

ENDING LGBTQA+ CONVERSION PRACTICES IN TASMANIA

Equality Australia's response to the Justice Miscellaneous (Conversion Practices) Bill 2024
Consultation Draft

15 February 2024



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ABOUT EQUALITY AUSTRALIA

Equality Australia is a national LGBTIQ+ organisation dedicated to achieving equality for LGBTIQ+ people.

Born out of the successful campaign for marriage equality, and established with support from the Human Rights Law Centre, Equality Australia brings together legal, policy and communications expertise, along with thousands of supporters, to address discrimination, disadvantage and distress experienced by LGBTIQ+ people.

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We acknowledge that our offices are on the lands of the Eora Nation and the lands of the Kulin Nation and we pay our respects to their traditional owners.

OUR SUBMISSION

Thank you for the opportunity to provide feedback on the Justice Miscellaneous (Conversion Practices) Bill 2024 (**the Bill**).

In 2022, the Tasmania Law Reform Institute (TLRI) made 16 detailed recommendations to address conversion practices in Tasmania.¹ These recommendations have the endorsement of conversion survivors in Tasmania.² Survivor advocacy has also been instrumental to the development of groundbreaking reforms in the ACT, Victoria, New Zealand and, most recently, in the development of the Independent Member for Sydney Alex Greenwich's private members' bill, the Conversion Practices Prohibition Bill 2023 (NSW) (**the Greenwich Bill**). Further, the TLRI recommendations are also endorsed by Equality Tasmania. We thank Equality Tasmania for its analysis of the Bill, which has informed our own analysis, and endorse their efforts to see effective conversion practice reforms put in place in Tasmania.

Regardless of whether the Tasmanian Government adopts the TLRI's proposed model or takes a different approach to reform built on the experience of other jurisdictions, we urge the Government to actively engage with survivors to ensure any legislation centres their needs. This Bill fails to do this and does not have our support in its current form.

Our principal recommendation is for the Tasmanian Government to re-examine the Bill as a whole to ensure the reforms effectively address the harms caused by all forms of conversion practices, regardless of the settings in which they occur. To assist with this process, below we have set out both our general observations on the Bill, and a non-exhaustive set of minimum requirements that we would expect to see in any effective legislative scheme addressing conversion practices.

Given the number of deficiencies identified in the Bill, we would welcome the opportunity to make comment on a revised Bill to be able to provide further detailed suggestions for improvement.

¹ Tasmania Law Reform Institute (2022) [Sexual Orientation and Gender Identity Conversion Practices, Final Report No. 32](#), Chapter 3.

² See for example, [Petition \(6,011 Signatures\) – Pass Laws to Prohibit LGBTQA+ Conversion Practices](#), (tabled in the Parliament of Tasmania House of Assembly, 24 November 2022), Sponsored by Ms Kristie Johnston.

OBSERVATIONS INFORMING OUR APPROACH

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

Up to 1 in 10 LGBT Australians remain vulnerable to conversion practices, with around 4% of LGBTQA+ Australians aged 14-21 years having experienced conversion practices.³ From the TLRI's consultations, we know that those practices continue to cause harm in Tasmania today.⁴

Conversion practices cause lasting harm and find no support among any mainstream medical or psychological professional community.⁵ 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).⁶

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. LGBTQA+ people are not broken, and do not need to be cured or fixed. Ultimately, no one has the right to cause physical or mental harm to someone else, regardless of how or why they do so. Any reforms must start from this foundational principle.

The primary focus of any successful response to LGBTQA+ conversion practices should be on preventing harm rather than punishing offenders after it occurs. Survivors have emphasised the need for an adequately resourced civil response scheme that focusses on prevention, education and support. Survivors have told us that overcriminalisation may inhibit efforts to prevent harm and drive practices underground. However, they have also been clear that conversion practices cause real and lasting harm, and should not be endorsed by the law, as a person cannot truly consent to practices that take place in the context of deeply reinforced stigma, discrimination, coercion and pressure. Criminalisation has a role to play, but it should not be the main focus of the scheme.⁷

That is why any response needs to ensure that everyone is protected from practices seeking to change or suppress their sexual orientation or gender identity in whatever settings they occur, and that the focus of the scheme is on the prevention of harm with criminalisation reserved for serious or systemic forms of conversion practices.

³ 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*.

⁴Tasmania Law Reform Institute (2022) [Sexual Orientation and Gender Identity Conversion Practices, Final Report No. 32](#), Chapter 3.

⁵ See Australian Medical Association (2023) [AMA Position Statement – LGBTQI/ASB+ Health](#); Australian Psychological Society (2021) [Use of psychological practices that attempt to change or 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](#).

⁶ 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.

