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TENTH ASSEMBLY

Statutory Review Report

Sexuality and Gender Identity Conversion Practices Act 2020

Presented by
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Chief Minister
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ACT
Government

Statutory Review Report

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February 2024

1. Executive Summary

The *Sexuality and Gender Identity Conversion Practices Act 2020* (the Act) was passed by the ACT Legislative Assembly in 2020 and the Act commenced on 4 March 2021.

The Act promotes the right to equality and non-discrimination and the right of children to protection by prohibiting sexuality and gender identity conversion practices (conversion practices) in the ACT. The Act makes it a criminal offence to undertake conversion practices on protected persons and to remove protected persons from the ACT for the purpose of conversion practices.

Consequential amendments to the *Human Rights Act 2005* were also made at this time to include in its jurisdiction complaints relating to sexuality and gender identity conversion practices. Anybody affected by conversion practices can make a complaint to the ACT Human Rights Commission (ACT HRC).

Section 10 of the *Sexuality and Gender Identity Conversion Practices Act 2020* (the Act) requires the responsible Minister (Chief Minister) to arrange a review of the Act as soon as practicable after two years from the commencement of the operative provisions. The review was commenced by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) in 2023.

The aim of this review was to examine the operation and effectiveness of the Act. Terms of Reference were established for the review to consider the current operations of the Act and any improvements that might be made to its operation.

Input into the review was sought from a range of stakeholders including jurisdictional counterparts, faith communities, education, legal, human rights, LGBTIQ+ service providers and the health, disability and multicultural sectors.

Nine written submissions were received and CMTEDD officials met with 7 further stakeholders, including Victorian Government officials, the Victorian Equal Opportunity and Human Rights Commission, the ACT HRC and the ACT Justice and Community Safety Directorate.

The review found:

- No definite evidence of conversion practices being performed in the ACT since the commencement of the Act. ACT Policing reported that there have been no charges laid under the Act and no investigations in relation to offences under the Act. The ACT HRC has confirmed there have been no formal complaints made under the Act, but that there have been six enquiries.
- There is low to moderate awareness across LGBTIQ+ communities, faith communities and health practitioners about the Act, the protections afforded by the Act and/or the harm caused by conversion practices.
- There is concern among some stakeholders about whether the Act as it stands would provide protections for certain people in certain situations. As there have been no confirmed cases of conversion practices, and no complaints, the law has not been tested in these areas.

The review makes two recommendations relating to increasing awareness amongst groups who may be at risk of performing conversion practices and those who are at risk of experiencing conversion practices. The third recommendation is for the Government to seek expert advice in relation to situations raised by stakeholders as needing protections. Subject to this advice, the results of the Victorian review of equivalent legislation and the results of awareness raising activities, the government may then wish to consider the need for legislative amendments.

2. Introduction

The ACT Government's vision is for Canberra to be the most LGBTIQ+ welcoming and inclusive city in Australia. Equality before the law and protection from harm and discrimination is fundamental to this vision. Equality Australia's 2019 legal audit of ACT legislation and regulations recommended the introduction of legislation prohibiting sexuality and gender conversion practices in the ACT.

The *Sexuality and Gender Identity Conversion Practices Act 2020* (the Act) was passed by the ACT Legislative Assembly in 2020 and commenced on 4 March 2021. The Act prohibits sexuality and gender identity conversion practices in the ACT. Anyone who has been subject to conversion practices can make a complaint to the ACT HRC. The Act makes it a criminal offence to undertake conversion practices on protected persons and to remove protected persons from the ACT for the purpose of conversion practices.

Section 10 the Act requires the responsible Minister (Chief Minister) to arrange the review of the Act as soon as practicable after two years from the commencement of the operative provisions.

The review sought to obtain evidence about the operation and effectiveness of the Act.

Stakeholders were invited to provide input against the below terms of references. Stakeholders were able to select which questions they did or did not respond to.

