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ARTICLE

Criminalising 'Conversion Therapy'

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An increasing number of jurisdictions have introduced legal bans on so-called 'conversion therapy' practices. Yet significant uncertainty and disagreement persist among legal scholars, policy-makers and advocates about whether criminal law is an appropriate tool in this area and, if so, how it should be used. This article addresses that pressing question by examining whether criminalisation is justified, what risks it poses to the rights of LGBT+ people and others, and how those risks can be mitigated. Drawing on analogies with existing criminal offences and a comparative analysis of legislative models from several jurisdictions, it argues that a carefully designed criminal ban can be a legitimate and proportionate response to the serious harms caused by 'conversion therapy'. The article develops an original, evidence-based framework that clarifies how such bans should be formulated in law and integrated with complementary non-criminal measures, and what broader lessons this holds for the place of criminal law in advancing human rights.

INTRODUCTION

The case for a legal ban on so-called 'conversion therapy' practices is now firmly established. These practices, which encompass a wide range of harmful methods – from physical abuse to pseudo-scientific counselling[1] – are all aimed at changing or suppressing LGBT+ identities. They are rooted in the false and stigmatising belief that such identities are disordered, inferior and in need of correction. Collectively, these practices entrench homophobia and transphobia, inflict profound psychological harm, and undermine the dignity and autonomy of all LGBT+ people, including those who have never directly experienced them. Key international institutions – including the United Nations,[2] the

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1 Amie Bishop, *Harmful Treatment: The Global Reach of So-Called Conversion Therapy* (New York, NY: OutRight International, 2019).
2 UN Human Rights Council, *Practices of So-Called 'Conversion Therapy': Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity* A/HRC/44/53 (1 May 2020) (UN SOGI Report).

European Parliament,[3] the Council of Europe,[4] and the Inter-American Commission on Human Rights[5] – alongside leading human rights NGOs[6] and professional medical bodies[7] – have unequivocally condemned these practices and called for their global prohibition.

But what legal mechanisms ought to be used to ban these practices? This question, of considerable importance to both legal scholars and policymakers, remains unresolved. It is an increasingly urgent question as more jurisdictions move to outlaw 'conversion therapy'. A variety of legal responses, punitive and non-punitive, are now emerging. Some countries, such as Malta, Canada, Norway, Germany and France, have opted to criminalise all forms of the practice. Others have adopted more limited measures, prohibiting only regulated professionals from offering such 'therapies', as in Greece for example. Meanwhile, jurisdictions such as New Zealand and the Australian state of Victoria have introduced hybrid regimes combining civil and criminal law measures. In the UK, despite repeated government pledges to legislate since 2018,[8] no ban has yet been enacted.[9]

'Conversion therapy' cannot be effectively banned without new legislation. Forms of the practice that involve physical or sexual violence are already criminal offences. But non-violent methods – so-called 'talking therapies' – remain largely untouched by the law, despite ample evidence of their potential to cause grave harm.[10]

Against this background, this article pursues two main aims. First, it develops a principled defence of criminalisation. It argues that the harms caused by 'conversion therapy' are analogous to those addressed by existing criminal offences, such as hate crime and controlling or coercive behaviour. Like these offences, 'conversion therapy' combines two serious moral wrongs: a well-documented

3 European Parliament, *Resolution on Fundamental Rights in the EU in 2016* 2017/2125(INI) at [65].

4 Council of Europe, 'Strengthening the fight against so-called "honour" crimes', Parliamentary Assembly, Resolution 2395, 28 September 2021, at [6.6].

5 Inter-American Commission on Human Rights, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas* OEA/Ser.L/V/II.170 Doc 184, 2018 at [131].

6 Lucas Ramon Mendos, *Curbing Deception: A World Survey on Legal Regulation of So-Called 'Conversion Therapies'* (Geneva: ILGA, 2020); Bishop, n 1 above.

7 BACP and others, 'Memorandum of Understanding on Conversion Therapy in the UK' (July 2024) at https://www.bacp.co.uk/media/21242/memorandum-of-understanding-on-conversion-therapy-in-the-uk-july-2024.pdf [https://perma.cc/7HWD-RPR2] (MoU); Independent Forensic Expert Group, 'Statement on Conversion Therapy' (2020) 72 *Journal of Forensic and Legal Medicine* 101930; 'Editorial' (2016) 387 *The Lancet* 95.

8 See, for example, Government Equalities Office, 'LGBT Action Plan 2018: Improving the Lives of Lesbian, Gay, Bisexual and Transgender People' (3 July 2018) at https://assets.publishing.service.gov.uk/media/5b39e91ee5274a0bbef01fd5/GEO-LGBT-Action-Plan.pdf [https://perma.cc/8QXH-XA8D] 14-15.

9 Libby Brooks, 'Labour's Delay on Conversion Practices Ban is "Dangerous", Campaigners Say' *The Guardian* 12 May 2025 at https://www.theguardian.com/world/2025/may/12/labours-delay-on-conversion-practices-ban-is-dangerous-campaigners-say [https://perma.cc/CBV5-CRDY]. A ban on 'conversion therapy' was among the Labour Government's manifesto commitments (see *Change: Labour Party Manifesto 2024* at https://labour.org.uk/wp-content/uploads/2024/06/Labour-Party-manifesto-2024.pdf [https://perma.cc/TAV2-AAXV] 91) and its prohibition in England and Wales was included in the King's Speech in 2024.

10 UN SOGI Report, n 2 above, 4-5.

risk of grave physical or psychological harm, and wrongful direct discrimination. It is therefore part of a wider family of offences involving discriminatory abuse, and the moral principles that justify the criminalisation of such offences should be applied coherently.[11] Criminal law also performs a powerful expressive function:[12] it enables the state to repudiate the ideology that underpins 'conversion therapy' and affirm the equal worth of LGBT+ identities. In these ways, criminalisation protects not only individual survivors but also the dignity of the wider LGBT+ community. Finally, a criminal ban can facilitate access to justice. While civil law mechanisms – such as the creation of a new statutory tort – can offer important benefits, including a lower evidentiary threshold and greater victim agency, significant barriers stand in the way of civil litigation in this context.[13] These barriers can severely limit survivors' ability to seek redress. Criminal law, by contrast, enables the state to act directly against perpetrators, offering a more robust route to accountability for the systemic harms these practices inflict and foster.

The second aim of this article is to demonstrate how a criminal ban on 'conversion therapy' – which, if poorly drafted, can pose risks to human rights, including those of LGBT+ people – can and should be carefully designed to mitigate those risks. Drawing on legal responses and survivor-led studies from several jurisdictions, the article identifies specific risks associated with underreach, overreach and imprecision in criminal law, and proposes concrete legislative measures to address them. This represents a novel and substantial contribution to both legal and policy scholarship, which have so far largely neglected the detailed mechanics of designing and implementing a ban on 'conversion therapy'. By addressing not just *whether* but *how* criminalisation should proceed, this article makes a major advance on the existing literature and fills a critical gap at a particularly urgent time, as the UK and several other countries continue to grapple with how to legislate effectively in this area.

This article also offers a nuanced and applied contribution to debates about the limits and potential of coercive legal responses from the perspective of LGBT+ equality. The relationship between human rights and criminal law is often described as paradoxical.[14] On the one hand, criminal law can pose serious threats to human rights – impacting health, liberty and economic status.[15] On the other, it is increasingly deployed as a tool for advancing equality, including through the criminalisation of discriminatory harms.[16] LGBT+ theory and activism reflect these tensions, with some warning against punitive approaches and

11 Joseph Raz, *Ethics in the Public Domain* (Oxford: OUP, 1995) 277-325.
12 See for example Gail Mason, 'The Symbolic Purpose of Hate Crime Law: Ideal Victims and Emotion' (2014) 18 *Theoretical Criminology* 75.
13 Craig Purshouse and Ilias Trispiotis, 'Is "Conversion Therapy" Tortious?' (2022) 42 *Legal Studies* 23.
14 Françoise Tulkens, 'The Paradoxical Relationship between Criminal Law and Human Rights' (2011) 9 *Journal of International Criminal Justice* 577.
15 Natasa Mavronicola and Laurens Lavrysen, 'Coercive Human Rights: Introducing the Sharp Edge of the European Convention on Human Rights' in Natasa Mavronicola and Laurens Lavrysen (eds), *Coercive Human Rights* (Oxford: Hart, 2020) 1.
16 Ryan Thoreson, '"Discriminalization": Sexuality, Human Rights, and the Carceral Turn in Antidiscrimination Law' (2022) 110 *California Law Review* 431.

others supporting criminal law as a means of securing protection and recognition. Inspired by these debates, this article offers a distinctive, qualified defence of criminalisation – one that is attentive to its historical evolution, its inherent limitations and its place as one component within a broader ecosystem of legal and non-legal responses, as the article's final section emphasises.

Finally, a note on terminology. The term 'conversion therapy' is a profoundly misleading misnomer: these so-called 'therapies' are in no way therapeutic, and LGBT+ identities are not conditions to be cured. The term deliberately obscures the inherently abusive and degrading nature of these practices.[17] It is used here – always in inverted commas – reluctantly and only because it remains the most widely recognised label in policy, advocacy and public discourse. The alternative term Sexual Orientation, Gender Identity or Gender Expression Change Efforts (SOGIE CE) is more accurate[18] but less familiar. This terminological choice reflects a pragmatic balance between critical precision and effective engagement with the audiences this article seeks to reach.

The article is structured in two main sections, each comprising three sub-sections. The first section sets out the case for criminalising 'conversion therapy', beginning with an overview of the justifications and risks associated with coercive approaches to human rights enforcement. It then draws analogies with existing criminal offences – specifically, hate crime and controlling or coercive behaviour – and considers the limitations of alternative legal responses. The second section examines three principal risks posed by criminalisation: underreach, overreach and insufficient emphasis on prevention and LGBT+ inclusion. Concrete legislative strategies are proposed throughout to mitigate these risks and ensure a proportionate and effective criminal ban. Together, these sections develop a normative and doctrinal framework to guide the effective design and implementation of criminal bans on 'conversion therapy' – both in the UK and internationally.

WHY CRIMINALISE 'CONVERSION THERAPY'?

Criminal law responses to human rights violations

Determining whether it is appropriate to mobilise the criminal law to ban 'conversion therapy' requires engagement with both the justifications for, and the risks of, coercive approaches to human rights enforcement. In recent decades, criminal law rules and enforcement mechanisms have increasingly been used to prosecute and punish serious human rights violations. This trend is often analysed as part of a growing 'anti-impunity' movement in international

17 Ilias Trispiotis and Craig Purshouse, '"Conversion Therapy" as Degrading Treatment' (2022) 42 *Oxford Journal of Legal Studies* 104. See also UN SOGI Report, n 2 above; Dinesh Bhugra and others, 'WPA Position Statement on Gender Identity and Same-Sex Orientation, Attraction and Behaviours' (2016) 15 *World Psychiatry* 299.

18 American Psychological Association (APA), 'APA Resolution on Sexual Orientation Change Efforts' (February 2021) at https://www.apa.org/about/policy/resolution-sexual-orientation-change-efforts.pdf.

law, aimed at ensuring criminal accountability for those responsible for serious human rights violations.[19] Early examples include the Nuremberg and Tokyo International Military Tribunals, the Genocide Convention and the Geneva Conventions of 1949. Over time, states have undertaken express duties to criminalise serious human rights violations through widely ratified international treaties, such as the UN Convention Against Torture, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention for the Protection of All Persons from Enforced Disappearances. These developments reflect the emergence of a two-way relationship between human rights and criminal law. On the one hand, state authorities are accountable for ensuring that criminal law is used to punish the most serious human rights abuses, including by ensuring that investigations of human rights abuses allow for effective prosecution, and that offenders are properly sentenced.[20] On the other, human rights norms are used to re-interpret and expand the catalogue of recognised international crimes.[21]

Positive state obligations to mobilise criminal law continue to percolate through the doctrine of human rights courts. There is now a formidable corpus of jurisprudence at the international, regional and national levels outlining such obligations. The European Court of Human Rights (ECtHR), in particular, has consistently held that 'framework' state duties – that is, duties to set up effective systems deterring human rights violations, backed up by investigation and enforcement mechanisms[22] – may sometimes require the use of criminal law measures. These duties have arisen in a wide range of cases, including unlawful killings,[23] torture,[24] rape,[25] sexual abuse of minors[26] or persons with disabilities,[27] excessive or illegitimate police violence,[28] ill-treatment of people in custody[29] and domestic violence.[30] The reasons why *these* particular violations, and not others, necessitate criminalisation are not always clearly articulated. For instance, while most of the aforementioned examples involve severe physical or mental abuse, the ECtHR often notes that criminalisation is

19 Karen Engle, 'Anti-Impunity and the Turn to Criminal Law in Human Rights' (2015) 100 *Cornell Law Review* 1069.
20 *McKerr* v *United Kingdom* Application No 28883/95, Merits and Just Satisfaction, 4 April 2000 (*McKerr*); *Khashiyev and Akayeva* v *Russia* Application Nos 57942/00 and 57945/00, Merits and Just Satisfaction, 24 February 2005 (*Khashiyev and Akayeva*).
21 Anja Seibert-Fohr, *Prosecuting Serious Human Rights Violations* (Oxford: OUP, 2009) ch 4.
22 *A* v *United Kingdom* Application No 25599/94, Merits and Just Satisfaction, 23 November 1998 at [22].
23 *McKerr* n 20 above.
24 *Khashiyev and Akayeva* n 20 above at [179].
25 *MC* v *Bulgaria* Application No 39272/98, Merits and Just Satisfaction, 4 December 2003 at [166].
26 *M and C* v *Romania* Application No 29032/04, Merits and Just Satisfaction, 27 September 2011 at [108].
27 *X and Y* v *The Netherlands* Application No 8978/80, Merits and Just Satisfaction, 26 March 1985 at [27].
28 *Cestaro* v *Italy* Application No 6884/11, Merits and Just Satisfaction, 7 April 2015 at [209].
29 *Myumyun* v *Bulgaria* Application No 67258/13, Merits and Just Satisfaction, 3 November 2015 (*Myumyun*) at [77].
30 *Volodina* v *Russia* Application No 41261/17, Merits and Just Satisfaction, 9 July 2019 (*Volodina*) at [81].

justified to protect individuals – especially those in a vulnerable position[31] – from serious violations of human dignity,[32] regardless of whether injuries of a certain degree of severity have been inflicted.[33] For the purposes of this section, it is sufficient to note that these cases reveal two recurring justifications for mobilising (or withholding) criminal law in response to human rights violations. First, robust criminal proceedings – from investigation through to prosecution and sentencing – are necessary to deter and respond to the most serious and intentional human rights violations.[34] Second, criminalisation expresses societal condemnation and thus reaffirms the values underpinning human rights, namely, respect for the equal value and dignity of all persons.[35] On this view, criminalisation serves to signal the state's commitment to confront serious human rights violations, and offers victims recognition and a pathway to justice.