⁷ These same sentiments are also reflected in the findings of the Tasmania Law Reform Institute (2022) [Sexual Orientation and Gender Identity Conversion Practices, Final Report No. 32](#) - see for example, page 5.

THE BILL IS FLAWED

In our view, the key issues with the Bill include:

- **There is no robust civil response scheme:** This is a fundamental flaw of the Bill, which does not adequately respond to repeated calls from survivors for a response to LGBTQA+ conversion practices that primarily focusses on prevention, education, and support. Currently, the Bill does not empower an appropriate authority to take action to stop conversion practices before they occur. It also does not provide victim-survivors with options for support, an adequate complaints mechanism or pathways for complaints to be resolved outside of the criminal justice system (unless the relevant conduct falls within the jurisdiction of the Health Complaints Act 1995, which may not include all practices performed in religious or other ‘non health related’ settings). This falls below the standards set by comparable legislation in the ACT, Victoria, New Zealand and proposed in NSW.
- **The definition of a conversion practice does not capture all conversion practices:** It is a critical omission of the Bill that practices which seek to suppress a person’s sexual orientation or gender identity (rather than just change or eradicate it) are not explicitly captured by the definition of a ‘conversion practice’. As leading Australian research has documented, the claims of some proponents of conversion ‘therapy’ in being able to ‘change’ a person’s sexuality or gender identity have been replaced with an acknowledgement that, for most people, gender identity and sexual attraction are fixed – but can instead be controlled. This has led to many conversion practices being aimed at controlling sexual behaviour and gender expression that is not deemed ‘in alignment with the intent of God’, encouraging people who identify as LGBTQA+ to live chaste lives, perform heteronormative relationships or live as a cisgendered person despite their true sexual orientation or gender identity.⁸ These practices are unlikely to be captured by the current Bill, but must be for the legislation to address the reality of modern conversion practices. This definition falls below the standard set by comparable legislation in New Zealand, Queensland, Victoria and proposed in NSW.⁹
- **The exemptions to the definition require further consideration:** As they are currently drafted, the exemptions in the Bill are improperly framed because:
 - The exemption for health service providers in s 28(2) may facilitate the provision of services that do not comply with a health service provider’s legal and professional obligations because it frames the issue only in respect of the provider’s own reasonable judgment and it applies this exemption to a wide range of health service providers,

⁸ 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. 12 and 17.

⁹ *Conversion Practices Prohibition Legislation Act 2022* (NZ), s 5; *Public Health Act 2005* (Qld), s 213F; *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic), s 5 and *Conversion Practices Prohibition Bill 2023* (NSW), s 9.

including people who simply hold themselves out to be health service providers.¹⁰ This exception is broader than the equivalents found in New Zealand and proposed in NSW.¹¹

- The exemptions in s 28(3) do not centre the self-determination and dignity of the person who is being assisted or provided with support, understanding and so on. Without further qualification, they could be read to exclude any practice where the offender believed they were (a) assisting a person (b) providing acceptance, support or understanding or (c) facilitating a person's coping skills, development, identity exploration or social support. Unfortunately, many forms of conversion practices occur because the perpetrator believes they are doing these things, when in reality, their actions are misguided, harmful and rooted in anti-LGBTQA+ ideology. What is relevant here is whether the assistance, support, etc. was genuine and objectively done in a manner that was faithful to the individual's own exploration, discovery and expression of their sexual orientation or gender identity. This exception does not adopt the protections found in equivalent exceptions in Victoria and proposed in NSW.¹²
- The scope of s 28(4) is very broad and has the potential to undermine the purpose of the legislation by excluding common forms of conversion practices. It is essential that a conversion practice which involves the expression of '*opinions, ideas, beliefs or religious principles*' is captured by the definition because most conversion practices in Australia are rooted in religious beliefs or occur in religious settings.¹³ However, currently s 28(4) could be taken to give weight to the idea that holding a religious belief freedom, or simply being a parent, implies a permission to cause harm to others. It does not.¹⁴ While we recognise that there are many circumstances where the expression only of a belief, opinion, idea or religious principle or parental guidance will not constitute a conversion practice, similar exemptions in New Zealand and proposed in NSW ensure that the circumstances in which the statement is made are taken into account.¹⁵ Otherwise this exception would swallow up the protection wherever conversion practices involve no more than pressure and coercion caused by the expression of opinions, ideas, beliefs or religious principles.
- **The offences:** The offences allow adults to consent to conversion practices. Survivors have strongly advocated that consent should not be a defence to a conversion practices offence. This is because LGBTQA+ conversion practices can occur in environments where people are

¹⁰ Bill s 7, amending the *Health Complaints Act 1995* (Tas). Under the definition of 'health service' in s 3 of the Act, a health service includes a service provided by a person *purportedly* for the benefit of human health.

