

Conversion Practices Prohibition Legislation Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Conversion Practices Prohibition Legislation Bill and recommends by majority that it be passed. We recommend all amendments unanimously.

About the bill as introduced

The bill seeks to prevent harm caused by conversion practices: practices that seek to change or suppress a person's sexual orientation, gender identity, or gender expression. It would do this by creating two new criminal offences for people who perform a conversion practice. One offence would apply where there is an increased risk of harm to the victim because the victim is under 18 years of age or lacks decision-making capacity. The other offence would apply in situations where serious harm is caused to the victim.

As well as establishing a new statute, the Conversion Practices Prohibition Legislation Act, the bill would also amend the Human Rights Act 1993 to make performing conversion practices unlawful under civil law. This would allow complaints about the performance of conversion practices to be addressed through the Human Rights Commission's existing complaints system. Where the performance of a conversion practice did not meet the threshold for being considered under the criminal offences, it could be addressed under the Human Rights Act.

About our process

We received nearly 107,000 submissions on this bill. The majority of them were identified as form submissions,¹ while about 38,900 had unique content. The unique submissions were all read and analysed, and formed the basis of our consideration of matters in this bill.

Of those who made written submissions, about 3,400 submitters asked to make an oral submission.² We decided to invite oral submissions from those who made unique written submissions, New Zealanders (even if based overseas), and those with expertise or experience in matters relating to conversion practices. We held 18 oral hearings of evidence.

We are grateful to submitters who shared with us their views on and experiences of conversion practices. We acknowledge that for many this was difficult.

In a bill commentary, select committees usually only comment on their recommended changes to a bill. However, because we received such a high number of submissions on this bill, we consider that it is important also to outline matters that we discussed but which have not resulted in proposed amendments to the bill.

These other matters are set out later in this commentary, after our proposed amendments.

Proposed amendments

This section of the commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Recognising harm caused by conversion practices in the purpose clause

Clause 3 of the bill states the purpose of the legislation. That is to prevent harm caused by conversion practices, and to promote respectful and open discussions regarding sexuality and gender.

We consider that it is important for the purpose to explicitly acknowledge that conversion practices are inherently harmful. Accordingly, we recommend that clause 3 be amended to include a reference to recognising the harm caused by conversion practices.

Removing “detrimentally” from the definition of “serious harm”

Clause 4 provides definitions for terms used throughout the bill including “health practitioner”, “health service”, “scope of practice”, and “serious harm”.

“Serious harm” would be defined as “in relation to an individual ... any physical, psychological, or emotional harm that seriously and detrimentally affects the health, safety, or welfare of the individual”. This definition relates to the new offence that would be created by clause 9, where a conversion practice had caused serious harm to a victim.

¹ We defined a form submission as one based off a template, usually quoting views or recommendations word for word. These templates are typically created by organisations.

² We heard oral submissions from 837 submitters in total. This included 716 individuals and 121 organisations.

We consider that the definition of “serious harm” does not need to contain both the words “detrimentally” and “seriously”. We do not believe that “detrimentally” would provide further clarity for people interpreting the meaning of “serious harm”. The word “seriously” already describes the effect on a person’s health, safety, or welfare. Accordingly, we recommend that clause 4 be amended to remove the word “detrimentally” from the definition of “serious harm”.

Amendments to the meaning of “conversion practice”

Clause 5 provides a definition for “conversion practice”. Subclause (1) states that a conversion practice means any practice that:

- is directed towards an individual because of their sexual orientation, gender identity, or gender expression; and
- is performed with the intention of changing or suppressing the individual person’s sexual orientation, gender identity, or gender expression.

Subclause (2) provides a list of actions that would not be considered to be a conversion practice. It includes:

- a health service provided by a health practitioner in accordance with the practitioner’s scope of practice (clause 5(2)(a))
- assisting an individual who is undergoing, or considering undergoing, a gender transition (clause 5(2)(b))
- assisting an individual to express their gender identity (clause 5(2)(c))
- providing acceptance, support, or understanding of an individual (clause 5(2)(d))
- facilitating an individual’s coping skills, development, or identity exploration, or facilitating social support for the individual (clause 5(2)(e))
- 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, gender identity, or gender expression (clause 5(2)(f)).

