



# THE VICTORIAN CONVERSION BAN BILL: LEGAL EXPLAINER

The Victorian Government has introduced the [Change or Suppression \(Conversion\) Practices Prohibition Bill 2020](#). The Bill protects LGBTQ+ people from the harm caused by conversion practices that seek to change or suppress their sexual orientation or gender identity.

## HOW THE BILL WORKS

The Bill criminalises certain conversion practices that cause actual physical or psychological injuries to a person, while providing pathways for education, research, voluntary facilitation, and investigations into serious or systemic conversion practices, through a civil response scheme.

## CRIMINAL OFFENCES

The Bill criminalises certain conversion practices which cause 'serious injury' or 'injury' to others, where the person who engages in those practices is negligent as to whether their conduct will cause injury.<sup>1</sup>

'**Serious injury**' means injuries that endanger life or are 'substantial and protracted'.<sup>2</sup>

'**Injury**' means:

- *physical injuries*, such as unconsciousness, disfigurement,

substantial pain, infection with a disease and an impairment of bodily function; or

- *certain mental injuries* (but does not include an emotional reaction such as distress, grief, fear or anger unless it results in psychological harm).<sup>3</sup>

These offences criminalise causing injury to another person, regardless of whether the injury was caused by one or multiple conversion practices,<sup>4</sup> and the location.<sup>5</sup>

## Practices outside Victoria

For conversion practices occurring outside Victoria, there must be a 'real and substantial link' with Victoria, such as a person living in Victoria who arranges to take another person outside Victoria to engage in conversion practices causing injury.<sup>6</sup>

## Penalties

The maximum penalties range depending on the offence, whether it is committed by an individual or a corporation, and the degree of injury caused to a person. Imprisonment of up to 10 years and/or a fine of up to around \$198,300 is the maximum for an individual causing serious injury to another person.<sup>7</sup>

The Bill also criminalises **advertising** that indicates a person intends to engage in conversion practices, with a maximum fine for an individual of almost \$10,000.<sup>8</sup>

<sup>1</sup> Bill, ss 10-12.

<sup>2</sup> *Crimes Act 1958* (Vic), s 15 (definition of *serious injury*).

<sup>3</sup> *Crimes Act 1958* (Vic), s 15 (definition of *injury* and related definitions).

<sup>4</sup> Bill, ss 10(2), 11(2) and 12(2).

<sup>5</sup> Bill, s 12.

<sup>6</sup> Bill, ss 8, 12.

<sup>7</sup> Bill, s 10(1).

<sup>8</sup> Bill, s 13.



## CIVIL RESPONSE SCHEME

### Individual reports

The Bill allows a person to report conversion practices to the Victorian Equal Opportunity and Human Rights Commission.<sup>9</sup>

When a report is made, the Commission will be able to ask for more information when necessary and:

- offer targeted education to persons or organisations who have engaged in conversion practices;
- offer **voluntary** facilitation to survivors and those who have engaged in conversion practices, allowing those parties to voluntarily enter into agreements;
- refer a report to health regulators, the Ombudsman or Victorian Police; or
- decline to respond to reports.<sup>10</sup>

### Serious or systemic practices

Most of the Commission's powers are educative and facilitatory, rather than compulsory. However, the Commission may also investigate conversion practices if four threshold conditions are met. They are, that the practices are **serious, systemic** or **persisting**, relate to **a class or group** of persons and possibly contravene the Act, and investigating would advance the objects of the Act.<sup>11</sup>

If these conditions are met, then the Commission can compel information,

documents and evidence from witnesses (subject to the privilege against self-incrimination for individuals, and other limitations).<sup>12</sup>

An investigation into serious or systemic conversion practices can result in:

- no further action being taken;
- a person agreeing with the Commission on actions to comply with the Act;
- a person undertaking to take enforceable actions (an 'enforceable undertaking'); or
- the Commission issuing a compliance notice, indicating specific actions a person must take or refrain from taking regarding conversion practices.<sup>13</sup>

If an enforceable undertaking or compliance notice is breached, the Commission can then seek to have the undertaking or notice enforced in the Victorian Civil and Administrative Tribunal.<sup>14</sup> A person subject to a compliance notice can also have that notice reviewed by the Tribunal.<sup>15</sup>

### Education and research

The Bill also allows the Commission to undertake general information and education programs and research into conversion practices, consistent with law's objectives to eliminate conversion practices, promote human rights, and ensure all people, regardless of sexual orientation and gender identity, feel welcome and valued in Victoria and are able to live authentically with pride.<sup>16</sup>

<sup>9</sup> Bill, s 24.