At the same time, human rights also operate as a 'shield' against excessive or disproportionate criminalisation.[36] *Dudgeon* v *United Kingdom* stands as a landmark judgment in which the ECtHR found that laws criminalising homosexual relations violate Article 8 of the European Convention on Human Rights (ECHR).[37] In other cases, the Court has held that criminalising expression can breach the Convention. In *Du Roy and Malaurie* v *France*, for instance, the Court held that imposing criminal fines on journalists who disseminated illegally obtained information that was in the public interest violated Article 10.[38] Such fines, the ECtHR held, could have a chilling effect on journalism. Human rights thus play a dual – or, as noted earlier, paradoxical[39] – role: shielding individuals from the overreach of criminal law while also requiring its mobilisation in cases of serious abuse. The risks of criminalisation stem from its nature as a 'global and indiscriminate invasion of autonomy',[40] capable of inflicting its own forms of serious harm.[41] Criminal punishment, for instance, particularly through imprisonment, restricts the rights to liberty, privacy and

31 Lourdes Peroni and Alexandra Timmer, 'Vulnerable Groups: The Promise of an Emerging Concept in European Human Rights Convention Law' (2013) 11 *International Journal of Constitutional Law* 1056.
32 *Myumyun* n 29 above at [74].
33 *Volodina* n 30 above at [81].
34 Tulkens, n 14 above.
35 See for example *Calvelli and Ciglio* v *Italy* Application No 32967/96, Merits, 17 January 2002, partly dissenting opinion of judges Rozakis, Bonello and Strážnická. On the expressive value of criminal punishment, as distinct from criminalisation, see Joel Feinberg, 'The Expressive Function of Punishment' (1965) 49 *The Monist* 397.
36 Tulkens, n 14 above.
37 *Dudgeon* v *United Kingdom* Application No 7525/76, Merits, 22 October 1981; *Norris* v *Ireland* Application No 10581/83, Merits and Just Satisfaction, 26 October 1988; *Modinos* v *Cyprus* Application No 15070/89, Merits and Just Satisfaction, 22 April 1993.
38 *Du Roy and Malaurie v France* Application No 34000/96, Merits and Just Satisfaction, 3 October 2000; *Vajnai* v *Hungary* Application No 33629/06, Merits and Just Satisfaction, 8 July 2008; *Mosley* v *United Kingdom* Application No 48009/08, Merits and Just Satisfaction, 15 September 2011; *Altug Taner* v *Turkey* Application No 27520/07, Merits and Just Satisfaction, 25 January 2012.
39 Tulkens, n 14 above.
40 Joseph Raz, *The Morality of Freedom* (Oxford: OUP, 1986) 418.
41 Liora Lazarus, 'Positive Obligations and Criminal Justice: Duties to Protect or Coerce?' in Lucia Zedner and Julian Roberts (eds), *Principles and Values in Criminal Law and Criminal Justice* (Oxford: OUP, 2012) 135.

association, whilst also exposing people to violence and abuse in detention, separating them from family life and preventing employment.[42] Post-release restrictions on freedom of movement and the ability to work often lead to poverty.[43] These well-documented harms are why human rights law must, at the very least,[44] act as a shield against excessive criminalisation, and justify criminal coercion – especially deprivations of liberty[45] – only when strictly necessary.[46]

In the context of this article, it is essential to situate this discussion within the history of LGBT+ rights. Criminal law has long functioned as a tool of persecution: gay men were prosecuted for consensual same-sex relations, and LGBT+ communities have faced police harassment, threats of public exposure and criminal stigma.[47] While UK criminal law no longer directly targets LGBT+ people, the harms of criminalisation are not just historical. Many LGBT+ individuals continue to experience discrimination and exclusion within the criminal justice system. Surveys suggest that LGBT+ people are often reluctant to report violence due to fears that the police will not take them seriously or may discriminate against them.[48] Most transgender hate crime survivors, for instance, do not report their experiences due to their mistrust in the efficacy of the criminal justice system.[49] LGBT+ people are also more likely to experience violence within the carceral system. LGBT+ prisoners often face homophobic and transphobic bullying, may be forced to conceal their identities for safety, and are sometimes segregated – even placed in solitary confinement[50] – for their own protection.[51] Research indicates that trans prisoners are at significantly greater risk of sexual violence than cisgender prisoners.[52] More broadly, LGBT+ detainees face what has been described as 'additional punishment simply for being homosexual, bisexual and/or transgender.'[53] Although the risks of criminalisation extend beyond incarceration, non-carceral criminal measures – such as fines or community sentences – are not necessarily unproblematic,[54] as international human rights mechanisms increasingly recognise.[55]

Despite these risks, recent years have seen growing efforts across jurisdictions to mobilise criminal law in the service of LGBT+ equality. A few examples can

42 *Trosin* v *Ukraine* Application No 39758/05, Merits and Just Satisfaction, 23 February 2012; *MM* v *United Kingdom* Application No 24029/07, Merits and Just Satisfaction, 13 November 2012.
43 Rose Smith and others, *Poverty and Disadvantage Among Prisoners' Families* (York: Joseph Rowntree Foundation, 2017).
44 Dylan Rodriguez, 'Abolition as Praxis of Human Being' (2019) 132 *Harvard Law Review* 1575.
45 UN HRC, General Comment No 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014 at [10].
46 Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge: CUP, 2012).
47 Laura Belmonte, *The International LGBT Rights Movement: A History* (London: Bloomsbury, 2021) ch 6.
48 Galop, *Navigating the Criminal Justice System & Support Services as an LGBT+ Survivor of Sexual Violence* (London: Galop, 2022).
49 Stonewall, *LGBT in Britain: Trans Report* (London: Stonewall, 2018).
50 *X* v *Turkey* Application No 24626/09, Merits and Just Satisfaction, 9 October 2012.
51 Fernando Lannes Fernandes, Becky Kaufmann and Karen Kaufmann, *LGBT+ People in Prisons: Experiences in England and Scotland* (Dundee: University of Dundee, 2020).
52 Shon Faye, *The Transgender Issue* (New York, NY: Penguin, 2021) ch 5.
53 Fernandes, Kaufmann and Kaufmann, n 51 above.
54 Maya Schenwar and Victoria Law, *Prison by Any Other Name* (New York, NY: New Press, 2020).
55 Steven Malby, 'Beyond Sword and Shield: the UN Human Rights System and Criminal Law' (2024) 29 *International Journal of Human Rights* 916, 924–926.

illustrate this trend. In the United States, the Hate Crimes Prevention Act of 2009 expanded hate crime offences to include violence based on sexual orientation or gender identity. As Sarah Lamble observes in relation to the lobbying efforts that secured its passage, 'it is striking that many LGBT activists in the USA see no contradiction between older movement goals of *de-criminalising* same-gender sex acts and current goals of *expanding criminalisation* through hate crime legislation.'[56] In England and Wales, section 66 of the Sentencing Act 2020 requires courts to treat hostility based on sexual orientation or transgender identity as an aggravating factor at sentencing. There is also a distinct offence of intentionally 'stirring up hatred' on the grounds of sexual orientation.[57] In Scotland, crimes may likewise be aggravated where they are proven to have been based on prejudice against a person's sexual orientation or gender identity.[58] These mechanisms enable increased maximum sentences and distinct labelling – for instance, assault aggravated by homophobic or transphobic prejudice. As noted earlier, such laws aim not only to punish the harms caused by discriminatory violence, but also to repudiate the message that LGBT+ people are of lesser social and moral worth.[59]

The literature discussed above – which this article can only briefly engage with – rightly cautions against an uncritical embrace of LGBT+ penality and highlights the contradictions inherent in seeking political freedoms through the mobilisation of state violence. Yet these critical perspectives should not be read as closing the door to criminalisation in all cases, and some of the authors cited earlier acknowledge that criminal law can be a proportionate response to serious human rights abuses.[60] One of their central demands is for care: attention to the structural conditions that enable violence and discrimination, and awareness that criminalisation alone cannot dismantle them. Rather than offering a definitive answer for or against criminalisation – as the sword and shield metaphor might suggest – human rights norms can help define the conditions under which criminal law may be legitimately deployed. In that vein, this article does not argue that the harms of 'conversion therapy' *automatically* trigger its criminal prohibition.[61] Rather, it supports such a call contextually: recognising the gravity and nature of the harms involved, the specific limitations of civil measures in this area, the ongoing risks LGBT+ people face within the criminal justice system, and the broader transformative imperative to pursue strategies of prevention, support and social inclusion. The final section of this article will return to these structural concerns. The remainder of this section turns to the reasons for criminalising hate crimes and coercive control and considers how these relate to 'conversion therapy'.

56 Sarah Lamble, 'Queer Necropolitics and the Expanding Carceral State: Interrogating Sexual Investments in Punishment' (2013) 24 *Law and Critique* 229, 235 (emphasis in original).
57 Public Order Act 1986, s 29.
58 Hate Crime and Public Order (Scotland) Act 2021, ss 1-2.
59 Nathan Hall, *Hate Crime* (Abingdon: Routledge, 2013) ch 5.
60 See for example Thoreson, n 16 above, 481; Natasa Mavronicola and Lee Davies, '"Conversion Therapy" and Transformative Reparations' in Ilias Trispiotis and Craig Purshouse (eds), *Banning 'Conversion Therapy'* (Oxford: Hart, 2023) 231, 246.
61 Mattia Pinto, 'Rights-Driven Global Penality' in Francesco Mazzacuva and others (eds), *Criminal Justice in the Prism of Human Rights* (Antwerpen: Maklu, 2022) 23.

Justifying criminalisation

Criminal law already punishes discriminatory abuse in various contexts, including hate crimes and controlling or coercive behaviour.[62] This section examines the rationales for criminalising those offences and argues that the same underlying values justify the criminalisation of 'conversion therapy'. Like hate crimes and coercive control, 'conversion therapy' combines a well-documented risk of grave physical or psychological harm with wrongful direct discrimination. Given that it causes harm in similar ways and with similar levels of gravity as hate crimes and coercive control, criminalising it would ensure coherence in the law's response to discriminatory abuse and affirm that survivors deserve equal protection and recognition under the law.[63]

Before proceeding, it is important to clarify what is meant by 'conversion therapy'. While the next section considers definitional challenges in greater depth, a working definition is necessary at this stage. According to the United Nations and most states that have introduced bans, 'conversion therapy' refers to a range of practices directed at identifiable persons with the specific aim of changing or suppressing an individual's sexuality, gender identity, or gender expression, on the basis that these are deficient or inferior.[64] These practices target LGBT+ people and foster and reflect longstanding stigma and discrimination. They are profoundly harmful, widely discredited,[65] and unsupported by any credible evidence that identity can be changed through therapeutic or other interventions.[66] 'Conversion therapy' includes so-called 'talking therapies' which, although not overtly violent, can inflict grave psychological harm and perpetuate shame, self-rejection and trauma, as numerous survivors and studies across different countries attest.[67] It has been argued that this combination of grave harm and discrimination that all such practices share means that all of them amount at minimum to degrading treatment, and thus fall within the scope of the absolute prohibition of torture, inhuman or degrading treatment (TIDT).[68] There is growing support for this position in international human rights law.[69]

62 See for example Public Order Act 1986, ss 17-29; Crime and Disorder Act 1998, ss 28-32; Serious Crime Act 2015, s 76.

63 John McGarry, 'The Possibility and Value of Coherence' (2013) 34 *Liverpool Law Review* 17.

64 UN SOGI Report, n 2 above, 60-61.

65 *ibid*; Independent Forensic Expert Group, n 7 above, 1.