Including reference to a “treatment” or “sustained effort”

The definition of conversion practice does not explicitly state whether it would cover both one-off and cumulative practices. We believe that the definition should cover both, as harm can be caused by one-off acts as well as by cumulative practices.

Therefore, we recommend by majority that clause 5 be amended to include reference to “treatment” and “sustained effort”. The inclusion of “treatment” would avoid the exclusion of discrete practices that are harmful. The inclusion of “sustained effort” would make it clear that cumulative practices are intended to be captured by the definition. We consider that this would align the definition of conversion practices with the purpose of the bill as introduced.

Including examples of what constitutes a conversion practice

Many submitters stated that the bill is unclear on what would constitute a conversion practice. A high number of these submitters expressed fear that they could unwittingly perform actions that would constitute conversion practices. We note that the lack of examples in the definition of conversion practice may contribute to confusion about what behaviours would be captured. We note that examples have been provided in legislation prohibiting conversion practices in Australian jurisdictions, such as in the Public Health Act 2005 (Queensland) and the Change or Suppression (Conversion) Practices Prohibition Act 2021 (Victoria).

We believe examples would be useful to provide further context for behaviours that could be captured by the definition. Therefore, we recommend amending clause 5 to include examples of what constitutes a conversion practice, drawing on the examples in the Queensland and Victorian legislation. Examples would include:

- using shame or coercion intending to give an individual an aversion to same-sex attractions or to encourage gender-conforming behaviour
- encouraging an individual to believe that their sexual orientation, gender identity, or gender expression needs changing because it is a defect or disorder
- carrying out a prayer-based practice, a deliverance practice, or an exorcism intending to change or suppress an individual's sexual orientation, gender identity, or gender expression.

We consider that this would make clearer what kinds of action are intended to be captured by the definition of conversion practice.

Removing reference to “scope of practice”

Clause 5(2)(a) would exclude from the definition of a conversion practice health services provided by a health practitioner in accordance with the practitioner's scope of practice. Clause 4 of the bill provides definitions for “health service”, “health practitioner”, and “scope of practice”. We acknowledge that the reason for including clause 5(2)(a) is to make it clear that health practitioners who perform services in line with their scope of practice are not performing conversion practices.

We note that this clause is not intended to act as a blanket exemption for health practitioners to perform conversion practices. Health practitioners are already prohibited from performing conversion practices through codes of ethics and specific position statements from the professional bodies they belong to.

We consider that the reference to “scope of practice” is too broad. It would not sufficiently convey the existing restrictions on health practitioners. Therefore, we recommend amending clause 5(2)(a) to state 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 judgement it is appropriate to take that action; and

- (ii) complies with all legal, professional, and ethical standards when taking the action.

We consider that specifically referencing a health practitioner’s legal, professional, and ethical standards would make clearer what would be considered legitimate health care.

We believe that explicitly referring to a health practitioner’s obligations would clearly establish the boundary within which reasonable judgement could be exercised. We consider that this would also lower the risk of harmful conversion practices being able to be practised under the guise of a health service.

Including reference to a “personal belief”

Clause 5(2)(f) would exclude expressing a religious principle or belief from what is captured under the definition of a conversion practice. However, it would need to be expressed without the intention to change or suppress the sexual orientation, gender identity, or gender expression of the individual it is being expressed to.

We do not consider that the definition of “conversion practice” in clause 5(1) would include the expression of a non-religious belief. That is provided there is no deliberate intention to change or suppress someone’s sexual orientation, gender identity, or gender expression. We recommend that clause 5(2)(f) be amended, for the avoidance of doubt, to include reference to a personal belief.

Other matters we considered

Including “gender identity” and “gender expression”

Many submitters supported the bill’s inclusion of “gender identity” and “gender expression” in the definition of conversion practices in clause 5. They said that this helped to ensure that the bill reflected current best practice for working with the rainbow population in New Zealand.

