choose it because the influences that they have are telling them that they need to ... I felt like I was making a personal choice to go and do these things but when I look back on it I realise actually I was in a vulnerable position ... I listened to those people in authority over me who convinced me that that was the choice I needed to make."

The UK Government's proposals say that the consent process must be "robust and stringent", and they refer to consent needing to be "informed". There are some issues around that. Many, if not all, of the proponents of conversion therapy do not accept the evidence. They do not accept the evidence of harm. Earlier, we heard claims that some talking conversion therapy was not harmful. I do not have any confidence that people who would be delivering conversion therapy would give an unbiased and accurate description of what the evidence is and what the risks around conversion therapy are.

Maggie Chapman: Thank you—that is really helpful.

Karen Adam: I would like to ask Adam Jowett a question that has just come to mind. What do you feel about the suspicion, judgment or debate, as some put it, around the understanding of why people are who they say they are? In your opinion, is that pertinent to our discussions around conversion practices? I would highlight that these so-called debates are particularly prevalent around gender identity.

Dr Jowett: Could you elaborate on what you mean by "debates"?

Karen Adam: We often hear that people are trying to understand why people, particularly those in the trans community, are identifying as a particular gender. We seem to be getting pulled into the semantics of the why, with people giving their opinions on such matters. Is that something that we should even take into consideration when we are discussing conversion practices here at committee?

Dr Jowett: I do not think that the reasons why somebody might be lesbian, gay, bisexual or trans are really relevant in this. It comes back to what is appropriate in terms of therapeutic practice. We often hear the claim—we have heard it again today—that affirmative therapy or affirmative approaches are pushing people in a particular direction. As has already been said, it is important to be clear that affirmative approaches are non-judgmental, non-directive approaches that assist identity development, exploration and self-determination without prior goals or a determined outcome for how a person should identify or express their sexual orientation or gender identity. As part of that gender identity exploration that would be done in standard affirmative practice, issues might be discussed around whether the client has any thoughts about why they might be having the feelings that they have.

The term "affirmative therapy" refers to positively supporting the individual to be themselves, without a predetermined desired outcome, where the client is safe in the knowledge that no sexual orientation or gender identity is viewed as inherently more desirable by the person providing the support.

Dr Ryan: To answer the question around why somebody has a particular gender identity, the main thing that I would urge legislators to keep in mind and remember is that everybody has a sexual orientation or a gender identity. Sometimes, that differs from the norm. The reason why somebody's gender identity differs from someone else's is that humans have diversity, and that is how we exist in the world. It is not a legal matter or a psychological matter; it is how we exist in the world.

I would urge you to keep that at the forefront of your mind and not to conflate that diversity with the difficulties—and there are difficulties, and challenges—of legislating to ban conversion practices. However, that is a very different question to how we support individuals in affirming their gender identity, whether by enabling them to access gender-affirmative care, the positive step that the Scottish Parliament is planning to take with regards to simplifying access to legal gender recognition and, similarly, access to mental health care for trans and gender-diverse people.

I want to emphasise that, when people start talking about the need to research why teenage girls are suddenly racing to get gender-affirming therapy, we need to look at the evidence, and to look at more than one study that is being perpetrated throughout the news in an inflammatory way. I heard someone say in this morning's session that there had been a 5,000 per cent increase in requests for that care, but big increases could be because there were seven people last year and now there are 12. Always bear in mind that the way that figures are portrayed is often quite different from the reality. Of course, as we become a more accepting society and there is greater access to care—which we want there to be—more and more people will access gender-affirming care.

Dr Jowett: I would like to build on that. If we are asking whether we need to understand why somebody is transgender in order to decide whether to ban conversion therapy, I would reframe the question to ask, "Do we need to understand why somebody is gay in order to ban conversion therapy?" I think that the answer would be no.

Alexander Stewart: Dr Ryan, you spoke about the challenges and the difficulties, and those come together with the safeguards that you have talked about. However, there is some anxiety about religious organisations that deal with their own governance. They self-police, so, in carrying out scrutiny on themselves, they could find loopholes in the legislation that they might manipulate to cover up or hide what they are doing. We heard evidence of that from survivors who felt that they were manipulated, because they were told that they were going to an event of some nature that turned out to be completely different from what was described. It would be useful to hear your views on how we can manage that safeguarding and the fears that those survivors expressed.

Dr Jowett: Those are really good points, and the people who we spoke to raised them again and again. The issue is the difference between pastoral care and professional support, because professional support operates generally in a regulated area and follows a code of ethics, and that is quite different from what happens in a pastoral care setting. Some of our participants suggested that they would have quite liked some regulation around pastoral care.

That is why a ban is important: it means that people can come forward and report that happening. I do not think that the mechanisms for reporting within those organisations and groups are sufficient. It needs to be possible for a person to report to outside authorities that it happened.

Dr Ryan: There are a couple of things that you could do. We have just heard from Dr Jowett about the importance of having an independent reporting mechanism. That is extremely important, including having one for children, who need an appropriate mechanism that is accessible for them.