66 'Editorial' *The Lancet*, n 7 above.

67 Jordan Sullivan and others, *SOGIE CE/CT Survivor Support Project: Findings from a National Survey, Focus Groups, and Interviews with Hundreds of Survivors* (Vancouver: CBRC, 2022); Survivors of Sexual Orientation and Gender Identity Change Efforts (SOGICE), 'SOGICE Survivor Statement' (July 2020) at https://sogicesurvivors.com.au/sogice-survivor-statement/ [https://perma.cc/2F9A-A9RH]; Mendos, n 6 above; Bishop, n 1 above; UN SOGI Report, n 2 above.

68 Trispiotis and Purshouse, n 17 above.

69 UN SOGI Report, n 2 above; *Yogyakarta Principles Plus 10* (Geneva, 10 November 2017) at https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf [https://perma.cc/A7YC-SZL3] Principle 10 E; United Nations Committee Against Torture, 'Concluding Observations on the Seventh Periodic Report of Ecuador' CAT/C/ECU/CO/7 (11 January 2017) at [46]; United Nations Committee Against Torture, 'Concluding Observations on the First Period Report of China' CAT/C/CHN/CO/5 (3 February 2016) at [55].

There are three main benefits of criminalising 'conversion therapy'. First, criminalisation enables the punishment of perpetrators for the *totality* of harms inflicted on the survivors of those practices. While existing criminal laws already prohibit physically and sexually violent versions of 'conversion therapy',[70] they fail to capture the totality of harm caused, which includes serious discriminatory and relational harms. Second, criminalisation carries important expressive value: it denounces 'conversion therapy' and affirms the equal moral and social worth of LGBT+ people. The failure of existing criminal law to prohibit all forms of 'conversion therapy' sends the false message that these practices are less serious than other forms of discriminatory abuse that are criminalised. Third, criminalisation can help ensure that survivors have access to justice so that they can be heard and receive vindication. The first two benefits will be discussed below; the third is examined in the next subsection and revisited in the article's last section.

It is important first to outline the core features of hate crime, and the justifications for hate crime offences, before examining how these reasons can support the criminalisation of 'conversion therapy'. Hate crime covers a myriad of behaviours – including harassment, assault, verbal abuse and damage to property – based on hostility or prejudice towards a victim's protected characteristic, such as disability, ethnicity, gender identity, nationality, race, religion or sexual orientation.[71] In England and Wales, hate crime offences include racially or religiously aggravated forms of wounding, assault, damage, stalking, harassment and threatening or abusive behaviour. They also include offences of stirring up hatred, which criminalise the use of threatening words or behaviour, or the display of threatening written material, where there is intent to stir up hatred on the grounds of sexual orientation, race, or religion.[72]

Justifications for hate crime offences rest on the devastating and lasting physical and psychological harms they inflict and on the corresponding culpability of perpetrators who risk causing such harms. Empirical studies consistently show that victims of hate crime experience greater and more enduring psychological distress than victims of otherwise comparable crimes. For example, survivors of racially motivated crimes are significantly more likely to experience serious stress, depression and anxiety.[73] Analysing British Crime Survey data, Kevin Smith and others found that survivors of hate crimes based on race, religion, gender identity, sexual orientation or disability reported higher levels of fear and anxiety than those targeted by non-hate crimes.[74] Similar findings emerge from studies of misogynistic[75] and anti-LGB hate crimes:[76] victims consistently

70 Offences Against the Person Act 1861, ss 20 and 47.
71 Hall, n 59 above, ch 1.
72 Public Order Act 1986, ss 17-29; Crime and Disorder Act 1998, ss 28-32.
73 Paul Iganski, 'Hate Crimes Hurt More' (2001) 45 *American Behavioral Scientist* 626.
74 Kevin Smith and others, *Hate Crime, Cyber Security and the Experience of Crime among Children* (London: Home Office, 2012).
75 Mika Hagerlid, 'Swedish Women's Experiences of Misogynistic Hate Crimes: The Impact of Victimization on Fear of Crime' (2021) 16 *Feminist Criminology* 504.
76 James Bell and Barbara Perry, 'Outside Looking In: The Community Impacts of Anti-Lesbian, Gay, and Bisexual Hate Crime' (2015) 62 *Journal of Homosexuality* 98; Gregory Herek and others, 'Hate Crime Victimization among Lesbian, Gay, and Bisexual Adults' (1997) 12 *Journal of Interpersonal Violence* 195.

report more severe and longer-lasting psychological distress than other crime victims. Hate crimes have this effect because they are 'message crimes': they convey that the victim is inferior because of their membership of the targeted group, reinforcing demeaning messages that minorities have often encountered through prior discrimination.[77]

A further justification for hate crime laws lies in the distinct culpability of offenders for 'making a contribution to an already-existing societal pattern of discrimination'.[78] As Allison Marston Danner argues, hate crime offenders bear moral responsibility for reinforcing conditions that render victims vulnerable to discrimination.[79] Hate crime thus helps sustain an oppressive culture that stigmatises targeted groups as having lesser moral and social worth.[80] On this account, hate crime laws play a crucial role in improving the protection of groups – such as racial and religious minorities – that have historically endured discrimination. They do so not necessarily by prohibiting new forms of conduct but by taking existing criminal offences, which perform the prohibitive work, and aggravating them by prejudice. It can be argued, although this point cannot be developed further here, that the value of criminalising hate crime lies in the ways it can improve the accountability of perpetrators, while also performing important expressive functions: it proclaims that the state regards hate crime survivors as equals and is committed to dismantling entrenched prejudice by punishing hatred.

'Conversion therapy' practitioners fall outside the scope of existing hate crime offences. In England and Wales, aggravated offences apply only to crimes based on religion or race and, as discussed earlier, only where the perpetrator has also committed an underlying 'basic offence', such as assault. Practitioners of non-violent 'conversion therapy' may not commit any such basic offence. The separate standalone offence of stirring up hatred would also be unhelpful: the legal hurdles for establishing the offence under section 29B of the Public Order Act 1986 are likely insurmountable in cases involving 'conversion therapy'. For liability to arise, it is not sufficient to show that a practitioner was abusive or insulting, or that their conduct could stir up discrimination or recklessly stir up hatred against LGBT+ people. The behaviour must be proven to be *threatening* and *intended* to stir up hatred towards LGBT+ people. This is an almost impossible threshold to meet, given that 'conversion therapy' is typically framed by practitioners as being in the best interests of LGBT+ individuals. The relevance of the stirring-up hatred offence is further diminished by two additional factors: that 'conversion therapy' is likely to be directed at an individual rather than a group, and that section 29B(2) exempts acts carried out in a private dwelling.

77 Paul Iganski and Abe Sweiry, 'How Hate Hurts Globally' in Jennifer Schweppe and Mark Austin Walters (eds), *The Globalisation of Hate* (Oxford: OUP, 2016) 96.

78 Allison Marston Danner, 'Bias Crimes and Crimes against Humanity: Culpability in Context' (2002) 6 *Buffalo Criminal Law Review* 389, 426.

79 *ibid*, 423.

80 Mark Walters, 'Conceptualizing Hate Crime as Group Oppression' [2025] *Theoretical Criminology* (Online First); James Chalmers and Fiona Leverick, *A Comparative Analysis of Hate Crime Legislation: A Report to the Hate Crime Legislation Review* (Edinburgh: Scottish Government, 2017) 30-33.

Despite 'conversion therapy' falling outside the scope of existing hate crime provisions – and despite the fact that a prohibition on 'conversion therapy' would need to be a standalone rather than an aggravated offence because it targets a specific form of wrongful conduct currently insufficiently captured by the law – there is value in recognising that the effects of hate crime, which normatively justify its criminal prohibition, are similar to those produced by 'conversion therapy'. Like hate crimes, 'conversion therapy' risks inflicting devastating and long-lasting physical and psychological harms rooted in discriminatory abuse. It targets a protected group – LGBT+ people – and seeks to deny them profoundly important freedoms related to sexuality and gender identity. Its explicit message that LGBT+ identities are inferior and ought to be eradicated reflects and reinforces historical stigma, causing profound distress to survivors. Empirical evidence from multiple jurisdictions consistently shows that survivors of 'conversion therapy' suffer lasting damage, including depression, anxiety, suicidal thoughts or attempts, shame, and self-hatred.[81] In the UK, the 2018 National Faith & Sexuality Survey similarly found high rates of mental health problems among 'conversion therapy' survivors, including suicidal ideation and attempts.[82] Legislators have correctly concluded that perpetrators of hate crimes deserve criminal punishment for risking such harms. Those who commit 'conversion therapy' deserve the same for exposing LGBT+ people to comparable risks.

Additionally, like hate crime, 'conversion therapy' harms not only individual survivors but contributes to broader social disadvantage for LGBT+ people by compounding existing prejudices and shaping how others perceive and treat them. As noted, all forms of 'conversion therapy' are grounded in the stigmatising ideology that LGBT+ identities possess lesser moral and social worth. The failure to ban such practices risks inflicting what Ben Eidelson, in the context of racial profiling, calls 'broad harm': it can shape social attitudes towards LGBT+ people and encourage their further exclusion.[83] Criminalising 'conversion therapy' is therefore crucial to recognising that it attacks the autonomy and moral personhood of *all* LGBT+ people, much like hate crime sustains and contributes to the systemic oppression of targeted minority groups. As noted earlier, while hate crime offences do not necessarily criminalise new forms of wrongful conduct, their contribution lies in improving accountability and recognition, thereby making existing prohibitions more effective. Although banning 'conversion therapy' would entail creating a standalone offence, recognising that its wrongfulness bears normative similarities to hate crime helps illuminate why the mobilisation of criminal law in this area can be justified.

An even closer analogy to 'conversion therapy' than hate crime is the standalone offence of controlling or coercive behaviour, criminalised in England

81 Tiffany Jones and others, *Healing Spiritual Harms: Supporting Recovery from LGBTQA+ Change and Suppression Practices* (Victoria: La Trobe, 2021) 7; Adam Jowett and others, *Conversion Therapy: An Evidence Assessment and Qualitative Study* (London: Government Equalities Office, 2021) 45-51; Bishop, n 1 above, 16-17.

82 Ozanne Foundation, 'National Faith and Sexuality Survey 2018' (Executive Report, 2019) at https://drive.google.com/file/d/1NpGW3PtZTnT21O4PbwuD_rkvk6aG99iv/view [https://perma.cc/8XTV-DZUJ].

83 Benjamin Eidelson, *Discrimination and Disrespect* (Oxford: OUP, 2015) 207-208.

and Wales under section 76 of the Serious Crime Act 2015, and also criminalised in Scotland[84] and Northern Ireland,[85] with several other jurisdictions, such as Canada, considering similar legislation at the time of writing. This provides another useful precedent for criminalising conduct that combines a real risk of grave harm with discrimination.[86] Controlling or coercive behaviour includes 'threats, excessive regulation, intimidation, humiliation and enforced isolation'[87] – behaviours designed to control, dominate and increase dependency.[88] It is a relational wrong, typically sustained by sexist beliefs, which it also reproduces and promotes.[89]

The imbalance of power that coercive control reflects and sustains – an imbalance driven by patriarchal norms and structural inequalities – is likewise central to 'conversion therapy'.[90] Such practices are typically carried out by members of established social institutions, such as faith groups or health professionals,[91] who hold significant power or status over those they seek to influence. As the UN has noted, 'conversion therapy' is framed as a relationship between an 'enlightened converter and [a] benighted convert',[92] reflecting and reinforcing long-standing social stigma against LGBT+ identities. Through this stark power imbalance, and by drawing on and reinforcing existing social hierarchies, both coercive control and 'conversion therapy' subvert personal autonomy. They do so by coercing individuals to behave according to patriarchal, heteronormative and cisnormative ideals,[93] and by undermining their sense of self-worth – all under the guise of acting in the person's best interests.

The rationale for criminalising coercive control as a distinct pattern of abuse that subordinates and causes serious harm applies fully to 'conversion therapy'.[94] The nature and gravity of the harm are similar in both cases, and both have profoundly damaging effects not only on individual victims but also on the broader social standing of women and LGBT+ people.[95] Existing criminal laws on coercive control, however, are insufficient to address 'conversion therapy'. The offence of controlling or coercive behaviour requires that the perpetrator be 'personally connected' to the victim.[96] This threshold is met only in current

84 Domestic Abuse (Scotland) Act 2018, Part 1.
85 Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, Part 1.
86 Marilyn McMahon and Paul McGorrery, 'Criminalising Coercive Control' in Marilyn McMahon and Paul McGorrery (eds), *Criminalising Coercive Control* (Berlin: Springer, 2020) 3.
87 Women's Aid NI, 'Coercive Control' at https://www.womensaidni.org/whatisdomesticabuse/coercive-control/ [https://perma.cc/266R-TJDB].
88 Evan Stark, *Coercive Control: How Men Entrap Women in Everyday Life* (New York, NY: OUP, 2nd ed, 2023) ch 8.
89 *ibid*.
90 Jonathan Herring, 'Conversion Practices and Coercive Control' in Trispiotis and Purshouse, n 60 above.
91 n 163 below.
92 UN SOGI Report, n 2 above, 16.
93 Evan Stark and Marianne Hester, 'Coercive Control: Update and Review' (2019) 25 *Violence Against Women* 81, 93.
94 Home Office, 'Controlling or Coercive Behaviour: Statutory Guidance Framework' (Home Office, Statutory Guidance, 5 April 2023) at https://assets.publishing.service.gov.uk/media/642d3f9e7de82b001231364d/Controlling_or_Coercive_Behaviour_Statutory_Guidance_-_final.pdf [https://perma.cc/DU48-AEVQ] 12.
95 *ibid*, 25. See also Herring, n 90 above, 53-56.
96 Serious Crimes Act 2015, s 76.

or past intimate and family relationships.[97] As a result, many perpetrators of 'conversion therapy' would fall outside the scope of this offence.

