

**Chief Minister**

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Mrs Giulia Jones MLA

Chair

Standing Committee on Justice and Community Safety

[scrutiny@parliament.act.gov.au](mailto:scrutiny@parliament.act.gov.au)

Dear Mrs Jones MLA

I write to thank you for the Scrutiny Report 50 of 25 August 2020 commenting on the Sexuality and Gender Identity Conversion Practices Bill 2020 (the Bill), and to respond to the matters raised.

*The Committee requests a further response from the Chief Minister on why alternative approaches to the definition and regulation of conversion practices may not be considered adequate and why consent should not be explicitly included as a consideration in any remedies awarded by ACAT.*

The ACT Government is committed to the prevention of harm and supporting equality, diversity and inclusion within the Territory. The ACT Government recognises that people's faith can be an important part of their lives and seeks to create a community where LGBTQ people can practice their own faith in a way that includes and supports them in a safe way.

This Bill prohibits certain practices aimed at changing a person's sexuality or gender identity. As the Explanatory Statement provides, the Bill is targeted at practices that are demonstrably harmful and based on unfounded claims that it is possible to change a person's sexuality or gender identity.

Evidence from survivors of conversion practices in the ACT and Australia reveal the extent and long-term impact of this harm. These practices are reported to cause depression, suicidality, anxiety, decreased sexual function, poor self-esteem, social isolation, and decreased capacity for intimacy.<sup>1</sup> Conversely, there is no evidence to suggest any benefits nor that sexuality or gender identity can be changed by undertaking conversion practices. These practices have been condemned by peak national medical bodies.<sup>2</sup>

<sup>1</sup> La Trobe University, Gay & Lesbian Health Victorians & the Human Rights Law Centre, [Preventing Harm, Promoting Justice: Responding to LGBT conversion therapy in Australia](#) (2018) pp 27, 31-36.

<sup>2</sup> Australian Medical Association (2002) *AMA Position Statement: Sexual Diversity and Gender Identity*, [6.10]; Australian Psychological Society (2015) *APS Position Statement on Psychological Practices that attempt to change Sexual Orientation*; Psychology and Counselling Federation of Australia (2018) *Scope of Practice for Registered Counsellors*, p20; Royal Australian and New Zealand College of Psychiatrists (2019) *Sexual orientation change efforts: Position Statement* 60; Royal Australian and New Zealand College of Psychiatrists Victoria Branch, *Submission – Legislative*

**ACT Legislative Assembly**

London Circuit, Canberra ACT 2601, Australia

**Phone** +61 2 6205 0011 **Fax** +61 2 6205 0157

GPO Box 1020, Canberra ACT 2601, Australia

**Email** [barr@act.gov.au](mailto:barr@act.gov.au)

@ABarrMLA



AndrewBarrMLA



andrewbarrmla



The La Trobe University report to which the Committee refers is one of the sources of evidence the ACT Government considered when seeking to understand the harm caused by these practices, along with other accounts from survivors.

The ACT Government has developed policy in response to (and seeking to prevent this harm) to fit this jurisdiction and our legislative frameworks. The prohibition and penalties in the Bill are designed to strike an appropriate balance between the right of individuals and communities to practice their faith and the prevention of harm caused by practices aimed at changing sexuality or gender identity.

The Bill provides the Commission with jurisdiction to handle complaints about conversion practices, allowing the Commission to have the capacity to deal with complaints from individuals made against individuals and/or organisations providing these services in the ACT. The Commission will also have the power to conduct Commission-initiated considerations or systemic reviews into conversion practices.

The Bill also provides for criminal penalties where a child or a person who has impaired decision-making ability in relation to a matter relating to the person's health or welfare is the subject of conversion practices or is removed from the ACT in order for the conversion practice to be performed. These criminal penalties apply in recognition of the serious harm that can be caused by conversion practices and the particular vulnerability of people who aren't able to consent to exposure to harm. They also signal to the community that the ACT Government does not condone these practices in or outside the Territory.

The application of a criminal offence is related to instances where conversion practices have targeted the most vulnerable members of society, and it reflects the seriousness of this conduct well evidenced by the harm caused by these practices.

The Committee notes that the La Trobe University report also states that, 'unlike children and persons with impaired decision-making ability:

adults who freely choose to seek out discussions within their faith communities should be permitted to exercise their own agency to engage in these informal faith-based activities (including pastoral care, prayer and group activities) if they wish (at p 66).'"

The Bill does not prevent any person or organisation from providing pastoral care, prayer and group activities. The only conduct which this Bill addresses is that which actively tries to "fix" or change a person's sexuality or gender identity.

The definition of conversion practices in the Bill covers practices that actively seek to change the sexuality or gender identity of a person, and instances where someone purports to change the sexuality or gender identity of a person.

Since introduction, the Government has engaged further with survivors, schools, faith leaders and members of the community in order to clarify the Bill's intent and provide the best possible protections for the Canberra community.

As a result of the further consultation the Government is pursuing amendments to complement the existing definition of sexuality and gender identity conversion practice. These amendments will add in a further example of what is not considered by the Bill as currently drafted to be a sexuality or gender identity conversion practice - support for a person exploring and expressing their sexuality. The amendment will also add a note referencing the Human Rights Act, making clear that the expression of religious tenets or beliefs not purporting to change a person's sexuality or gender identity is not a conversion practice.

The supplementary Explanatory Statement accompanying those amendments will also make clear that the definition of conversion practices as already outlined in the Bill is not intended to capture the mere expression of religious beliefs.

The Government has sought to be careful through drafting amendments not to inadvertently capture practices that the Government did not intend to capture in the Bill as presented to the ACT Legislative Assembly. The amendments outlined above are complementary to the definition of sexuality and gender identity conversion practice the Government has drafted.

Consent in the context of conversion practices is a complex concept. The ACT Government's view remains that requiring ACAT to consider mitigating factors and allowing ACAT to consider any other matter ACAT considers relevant would sufficiently allow for consideration of a range of factors (including consent) where it was relevant, and thus it is not necessary or preferable to include a specific requirement for ACAT to consider whether a person consented to the practice.

Yours sincerely

Andrew Barr MLA  
Chief Minister