



## CONVERSION PRACTICES PROHIBITION BILL NSW: EXPLAINER

**Everyone deserves to live with dignity and respect, safe from harm, no matter who they are or whom they love.**

Yet practices that seek to change or suppress a person's sexual orientation or gender identity continue to cause harm in NSW.

Here is a summary of how the [Conversion Practices Prohibition Bill 2023](#) (the **Bill**) introduced by Alex Greenwich MP builds on best practice survivor-led reforms and works to prevent harm.

### WHY A BAN ON CONVERSION PRACTICES?

Along with several other jurisdictions overseas, Victoria, the ACT and New Zealand have each passed comprehensive schemes banning LGBTQA+ conversion practices, with Queensland introducing a more limited ban in health settings.<sup>1</sup> Western Australia, Tasmania and South Australia have also committed to reform, along with each major party in NSW.

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<sup>1</sup> *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic); *Sexuality and Gender Identity Conversion Practices Act 2020* (ACT); *Conversion Practices Prohibition Legislation Act 2022* (NZ); *Public Health Act 2005* (Qld), Chapter 5B.

<sup>2</sup> Jones et al (2018) *Preventing Harm, Promoting Justice: Responding to LGBT conversion therapy in Australia*, Melbourne: GLHV@ARCSHS, La Trobe University and the Human Rights Law Centre, p. 3; Jones, Power, Hill, Despott, Carman, Jones, Anderson and Bourne (2021) 'Religious Conversion Practices and LGBTQA+ Youth', *Sexuality Research and Social Policy*.

<sup>3</sup> See Australian Medical Association (2021) *AMA Position Statement - LGBTQIA+ Health*; Australian Psychological Society (2021) *Use of psychological practices that attempt to change or*

Up to 1 in 10 LGBT Australians remain vulnerable to conversion practices, with around 4% of all Australians aged 14-21 years having experienced conversion practices.<sup>2</sup>

Conversion practices cause lasting harm and find no support among any mainstream medical or psychological professional community.<sup>3</sup> Among the harms experienced by victim-survivors include acute distress, ongoing mental health issues (such as severe anxiety and depression), and symptoms of complex, chronic trauma and post-traumatic stress disorder (PTSD).<sup>4</sup>

Like other forms of interpersonal violence and abuse, conversion practices can take different forms and occur in different settings. But one thing is constant. At their heart, conversion practices seek to change or suppress a person's sexual orientation or gender identity based on the idea that LGBTQA+ people are not human and whole, just as they are. They are not broken and they do not need to be cured or fixed.

### HOW THE BILL WORKS

Building on best practice reforms in Victoria, the ACT and New Zealand, the key features of the Bill are:

- definitions that protect all LGBTQA+ people from conversion practices no matter in which setting they occur;

*suppress a person's sexual orientation or gender: Position statement*; Psychotherapy and Counselling Federation of Australia (2018) *Position Statement on Therapeutic Support for Lesbian, Gay, Bisexual, Transgender, Intersex and Queer People and their Families*; Royal Australian & New Zealand College of Psychiatrists (2019) *Position Statement: Sexual Orientation Change Efforts*.

<sup>4</sup> Victorian Health Complaints Commissioner (2019) *Report on the Inquiry into Conversion Therapy - Executive Summary*, p. 2; Jones et al, AGMC, Brave Network, La Trobe University, Macquarie University and Victorian Government (2021) *Healing Spiritual Harms: Supporting recovery from LGBTQA+ change and suppression practices*, pp. 19-25.



- a civil response scheme that seeks to prevent harm primarily through education, research and voluntary responses and support;
- stronger regulatory responses and criminal offences reserved for the most serious forms of practices.

## 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, sustained effort, or treatment that:

- is directed towards an individual because of the individual’s sexual orientation or gender identity; and
- is done with the intention of changing or suppressing the individual’s sexual orientation or gender identity.<sup>5</sup>

Because they must be *directed* at an individual *because of* their sexual orientation or gender identity, conversion practices cannot include any conduct aimed at the general public or a group, no matter how condemnatory of LGBTQA+ people they may be. This means that religious practices, such as sermons, are not captured unless the practice is directed at an individual because of their sexual orientation or gender identity.

### What is not a conversion practice?

The Bill also clarifies that certain practices are not conversion practices.

Health practitioners who, in their reasonable professional judgement provide appropriate

care, consistent with their professional obligations do not engage in conversion practices.<sup>6</sup>

The Bill also clarifies that conversion practices do not include anyone who genuinely:

- assists an individual considering gender transition or expressing their gender identity,
- provides acceptance, support or understanding of an individual or their needs, or
- facilitates an individual’s coping skills, development or identity exploration, or social support.<sup>7</sup>

The expression of a belief or religious principle to an individual that is not intended to change or suppress their sexual orientation or gender identity is also not a conversion practice.<sup>8</sup>

## CIVIL RESPONSE SCHEME

Essential to the Bill is the civil response scheme which is focused on preventing harm and providing support to victim-survivors.