It is possible to amend existing hate crime and coercive control legal frameworks to capture 'conversion therapy'. Hate crime laws could, for example, be amended to make 'conversion therapy' an aggravating factor upon sentencing, recorded as an aggravated hate crime offence. However, this would be unsatisfactory: non-violent forms of 'conversion therapy' would escape criminal liability because there would be no underlying 'basic offence' to aggravate. Creating a 'conversion therapy' aggravated offence would also risk establishing a false hierarchy of harm, with non-violent forms of 'conversion therapy' treated as less serious. Similarly, the law on controlling or coercive behaviour could be broadened to include 'conversion therapy' practitioners, allowing for the criminalisation of non-violent forms of such practices.

Yet creating a distinct 'conversion therapy' offence is preferable. A bespoke offence would bring the practical clarity and efficacy that no extension of existing offences could secure. It would define 'conversion therapy' and clarify its harms to state agencies such as the police, health professionals, schools and universities.[98] It would establish clear reporting pathways and enhance the ability of police and other criminal justice professionals to engage with survivors and pursue criminal interventions where appropriate. Drawing lessons from the implementation of the existing coercive control offence, a bespoke offence could also facilitate the necessary resourcing, training, monitoring and victim support to make its implementation effective.[99] Finally, a bespoke offence would have significant expressive value: it would enable the state to denounce 'conversion therapy' as an intolerable form of discriminatory abuse, affirm the equal worth of LGBT+ identities, and repudiate the ideology that sustains such practices. None of this implies that the criminal justice process is a panacea, nor should it be the sole means of providing justice and support to survivors. Broader strategies of prevention, education and resourcing remain indispensable. Nevertheless, as the Domestic Abuse Commissioner for England and Wales noted in their submission to the UK Government's 2021 consultation on a ban, statutory services often fail to recognise 'conversion therapy' as abuse, and therefore do nothing to protect those at risk or subjected to it.[100] A distinct criminal offence would encourage both service providers and survivors to recognise and act against 'conversion therapy'. This is a point the last section of this article will return to.

In sum, while certain instances of 'conversion therapy', such as those involving physical or sexual violence, are already covered by the criminal law, the totality of the harm these practices inflict – as an attack on the auton-

97 *ibid*.

98 Thoreson, n 16 above, 462.

99 Charlotte Barlow and Sandra Walklate, 'Learning Lessons from the Criminalisation of Coercive and Controlling Behaviour Ten Years On: The Implementation Journey in England and Wales' [2025] *International Journal for Crime, Justice and Social Democracy* (Advance Online Publication).

100 Domestic Abuse Commissioner, 'Government Conversion Therapy Consultation: Written Submission from the Domestic Abuse Commissioner for England and Wales' (2022) at https://domesticabusecommissioner.uk/wp-content/uploads/2022/01/2201-DAC-Response-to-Conversion-Therapy-Consultation.pdf [https://perma.cc/CZ4R-WSWE].

omy and moral personhood of LGBT+ people – is not. This is despite the fact that the normative justifications for criminalising hate crimes and coercive control apply analogously. The resulting inconsistency undermines legal clarity and coherence, and leaves a significant gap in protection for LGBT+ individuals.

Alternatives to criminalisation: the limits of tort law

Existing tort law in the UK, particularly negligence and harassment, is ill-equipped to protect individuals from 'conversion therapy', especially from non-physical 'talking therapies'.[101] Claimants face major legal hurdles. The tort of negligence requires proof of a recognised psychiatric injury[102] – a threshold that often exceeds grievous mental harm,[103] even though such harm is well documented in relation to these practices.[104] Claimants must also show that the provider owed them, and breached, a duty of care,[105] which is difficult when practitioners are unqualified or present as faith healers.[106] The law effectively holds pseudo-scientific practices to a lower standard than professional medicine or regulated psychotherapy. The tort of harassment, meanwhile, only applies to unwanted conduct.[107] This bar is unlikely to be met where individuals consent to 'conversion therapy', even if that consent is shaped by religious or social pressure. In sum, existing tort law fails to capture the coercive dynamics and long-term harms of 'conversion therapy', particularly in its non-violent forms.

Against this background, it might be argued that a new statutory tort targeting 'conversion therapy' could offer a more appropriate legal response. New legislation could, for instance, stipulate that all forms of 'conversion therapy' involve a breach of a duty of care and permit individual claims for emotional distress. As the next section will discuss in more detail, some jurisdictions that have banned 'conversion therapy' have indeed adopted this approach. There are potential advantages to this strategy. Unlike criminal proceedings, civil litigation offers survivors of 'conversion therapy' greater control over whether and how a case is pursued, potentially providing some therapeutic benefits.[108] Another benefit is that successful tort claims can serve vindicatory purposes similar to criminal convictions without imposing as serious harms on offenders. In addition, the lower standard of proof in tort law may enhance access to justice, particularly given the low prosecution rates for abuse offences, including rape,

101 Purshouse and Trispiotis, n 13 above.
102 *McLoughlin* v *O'Brian* [1983] 1 AC 410 at [431] per Lord Bridge.
103 Rachael Mulheron, 'Rewriting the Requirement for a "Recognised Psychiatric Injury" in Negligence Claims' (2012) 32 *Oxford Journal of Legal Studies* 77.
104 n 81 above.
105 *Phelps* v *Hillingdon London Borough Council* [2000] 2 AC 59 at [77] per Lord Steyn.
106 *Shakoor* v *Situ* [2001] 1 WLR 410.
107 Protection from Harassment Act 1997, ss 1(1) and 3; *Brayshaw* v *The Partners of Apsley Surgery* [2018] EWHC 3286 at [61]. Similarly, Equality Act 2010, s 26.
108 Allan Lind and others, 'In the Eye of the Beholder: Tort Litigants' Evaluations of their Experiences in the Civil Justice System' (1990) 24 *Law & Society Review* 953.

assault, and controlling or coercive behaviour.[109] Finally, civil remedies can serve preventative aims. Courts can impose civil injunctions to desist from 'conversion therapy'[110] or issue no contact orders, which can be backed by criminal sanctions in the event of a breach.[111] Such orders may be especially valuable in light of the longstanding and well-founded distrust many LGBT+ people hold toward criminal justice agencies.

Nonetheless, without the possibility of criminal sanction, the effectiveness of a purely civil response remains limited. Statutory limitation periods for torts – typically six years from the date of the cause of action[112] – may be ill-suited to the delayed recognition and disclosure often associated with psychological harm. Studies focused on survivors consistently show that survivors may take years to identify the link between the practice and their mental health difficulties, especially where 'conversion therapy' was framed as a form of care or support.[113] Financial barriers also loom large. Legal aid is mostly abolished in private law cases, and many survivors may lack the significant resources required to fund litigation and may be unable to recover meaningful compensation from defendants with limited means.[114] Furthermore, the nature and impact of 'conversion therapy' may be difficult to translate into monetary damages.

Crucially, tort law is structurally ill-equipped to address the public and systemic nature of the harm caused by 'conversion therapy'.[115] A tort-based response frames the issue as a private dispute rather than a public wrong. It fails to communicate the gravity of the moral and social injury that 'conversion therapy' represents – namely, its reinforcement of a cultural narrative that LGBT+ identities are disordered or undesirable. These harms extend well beyond individual claimants to the wider LGBT+ community, undermining dignity and equality on a societal scale. Criminal law, by contrast, offers a more appropriate vehicle for expressing collective condemnation of the ideologies underpinning 'conversion therapy', much as it does with hate crime and controlling or coercive behaviour.[116]

Moreover, criminalisation enables a state-led response in situations where survivors may be unable or unwilling to initiate civil proceedings due to

109 Rachel George and Sophie Ferguson, *Review into the Criminal Justice System Response to Adult Rape and Serious Sexual Offences across England and Wales* (HM Government, Research Report, 2021) https://assets.publishing.service.gov.uk/media/60cbb9318fa8f57ce78d4d85/rape-review-research-report.pdf [https://perma.cc/9VAX-YKAB] 55-57.

110 Although it is arguable that such injunctions might be of limited use: a person who is in a position to sue may not need an injunction against a practice they have no interest in, nor would such an injunction necessarily prevent 'conversion therapy' being offered to other individuals.

111 For example the Domestic Violence, Crime and Victims Act 2004 criminalised the breach of non-molestation orders under the Family Law Act 1996.

112 Limitation Act 1980, s 2.

113 Elisabeth Dromer and others, 'Overcoming Conversion Therapy: A Qualitative Investigation of Experiences of Survivors' [2022] *SSM Qualitative Research in Health* 100194; Jones and others, n 81 above, 14-16; Ozanne Foundation, n 82 above.

114 Jon Robins and Daniel Newman, *Justice in a Time of Austerity* (Bristol: Bristol University Press, 2021).

115 John Coffee, 'Paradigm Lost: The Blurring of the Criminal and Civil Law Models' (1992) 101 *Yale Law Journal* 1875.

116 Antony Duff, 'Towards a Theory of Criminal Law' (2010) 84 *Proceedings of the Aristotelian Society* 1, 21-22.

internalised stigma, fear of retribution, or complex ties to perpetrators. Research commissioned by the UK Government Equalities Office shows that many seek 'conversion therapy' out of a 'strong desire to belong within their families, religious communities and friendship groups, and a belief that being LGB was an obstacle to that.'[117] Survivors from Australia similarly describe the coercive control and gaslighting common in these practices, which lead many to internalise messages of brokenness and to view perpetrators as healers.[118] Such evidence shows that survivors may refrain from initiating civil proceedings because of the very nature of 'conversion therapy': loyalty, shame, or fear of being 'outed' – especially within unsupportive families or communities – can silence them. These foreseeable barriers to civil proceedings mirror well-documented patterns in the underreporting of LGBT+ hate crimes.[119] While such dynamics can also impede engagement with the criminal process – a point the final section of this article will return to – the availability of criminal sanctions ensures that the state can act independently to hold perpetrators accountable and affirm the equal worth of LGBT+ people.

This is not to suggest that criminal law is, or should be, the sole response to 'conversion therapy'. Later sections of this article will elaborate on the essential role of complementary measures. Nor is this to dismiss civil remedies. A statutory tort could meaningfully complement a criminal prohibition by offering survivors an additional avenue for redress. But the public wrongs inherent in 'conversion therapy', combined with the distinctive barriers to civil justice mentioned above, mean that tort law alone cannot provide an adequate response. While it may supplement a criminal ban, it cannot supplant it.

THE RISKS OF CRIMINALISING 'CONVERSION THERAPY' AND SUGGESTIONS FOR MITIGATION

The preceding analysis has shown why the nature and gravity of the harms caused by 'conversion therapy' can justify recourse to the criminal law. Yet, as previously discussed, criminal law is not a benign force. If poorly designed or implemented, it may inflict further harm – including on those it purports to protect. This risk is evident in other contexts: punitive drug possession laws have led to serious health consequences for people with substance use disorders;[120] the criminalisation of sex work has frequently exacerbated unsafe working conditions for sex workers;[121] and, more broadly, penal expansion has often diverted attention from the structural conditions that produce in-

117 Jowett and others, n 81 above, 36.
118 'SOGICE Survivor Statement' n 67 above, 4.
119 Neil Chakraborti and Stevie-Jade Hardy, *LGB&T Hate Crime Reporting* (University of Leicester, Research Report, 2015) at https://www.equalityhumanrights.com/sites/default/files/research-lgbt-hate-crime-reporting-identifying-barriers-and-solutions.pdf [https://perma.cc/7T8G-9S7U].
120 Lisa Maher and Thomas Crewe Dixon, 'Collateral Damage and the Criminalisation of Drug Use' (2017) 4 *Lancet HIV* 326.
121 Laura Graham, 'Governing Sex Work Through Crime: Creating the Context for Violence and Exploitation' (2017) 81 *Journal of Criminal Law* 201.

equality and violence.[122] These lessons, widely recognised in human rights scholarship and activism, caution against overreliance on criminalisation as a tool for human rights protection. It is with this caution in mind that this section identifies key risks associated with criminalising 'conversion therapy' and, informed by comparative material on relevant laws and policies, offers concrete recommendations for how those risks can be effectively mitigated.