Some submitters did not agree with this as they believed it was inappropriate to conflate gender with sexual orientation. Some of these submitters believed that the bill contradicted itself by supporting affirmative medication and practices such as the use of puberty blockers. They suggested that this was an example of a dangerous conversion practice.

We disagree that gender-affirming care or supporting a gender transition could be classified as conversion practices. The bill provides that one of the elements of a conversion practice is that it is performed with the intent to suppress or deny someone’s identity. We note that the bill would not amend legislation around decisions concerning the healthcare of children, including the prescription of puberty blockers.

Some submitters told us that clause 5 would disadvantage people who may want to transition to the sex they were assigned at birth, or to being heterosexual.

We do not consider that the bill would prevent people who wanted to transition to the sex they were assigned at birth, or to identify as heterosexual. The bill would only cover circumstances where external attempts are made to change or suppress some-

one's gender identity, gender expression, or sexual orientation, regardless of what they may be.

Variations of sex characteristics

Some submitters told us that the definition of a conversion practice, in clause 5, should include practices intended to change or suppress variations of sex characteristics. They believe this would help to better protect intersex people from unnecessary medical interventions, often performed on people without their consent.

Some submitters who support prohibiting unnecessary medical interventions on intersex people did not support including intersex people in the bill. They considered that these medical interventions should be dealt with by a more specific policy or piece of legislation.

We note that conversion practices performed on the basis of variations of sex characteristics would not explicitly be covered by the definition of a conversion practice. This is because sex characteristics are biological traits while sexual orientation, gender identity, and gender expression are socially constructed. Despite this, intersex people would still receive protection through the bill as conversion practices performed on the basis of gender identity and expression are captured.

We note that there are issues that fall outside the bill's intent. The Government is considering opportunities to:

- move away from a solely medicalised view of intersex health care, and take a rights-based approach that focuses on ensuring that intersex people and their whānau have all the relevant information and support to make informed decisions about their health care
- support health practitioners to provide best practice health care for intersex people.

Additional clarifications

Many submitters advocated including additional clarifications on what would not be classed as a conversion practice. Most of them discussed whether there should be a specific exemption for parents and whānau.

Many submitters accepted that the bill would allow parents and whānau to have conversations about sexual orientation, gender identity, and gender expression. However, some submitters were concerned that parents and whānau could be criminalised for having these conversations. Many submitters also recommended that an exemption should be included for religious groups.

We consider that many of these conversations would not meet the criteria for what the bill defines as a "conversion practice" or would be excluded by clauses 5(2)(b) to (f). Accordingly, we do not believe that any additional exemptions are needed or appropriate to meet the purpose of the bill.

Victims under the age of 18 years

Clause 8 would create an offence where a person performs a conversion practice on an individual under the age of 18, or where the individual lacks decision-making capacity. Clause 8(2) provides that someone convicted of this offence would be liable to a maximum term of imprisonment of 3 years.

Most submitters were in favour of this offence and told us that it would capture the behaviours and practices that should be criminalised.

Some submitters who oppose the clause 8 offence expressed concern about a lack of clarity as to what behaviours would be considered illegal. Others who oppose the offence do not consider that practices that would be captured by the offence should be illegal at all. These submitters told us that clause 8 would criminalise parents for giving their children advice or guidance about gender or sexual diversity. They were also concerned that the offence would prevent people under 18 years of age from choosing to engage in non-invasive conversion practices.

We consider that conversations between parents and children would not be criminalised under the offence in clause 8. We believe that the standard for a behaviour to be considered a conversion practice in the bill is appropriately high. As discussed earlier in this commentary, we recommend that the definition of a “conversion practice” be amended to include examples of what behaviours or actions would be captured.

Maximum penalties for an offence under clause 8

If convicted of an offence under clause 8, a person would be liable to a maximum term of imprisonment of 3 years.