¹¹ *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic), s 5(2)(b) and *Conversion Practices Prohibition Bill 2023* (NSW), s 9(2)(a).

¹² *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic), s 5(2)(a) and *Conversion Practices Prohibition Bill 2023* (NSW), s 9(2)(b) – (e).

¹³ 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.

¹⁴ For example, the freedom to manifest religion may be subject to limitations that protect public safety, health or the fundamental rights and freedoms of others – see International Convention on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 18(3).

¹⁵ *Conversion Practices Prohibition Legislation Act 2002* (NZ), s 5(2)(f); *Conversion Practices Prohibition Bill 2023* (NSW), s 9(2)(f).

made to believe they are broken and in need of fixing.¹⁶ While victim-survivors may be perceived by external observers as engaging voluntarily in conversion practices, their engagement is often underpinned by having experienced and internalised repeated false and misleading claims regarding the nature of sexual orientation and gender identity, or the value of particular sexual orientations or gender identities. This element puts the offences out of step with equivalent offences in Victoria, New Zealand and proposed in NSW.¹⁷

- **Amendments to the Health Complaints Act 1995:** While the TLRI recommended similar amendments to the Health Complaints Act 1995 in their final report, only some elements of these recommendations have been adopted in Part 3 of the Bill. Divorced from the remaining recommendations, they are ineffective for a number of reasons. Firstly, the legislation should include a civil complaints mechanism for all conversion practices, in whatever settings they occur, not just those that are dressed up as ‘health services’. More concerning, if passed, the amendments to the Health Complaints Act 1995 proposed by the Bill would explicitly make ‘attempting to change or eradicate [a] person’s sexual orientation or gender identity’ (i.e. a conversion practice) a ‘health service’ for the purpose of the exemption. This wording was not recommended by the TLRI.

¹⁶ Jones et al (2021) [Healing Spiritual Harms: Supporting recovery from LGBTQIA+ change and suppression practices](#), AGMC, Brave Network, La Trobe University, Macquarie University and Victorian Government.

¹⁷ See *Conversion Practices Prohibition Legislation Act 2022* (NZ), s 10; *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic), s 5(1) and *Conversion Practices Prohibition Bill 2023* (NSW), s 11(3), which each provide that consent is not a defence.

THE WAY FORWARD

The TLRI have recommended, and Tasmanian Conversion Practices Survivors have endorsed, a suite of proposed reforms to holistically address the harms caused by conversion practices in Tasmania. If the Tasmanian Government is not minded to accept these recommendations, then the approaches taken in other Australian jurisdictions also provide examples of alternate pathways that could be adopted to achieve similar objectives. We would be happy to provide the Tasmanian Government with further detail on the rationale behind aspects of these legislative schemes if it would be of assistance.

Whichever legislative model is ultimately adopted, we would expect that, at a minimum, the final scheme meets the following criteria:

- **Definition:** Like the definitions in Victoria, New Zealand and proposed in NSW,¹⁸ the base definition of a ‘conversion practice’ must be broad enough to capture all practices that seek to change or suppress a person’s sexual orientation or gender identity in whatever settings they occur. ‘Sexual orientation’ and ‘gender identity’ should also be properly defined.
- **The exemptions:** Any exemptions to the definition of a ‘conversion practice’ must be carefully framed to centre the person who is the intended beneficiary of the protection, being the person seeking to affirm or explore their sexuality or gender identity, or the patient seeking access to healthcare. They should merely clarify the intended scope of the ban, not create legal loopholes that allow conversion practices to be dressed up as forms of ‘support’, ‘exploration’, ‘health services’, ‘expressions of religious belief’ or ‘parental guidance’. In particular:
 - **For legitimate health services:** If an exception of this kind is included, its sole purpose should be to clarify that, provided registered health practitioners continue to comply with their existing obligations, their conduct will not fall under the legislation (i.e. they still can provide treatment which is consistent with their professional, legal and ethical obligations). These goals are best achieved by the Greenwich Bill exemption, which can only be relied on by registered health practitioners if they (a) comply with all of their legal, ethical and professional obligations and (b) consider the relevant action appropriate in their reasonable professional judgement.¹⁹ The requirement of ‘*appropriate in their reasonable, professional judgement*’ implicitly necessitates that the practitioner’s treatment or actions would be supported by at least a group of their peers.
 - **For providing ‘assistance’ or ‘support’:** Like the approach in Victoria and the Greenwich Bill,²⁰ any exemption for assistance, support, understanding and so on should include an objective legal standard that ensures the support, assistance, understanding, development or identity exploration meets the individual’s actual needs. That is, it should be carefully framed to ensure that what is relevant is the

¹⁸ *Conversion Practices Prohibition Legislation Act 2022* (NZ), s 5; *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic), s 5 and *Conversion Practices Prohibition Bill 2023* (NSW), s 9.