1. Has the introduction of the Act resulted in any behavioural change relating to conversion practices? This includes either a reduction in conversion practices through deterrence or a perverse effect of increasing secrecy around such practices.
2. Is there evidence of formal or informal conversion practices continuing to occur in the ACT? This may include complaints or inquiries to the ACT Human Rights Commission (ACT HRC), reporting of alleged crimes and/or knowledge of practices which have not been reported to the ACT HRC or police.
3. Has the introduction of the Act resulted in any attitudinal change related to recognising the harm caused by sexuality and gender conversion practices (an object of the Act)?
4. What is the awareness level across the community, particularly communities of faith, about the Act and the complaints process?
5. Is the ACT HRC reporting mechanism effective, including pathways to the reporting of alleged crimes?
6. Is there a good understanding across the community of:
 - a. who the Act applies to and why?
 - b. what constitutes a sexuality or gender identity conversion practice?
7. Are the communications materials about the Act effective and reaching the right audience? This includes the effectiveness of the ACT HRC website as the main source of awareness about the Act and the complaint process.
8. How does the Act compare to similar legislation in other Australian jurisdictions (where applicable)?
9. Has the Act balanced the rights of LGBTIQ+ people with religious freedoms?
10. What, if any, are the impacts on the introduction and operation of the Act of:
 - a. the COVID-19 pandemic;

- b. reforms with respect to supported decision-making;
- c. general rises in homophobia and transphobia;
- d. asexuality and its pathologisation in mental and clinical health settings;
- e. the “watchful waiting” approach which stands in contrast to a gender-affirming model of care;
- f. advocacy for religious freedom laws;
- g. any emerging research and evidence about the harms caused by conversion practices; and
- h. conversion practices law reform in other jurisdictions.

11. Are there any legislative amendments necessary to clarify or facilitate the operation of the Act?

3. Background

The Act is one legislative reform in a broader body of work undertaken by the ACT Government to make Canberra the most welcoming and inclusive city for LGBTIQ+ people in Australia. The Act was recommended in a 2019 legal review¹ and introduced under the First Action Plan (2019-2021) of the Capital of Equality Strategy (2019-2023). Significant community consultation was undertaken to shape the Act so that it met community expectations and afforded LGBTIQA+² people protections from harmful conversion practices.

There have been developments across the ACT, Australia and internationally since the passing of the Act, which are useful in understanding the current context in which the legislation operates.

- There has been significant proactive and positive action in the ACT to remove barriers to equality for LGBTIQA+ people through the implementation of the First Capital of Equality Strategy which ended in December 2023.
- Two other Australian Jurisdictions and New Zealand have passed comparable legislation prohibiting conversion practices, with more states considering options.
- There has been maturing awareness of the issue of conversion practices among political and community leaders, but the depth and breadth of that awareness in the community remains modest.

Legislative audit

In 2019, CMTEDD commissioned Equality Australia to conduct an independent and comprehensive legal audit of ACT legislation and regulations which could discriminate or cause harm to LGBTIQ+ people (the

¹ https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0006/1663611/EQAU-ACT-legal-report-2019.pdf

² LGBTIQA+ is used throughout this document including the I for Intersex (also known as variations of sex characteristics or VSC). People with VSC are protected from sexuality and gender identity conversion practices under the Act. People with VSC are also protected from forced medical procedures in the ACT under the *Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023*.

Audit). The purpose of the Audit was to identify areas for law reform to remove discrimination and help to make the ACT a safe, respectful and inclusive jurisdiction for all.

Recommendations 49, 50 and 51 of the Audit related to conversion practices:

- **Recommendation 49:** The ACT Government should introduce legislation to prohibit conversion practices and define ‘conversion practices’ broadly for any conduct aimed at ‘changing’, ‘suppressing’, ‘curing’, ‘healing’, or ‘repairing’ a person’s sexual orientation or gender identity in a way which has, or is likely to have, a significant negative impact on a person’s mental health.
- **Recommendation 50:** The ACT Government should introduce legislation prohibiting conversion practices being engaged in by:
 - ‘professionals’ (defined to include social workers, unregistered and registered health practitioners, teachers and more) towards any adult, or
 - ‘any person’ towards a child under 18 or people who are particularly vulnerable to coercion (e.g. a person with a cognitive impairment, intellectual disability or experiencing mental health issues),as part of a package with non-legislative measures aimed at education, prevention and support.
- **Recommendation 51:** The ACT Government should insert a new offence into the Crimes Act 1900 (ACT) which criminalises the removal, or attempted removal, of another person from Australia for the purposes of forced or coerced conversion practices which would constitute a criminal offence in the ACT.