<sup>10</sup> Bill, ss 26-30.

<sup>11</sup> Bill, s 34.

<sup>12</sup> Bill, ss 36-39.

<sup>13</sup> Bill, ss 42-45.

<sup>14</sup> Bill, s 46.

<sup>15</sup> Bill, s 45(3).

<sup>16</sup> Bill, ss 3, 18-20.



## HOW ARE CONVERSION PRACTICES DEFINED BY THE BILL?

### ‘Change or suppression practices’

Conversion practices (referred to as ‘change or suppression practices’ by the Bill) are defined as:

- a practice or conduct directed towards a person, whether with or without their consent; and
- based on their sexual orientation or gender identity; and
- for the purpose of changing or suppressing, or inducing the person to change or suppress, their sexual orientation or gender identity.<sup>17</sup>

They exclude certain practices or conduct which are supportive of or affirming of a person’s sexual orientation or gender identity (such as facilitating a person’s coping skills, social support or identity exploration and development, and assisting persons to express their gender identity or who are undergoing or considering gender ‘transition’). They also exclude health services provided reasonably or generally in line with legal or professional obligations.<sup>18</sup>

### Practices covered by the Bill

Practices can include psychiatry and psychotherapy consultations, treatments, therapies, prayer based practices (such as deliverance practices or exorcisms) and referrals, but these have to meet *all* parts of the ‘change or suppression practice’ definition above, and have to cause injury to fall within

the criminal offences. All offences must be proven beyond a reasonable doubt.

Practices that have not caused provable injury can be investigated by the Commission only if they are serious, systemic or persisting, and meet all the threshold conditions set out above. Otherwise, the Commission is limited to offering education, voluntary facilitation (if all parties agree), or referring the matter to another agency if, for example, it considers a law or professional obligation has been breached.

### Practices must target a person

Conversion practices are defined to capture practices and conduct targeted towards a particular person, not people at large. It would not include any general or spiritual guidance, however adverse to LGBTQ+ people, unless it was targeted towards a person, because of their sexual orientation or gender identity, and for the purpose of changing or suppressing their sexual orientation or gender identity.

## REVIEW PERIOD

The Bill requires an independent expert review of the Act, two years after its commencement. The independent expert must consider whether the criminal offences and civil response scheme are effective, and whether a redress scheme should be developed.<sup>19</sup>

---

<sup>17</sup> Bill, s 5(1).

<sup>18</sup> Bill, s 5(2).

<sup>19</sup> Bill, s 57.





## DISCRIMINATION PROTECTIONS

The Bill updates the definitions of 'sexual orientation' and 'gender identity', and introduces a new discrimination protection for people born with intersex variations into the *Equal Opportunity Act 2010*. It will prohibit discrimination based on 'sex characteristics' in certain areas of public life, such as employment, education and services.

## WHAT YOU CAN DO

Everyone deserves to live with dignity and respect. LGBTQ+ are whole, valid, and loved just the way they are. No practice that attempts to change or suppress a person's gender identity or sexual orientation is acceptable.

**Write to your MP to support the Bill.** You can use our webform [here](#).

**If you have experienced LGBTQ+ conversion practices,** we'd love to hear your story. Write to us at [info@equalityaustralia.org.au](mailto:info@equalityaustralia.org.au).

If this material raises issues for you, support is available:

- **Lifeline:** 13 11 14 or [www.lifeline.org.au](http://www.lifeline.org.au) (24/7) (crisis support and suicide prevention);
- **QLife:** 1800 184 527 or [www.qlife.org.au](http://www qlife.org.au) (3pm to midnight, everyday) (LGBTIQ+ counselling, peer support and referrals);
- **Kids Helpline:** 1800 55 1800 or [www.kidshelpline.com.au](http://www.kidshelpline.com.au) (13-25 years).