Definition of the offence and international precedent

One of the primary risks with the criminalisation of 'conversion therapy' is the dual threat of *underreach* – where harmful practices may escape legal scrutiny – and *overreach* – where legitimate therapeutic or supportive practices may inadvertently be brought within the scope of criminal law. To mitigate these risks, it is essential to formulate a clear and precise legislative definition of the offence, accompanied by detailed explanatory notes and illustrative examples in any relevant bill.[123]

This task, however, does not begin in a vacuum. Recent policy and advocacy efforts – both nationally and internationally – often led or informed by survivors of 'conversion therapy', alongside the introduction of legal bans in various jurisdictions, have significantly clarified this area. Today, there is an internationally accepted definition of 'conversion therapy' and a developing body of best practices aimed at preventing the foreseeable forms of underreach and overreach that can reasonably be anticipated in this legal context.

Earlier sections of this article provided an initial overview of the established definition of 'conversion therapy' practices. At this point, it is essential to revisit and examine that definition more thoroughly. In his 2020 report to the UN Human Rights Council, the UN Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity (UN SOGI) defined 'conversion therapy' as

> an umbrella term to describe interventions of a wide-ranging nature, all of which are premised on the belief that a person's sexual orientation and gender identity, including gender expression, can and should be changed or suppressed when they do not fall under what other actors in a given setting and time perceive as the desirable norm, in particular when the person is lesbian, gay, bisexual, trans or gender diverse. Such practices are therefore consistently aimed at effecting a change from non-heterosexual to heterosexual and from trans or gender diverse to cisgender.[124]

This definition corresponds closely with those adopted in legislative bans on 'conversion therapy' enacted by several national jurisdictions, including

122 Silvana Tapia Tapia, 'Human Rights Penality and Violence Against Women: The Coloniality of Disembodied Justice' (2025) 36 *Law and Critique* 41.
123 New Zealand's ban on 'conversion therapy' includes illustrative examples; n 127 below.
124 UN SOGI Report, n 2 above, at [17].

Canada,[125] France,[126] New Zealand,[127] Norway,[128] Malta,[129] Germany,[130] and Greece.[131] It is a key point of reference in the European Parliament's 2023 report *Conversion Practices on LGBT+ People*,[132] and is frequently cited in scholarly publications and policy documents issued by the Council of Europe,[133] the UK parliament,[134] and a range of NGOs operating both domestically[135] and internationally.[136] Furthermore, the UN definition closely parallels the one adopted by the Memorandum of Understanding (MoU) on 'Conversion Therapy' in the UK. The MoU, signed by leading healthcare bodies such as the British Association for Counselling and Psychotherapy (BACP), the Royal College of General Practitioners (RCGP) and the National Health Service (NHS), condemns 'conversion therapy' as both harmful and unethical, and sets out concrete commitments and actions for organisations to help end this practice in the UK.[137]

The foregoing definition underpins a range of legislative approaches to the criminalisation of 'conversion therapy', including comprehensive criminal bans, partial criminal bans targeting specific providers or practices and hybrid models combining criminal and civil sanctions. Each of these approaches will now be briefly examined. Their potential to underreach or overreach will then be assessed in the following two sections.

France, Canada and Norway have enacted comprehensive criminal bans on 'conversion therapy'. In Canada, it is a criminal offence for someone to knowingly cause another person to undergo 'conversion therapy' – including by directly providing it to them.[138] Additionally, promoting, advertising or profiting from such practices is also criminalised.[139] In addition to these core prohibi-

125 Bill C-4 (S.C. 2021, c. 24) (Canada), s 320.101.
126 Loi no 2022-92 du 31 Janvier 2022 (France), Art 225-4-13.
127 Conversion Practices Prohibition Legislation Bill 56-2 (2021) (New Zealand), s 5(1).
128 Lov 20 Desember 2023 nr 113 om endringer i straffeloven (konverteringsterapi) (Norway), s 270.
129 Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, Act LV of 2016 (Malta), s 2.
130 Gesetz zum Schutz vor Konversionsbehandlungen vom 12 Juni 2020 (BGBl. I S. 1285) (Germany), §1.
131 Πρακτικές Μεταστροφής, Τροπολογία στο Σχέδιο Νόμου του Υπουργείου Υγείας με Τίτλο 'Γιατρός για Όλους' (9 May 2022) (Greece), Art 1.
132 European Parliament, *Conversion Practices on LGBT+ People* (STUDY Requested by the LIBE committee, July 2023) at https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2023/07-17/Study_PolDepC_ConversionPracticesonLGBTPeople_752.385_EN.pdf [https://perma.cc/LHS2-TTJG].
133 Dunja Mijatović, 'Nothing to Cure: Putting an End to So-Called "Conversion Therapies" for LGBTI People' (Commissioner for Human Rights, Comment, 16 February 2023) at https://www.coe.int/en/web/commissioner/-/nothing-to-cure-putting-an-end-to-so-called-conversion-therapies-for-lgbti-people.
134 Douglas Pyper and Joe Tyler-Todd, 'Prohibiting Conversion Therapy' House of Commons Library Research Briefing (22 February 2024); Jack Edmunds and Abbi Hobbs, 'Conversion Therapy' POSTnote Number 658, UK Parliament POST (December 2021).
135 Ozanne Foundation, 'Recommendations on effectively legislating for a ban on conversion practices, Signatories' (The Cooper Report, 1 October 2021) at https://ozanne.foundation/cooper_report/#signatories [https://perma.cc/5ZSD-HN5H].
136 Mendos, n 6 above, 17-20.
137 MoU, n 7 above.
138 Bill C-4 (S.C. 2021, c. 24) (Canada), s 320.101.
139 Bill C-4 (S.C. 2021, c. 24) (Canada), ss 320.103 and 320.104.

tions – shared with Canada – France and Norway have introduced aggravated criminal offences for conversion practices that involve multiple perpetrators or result in serious physical or psychological harm.[140] France further includes aggravated criminal offences for practices directed at minors or individuals with known vulnerabilities.[141] Moreover, the legal frameworks of France, Canada and Norway – alongside those in New Zealand and the state of Victoria, Australia, which will be discussed below – expressly exclude the possibility of individual consent as a legal defence for undergoing 'conversion therapy'.

Malta, Germany and Greece have enacted partial criminal bans on 'conversion therapy'. These prohibitions are partial in several respects: they apply only to practices directed at minors or vulnerable individuals; primarily target the provision of 'conversion therapy' by professionals; and they permit adults who are not deemed vulnerable to consent to such practices, with valid consent operating as a defence to criminal liability. More specifically, Malta, the first member of the Council of Europe to legislate against 'conversion therapy' in 2016, criminalises its performance on minors, individuals deemed vulnerable due to health or dependency, and persons who have not consented.[142] The advertising of such practices is also a criminal offence.[143] Moreover, regardless of age, vulnerability or consent, it is a criminal offence for a broad range of professionals – including medical practitioners, therapists and social workers – to offer or perform 'conversion therapy' on any person.[144] Similarly, German law criminalises the performance of such practices on minors and on adults whose consent was obtained through coercion, threats, or deception.[145] However, offering, advertising, or arranging 'conversion therapy' is an administrative rather than a criminal offence.[146] By contrast, Greek law imposes criminal liability on professionals who promote or advertise 'conversion therapy'.[147] Like Malta and Germany, Greece also criminalises the performance of such practices on minors, vulnerable persons, and those who have not consented.[148]

New Zealand and Victoria, Australia have introduced comprehensive bans on 'conversion therapy' that rely only partially on criminal law. While it is unlawful in both jurisdictions for any person to perform or arrange for the performance of 'conversion therapy' on another,[149] criminal sanctions apply only in limited circumstances. In New Zealand, criminal liability arises where the conduct is directed at a minor,[150] at a person lacking the capacity to understand

140 Loi no 2022-92 du 31 Janvier 2022 (France), Art 1 and Lov 20 Desember 2023 nr 113 om endringer i straffeloven (konverteringsterapi) (Norway), s 270(a) respectively.
141 *ibid*.
142 Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, Act LV of 2016 (Malta), s 3.
143 *ibid*.
144 *ibid*.
145 Gesetz zum Schutz vor Konversionsbehandlungen vom 12 Juni 2020 (BGBl. I S. 1285) (Germany), §1.
146 *ibid*, §6.
147 Πρακτικές Μεταστροφής, Τροπολογία στο Σχέδιο Νόμου του Υπουργείου Υγείας με Τίτλο 'Γιατρός για Όλους' (9 May 2022) (Greece), Art 2.
148 *ibid*.
149 Conversion Practices Prohibition Legislation Bill 56-2 (2021) (New Zealand), Art 15.
150 *ibid*, Art 8.

the nature and consequences of the practice,[151] or where the practice causes serious harm.[152] Outside these situations, 'conversion therapy' practices may attract civil liability. New Zealand has amended the Human Rights Act 1993, establishing a civil redress scheme overseen by the Human Rights Commission. The Human Rights Commission plays a broader institutional role that includes public education, receiving and referring reports of conversion practices, and the publication of guidelines and codes of practice, reflecting a more systemic approach.[153] Victoria follows a similar model. Criminal sanctions are triggered only when an instance of 'conversion therapy' causes injury or serious injury, while a wider civil response scheme is administered by the Victorian Equal Opportunity and Human Rights Commission. Like its New Zealand counterpart, the Victorian Commission engages in education, complaint handling and systemic oversight.[154] As noted above, both jurisdictions exclude consent as a legal defence to 'conversion therapy'.[155]

One final definitional point is worth noting before turning to questions of underreach and overreach. Among the jurisdictions discussed, Canada has adopted a *unidirectional* ban, criminalising 'conversion therapy' practices aimed specifically at changing or suppressing LGBT+ identities. In contrast, France, Malta, Germany, Greece and Norway have enacted *universal* bans that criminalise all forms of 'conversion therapy' irrespective of the sexual orientation or gender identity targeted for change or suppression. A unidirectional ban better reflects the empirical reality that there is no credible evidence of 'conversion therapy' being directed at heterosexual or cisgender people.[156] On this basis, a more narrowly tailored legislative response may be justified. Moreover, a unidirectional ban carries greater and clearer symbolic force. It acknowledges that 'conversion therapy' is rooted in, and contributes to, the exclusion, stigma and structural vulnerability faced by LGBT+ people – conditions not experienced by heterosexual or cisgender persons in the same way. By directing legal protection where harm is actually occurring, a unidirectional ban delivers an unambiguous message: that the state will not tolerate efforts to erase LGBT+ identities, and will meet such practices with the full weight of criminal law.

However, the distinction between unidirectional and universal bans may not be as stark in practice. Each of the universal bans mentioned above explicitly recognises – either in travaux préparatoires[157] and explanatory notes,[158] or in examples within the text of the legislation[159] – that 'conversion therapy' practices target same-sex attraction and promote gender-conforming behaviour. In this respect, even universal bans reflect the real-world directionality of

151 *ibid*.
152 *ibid*, Art 9.
153 *ibid*, Part 3.
154 Change or Suppression (Conversion) Practices Prohibition Act 2021 (Victoria), Part 3.
155 Change or Suppression (Conversion) Practices Prohibition Act 2021 (Victoria), Art 5; Conversion Practices Prohibition Legislation Bill 56-2 (2021) (New Zealand), s 5.
156 UN SOGI Report, n 2 above; Mendos, n 6 above.
157 French Senate Rapport No 294 at https://www.senat.fr/rap/l21-294/l21-2941.pdf [https://perma.cc/U3RB-9TGD] 4.
158 n 131 above, 6.
159 Conversion Practices Prohibition Legislation Bill 56-2 (2021) (New Zealand), s 5.

such practices. As Lui Asquith argues, universal bans may carry an additional benefit: they may be more effective at accommodating the diversity of gender identity expressions within the trans community.[160] By avoiding assumptions about what it means to be trans, universal bans can reduce the risk of gender-policing and offer stronger protection for trans individuals.[161] Nonetheless, this argument pertains more to the application than the formulation of the ban. Both unidirectional and universal bans, if properly enforced, should adequately protect all LGBT+ persons from the harms of 'conversion therapy'. For this reason, this point is addressed briefly here before turning to the risks of underreach and overreach.

The risk of underreach

Empirical studies across several countries reveal two significant risks of underreach in the criminal regulation of 'conversion therapy'. These risks are evident in some of the national bans discussed in the preceding section. The first concerns the exclusion of consenting adults from legal protection. The second arises from the narrow focus of some bans on professional actors, thereby failing to capture a substantial share of 'conversion therapy' providers. These two risks are addressed in turn. The discussion then turns to the scope of criminalisation, with a particular focus on hybrid bans that combine civil and criminal regulatory tools, and the risks of underreach they may pose.