The Capital of Equality Strategy’s First Action Plan (2019-2021) responded to these recommendations under the action of “ban sexuality and gender identity conversion practices’, within the focus area of ‘keeping people safe from harm’.

Context in ACT law

Legislation implementing a ban on sexuality and gender identity conversion practices is not the only way in which conversion practices are prevented. The Act sits alongside other legal protections and supports available to LGBTIQ+ Canberrans.

The *Discrimination Act 1991* protects people from discrimination in most settings on a range of grounds including their sex, sexuality or gender identity. The Discrimination Act is being further strengthened by provisions to take effect this year, with positive obligations including:

- A duty to make reasonable adjustments to accommodate a person’s particular need arising from a protected attribute; and
- A duty for organisations and businesses and persons with organisational management responsibility within these entities to take reasonable and proportionate steps to eliminate discrimination, sexual harassment and unlawful vilification.

The ACT’s human rights framework also provides protections. This includes the capacity of a person to complain to the Health Complaints Commissioner about a health service, including a service from a

psychologist or other medical practitioner, if they believe the service is not being provided appropriately or does not meet a generally accepted standard of health service delivery.

Key professional organisations have released position statements and practice standards that support gender affirming care and oppose conversion practices.³ Attention can be drawn to these in any circumstance where a health professional might appear to be considering, or providing support to, a conversion practice.

The Act

Development of the Act

In 2020, in line with commitments made in the Capital of Equality First Action Plan, the ACT Government prepared a Bill that sought to:

- a) declare that 'conversion practices' are prohibited;
- b) vest the ACT HRC with the jurisdiction to handle complaints about conversion practices;
- c) allow a matter dealt with by the Commission that has not resolved through conciliation to be referred to the ACT Civil and Administrative Tribunal;
- d) introduce criminal offences for conversion practices directed at 'protected persons', and for the removal of these persons from the ACT for the purpose of exposing them to conversion practices; and
- e) make consequential amendments to the *Human Rights Commission Act 2005* to include in its jurisdiction complaints relating to sexuality and gender identity conversion practices.

Targeted consultation with identified stakeholders was undertaken to inform the drafting of the Bill. Stakeholders which provided input included an inter-directorate group, LGBTIQ+ groups, survivor groups of conversion practices, faith groups and leaders, education peak bodies, medical peak bodies and health organisations, community sector representatives and concerned individuals.

The Bill was passed by the ACT Legislative Assembly in 2020 and commenced on 4 March 2021.

Features of the Act

The Act declares conversion practices prohibited in the ACT and makes it a criminal offence to undertake conversion practices on protected persons.

³ These include Australian Psychological Society, 2021, 'Use of psychological practices that attempt to change or suppress sexual orientation or gender: Position statement', https://psychology.org.au/getmedia/7bb91307-14ba-4a24-b10b-750f85b0b729/updated_aps_position_statement_conversion_practices.pdf; AusPATH, 2023, 'Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents' version 1.4, https://auspath.org.au/2018/02/01/https-auspath-org-au-wp-content-uploads-2024-02-230242-rch-gender-standards-booklet-1-4_nov-2023_web-final_-pdf/; Royal Australian and New Zealand College of Psychiatrists, 2019, 'Sexual orientation change efforts', <https://www.ranzcp.org/clinical-guidelines-publications/clinical-guidelines-publications-library/sexual-orientation-change-efforts>

Definition

The Act defines conversion practices to mean '*a treatment or other practice the purpose, or purported purpose, of which is to change a person's sexuality or gender identity*'.