In terms of religious organisations that provide commercial services that they advertise as a way of changing someone's sexual orientation or gender identity, it is a lot easier to regulate that than it is to deal with the concerns that people have about an individual being prevented from asking their religious leader to pray for them or asking their family for support or prayer.

The other thing to mention is that, although we have heard a lot about religious practices being used to cause this type of harm to individuals, it is important to remember that no religious community is a monolith. That is something that you pointed to, Mr Stewart, when you were talking about the internal governance regimes. Under international law, we support the autonomy of religious communities to define their own teachings and elect their own leaders, and to provide appropriate care, but there are also safeguards under international law whereby that autonomy can be infringed if it is necessary to prevent the violation of others' human rights, as long as those interventions are necessary, proportionate and do not target one group—in

other words, are non-discriminatory. In that sense, I would recommend that the legislators in the Scottish Parliament engage with religious leaders and communities and use it as an opportunity for outreach.

Earlier, I mentioned that there need to be campaigns and education to call on church leaders to speak out against the harms caused by conversion practices. That is something that most campaigns to end conversion therapy are looking for: they want leadership from religious leaders, elected representatives and others in society to name this as moral harm and an entirely human rights violating practice. Campaigning, outreach and education are one way to do that.

Fulton MacGregor: My question is for Dr Ryan. I do not know if you listened to the first panel, Dr Ryan, but I put this question to those witnesses earlier and it has been broadly covered because of the nature of our conversation. We have heard a lot of evidence from individuals and organisations that have spoken about the harm caused by conversion therapy and have described it as a form of torture. We have also spoken a bit about consent. Is it possible to consent to something that could be described as torture?

We heard a slightly different view from the organisations that spoke to us today. Can you give your thoughts as a doctor on where conversion therapy sits? We heard some very harrowing tales from people about the impact that such therapy has had on them.

Dr Ryan: In my work I come across cases where the practices inflicted on individuals are capable of constituting torture or cruel, inhuman and degrading treatment. Those are defined in law as intentional acts that cause severe pain or suffering, whether physical or mental, that are inflicted on an individual.

Having said that, I would not subscribe to the view that every form of the broad umbrella term "conversion practice" amounts to torture. Where practices reach the threshold of conduct that is torture, people cannot consent to that. It should be appropriately criminalised. Governments should support survivors to file criminal complaints and to seek reparations or justice where torture has been inflicted on them, but, at the moment, because there are several different definitions that include a broad variety of practices, we cannot describe all of it as fitting into the international definition of torture. However, it certainly sounds as if you have been extremely moved by those harrowing and chilling accounts of what people have been subjected to.

12:45

Fulton MacGregor: Where is the threshold reached? Under international law, is it about the practice or about the impact and effects of the practice? A practice might not reach the international threshold, but somebody could tell us that the impact was that they felt degraded, and that might reach the threshold. Will you expand on that a wee bit? Is it about the practice or the impact on the individual?

Dr Ryan: If something is to qualify as torture under international law, the perpetrator has to intend to inflict severe pain or suffering, whether it is physical or mental. That is a high threshold, because you are looking for intent, which can be difficult to prove, although it is not impossible. There might well be cases where the threshold is reached.

There is no definition in international law under which a particular form of a conversion practice has been found to amount to torture, and nor is there any precedent for that. That is not to say that that will not happen in future. This is a burgeoning area in the human rights community. It is recognised that the issue is underdiscussed, that conversion practices are regularly underreported and that people have not had recourse to reporting mechanisms et cetera. It is totally possible that, in future, there will be precedent around the types of conversion practices that amount to torture or ill-treatment.

You might, however, be asking about defining every type of conversion practice as torture, including cases where an adult asks their priest to pray with them, for example. There might be a severe long-term impact from that. I in no way want to diminish the harm that comes from somebody telling another person that their identity, sexual orientation or gender identity is a wrong or a sin. Severe harms emerge from that, which can have social, psychological, economic and educational consequences for someone's whole life. However, legally, it is not possible to say that every type of effort to change or suppress someone's sexual orientation or gender identity amounts to torture.

Dr Jowett: It is important to recognise that the question of whether something reaches the threshold of what might be considered to be torture under international law is not the same as the question of whether it is harmful. A previous witness cited my report and said that they could not see anything harmful in what we presented. I would like to be clear that the vast majority of people to whom we spoke had experienced the practice as harmful, and that included reporting experiences of depression, self-harming and suicidal thoughts. Therefore, we should not assume that talking therapy cannot be harmful. As

I said, we spoke to a minority of people who found it to be helpful, but most people found it to be incredibly harmful. That was not because it was physically harmful or because it necessarily amounted to torture, but it was psychologically very damaging.

The Convener: Again, because of the time, the committee will have to hold back with some of the further questions that we would like to ask.

I thank both of our witnesses for taking the time to join us. Your evidence has been really helpful. I had not realised that Dr Ryan was to be joining us from New York—I hope that it was not too early a start for you, Dr Ryan.

We will now move into private session.

12:49

Meeting continued in private until 13:03.

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