Some submitters told us that the maximum penalty was too severe and suggested that less punitive measures should be explored such as community-based sentences, or fines. One submitter suggested that, because conversion practices cause significant harm to family relationships, restorative processes should be considered.

Submitters who oppose the maximum penalty were concerned that health professionals, such as counsellors, would not feel able to work for fear of breaking the law.

Some submitters who support the clause 8 offence told us that the maximum penalty should be increased to reflect the seriousness of the offence.

We consider that the maximum penalty in clause 8 would be appropriate for the practices that would be captured by the offence. We note that the maximum penalty would be reserved for the most serious instances of offending.

Regarding penalties other than imprisonment, we note that the Sentencing Act 2002 gives judges discretion to impose an appropriate sentence. Possible sentences would include discharge without conviction, a fine, a community-based sentence, home detention, and imprisonment. Because of this judicial discretion, we see no need to specify alternative penalties in the bill.

The bill would also make a civil redress scheme available through the amendments it proposes to the Human Rights Act. This would include access to dispute resolution

services that may be more appropriate in situations where those performing conversion practices have close relationships to the victim.

Maximum penalties for an offence under clause 9

If convicted of an offence under clause 9 (performing a conversion practice that caused serious harm), a person would be liable to a maximum term of imprisonment of 5 years. We note that, even though individuals under the age of 18 and those lacking decision-making capacity are specifically covered by clause 8, the clause 9 offence would still be available to them if serious harm was caused.

Many submitters felt that the maximum penalty for the clause 9 offence was justified by the level of harm that would be caused by the offending. Other submitters opposed the maximum penalty for the clause 9 offence and expressed concern that it appeared higher than the penalty for violent crimes such as child abuse.

As noted in relation to the maximum penalty for a clause 8 offence, the maximum penalty would be reserved for the most serious instances of offending. We consider that the maximum penalty is appropriate for the behaviours and practices that would be captured by the clause 9 offence.

We note that the penalty for the clause 9 offence is comparable with the maximum penalty for the offence of causing injury with intent to do so or with reckless disregard for the safety of others.³

Consent not a defence to a charge under clause 8 or 9

Clause 10 provides that a person's consent to a conversion practice could not be used as a defence to a charge under clauses 8 or 9. This would also apply if a person consented on behalf of someone else to a conversion practice being performed on that person, or if the person charged believed that consent was given. It is designed to provide that consent should not be relevant to determining a defendant's culpability. This is intended to lessen the impact of court processes on victims.

Most submitters we heard from on this matter discussed whether it was possible to consent to conversion practices at all. These submitters said that clause 10 would remove any blame from the victim and shift it to the perpetrator. Some submitters told us about their personal experiences where the potential loss of their family, loved ones, and community had led to them seeking out conversion practices.

Some submitters who oppose clause 10 said that it would breach a parent's right to make decisions on behalf of their children. Others in opposition were concerned that clause 10 would interfere with a person's ability to seek or impart counselling. They argued that removing consent as a defence would breach rights and freedoms guaranteed by the New Zealand Bill of Rights Act 1990 (NZBORA).

³ Section 189(2), Crimes Act 1961.

We note that clause 10 would only apply to an offence under clauses 8 or 9. It would not apply in situations covered by the civil redress scheme in the bill.

Other jurisdictions have excluded consent as a defence for criminal offences relating to the performance of conversion practices, including Victoria and the ACT in Australia.

We do not consider that clause 10 would place an unjustified limit on the rights and freedoms in NZBORA. We note that Crown Law provided advice to the Attorney-General that the bill is consistent with NZBORA.

Attorney-General's consent needed to prosecute an offence under clause 8 or 9

Clause 12 would require the Attorney-General's consent for the prosecution of an offence under clause 8 or 9.

Most submitters who commented on this provision suggested its removal, considering it an unnecessary threshold for prosecution. Some submitters recommended that it be removed because other crimes that require the Attorney-General's consent are usually offences that have international political ramifications or a clear public interest. These submitters told us that there are more comparable crimes that do not require the Attorney-General's consent.