The definition targets the act of a conversion practice, rather than the ideology beneath such practices. The inclusion of 'purported purpose' is to capture misleading claims about the ability to change a person's sexuality or gender identity.

The Act outlines exclusions and examples of what is not a conversion practice under the Act. This ensures clarity regarding legitimate health interventions and supporting a person to affirm or explore their gender and/or sexuality.

The scope of this definition is not as broad as originally proposed by supporters of the prohibition. This is because of the need to promote and protect both LGBTIQ+ people's right to non-discrimination and the rights of individuals from diverse community groups, including faith communities, and LGBTIQ+ people belonging to faith communities, to the freedom of thought, conscience, religion and belief.

Offences

The Act contains two criminal offences which are applicable if a conversion practice is directed at a protected person. The offences are:

- Performing a conversion practice on a protected person; and
- Removing a protected person from the ACT for the purpose of a conversion practice being performed on them.

The Act defines protected persons to mean '*a child or a person who has impaired decision-making ability in relation to a matter relating to the person's health or welfare*'.

ACT HRC complaints mechanism

The Act makes it possible for the ACT HRC to accept complaints from persons directly affected by conversion practices. The Commission can also initiate consideration (own motion investigation powers) if a person is concerned about a practice and wants to raise it with the ACT HRC confidentially or anonymously. The ACT HRC is able to investigate complaints, try to resolve the complaint through conciliation, or where it is not able to resolve the complaint, it can make recommendations to the respondent to a complaint. If a matter is not able to be resolved through conciliation, a complainant can make an application to the ACT Civil and Administrative Tribunal to have the matter heard and determined.

Jurisdictional comparison

Jurisdictional comparison

The SOGICE Survivor group⁴, Equality Australia and the Australian Medical Association⁵ have called upon State and Territory Governments to legislate to protect LGBTIQ+ people from sexuality and gender conversion practices. The ACT has led change with the introduction of the Act, which was considered to be the most progressive and effective legislation prohibiting conversion practices. Other States are at different stages of law reform to prevent conversion practices.

Victoria

The [Change or Suppression \(Conversion\) Practices Prohibition Act 2021](#) (the Victorian Act) came into effect in Victoria on 17 February 2022. The Victorian Act prohibits change or suppression practices (as defined below). Like the ACT scheme, the Victorian Act introduces criminal offences and a civil response scheme.

For the purpose of the Victorian Act, change or suppression practice means a practice or conduct directed towards a person, whether with or without the person's consent -

- (a) on the basis of the person's sexual orientation or gender identity; and
- (b) for the purpose of—
 - (i) changing or suppressing the sexual orientation or gender identity of the person; or
 - (ii) inducing the person to change or suppress their sexual orientation or gender identity.

The Victorian Act differs from the ACT's by:

- Inclusion of *suppression* in the definition of conversion practices.
- Inclusion of examples of what constitutes a conversion practice.
- Offences apply when the conversion practices cause injury or serious injury.
- Inclusion of an additional offence of advertising conversion practices.
- The recipient of the conversion practice does not need to be a '*protected person*' for offences to apply.

The Victorian civil scheme is administered by the Victorian Equal Opportunity and Human Rights Commission. The Commission had resources available to communicate with relevant audiences about the Act and protections provided.

The Victorian Government is undertaking a review of the legislation in 2024.

⁴ <https://www.sogicesurvivors.com.au/wp-content/uploads/2020/12/Survivor-Statement-A4-Doc-v1-2-Digital.pdf>

⁵ <https://www.ama.com.au/sites/default/files/2021-11/AMA%20Position%20Statement%20-%20LGBTQIA%2B%20Health%202021.pdf>

Queensland

The Queensland Government's [Health Legislation Amendment Act 2019](#) (enacted 2020) amended the [Public Health Act 2005](#) to include a provision prohibiting 'conversion therapy' which is defined as:

“a treatment or other practice” (paid or unpaid) by a health care provider “that attempts to change or suppress a person’s sexual orientation or gender identity”.