¹⁹ *Conversion Practices Prohibition Bill 2023* [NSW], s 9(2)(a); see also *Conversion Practices Prohibition Legislation Act 2022* (NZ), s 5(2)(a).

²⁰ *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic), s 5(2)(a) and *Conversion Practices Prohibition Bill 2023* (NSW), s 9(2).

perspective of the person receiving the assistance, not the ‘purpose’ or ‘intention’ of the perpetrator. The Greenwich Bill achieves this best by caveating the equivalent exemptions by reference to qualifiers such as assistance that is ‘genuine’ and ‘meets the individual’s needs’.²¹ Victoria similarly qualifies these exemptions by ensuring that they *affirm* a person’s identity, rather than seek to change or suppress it.

- **For mere expressions of belief:** Any exemption for the expression only of a belief, opinion, idea or religious principle should mirror the limitations in the principal definition. This is achieved by both the approach in New Zealand and the Greenwich Bill, which solely excludes *‘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’*.²² In addition, Victoria, New Zealand and the Greenwich Bill effectively exclude practices such as sermons or private prayer through the definition of a ‘conversion practice’, which excludes conduct that is not targeted towards an individual.²³
- **An effective civil response scheme:** An effective scheme addressing LGBTQA+ conversion practices should be the focus of any response to conversion practices. It is essential that this scheme centres on prevention, education, and support, and ensures the burden of preventing harm does not fall to individual victim-survivors. To achieve this, a suitably resourced agency (or agencies) should be empowered to:
 - develop and provide education programs and guidance in relation to conversion practices and the harms they cause and disseminate information to educate the public about the objects of the legislation;
 - conduct research on relevant matters;
 - receive reports of conversion practices in all settings (by an affected person, a representative or the public); and
 - make requests for further information about reports, both from those who make them and from persons alleged to be engaging in conversion practices.

A responsible agency should also have the discretion to choose a course of action that is appropriate to the unique circumstances of each case. The laws should include a tiered, civil regulatory response mechanism that empowers a responsible regulator to take such action as it considers appropriate to the case, including:

- taking no further action;
- providing targeted education or guidance;

²¹ Alternatively, see the approach taken in *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic), s 5(2)(a) - Victoria does so by reference to a practice that is ‘supportive or affirms a person’s gender identity or sexual orientation’.

²² See *Conversion Practices Prohibition Legislation Act 2022* (NZ) s 5(2)(f); *Conversion Practices Prohibition Bill 2023* (NSW), s 9(2)(f).

²³ *Conversion Practices Prohibition Legislation Act 2022* (NZ), s 5(1); *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic), s 5(1) and *Conversion Practices Prohibition Bill 2023* (NSW), s 9(1).

- referring persons affected by conversion practices to appropriate support services and/or referring reports to and sharing information with other agencies as appropriate;
- offering voluntary facilitations designed to provide information and create space for a person engaging in LGBTQA+ conversion practices to cease action; and
- when practices are serious or systemic, doing any of the following as a result of a report or on their own motion:
 - conducting investigations;
 - compelling the production of documents, the provision of information, or attendance to give answers and issue notices for further information or documents; and/or
 - issuing compliance notices or seek protective orders and enforceable undertakings on behalf of a victim-survivor which (if breached) would give rise to further penalties for non-compliance.
- **Criminal offences:** Given the primary purpose of the scheme is to prevent harm before it occurs, criminal offences should be reserved for the most egregious forms of harm, deliberate breaches, or clear abuses of power. Accordingly, we support the approach taken in the Greenwich Bill,²⁴ which is modelled on the Victorian approach.²⁵ Alternately, we would also support the New Zealand approach.²⁶ Each of these models require that there is proof of injury or harm, that conversion practices were engaged in intentionally and that the risk of injury was foreseeable by a reasonable (or ordinary) person. We consider this to be an appropriate threshold for criminal offences because ultimately, no one has the right to cause harm to someone else, regardless of the means by which they do so. We would also support providing protection against harm before it occurs by introducing a protection order pathway whereby breaching a protection order would give rise to a criminal offence. This is the approach taken in the ACT, Victoria and proposed in NSW.

Finally, we would support extraterritorial offences for taking a person outside of Tasmania to engage in conversion practices that would otherwise be prohibited in Tasmania, as is the case in the ACT, Victoria and proposed in NSW.

²⁴ Conversion Practices Prohibition Bill 2023 (NSW), Part 2, Div 2.

²⁵ *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic), Part 2.

²⁶ *Conversion Practices Prohibition Legislation Act 2022* (NZ), Part 2, Subpart 1.