The Human Rights Commission told us that the Attorney-General's consent can be required in cases requiring complex human rights considerations. However, it believed that in the case of conversion practices this could create a barrier to justice.

Those who support the inclusion of clause 12 consider that it would provide an additional check and balance before prosecution. These submitters believe it would be especially necessary for parenting or religious expression that some might view as being covered by the definition of a "conversion practice".

We consider that clause 12 should remain in the bill. We note that Crown Law's advice on the bill's consistency with NZBORA identified clause 12 as a way to mitigate any limitation the bill would place on the freedom of expression.

We consider that requiring the Attorney-General's consent would help to ensure that the evidential test for prosecution of an offence under clause 8 or 9 is met.

We note that there are several other offences that can only be prosecuted with the Attorney-General's consent, including section 131 of the Human Rights Act. That section is also related to freedom of expression, with the offence being the incitement of racial disharmony.

Some submitters expressed concern that the requirement for the Attorney-General's consent would introduce a risk of politicisation and bias into the prosecution processes. We note that although the Attorney-General has a political role as a Minister with multiple portfolios, as the Attorney-General they act free from political consideration. We also note that in the process of providing consent for prosecution, this function is exercised in conjunction with the Solicitor-General.

Changes to the Human Rights Act and the civil redress scheme

Clause 15 would amend the Human Rights Act to insert new section 63A. That section would make it unlawful for a person to perform a conversion practice on another person. It would also apply to persons who arrange for a conversion practice to be performed on another person.

Any breaches of new section 63A would be dealt with under the existing dispute resolution processes in the Act. Clause 13 of the bill provides that any person who has a conversion practice performed on them could make a complaint under new section 63A of the Human Rights Act.

Some submitters who commented on clause 15 expressed support for a civil redress scheme. The Office of the Health and Disability Commissioner told us that recourse to the Human Rights Commission was appropriate for complaints about practices carried out by religious organisations or individuals. However, it said that conversion practices carried out in healthcare settings, which would lead to complaints about health and disability services, should be referred to its office.

We note that the criminal offences in the bill would only be intended to capture serious cases of conversion practices. We believe that the civil redress scheme would provide another path of redress for victims. The civil redress scheme would also focus on remedying harm and preventing it from happening again.

Under the Human Rights Act, the Human Rights Commission performs a range of functions such as providing education and preparing and publishing guidelines and voluntary codes of practice to promote consistency with the Act. We believe that these functions are an important part of achieving the purpose of this bill.

We acknowledge the view of the Office of the Health and Disability Commissioner. However, we do not consider it necessary for the bill to explicitly provide a power for the Human Rights Commission to refer a complaint regarding conversion practices in the health and disability sector to the Health and Disability Commissioner. If the commission declined to take further action in relation to a complaint, it could choose to refer the matter to another avenue of redress.

New Zealand National Party view

National Party members hold a range of views on this bill, and intend to vote as a matter of conscience during the remaining stages of the bill.

ACT New Zealand view

ACT acknowledges the challenging aspects of this bill. Those seeking advice or instruction on how to convert should be protected to do so safely, as is their right to be free to make decisions about themselves. As law makers, we are also tasked with protecting everyone's democratic way of life including free speech, religious freedoms, and parental controls. It's a balancing act.

The large number of submissions gave a varying array of ideas and thoughts on the bill and ACT appreciates the community input and sharing of experiences on such an important issue.

Nevertheless, the amended version of the bill does not alleviate the concerns that ACT had referred to in our first reading speech: that the role of parents and religious institutions has not been adequately protected enough to ensure that only harmful conversion practices are legislated against. We must all protect free speech without fear of prosecution as long as we speak within the rules of not doing harm. No one should feel the threat of going to jail for praying or for sharing their opinions in discussion with their child. The committee's amendments have not alleviated those concerns.