The most significant differences between the ACT and QLD legislation are:

- QLD legislation is only applicable to health professionals.
- QLD legislation uses the term 'conversion therapy' and does include 'suppress' in the definition.
- Inclusion of examples of what constitutes a conversion practice.
- Criminal penalties apply when the practice is performed on a vulnerable person and others. The penalty for performing a practice on a vulnerable person is higher.

New Zealand

New Zealand legislated in 2022, passing the [Conversion Practices Prohibition Legislation Act 2022](#) (the New Zealand Act).

In the New Zealand 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

(b) is done with the intention of changing or suppressing the individual’s sexual orientation, gender identity, or gender expression.

The New Zealand Act is more closely aligned to the Victorian Act than the ACT’s. The New Zealand Act:

- Includes reference to “suppressing” sexual orientation, gender identity or gender expression in the definition of conversion practices.
- Includes examples of what would constitute a conversion practice.
- Includes an offence to cause serious harm through a conversion practice, regardless of the age or decision-making capacity of the person who is subjected to that practice.
- Specifies that consent is not a defence to either of these charges.

New Zealand’s Te Kāhui Tika Tangata (Human Rights Commission) administers the complaints mechanism and has resourcing available to communicate about the prohibition.

The table below shows the progress of other Australian States and Territories in relation to conversion practices.

State/territory	Status
New South Wales	The NSW Government is committed to banning gender and sexuality conversion practices ⁶ . The Government announced the legislation would be delayed until 2024. No draft government Bill is publicly available.
Tasmania	Public consultation on a draft Bill is finishing on until 16 February 2024 ⁷ .
Western Australia	An amendment to the Health and Disability Services Complaint Bill ⁸ , Section 77A, prescribed the National Code of Conduct for Healthcare Workers. Under this Code and the Amendment Bill, patients could make a complaint about conversion practices under the efficacy of treatment ⁹ or if they experience harm as a result of their treatment. Complaints are investigated and resolved by the Health and Disability Services Complaints Office, an independent Statutory Authority. A broader legislative ban has not yet been progressed.
South Australia	Nil action.
Northern Territory	Nil action.

Table 1: Status of conversion practices legislation across Australian Jurisdictions.

Conversion practices and LGBTIQ+ Healthcare

Australian medical professional bodies such as the Australian Medical Association, the Australian Psychological Society and the Royal Australian and New Zealand College of Psychiatrists have all opposed sexuality and gender identity conversion practices and called for more inclusive LGBTIQ+ healthcare based on ethical standards and respect for individual autonomy and self-determination.

⁶ <https://dcj.nsw.gov.au/about-us/engage-with-us/past-consultations/statutory-reviews/legislative-reform-ban-lgbtq-conversion-practices-nsw.html#:~:text=The%20NSW%20Government%20is%20committed,of%20Health%2C%20has%20been%20establishe d.>

⁷ https://www.premier.tas.gov.au/site_resources_2015/additional_releases/public-consultation-begins-on-conversion-practices-bill

⁸ [https://www.parliament.wa.gov.au/Parliament/Bills.nsf/0534F2F7A571DA8F48258862001E3387/\\$File/Bill%2B60-2%2B%282022%29.pdf](https://www.parliament.wa.gov.au/Parliament/Bills.nsf/0534F2F7A571DA8F48258862001E3387/$File/Bill%2B60-2%2B%282022%29.pdf)

⁹ [https://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/1a67566389b56ba94825887900240da7/\\$FILE/A41%20S1%2020220407%20p1788b-1805a.pdf](https://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/1a67566389b56ba94825887900240da7/$FILE/A41%20S1%2020220407%20p1788b-1805a.pdf). There is scientific evidence and a consensus across the health profession ([Australian Medical Association](#), [Australia Psychological Society](#)) that it is not possible to change a person's gender or sexuality.