### Education and research

The Bill allows Anti-Discrimination NSW to develop and provide education and undertake research into conversion practices, and make reports to the Minister, consistent with the objects of denouncing and prohibiting conversion practices, and ensuring all people, regardless of sexual orientation and gender

<sup>5</sup> Bill, s 9(1).

<sup>6</sup> Bill, s 9(2)(a).

<sup>7</sup> Bill, s 9(2)(b)-(e).

<sup>8</sup> Bill, s 9(2)(f).



identity, feel welcome in NSW and can live authentically and with pride.<sup>9</sup>

### Individual reports

The Bill also allows an individual or representative entity to report conversion practices to Anti-Discrimination NSW.<sup>10</sup>

When a report is made, Anti-Discrimination NSW will be able to ask for more information when necessary<sup>11</sup> and:

- offer targeted education to entities alleged to have engaged in conversion practices;
- offer to facilitate a **voluntary** outcome between survivors, representative entities and those who have engaged in conversion practices;
- refer a report to health regulators, the Ombudsman, the DPP or NSW Police; or
- decline to respond to reports.<sup>12</sup>

### Serious or systemic practices

Most of Anti-Discrimination NSW's powers are educative and facilitatory, rather than compulsory. However, Anti-Discrimination NSW may also investigate alleged 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>13</sup>

If these conditions are met, then Anti-Discrimination NSW can require people to

provide information or documents (subject to the privilege against self-incrimination for individuals, and other limitations).<sup>14</sup>

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

- no further action being taken;
- a person entering into an agreement with Anti-Discrimination NSW about actions they will take to comply with the Act;
- a person undertaking to take enforceable actions (an 'enforceable undertaking'); or
- Anti-Discrimination NSW issuing a compliance notice, indicating specific actions a person must take or refrain from taking regarding conversion practices.<sup>15</sup>

If an enforceable undertaking or compliance notice is breached, Anti-Discrimination NSW can seek to have the undertaking or notice enforced by NCAT.<sup>16</sup> A person subject to a compliance notice can also have that notice reviewed by NCAT.<sup>17</sup>

## CRIMINAL OFFENCES

Reflecting the policy of preventing harm over punishment, criminal offences under the Bill are reserved for the most serious forms of conduct which have caused actual injury, or for advertising conversion practices.

### Causing injury to others

The Bill follows the approach in Victoria and only criminalises conversion practices which have caused 'injury' or 'serious injury' to others, where

<sup>9</sup> Bill, ss 3, 17, 20-22.

<sup>10</sup> Bill, ss 18, 23, 24.

<sup>11</sup> Bill, s 25.

<sup>12</sup> Bill, ss 27 - 33.

<sup>13</sup> Bill, s 34.

<sup>14</sup> Bill, ss 36-39.

<sup>15</sup> Bill, ss 40-43.

<sup>16</sup> Bill, s 44.

<sup>17</sup> Bill, s 43(3).



the person who engages in those practices is negligent as to whether their conduct will cause injury.<sup>18</sup>

'Injury' covers physical and psychological injuries, but excludes mere emotional reactions, such as anger, distress, fear or grief.<sup>19</sup> While 'serious injury' covers an injury that endangers life or is substantial or protracted.<sup>20</sup>

Recognising that conversion practices take place in the context of often repeated and internalised false and misleading claims about LGBTQA+ people, consent is not a defence to a practice which has caused injury.<sup>21</sup>

#### **Causing injury by taking a person from NSW for conversion practices**

The Bill also makes it an offence to take or arrange for a person to be taken from NSW to intentionally engage in a conversion practice that causes injury or serious injury, where the person is negligent as to whether their conduct will cause injury.<sup>22</sup>

#### **Penalties**

The maximum penalties depend 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 \$132,000 is the maximum for an individual causing serious injury to another person,<sup>23</sup> with lower penalties for other offences and higher penalties for bodies corporate.

#### **Advertising**

The Bill also criminalises advertising that indicates the person or another person intends

to engage in conversion practices, with a maximum fine of up to \$6,600 for an individual and up to \$33,000 for bodies corporate.

### **STREAMLINING EXISTING PROTECTIONS**

The Bill ensures that the new Act operates consistently with existing measures designed to protect people from abuse, violence and misconduct by health professionals.

When existing legislative requirements are met, the Bill clarifies that conversion survivors can access support under the Victims of Crime Support Scheme, make a complaint to the Health Care Complaints Commission about their health service provider, and seek protection through apprehended domestic or personal violence orders in the same way as others.<sup>24</sup>

The Bill also clarifies that conversion practices which satisfy the existing requirements for the mandatory reporting of child abuse are reportable in the same way.

### **REVIEW PERIOD**

The Bill requires a review by the Minister five years after its commencement.<sup>25</sup>

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<sup>18</sup> Bill, ss 11-12.

<sup>19</sup> Bill, Sch 1 (definition of *injury* and related definitions).

<sup>20</sup> Bill, Sch 1 (definition of *serious injury*).

<sup>21</sup> Bill, ss 11(3), 12(3), 13(3).

<sup>22</sup> Bill, ss 7, 13.

<sup>23</sup> Bill, s 11.

<sup>24</sup> Bill, Schedule 2.

<sup>25</sup> Bill, s 54.