There have been no changes made to clause 5 that address the concerns of parents having a conversation with their children about, say, not supporting the use of puberty blockers. The Government believes that the standard it has set is high, that parental conversations should not be captured and use examples from clause 5 again. The default for awkward situations is to give any potential prosecution incident to one person, the Attorney-General, to determine if a charge should be laid against the parents. Parents are rightly concerned about how far the Attorney-General will reach into homes, into family discussions or disagreements to determine what, if any, harm has occurred, and whom to prosecute for it.

There is also concern about removing a person's own ability to consent to a conversion practice. While ACT does not wish to see anyone harmed in any way and believes that the Crimes Act will take care of any unlawful and unsafe practice, a person must have the freedom to consent, and we do not agree that taking away a person's right to consent to a prayer-based practice is justified.

ACT believes that everyone should have autonomy over their bodies and that every person should be able to seek out information, assistance, and guidance to ensure that they attain the correct advice and support for all matters. We do not agree with harmful conversion practices taking place. Whenever a person has an important issue to consider, they usually seek out varying views. It is a way of understanding their own true determination. This bill only allows a one-sided conversation to take place and deems everything else as potentially being harmful. The promotion of discussion only runs one way.

ACT are disappointed that the parental and religious concerns of submitters did not bring about substantial changes to the bill, clarifying more precisely that their roles are not prosecutable unless substantially harmful. We do not believe that the much-needed balance has been found.

Appendix

Committee process

The Conversion Practices Prohibition Legislation Bill was referred to the committee on 5 August 2021.

The closing date for submissions on the bill was 8 September 2021. We received and considered nearly 107,000 submissions from interested groups and individuals. We heard oral evidence from 837 submitters.

We received advice on the bill from the Ministry of Justice. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Ginny Andersen (Chairperson)

Hon Simon Bridges (until 8 December 2021)

Simeon Brown (until 8 December 2021)

Hon Paul Goldsmith (from 8 December 2021)

Dr Emily Henderson

Harete Hipango (until 31 August 2021)

Nicole McKee

Hon Mark Mitchell (from 31 August 2021)

Simon O'Connor (from 8 December 2021)

Willow-Jean Prime

Vanushi Walters

Arena Williams

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kris Faafoi

Conversion Practices Prohibition Legislation Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Conversion Practices Prohibition Legislation Act **2021**.

2 Commencement

- (1) This Act, except the provisions specified in **subsection (2)**, comes into force 5
on the day after the date on which it receives the Royal assent.
- (2) The following provisions come into force 6 months after the date on which this
Act receives the Royal assent:
 - (a) **subpart 2 of Part 2:**
 - (b) **Part 3.** 10

Part 1

Preliminary provisions

3 Purpose of this Act

The purpose of this Act is to—

- (a) recognise and prevent harm caused by conversion practices; and 15
- (b) promote respectful and open discussions regarding sexuality and gender.

4 Interpretation

In this Act, unless the context otherwise requires,—

conversion practice has the meaning given to it in **section 5**

health practitioner has the same meaning as in section 5(1) of the Health 20
Practitioners Competence Assurance Act 2003

health service has the same meaning as in section 5(1) of the Health Practi-
tioners Competence Assurance Act 2003

~~**scope of practice** has the same meaning as in section 5(1) of the Health Practi-~~ 25
~~tioners Competence Assurance Act 2003~~

serious harm, in relation to an individual, means any physical, psychological,
or emotional harm that seriously ~~and detrimentally~~ affects the health, safety, or
welfare of the individual.

5 Meaning of conversion practice

- (1) In this Act, **conversion practice** means any practice, sustained effort, or treatment that—
- (a) is directed towards an individual because of the individual's sexual orientation, gender identity, or gender expression; and 5
 - (b) ~~is performed~~ done with the intention of changing or suppressing the individual's sexual orientation, gender identity, or gender expression.
- (2) However, **conversion practice** does not include—
- (a) ~~a health service provided by a health practitioner in accordance with the practitioner's scope of practice; or~~ 10
 - (a) any action that a health practitioner takes when providing a health service if the health practitioner—
 - (i) considers in their reasonable professional judgement it is appropriate to take that action; and
 - (ii) complies with all legal, professional, and ethical standards when taking the action; or 15
 - (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 20
 - (e) facilitating an individual's coping skills, development, or identity exploration, or facilitating social support for the individual; or
 - (f) the expression only of a belief or a religious principle ~~or belief~~ made to an individual that is not intended to change or suppress the individual's sexual orientation, gender identity, or gender expression. 25