The Australian Medical Association (AMA) released a position statement on LGBTQIA+¹⁰ Health in November 2021. The position statement calls on Australian Governments to *'ban 'conversion' practices that intend to change, alter or suppress a person's sexual orientation or gender identity'*.

The statement affirms the strong agreement across the Australian medical profession that conversion practices have no medical benefit or scientific basis, and there is evidence of significant harms. The AMA also asserts that conversations between patients and health professionals which are grounded in a genuine therapeutic intent and do not have the intent to change or suppress a person's sexuality or gender identity should not be considered conversion practices. The Act is consistent with this statement, with explicit exclusions articulated.

In its 2021 position statement the Australian Psychological Society (APS)¹¹ strongly opposes the use of psychological practices aimed at changing or suppressing a person's sexual orientation or gender identity. The statement is based on the lack of clinical evidence supporting the effectiveness of such approaches, as well as the documented negative effects of stigma on LGBTQIA+ individuals, including higher rates of depression. Instead, the statement reiterates that there is clinical evidence suggesting that these practices are harmful and exacerbate existing challenges faced by LGBTQIA+ communities. APS advocates for psychological approaches that challenge negative stereotypes, foster affirming social supports, promote self-acceptance, and increase mental health literacy, in accordance with their Code of Ethics and Ethical Guidelines for Psychological Practice with LGBTQIA+ clients. The Act is consistent with this statement in principle, noting that acts of suppression of a person's sexual orientation or gender identity are not included in the Act.

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) issued two statements¹² related to the topic. The 2019 RANZCP statement firmly opposes any form of sexual orientation change efforts, emphasising that there is no scientific evidence supporting the effectiveness of such practices and highlighting the significant harm they can cause individuals. The statement treats attempts to change one's sexual orientation as acts reinforcing prejudice and discrimination against diverse sexualities. The RANZCP underscores the importance of respecting individuals' rights to equal access to healthcare and protection from potentially damaging therapies, advocating for treatment approaches that prioritise acceptance, support, and identity exploration, while also respecting religious, spiritual, and cultural beliefs. This statement is aligned with the Act in opposing sexuality conversion practices.

In 2023 RANZCP issued its Position Statement on the role of psychiatrists in working with Trans and Gender Diverse people. The statement reaffirms the responsibility of psychiatrists to counter discrimination and provide person-centred care, ensuring equity of access to healthcare. The statement calls for the use of patient-preferred terminology and to provide culturally safe care. The statement specifically opposes conversion practices aimed at changing one's gender identity. RANZCP acknowledges that training and ongoing professional development in transgender health are essential for all psychiatrists. It also states that

¹⁰ <https://www.ama.com.au/sites/default/files/2021-11/AMA%20Position%20Statement%20-%20LGBTQIA%2B%20Health%202021.pdf>

¹¹ https://psychology.org.au/getmedia/7bb91307-14ba-4a24-b10b-750f85b0b729/updated_aps_position_statement_conversion_practices.pdf

¹² <https://www.ranzcp.org/clinical-guidelines-publications/clinical-guidelines-publications-library/role-of-psychiatrists-working-with-trans-gender-diverse-people> and <https://www.ranzcp.org/clinical-guidelines-publications/clinical-guidelines-publications-library/sexual-orientation-change-efforts>

psychiatrists must provide comprehensive assessment and evidence-based care, supporting individuals across the lifespan, including children, adolescents, and adults, while respecting their autonomy and diversity of experiences.

4. The Review

Section 10 of the Act requires the responsible Minister (Chief Minister) to arrange the review of the Act as soon as practicable after two years from the commencement of the operative provisions.

The Office of LGBTIQ+ Affairs in CMTEDD conducted the Review between August 2023 and February 2024, with a consultation period of 2 January 2024 – 29 January 2024.

The Review sought to obtain evidence about the operation and effectiveness the Act.

Consultation

In January 2024, CMTEDD wrote to 26 stakeholders inviting submissions on the operation and effectiveness of the Act.