One of the most pressing risks of underreach in 'conversion therapy' bans arises where the criminal law permits individual consent as a defence – mainly in the case of independent adults. This approach is flawed. Empirical studies, often led by survivors,[162] show that 'conversion therapy' practices are inherently coercive and thrive in contexts of social pressure, familial control and cultural stigma.[163] These dynamics compromise genuine autonomy, even for adults. The techniques used – gaslighting, emotional manipulation, the pathologisation of LGBT+ identities – mirror those found in coercive control, which, as discussed earlier, is a criminal offence in England and Wales under section 76 of the Serious Crime Act 2015.[164] In that context, the law rightly rejects consent as a defence because the individual's capacity for autonomous decision-making is understood to be subverted. The same logic applies here. Adults may 'choose' to undergo 'conversion therapy', but often this is under threat of social exclusion, loss of community or spiritual condemnation.[165] Such choices are not freely

160 Lui Asquith, 'Ensuring Trans Protection within a Ban on Conversion Practices' in Trispiotis and Purshouse, n 60 above, 160.
161 *ibid*.
162 n 67 above.
163 Mendos, n 6 above, ch 2; UN SOGI Report, n 2 above, 9-13; 'Pathways for Eliminating Conversion Practices' (Outright International, Advocacy Toolkit, 2022) at https://outrightinternational.org/sites/default/files/2022-12/Outright_Report_DEC2022.pdf [https://perma.cc/6JP9-LHHA] 4.
164 It is also a criminal offence in Scotland and Northern Ireland. See n 84 and n 85 above.
165 Jayne Ozanne, '"Conversion Therapy", Spiritual Abuse and Human Rights' [2021] *European Human Rights Law Review* 241.

made; they are shaped by a structural context that devalues LGBT+ identities. Permitting consent in these circumstances not only misunderstands how coercion operates – it also legitimises the very structures that allow discriminatory abuse to persist. That is why several jurisdictions, including Canada, France and New Zealand, allow no space for individual consent in their bans. Laws that do otherwise fail to provide meaningful protection and risk blaming survivors for their own victimisation.

A second significant risk of underreach arises where legislation limits its scope to the provision of 'conversion therapy' by professionals, thereby excluding a substantial proportion of those who actually deliver such practices. Empirical research in the UK – including the UK Government's 2018 National LGBT Survey – makes clear that conversion practices are frequently carried out by individuals operating outside formal therapeutic or medical contexts. Of those respondents who had undergone 'conversion therapy', just 28.7 per cent reported that it had been conducted by healthcare professionals, while over half (50.4 per cent) indicated that it had been delivered by faith-based organisations or individuals.[166] These findings are consistent with broader international data suggesting that much of the provision occurs in religious or informal community settings, often by individuals with no recognised professional status.[167] A legislative framework that targets only professionalised practice is thus poorly calibrated to the empirical reality. Greece offers a recent example: its 2022 law prohibits the provision of 'conversion therapy' by regulated professionals – particularly those who get paid to carry out such practices – but leaves unregulated a wide range of amateur or religious providers.[168] Such an approach risks creating a loophole through which the most prevalent and least accountable forms of 'conversion therapy' are allowed to persist. If criminal bans on 'conversion therapy' are to be effective, they must extend to all providers, regardless of formal qualifications or institutional affiliation.

That said, it is entirely appropriate – indeed necessary – for legislation to impose aggravated penalties on professionals who engage in these practices, as Malta's legislation does.[169] When clinicians, counsellors, nurses, educators or social workers – those entrusted with care, guidance, and institutional authority – participate in 'conversion therapy', the harm is aggravated. These actors betray both their ethical obligations and the trust of those in their care, and their actions demand heightened accountability under the law. Aggravated offences thus serve an important expressive and protective function, but must be part of a broader scheme that covers all providers.

166 Government Equalities Office, 'National LGBT Survey: Summary Report' (July 2018) at https://assets.publishing.service.gov.uk/media/5b3cb6b6ed915d39fd5f14df/GEO-LGBT-Survey-Report.pdf [https://perma.cc/B6HN-KLMP] 18-19.

167 Jowett and others, n 81 above, 24; Jones and others, n 81 above, 6-7; Mendos, n 6 above, 38-49; UN SOGI Report, n 2 above, 9-13; Ozanne, n 82 above, 15; Jack Drescher 'Sexual Conversion Therapies: History and Update' in Billy Jones and Marjorie Hill (eds), *Mental Health Issues in Lesbian, Gay, Bisexual, and Transgender Communities* (Washington DC: APA, 2002) 88.

168 Πρακτικές Μεταστροφής, Τροπολογία στο Σχέδιο Νόμου του Υπουργείου Υγείας με Τίτλο 'Γιατρός για Όλους' (9 May 2022) (Greece), Art 2(γ).

169 Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, Act LV of 2016 (Malta), Art 4(2).

As the previous section showed, some jurisdictions criminalise certain forms of 'conversion therapy', while other forms are treated as breaches of private law. This raises an important question: what justifies criminalising only some forms of 'conversion therapy' and not others, when all such practices share a common discriminatory aim – to change or suppress LGBT+ identities – and carry a well-established risk of serious harm? As discussed earlier, 'conversion therapy' practices, like coercive control, undermine an individual's autonomy and sense of self. And like hate crimes, they harm individuals because of their protected characteristics. Both coercive control and hate crimes are criminal offences in the UK, regardless of whether physical injury occurs or whether the victim consented.

Jurisdictions such as Victoria, which restrict criminalisation to forms of 'conversion therapy' that cause injury as defined in the Crimes Act 1958, risk significant underreach.[170] The harm caused by these practices is often psychological and always dignitarian – humiliation, shame and pressure to conform – which works cumulatively to erode an individual's sense of identity. These harms may fall outside existing definitions of injury but are no less serious in substance or consequence. As with the offence of controlling or coercive behaviour, it is the risk and nature of the harm – its manipulative, degrading effect – that justifies criminalisation.[171] On top of that, partial criminalisation of 'conversion therapy' fails to express the full official state condemnation that these practices deserve. When only some forms are criminalised, it signals to society that certain practices are less harmful or more tolerable than others, creating a discrepancy. This distinction creates an asymmetry in the law too, as coercive control, which is analogous in nature to 'conversion therapy', is fully criminalised regardless of consent or whether the perpetrator causes actual injury. By contrast, treating some forms of 'conversion therapy' as civil offences undermines the gravity of their impact and sends a message that these practices, while harmful, do not warrant the full force of the criminal law.

A more coherent legal response would be to criminalise all forms of 'conversion therapy', as jurisdictions such as Canada, France and Norway have done, to ensure comprehensive protection for everyone targeted by these practices. While the methods of 'conversion therapy' can vary – from violent interventions to non-violent, but equally coercive, 'talking therapies' or religious rituals – all of them are unified by a common aim: the denial and erasure of LGBT+ identities.[172] Partial criminalisation, as seen in jurisdictions like New Zealand and Victoria, risks drawing arbitrary distinctions that obscure the systemic nature of the harm and leave many survivors without sufficient legal protection. Any effective criminal prohibition should also encompass the promotion or advertisement of 'conversion therapy'. Such promotion serves to legitimise and perpetuate these practices. All the jurisdictions discussed in the previous section expressly prohibit advertising, with all but Germany classifying it as a criminal offence. These provisions are not peripheral: they are central

170 Crimes Act 1958, s 15.
171 Herring, n 90 above; Victor Tadros, 'The Distinctiveness of Domestic Abuse: A Freedom Based Account' (2005) 65 *Louisiana Law Review* 989, 1003.
172 UN SOGI Report, n 2 above.

to dismantling the infrastructure that sustains and reproduces 'conversion therapy'.

Two additional risks of underreach merit brief consideration, both concerning the precision with which criminal legislation ought to define the prohibited conduct. First, any criminal ban on 'conversion therapy' must explicitly protect the right to determine and express one's gender identity – a right already protected under human rights and discrimination law.[173] The inclusion of gender expression, alongside sexual orientation and gender identity, in the statutory definition of 'conversion therapy' is vital to acknowledge and protect the diverse ways gender is manifested, including through physical appearance and mannerisms, which may or may not conform with a person's gender identity.[174] This is particularly important for individuals with complex gender identities, but also more broadly for LGBT+ persons whose gender expression deviates from prevailing cisnormative and heteronormative expectations.[175] The inclusion of gender expression in this context is consistent with emerging international human rights standards,[176] the definition of 'conversion therapy' set out in the 2020 UN Report,[177] and the statutory definitions adopted in Canada, France, Malta, Greece, New Zealand and Victoria.

Second, careful attention must be paid to the temporal scope of the offence. The term 'interventions', as used in the 2020 UN Report,[178] creates ambiguity by failing to specify whether both one-off and sustained practices are covered. This lack of precision is significant, as empirical evidence and survivor testimony consistently show that both isolated acts and cumulative efforts to suppress or alter a person's sexual orientation or gender identity can inflict serious and long-term harm.[179] Legislative formulations that refer explicitly to both 'treatment' and 'sustained effort' – as seen in all the jurisdictions discussed in the preceding section – offer a more accurate reflection of the lived experiences of those subjected to 'conversion therapy' and more effectively serve the protective functions of a ban.

The risk of overreach

Having addressed the risk of underreach, it is equally important to consider the risk of overreach – most notably, the potential capture of legitimate therapeutic, religious or familial practices within the nexus of the criminal law. A ban on 'conversion therapy' must not impede access to appropriate therapeutic support, nor infringe personal autonomy in setting therapeutic goals, particularly where internal conflicts arise between identity and religious or cultural

173 *Yogyakarta Principles Plus 10* n 69 above; UNGA, 'Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity' A/76/152 (15 July 2021) at [16]-[18].
174 *Yogyakarta Principles Plus 10* n 69 above, Preamble.
175 Sandra Duffy, 'Contested Subjects of Human Rights: Trans- and Gender-Variant Subjects of International Human Rights Law' (2021) 84 MLR 1041.
176 *ibid*, 1049-1053.
177 UN SOGI Report, n 2 above.
178 *ibid*.
179 Dromer and others, n 113 above, 2; Jowett and others, n 81 above.

beliefs. Nor should a ban extend to protected forms of religious expression or to good-faith conversations between parents and children navigating questions of gender and sexuality. These are recognised aspects of personal development, often addressed through pastoral care, familial dialogue or counselling. Existing professional standards already provide clear guidance on how to support individuals in navigating these tensions without imposing normative assumptions about sexual orientation or gender identity.[180] Each of these potential sites of overreach – therapeutic practice, familial dialogue and religious expression – will be considered in turn.

Perhaps the most pressing concern is the potential impact a ban could have on legitimate therapeutic practices. However, the definition of 'conversion therapy' outlined in earlier sections is carefully constructed to avoid impeding access to lawful healthcare services. Rather, the ban targets practices that are demonstrably harmful, lack clinical or evidentiary support,[181] and fail to meet the legal and professional standards of integrity, competence and non-discrimination that underpin equitable healthcare provision for individuals of all sexual orientations and gender identities.[182] Specifically, this definition captures only practices that aim to change or suppress LGBT+ identities *because* such identities are considered inferior. As noted in sources such as the UN SOGI 2020 report ('[not] perceived as the desirable norm') and the MoU against 'conversion therapy' in the UK ('inherently [not] preferable'), this discriminatory presumption is the raison d'être of 'conversion therapy'.

'Discriminatory' is used here in a moralised sense, consistent with section 13 of the Equality Act 2010 and similar legal provisions: namely, to denote disadvantageous treatment based on a protected characteristic, not mere differentiation. Practices that treat some persons differently, but not disadvantageously – for instance, by tailoring care to the specific needs of a person – are not discriminatory in this sense. It follows that practices which do not involve this element of anti-LGBT+ discrimination fall outside the scope of a properly defined prohibition on 'conversion therapy'.

This distinction is explicitly recognised in the legislation of all the jurisdictions discussed in the previous section. Section 320.101 of the Canadian criminal ban on 'conversion therapy' provides: 'For greater certainty, this definition does not include a practice, treatment or service that relates to the exploration or development of an integrated personal identity – such as a practice, treatment or service that relates to a person's gender transition – and that is not based on an assumption that a particular sexual orientation, gender identity or gender expression is to be preferred over another.'[183]

180 Annie Bartlett, Glenn Smith and Michael King, 'The Response of Mental Health Professionals to Clients Seeking Help to Change or Redirect Same-Sex Sexual Orientation' (2009) 9 *BMC Psychiatry* 7; *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (Washington, DC: APA, 2009); *Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel* (Washington, DC: APA, 2008).

181 n 7 above.

182 MoU, n 7 above, at [11].

183 Bill C-4 (S.C. 2021, c. 24) (Canada).

Similarly, subclause 5(2) of New Zealand's Conversion Practices Prohibition Legislation Act 2021 states that a conversion practice does not include:

> (a) any action that a health practitioner takes when providing a health service if the health practitioner –
> (i) considers in their reasonable professional judgment it is appropriate to take that action; and
> (ii) complies with all legal, professional, and ethical standards when taking the action; or
> (b) assisting an individual who is undergoing, or considering undergoing, a gender transition; or
> (c) assisting an individual to express their gender identity; or
> (d) providing acceptance, support, or understanding of an individual; or
> (e) facilitating an individual's coping skills, development, or identity exploration, or facilitating social support for the individual
> (f) the expression only of a belief or a religious principle made to an individual that is not intended to change or suppress the individual's sexual orientation, gender identity, or gender expression.[184]

Comparable provisions appear in the bans enacted in Malta,[185] France,[186] Germany[187] and Victoria.[188] These exemptions make clear that legitimate medical and therapeutic practices, when conducted in accordance with professional and ethical standards, are unaffected by a criminal ban.

