



## CONVERSION PRACTICES PROHIBITION BILL SA: EXPLAINER

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

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

Here is a summary of how the Conversion Practices Prohibition Bill 2024 (the **Bill**) introduced by Deputy Premier Susan Close MP works to prevent harm.

### WHY A BAN ON CONVERSION PRACTICES?

Along with several other jurisdictions overseas, NSW, 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 and Tasmania have also committed to reform, along with South Australia.

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

The key features of the Bill are:

- definitions that protect all LGBTQA+ people from conversion practices no matter in which setting they occur (provided they consist of more than one event or occur on more than one occasion);
- a civil response scheme that seeks to prevent harm through education and research;
- criminal offences reserved for the most serious forms of practices.

### HOW ARE CONVERSION PRACTICES DEFINED BY THE BILL?

Conversion practices are defined as a practice, treatment, or sustained effort that consists of

<sup>1</sup> *Conversion Practices Prohibition Act 2024 (NSW); 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 et al (2021) *'Religious Conversion Practices and LGBTQA+ Youth'*, *Sexuality Research and Social Policy*.

<sup>3</sup> See Australian Medical Association (2021) *AMA Position Statement - LGBTQA+ 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*.

<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.



more than one event or occurs on more than one occasion, and 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 that conduct 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.

Unfortunately, the requirement that a conversion practice consist of more than one event or occur on more than one occasion may limit the application of the ban to common forms of conversion practices, such as a referral to a program or prayer group, the provision of self-help material intended for private reflection and study, or even a single incident of violence. Even single practices targeted at an individual and designed to change or suppress their sexual orientation or gender identity can be harmful and traumatic.

#### 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 use of an expression, without more, of a belief or principle, whether religious or not, to an individual that is not intended to change or suppress their sexual orientation is also not a conversion practice.<sup>8</sup>

## CIVIL RESPONSE SCHEME

Essential to the Bill is the civil response scheme which provides for research and education as well as individual complaints.

### Education and research

The Bill allows the Commissioner for Equal Opportunity (the **Commissioner**) to engage in education, undertake research, collect data, and disseminate information in relation to conversion practices, and with a view to eliminating them.<sup>9</sup>

### Individual complaints

The Bill also allows an individual survivor of conversion practices (or their guardian in the case of a child or person with an intellectual disability) to make a complaint to the Commissioner.<sup>10</sup>

Unfortunately, the Bill does not allow third parties or other persons to make complaints about conversion practices as is the case in NSW and Victoria. This means that a concerned individual or representative organisation cannot bring a

<sup>5</sup> Bill, s 4(1).

<sup>6</sup> Bill, s 4(3)(a).

<sup>7</sup> Bill, s 4(3)(b).

<sup>8</sup> Bill, s 4(3)(c).

<sup>9</sup> Bill, Schedule 1, s 1 (proposed s 86A(2) of the *Equal Opportunity Act 1984* (SA)); *Equal Opportunity Act 1984* (SA), s 11.

<sup>10</sup> *Equal Opportunity Act 1984* (SA), s 93(1).



complaint about conversion practices, and places the burden of enforcement on individual survivors.

While there is a 12-month time limit for complaints, the Commissioner has a broad discretion to extend this limit if there is a good reason the complaint was not made earlier and it is just and equitable to do so.<sup>11</sup> The second reading speech for the Bill made it clear this discretion should be exercised for most complaints relating to conversion practices.

When a complaint is made, the Commissioner is able to:

- conduct an investigation;
- offer to facilitate a **voluntary** outcome between survivors and those who have engaged in conversion practices;
- refer a complaint to the relevant health complaints entity;
- refer a complaint to the South Australian Civil and Administrative Tribunal (the **Tribunal**);
- decline to respond to reports.<sup>12</sup>

If a matter is referred to the Tribunal, the Tribunal may make an order that the person who has engaged in conversion practices:

- refrain from further conduct amounting to conversion practices,
- pay compensation for loss or damage (with no limit as to the amount),
- perform other acts to redress any loss or damage.<sup>13</sup>

## CRIMINAL OFFENCES

Reflecting the policy of preventing harm over punishment, criminal offences under the Bill are reserved for conduct that has caused serious harm.<sup>14</sup>

**'Harm'** covers physical harm and psychological harm that is more than trivial, whether it is temporary or permanent.<sup>15</sup>

**'Serious harm'** covers harm that endangers a person's life or is substantial.<sup>16</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 serious injury.<sup>17</sup>

The maximum penalty for this offence is 5 years imprisonment.<sup>18</sup>

### Taking a person from SA or engaging a person outside SA for conversion practices

The Bill also makes it an offence to take or arrange to take a person from SA to intentionally provide or deliver a conversion practice, or engage a person outside SA to provide or deliver a conversion practice.<sup>19</sup>

The maximum penalty for this offence is 3 years imprisonment or a \$15,000 fine or both.<sup>20</sup>

## REVIEW PERIOD

The Bill requires a review by the Minister three years after its commencement.<sup>21</sup>

<sup>11</sup> *Equal Opportunity Act 1984* (SA), s 93(2)-(2a).

<sup>12</sup> *Equal Opportunity Act 1984* (SA), s 94, 95, 95A, 95B; Bill, Schedule 1, s 2 (proposed s 93(5)-(6) of the *Equal Opportunity Act 1984* (SA)).

<sup>13</sup> *Equal Opportunity Act 1984* (SA), s 96.

<sup>14</sup> Bill, s 6.

<sup>15</sup> Bill, s 3 (definition of **harm** and **mental harm**).

<sup>16</sup> Bill, s 3 (definition of **serious harm**).

<sup>17</sup> Bill, s 6(4).

<sup>18</sup> Bill, s 6(1).

<sup>19</sup> Bill, s 7.

<sup>20</sup> Bill, s 7(1).

<sup>21</sup> Bill, s 8.