Examples of conversion practices

The following are examples of a conversion practice if each practice, sustained effort, or treatment described is directed towards an individual because of that individual's sexual orientation, gender identity, or gender expression:

- using shame or coercion intending to give an individual an aversion to same-sex attractions or to encourage gender-conforming behaviour; 30
- encouraging an individual to believe that their sexual orientation, gender identity, or gender expression needs changing because it is a defect or disorder;
- carrying out a prayer-based practice, a deliverance practice, or an exorcism intending to change or suppress an individual's sexual orientation, gender identity, or gender expression. 35

Compare: Public Health Act 2005 s 213F (Qld); Sexuality and Gender Identity Conversion Practices Act 2020 s 7 (ACT); Change or Suppression (Conversion) Practices Prohibition Act 2021 s 5 (Vic)

6 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.

7 Act binds the Crown

This Act binds the Crown.

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Part 2**Offences and civil liability in relation to conversion practices****Subpart 1—Offences relating to conversion practices****8 Offence to perform conversion practice on person under age of 18 years or lacking decision-making capacity**

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- (1) A person commits an offence if the person performs a conversion practice on an individual and knows that, or is reckless as to whether, the individual—

- (a) is under the age of 18 years; or
- (b) lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to their health or welfare.

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- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a term of imprisonment not exceeding 3 years.

Compare: Public Health Act 2005 s 213H (Qld); Sexuality and Gender Identity Conversion Practices Act 2020 s 8 (ACT)

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9 Offence to perform conversion practice that causes serious harm

- (1) A person commits an offence if the person performs a conversion practice on an individual that causes serious harm to the individual and the person—

- (a) knew that performing the conversion practice would cause serious harm to the individual; or
- (b) was reckless as to whether the performance of the conversion practice would cause serious harm to the individual.

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- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a term of imprisonment not exceeding 5 years.

Compare: Change or Suppression (Conversion) Practices Prohibition Act 2021 s 10 (Vic)

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10 Consent not defence

It is not a defence to a charge under **section 8 or 9** that—

- (a) the individual on whom the conversion practice was performed, or a person on behalf of that individual, consented to the performance of that practice; or

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(b) the person charged believed that such consent was given.

Compare: 1961 No 43 ss 204A(6), 204B(4)

11 Person on whom conversion practice performed not party to offence

A person on whom a conversion practice is performed may not be charged as a party to an offence committed on them under **section 8 or 9**.

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Compare: 1961 No 43 ss 204A(7), 204B(5)

12 No prosecution without Attorney-General's consent

No prosecution for an offence against **section 8 or 9** may be instituted without the consent of the Attorney-General.

Compare: 1993 No 82 s 132

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Subpart 2—Civil liability relating to conversion practices

13 Complaint may be made under Human Rights Act 1993

A person may make a complaint under the Human Rights Act 1993 alleging that there has been a breach of **section 63A** of that Act.

Part 3

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Amendment to Human Rights Act 1993

14 Principal Act

This **Part** amends the Human Rights Act 1993.

15 New section 63A inserted (Conversion practices)

After section 63, insert:

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63A Conversion practices

(1) It is unlawful for any person to—

(a) perform a conversion practice on any other person; or

(b) arrange for a conversion practice to be performed on any other person.

(2) In this section, **conversion practice** has the same meaning as in **section 5 of the Conversion Practices Prohibition Legislation Act 2021**.

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Schedule 1
Transitional, savings, and related provisions

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Part 1
Provisions relating to this Act as enacted

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There are no transitional, savings, or related provisions relating to this Act as enacted.

Legislative history

30 July 2021
5 August 2021

Introduction (Bill 56–1)
First reading and referral to Justice Committee