By the same token, concerns that a ban on 'conversion therapy' would interfere with gender-affirming care are misplaced. Gender affirmation and transition are not forms of 'conversion therapy'. Conflating the two betrays a decontextualised and ahistorical understanding of 'conversion therapy',[189] and also misunderstands its legal definition, which captures only practices that seek, on illegitimate grounds, to change or suppress a person's gender identity or expression. Nor is it necessary – or possible – for a criminal ban to define the full scope of gender-affirming healthcare. The target of the ban is not lawful care, but discriminatory practices that, as Florence Ashley argues, are prima facie unethical: they seek to prevent someone from being trans because trans lives are seen as less desirable, legitimate, or authentic than cisgender lives.[190] While not morally determinative, it is worth noting again that trans conversion practices have been widely discredited by professional and regulatory authorities worldwide.[191] As the Cass Review notes, 'no formal science-based training in psychotherapy, psy-

184 Conversion Practices Prohibition Legislation Bill 56-2 (2021) (New Zealand).
185 Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, Act LV of 2016 (Malta), ss 2(a)-(c).
186 Loi no 2022-92 du 31 Janvier 2022 (France), Art 3.
187 Gesetz zum Schutz vor Konversionsbehandlungen vom 12 Juni 2020 (BGBl. I S. 1285) (Germany), §1.
188 Change or Suppression (Conversion) Practices Prohibition Act 2021 (Victoria), s 5.
189 Florence Ashley, 'Homophobia, Conversion Therapy, and Care Models for Trans Youth: Defending the Gender-Affirmative Approach' (2020) 17 *Journal of LGBT Youth* 361, 369.
190 Florence Ashley, '*Trans*porting the Burden of Justification: The Unethicality of Transgender Conversion Practices' (2022) 50 *Journal of Law, Medicine & Ethics* 525.
191 See for example WHO, *The ICD-11 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines* (Geneva: WHO, 2018); UN SOGI Report, n 2 above, 5.

chology or psychiatry teaches or advocates "conversion therapy". If an individual were to carry out such practices, they would be acting outside of professional guidance, and this would be a matter for the relevant regulator.'[192] Although the Cass Review emerged within a context of bitter debate about gender-affirming care and has since been used by some to undermine its provision, such disputes underscore, rather than diminish, the need for clear legislative definitions that distinguish legitimate therapeutic support from discriminatory attempts to suppress LGBT+ identities. A statutory ban on 'conversion therapy' would help to clarify this boundary, and fears of its misappropriation should not stand in the way of strengthening human rights protections. The call should instead be for more careful implementation and greater civic awareness of the rights at stake.

A final and closely related point concerns statutory drafting. Not all jurisdictions that have criminalised 'conversion therapy' have incorporated explicit statutory exemptions for legitimate therapeutic or healthcare practices. While such exemptions are not strictly necessary – since, as argued, non-discriminatory practices already fall outside the scope of a properly defined offence – their inclusion, whether in the legislation itself or in accompanying explanatory notes, may offer valuable reassurance to practitioners and enhance the clarity and coherence of the legislative framework. Policymakers would therefore be well advised to give serious consideration to incorporating such explicit exemptions.

In the parental context, it is essential to distinguish between unlawful conduct and legitimate dialogue. Where parents provide 'conversion therapy' to their children, or refer them to third-party providers, this falls squarely within the scope of what a criminal ban must prohibit. Parental rights are not absolute and are bounded by the principle of the best interests of the child.[193] This is an established principle of international human rights law, widely recognised across national legal systems. Hence, the UN Committee on the Rights of the Child has called on all states to eliminate 'conversion therapy' practices, as they violate multiple rights under the UN Convention on the Rights of the Child,[194] including the right of the child to identity, to development, to be heard, and to be protected from violence and discrimination.[195] In practice, criminalising 'conversion therapy' may effect little substantive change in this area, as existing laws already prohibit parents from inflicting serious harm on children, regardless of motive.[196]

By contrast, difficult conversations between parents and children about matters of gender and sexuality do not fall within the scope of a criminal ban. Most jurisdictions have taken particular care to reassure parents that lawful, good-faith discussions are not captured. Under the German legislation, criminal penalties apply only where parents or guardians have 'grossly violated

192 Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People* (April 2024) at https://webarchive.nationalarchives.gov.uk/ukgwa/20250310143933/https://cass.independent-review.uk/home/publications/final-report/ [https://perma.cc/X8US-XEBN] 151.
193 UN CRC, 'General Comment 5' CRC/GC/2003/4 (27 November 2003).
194 UN CRC, 'General Comment 20' CRC/C/GC/20 (6 December 2016) at [34].
195 Ignatius Yordan Nugraha, 'The Compatibility of Sexual Orientation Change Efforts with International Human Rights Law' (2017) 35 *Netherlands Quarterly of Human Rights* 176.
196 Children Act 1989, s 1.

their duty of care or education through the act.'[197] Similarly, the New Zealand ban includes, as one of its stated purposes, the promotion of 'respectful and open discussions regarding sexuality and gender'.[198] To guard further against overreach, it provides that prosecutions for the specific offence of 'conversion therapy' directed at persons under the age of 18 may proceed only with the consent of the Attorney-General.[199] Article 1 of the French ban makes clear that an offence is not committed when a person merely encourages 'prudence and reflection', especially when the individual questioning their identity is a minor.[200] Legislatures in all jurisdictions that have enacted bans have been alert to this risk of overreach and have taken deliberate steps to address it. The examples above are illustrative rather than exhaustive, but they demonstrate the value of incorporating such clarifications – whether in the statutory text or in accompanying explanatory notes. In any event, the distinction between unlawful conduct and legitimate dialogue is not difficult to maintain. Ordinary conversations between parents or guardians and children about sexuality or gender identity do not meet the threshold for criminal intervention and would fall outside the scope of a properly defined offence, as already delineated, regardless of whether such clarifications appear in the legislation.

A final risk of overreach concerns the right to freedom of religion or belief, particularly when 'conversion therapy' is offered by religious providers. However, religious forms of 'conversion therapy' are no different from other forms and should fall within the scope of a criminal ban, given the nature and gravity of the harm involved. A properly defined offence does not disproportionately restrict the expression or practice of protected beliefs – religious or otherwise – even when such beliefs reflect anti-LGBT+ views. A ban on 'conversion therapy' is not a ban on prejudice. While many of its forms are motivated by homophobia or transphobia, 'conversion therapy' is a distinct, targeted practice, not reducible to any underlying belief or prejudice. It is a practice directed at identifiable persons with the specific aim of changing or suppressing their sexuality, gender identity or gender expression because these are viewed as inferior. Religious expression that does not cross that threshold is not captured by the ban. Several jurisdictions have explicitly recognised this distinction either in statutory text or explanatory material. For example, as mentioned earlier, New Zealand's legislation clarifies that 'the expression only of a religious principle or belief made to an individual that is not intended to change or suppress the individual's sexual orientation or gender identity' does not constitute 'conversion therapy.'[201] It is also worth emphasising that religious leaders across faiths and countries have made clear that 'conversion therapy' is not just distinguishable from legitimate religious practice and expression, but constitutes a profound distortion of religious principle. This is why many have

197 Gesetz zum Schutz vor Konversionsbehandlungen vom 12 Juni 2020 (BGBl. I S. 1285) (Germany), §5.
198 Conversion Practices Prohibition Legislation Bill 56-2 (2021) (New Zealand), Art 3(b).
199 Conversion Practices Prohibition Legislation Bill 56-2 (2021) (New Zealand), Art 12.
200 Loi no 2022-92 du 31 Janvier 2022 (France).
201 Conversion Practices Prohibition Legislation Bill 56-2 (2021) (New Zealand), Art 5(2)(f).

signed the Declaration of the Global Interfaith Commission on LGBT+ Lives, which calls for a legal ban on such practices.[202] The General Synod of the Church of England has endorsed the Memorandum of Understanding Against Conversion Therapy, discussed earlier, and has voted in favour of a statutory ban[203] – as has the General Assembly of the Church of Scotland,[204] the Bench of Bishops in the Church of Wales,[205] and numerous other faith groups worldwide.[206]

There is nothing controversial in the view that religious forms of 'conversion therapy' must be prohibited. It is a well-established principle of human rights law that freedom of religion or belief cannot be invoked to justify harm to others.[207] The UN Special Rapporteur on Freedom of Religion or Belief has affirmed this specifically in relation to religious forms of 'conversion therapy'.[208] As noted earlier, there is also growing support among human rights scholars and advocates for the view that all such practices – including so-called 'talking therapies' – are degrading and fall within the scope of the absolute prohibition of TIDT.[209] Given the absolute nature of this prohibition, no consequentialist reasoning offered by providers – religious or otherwise – can justify these practices. There is no room for exceptions and no balancing of competing interests. Providers of 'conversion therapy' have no right to offer such practices, and their interest in doing so carries no legal weight. The question of balancing their interests against the rights of those harmed simply does not arise.

In sum, the greatest risk in the criminalisation of 'conversion therapy' lies not in overreach, but in underreach. Most jurisdictions that have enacted criminal bans have been careful to exempt bona fide therapeutic practices and lawful, supportive parental engagement. By contrast, insufficient attention has been paid to instances of criminal underreach, particularly those involving religious providers and consenting adults. Therefore, for the reasons outlined in earlier sections, it is imperative that future legislative efforts leave no space for individual consent as a means of legitimising 'conversion therapy'. Additionally,

202 Global Interfaith Commission on LGBT+ Lives, *Declaring the Sanctity of Life and Dignity of All* (16 December 2020). The Declaration defines 'conversion therapy' according to the UN SOGI Report, n 2 above.

203 'General Synod Backs Ban on Conversion Therapy' (Church of England, Press Release, 8 July 2017) at https://www.churchofengland.org/media/press-releases/general-synod-backs-ban-conversion-therapy [https://perma.cc/MTG3-BJHJ].

204 'Church Sets Out Position on Ending Conversion Practices in Scotland' (Church of Scotland, News, 25 March 2024) at https://www.churchofscotland.org.uk/news-and-events/news/archive/2024/church-sets-out-position-on-ending-conversion-practices-in-scotland.

205 'Bishops Welcome Conversion Therapy Ban Commitment' (The Church in Wales, Provincial news, 29 April 2022) at https://www.churchinwales.org.uk/en/news-and-events/bishops-welcome-conversion-therapy-ban-commitment/ [https://perma.cc/6RPG-HP2F].

206 Harry Farley, 'Gay Conversion Therapy: Hundreds of Religious Leaders Call for Ban' *BBC News* 16 December 2020 at https://www.bbc.co.uk/news/uk-55326461 [https://perma.cc/KA8G-U8LX].

207 *Eweida and Others* v *United Kingdom* Application Nos 48420/10, 36516/10, 51671/10 and 36516/10, Merits and Just Satisfaction, 15 January 2013 at [103]. See also ECHR, Art 17.

208 Ahmed Shaheed, 'There Is No Legal Defence of LGBT+ Conversions' *The Guardian* 23 April 2021 at https://www.theguardian.com/commentisfree/2021/apr/23/legal-defence-lgbt-conversions-sexuality-rights-belief [https://perma.cc/K97X-4HXN].

209 See for example Trispiotis and Purshouse, n 17 above.

religious actors must be subject to equivalent legal scrutiny as licensed professionals, especially in view of the substantial evidence that 'conversion therapy' frequently occurs within religious settings.

The risk of insufficient focus on prevention and LGBT+ inclusion

Survivors of 'conversion therapy' across different jurisdictions have consistently called for a multipronged legal and policy strategy that not only prohibits conversion practices but also addresses their long-term effects and prevents future harm.[210] While a criminal ban is a legitimate and necessary element of this broader strategy, it cannot alone deliver the transformative change needed to dismantle the structures and ideologies that sustain anti-LGBT abuse.[211] Ending conversion practices requires more than criminal prohibition. This section sketches a range of complementary measures. While the proposals below are not, and cannot be, exhaustive – not least because what is appropriate will vary by context – most will be of relevance across legal systems considering a prohibition on 'conversion therapy'.

There are compelling reasons to be cautious about the effectiveness of a criminal ban. First, its implementation is unlikely to be straightforward. A major challenge is that criminalisation may not lead to increased reporting. In the UK, many LGBT+ people remain understandably reluctant to engage with the criminal justice system. Evidence from frontline workers at Galop, the UK's specialist anti-LGBT+ violence charity, shows that only one in eight anti-LGBT+ hate crimes is officially reported, with four out of five victims unable to access support.[212] This means that anti-LGBT+ hate crime is far more prevalent than official figures suggest,[213] while the vast majority of victims and survivors are left without the support they need. The Crown Prosecution Service acknowledges this reality in its current legal guidance on homophobic, biphobic and transphobic hate crime.[214]

210 'Ending conversion therapy in Canada: Survivors, community leaders, researchers, and allies address the current and future states of sexual orientation and gender identity and expression change efforts' (Community Based Research Center, Reports + Publications, 18 February 2020) at https://www.cbrc.net/ending_conversion_therapy_in_canada_survivors_community_leaders_researchers_and_allies_address_the_current_and_future_states_of_sexual_orientation_and_gender_identity_and_expression_change_efforts 11-16; 'SOGICE Survivor Statement', n 67 above, 7-10; 'Pathways for Eliminating Conversion Practices' n 163 above, 16-27.

211 Yuvraj Joshi, 'Affirmative Action as Transitional Justice' (2020) 46 *Wisconsin Law Review* 2; Rodrigo Uprimmy Yepes, 'Transformative Reparations of Massive Gross Human Rights Violations' (2009) 27 *Netherlands Quarterly of Human Rights* 625.

212 Luke Hubbard, *The Hate Crime Report, Supporting LGBT+ victims of hate crime* (London: Galop, 2021) 8.

213 Home Office, 'Hate Crime, England and Wales, Year Ending March 2024' (Official Statistics, 10 October 2024) at https://www.gov.uk/government/statistics/hate-crime-england-and-wales-year-ending-march-2024/hate-crime-england-and-wales-year-ending-march-2024 [https://perma.cc/72VN-GY6C].

214 Crown Prosecution Service, 'Homophobic, Biphobic and Transphobic Hate Crime: Prosecution Guidance' (Legal Guidance, Hate Crime, February 2023) at https://www.cps.gov.uk/legal-guidance/homophobic-biphobic-and-transphobic-hate-crime-prosecution-guidance [https://perma.cc/QN9D-JJY8].

This reluctance is unsurprising given a long history of institutionalised maltreatment and persecution. From medicalised violence – such as electric shock therapy for LGBT+ people, which was available in UK hospitals[215] and universities until relatively recently[216] – to state raids on LGBT+ spaces,[217] institutionalised homophobia in the police,[218] and the legal censorship of queer identities in education,[219] these were not isolated incidents but expressions of state policy, often supported or enforced by the law. Similar legacies exist elsewhere and in many countries LGBT+ people continue to face criminalisation and persecution today. While formal equality has advanced in many jurisdictions, both historical and continuing experiences of harm continue to shape the relationship between LGBT+ communities and the institutions now seeking their trust.

Second, survivors of 'conversion therapy' may refrain from reporting not only because of distrust towards the police, but also because of the very nature of these practices. As discussed earlier, coercive control and gaslighting are common, leading survivors to internalise beliefs that there is something wrong with them and to see their abusers as benevolent guides. All in all, fear of ostracism and violence, combined with mistrust of how state agencies manage personal data and provide support, create serious and foreseeable barriers to reporting. The stark under-reporting of anti-LGBT+ hate crimes, as reflected in the CPS's own guidance,[220] underscores these barriers.

To address these risks, a criminal ban must be accompanied by a robust and supportive infrastructure. Survivors must be able to access support safely, anonymously and on their own terms. Several jurisdictions have taken steps to facilitate this. German legislation, for instance, establishes anonymous counselling services – accessible by phone and online, and in multiple languages – for survivors, their families and professionals in relevant fields.[221] The UK's National Conversion Therapy Helpline, operated by Galop, similarly offers a victim-

215 Tommy Dickinson, *'Curing Queers': Mental Nurses and their Patients 1935-1974* (Manchester: Manchester University Press, 2016); Catherine Somerville, 'Unhealthy Attitudes: The Treatment of LGBT People within Health and Social Care Services' (Stonewall, 2015) at https://www.caremanagementmatters.co.uk/wp-content/uploads/2019/06/Unhealthy-Attitudes.pdf [https://perma.cc/XX6J-8HT8].

216 Ben Hunte, 'Gay "Conversion Therapy": Man Given Electric Shocks Demands Apology' *BBC News* 16 December 2020 at https://www.bbc.co.uk/news/education-55263392 [https://perma.cc/A42S-BD93]; Robbie Meredith, 'Gay Men Given Electric Shocks "to Cure Homosexuality" at QUB' *BBC News* 30 September 2019 at https://www.bbc.co.uk/news/uk-northern-ireland-49838964 [https://perma.cc/A93A-FRPL].

217 For example Vicky Iglikowski-Broad, 'The Royal Vauxhall Tavern: Raided' *The National Archives*, 24 January 2023, at https://blog.nationalarchives.gov.uk/the-royal-vauxhall-tavern-raided/ [https://perma.cc/LLU9-7JH3].

218 Baroness Casey of Blackstock, *Final Report: An Independent Review into the Standards of Behaviour and Internal Culture of the Metropolitan Police Service* (March 2023) at https://www.met.police.uk/SysSiteAssets/media/downloads/met/about-us/baroness-casey-review/update-march-2023/baroness-casey-review-march-2023a.pdf, 241-257.

219 Douglas Pyper and Joe Tyler-Todd, 'The 20th Anniversary of the Repeal of Section 28' (House of Commons Library, Research Briefing, 28 November 2023) at https://commonslibrary.parliament.uk/research-briefings/cdp-2023-0213/.

220 CPS, n 214 above.

221 Gesetz zum Schutz vor Konversionsbehandlungen vom 12 Juni 2020 (BGBl. I S. 1285) (Germany), §4.

centred point of contact for those directly affected or concerned about someone at risk.[222] Yet vital as such services are, support must not end at the point of disclosure. Engagement with survivors of 'conversion therapy' across different social and age groups should be a core component of post-legislative implementation and oversight.[223] This engagement must be sustained and meaningful, not tokenistic.[224] At the same time, survivor-led and survivor-centred initiatives must be approached with care, to safeguard the physical, mental and emotional wellbeing of survivors.[225] As emphasised by survivor-led initiatives in Canada and Australia, ethical engagement must be grounded in frameworks that prioritise mental health, accuracy and survivor agency.[226] Survivors with experience in peer-support networks and advocacy are well placed to offer holistic insight and should be central to the development of advocacy, policy, and education efforts. By contrast, unsupported survivors, particularly those without adequate mental health or community support, should not be approached to speak publicly owing to the significant risk of retraumatisation.[227] Compensation for survivors' time, expertise and emotional labour should also be standard practice in contexts such as policy consultations or long-term media engagement.[228]

Rebuilding trust in state institutions requires symbolic as well as practical steps. In some jurisdictions, criminal bans on 'conversion therapy' have been accompanied by official apologies for past mistreatment of LGBT+ people, as in Norway,[229] or by specific legislative provisions affirming the equal dignity of all sexual orientations and gender identities, as in Malta and Victoria.[230] These statements signal a restorative, not merely punitive, approach, whilst leveraging the expressive power of criminal law. As the French Senate committee observed in recommending a comprehensive criminal ban, criminalisation was intended to 'send the strongest possible signal of rejection' of these practices – a signal 'to be hoped that will be clearly heard.'[231] Yet trust cannot be rebuilt through symbolism alone. As mentioned earlier, some jurisdictions, including Victoria and New Zealand, have established dedicated expert bodies following survivor and human rights expert recommendations, with resources and authority to receive complaints, conduct inspections, issue recommendations, mediate dis-

222 See https://www.galop.org.uk/helpline [https://perma.cc/65R6-PB4V].
223 'Ending Conversion Therapy in Canada' n 210 above, 14.
224 Nathan Despott and Chris Csabs, 'Engaging Conversion Survivors Guidelines for media and government' (SOGICE Survivors, 2024) at https://sogicesurvivors.com.au/wp-content/uploads/2024/07/Engaging-Survivors-Guidelines-doc.pdf [https://perma.cc/USZ7-QFD9].
225 Joel R. Anderson and others, 'Engaging Mental Health Service Providers to Recognise and Support Conversion Practice Survivors Through Their Journey to Recovery' (2024) 31 *Cognitive and Behavioural Practice* 20.
226 Despott and Csabs, n 224 above; *Ending Conversion Therapy in Canada*, n 210 above, 14-18.
227 *ibid*.
228 *ibid*.
229 'Government Apologies for Past Treatment of Gay People by the Norwegian Authorities' (Press Release 74/22, 21 April 2022) at https://www.regjeringen.no/en/aktuelt/government-apologises-for-past-treatment-of-gay-people-by-the-norwegian-authorities/id2908870/ [https://perma.cc/TYT2-UBLX].
230 Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, Act LV of 2016 (Malta), Preamble; Change or Suppression (Conversion) Practices Prohibition Act 2021 (Victoria), Part 1.
231 French Senate Rapport No 294 n 157 above.

putes, and escalate matters if necessary.[232] The UN SOGI Report similarly calls for the establishment of dedicated mechanisms which can monitor, support and receive complaints so that 'victims of practices of "conversion therapy" have access to all forms of reparations, including the right of rehabilitation, as well as legal assistance.'[233] Establishing such dedicated mechanisms is crucial not only to guard against criminal overreach, but also to foster public understanding, drive systemic reform, and promote community cohesion.

Beyond institutional trust, there must also be a broader public reckoning with the social narratives that enable these practices. Many still misunderstand what 'conversion therapy' is, why it is harmful, and how it differs from legitimate forms of counselling or religious expression. Criminalisation alone cannot rectify this lack of understanding, nor can it challenge the structural conditions that enable these practices. Independent inquiries or truth commissions can help uncover the scale and nature of 'conversion therapy', much of which remains undocumented.[234] In tandem, targeted interventions in healthcare and education, and the development and dissemination of information and communication tools, are vital. These can empower individuals to recognise and mobilise against 'conversion therapy' and strengthen the multisectoral cooperation needed among healthcare, religious and human rights professionals to prevent further harm.[235] Ultimately, truth-telling, education and cultural change are needed to dismantle the subordinating ideology that LGBT+ people are 'broken' and must be 'fixed'. Faith leaders have a particularly important role to play. Many survivors come from within faith communities, and LGBT+ people of faith and their allies are essential voices, 'particularly in driving change from within faith communities and religious groups.'[236] Initiatives such as the Global Interfaith Commission on LGBT+ Lives, which, as mentioned earlier, brings together religious leaders from across denominations and belief systems to affirm equality and denounce 'conversion therapy',[237] can help raise awareness, acknowledge institutional complicity, and support collective efforts to uproot these practices from faith spaces.[238]

CONCLUSION

Mobilising criminal law to protect human rights is never a decision to be taken lightly – least of all in the context of LGBT+ rights, where the scars of state-sanctioned persecution run deep and continue to shape the lives of many. As noted at the outset, many global LGBT+ advocacy efforts sometimes risk be-

232 Conversion Practices Prohibition Legislation Bill 56-2 (2021) (New Zealand), Part 3.
233 UN SOGI Report, n 2 above, 87(a)(iv).
234 'SOGICE Survivor Statement' n 67 above, 7; *Report on the Inquiry into Conversion Therapy* (Victoria: Department of Health, 2019).
235 'Pathways for Eliminating Conversion Practices' n 163 above, 22-25; 'Ending Conversion Therapy in Canada' n 210 above, 19.
236 'SOGICE Survivor Statement' n 67 above, 6.
237 n 202 above.
238 Alhasan Ghazzawi and others, 'Religious Faith and Transgender Identities: The Dear Abby Project' (2020) 34 *Journal of Gay & Lesbian Mental Health* 190.

coming overly punitive, privileging criminal law responses in ways that can sideline broader strategies of education, inclusion and institutional accountability. But criminalisation and structural reform need not be in tension. When used carefully and supported by complementary measures, criminal law can offer a practical, legitimate and proportionate response to egregious human rights violations, particularly where victims, as in the case of 'conversion therapy', face enduring structural disadvantage.

This article argued that the criminalisation of 'conversion therapy' is both justified and pressing. Such practices cause serious and well-documented harm. They are an affront not only to the dignity of those subjected to them but also to LGBT+ communities more broadly. They are paradigmatic examples of degrading treatment under international human rights law. Criminalisation is a legitimate and proportionate response to these harms. It is also a coherent response, reinforcing consistency with other areas of criminal law, such as hate crimes and coercive or controlling behaviour, and with broader legal efforts to address discriminatory abuse. By contrast, as shown, civil or disciplinary measures – or legal inaction – are no more likely to address the underlying structures of harm, and far less likely to deliver accountability or prevention.

Yet establishing why criminalisation is justified is only part of the task. Legal scholarship can help shape real-world change when it offers not only principled arguments but also precise and workable recommendations, particularly in areas of law and policy as contested as this. That is both the commitment and the impetus behind this article. The challenge is urgent: many jurisdictions have already adopted bans on 'conversion therapy', while many others, including the UK, are actively considering doing so. This is the moment for advocates and scholars to draw on survivor-led research and comparative legal evidence to assess whether criminal law, or alternative forms of prohibition, provide the most appropriate response. This article has undertaken that task and has concluded that a carefully designed criminal ban is the preferable model. But even those who take a different view – and there will be many – must engage seriously with the limits of existing legal protections and with what survivors themselves identify as necessary for protection and redress. For too long, debates about LGBT+ rights have been marked more by confrontation than by informed deliberation. Properly designed and implemented, a criminal ban on 'conversion therapy' is not a hollow gesture or another form of performative denunciation. It is a meaningful step toward justice – but only when embedded within a broader and enduring commitment to truth-telling and to the full social inclusion of LGBT+ people.