1. Department of Families, Fairness and Housing, Victorian Government
2. Queensland Human Rights Commission
3. ACT Human Rights Commission
4. ACT Policing
5. The ACT Education Directorate
6. Catholic Education Office
7. Association of Independent Schools of the ACT
8. Office for Disability/ Disability Reference Group
9. Equal Voices
10. Rainbow Catholics
11. Anglican Diocese of Canberra and Goulbourn
12. GLBTIQ Intercultural and Interfaith Network
13. Rainbow Christian Alliance, Uniting Church
14. Australian Medical Association
15. The Royal Australian and New Zealand College of Psychiatrists
16. Canberra Sexual Health Clinic
17. Sexual Health and Family Planning ACT
18. LGBTIQ+ Ministerial Advisory Council
19. Meridian
20. Diversity ACT
21. SOGICE Survivors
22. A Gender Agenda
23. Forcibly Displaced People Network
24. Equality Australia
25. A.C.T Aces
26. Ministerial Advisory Council for Multiculturalism

Stakeholders were also provided the option to provide input via an in-person meeting with CMTEDD officials.

Nine written submissions were received and CMTEDD officials met with seven further stakeholders, including Victorian Government officials, the Victorian Equal Opportunity and Human Rights Commission, the ACT HRC and the ACT Justice and Community Services Directorate.

5. Findings and Discussion

Occurrence of conversion practices in the ACT

ACT Policing (ACTP) confirmed that no charges have been laid under the Act and no investigations have occurred by ACTP in relation to offences under the Act.

The ACT HRC has confirmed there have been no formal complaints made under the Act, but there have been six enquiries.

While the criminal and civil pathways in the Act have not been utilised, this should not be taken to mean conversion practices are definitely not occurring in the ACT. Stakeholders have described:

- Clients who reported they had been threatened with conversion practices when they disclosed their gender identity (noting it was not clear to the stakeholder whether this had occurred since the Act commenced).
- Clients of a service experiencing what is “*fundamentally a conversion practice, but that the language used by the provider around what is being done has meant that individuals have not felt they were able to report it under the Act*”.
- Medical practices experienced by asexual people in the ACT, which could be considered conversion practices. This includes the removing and changing of medications which are seen to reduce libido by health practitioners, for the purpose of ‘fixing’ a low/no libido, when this has not been requested by the patient.
- Medical practices which may have the same goals of conversion practices (to ‘fix’ a person’s sexuality or gender identity) under the guise of ‘watchful waiting’ and ‘gender exploratory theory’.
- Receiving correspondence from religious organisations within the ACT which implied that they may be willing to perform conversion practices if approached.

Another stakeholder identified four instances of conversion practices, taking the form of forced heterosexual marriage, occurring in other Australian jurisdictions.

Australian research suggests that up to 1 in 10 LGBT Australians remain vulnerable to conversion practices, with around 4% of LGBTIQ+ Australians aged 14-21 years having experienced conversion practices¹³.

It is significant that no definitive evidence was received from individuals or organisations reporting the occurrence of a conversion practice in the ACT since the legislation commenced. Although one stakeholder working with LGBTIQ+ people in the ACT indicated that there have been suggestions to some young people that the young person would be taken outside of the ACT in order to access conversion practices, it was not clear whether these threats occurred before or after the commencement of the legislation. Another stakeholder stated they had not heard reports of conversion practices since the Act passed, however were aware of instances in which LGBTIQ+ people have experienced harm due to their treatment in faith communities. This related to anti-gay sermons, transphobia in faith-based schools, and a lack of pastoral support and understanding.

Support for the Act

At the time of passing, the Act was considered by some to be amongst the best in the world. Stakeholders generally continue to be supportive of the intentions and protections provided by the Act.

Some stakeholders considered the Victorian legislation to be the strongest survivor-led legislation to date, but that the ACT's legislation remains a sound model.

No stakeholders made arguments for relaxing the legislation, limiting its scope or removing any of its protections. No stakeholders argued that conversion practices of any kind should be able to occur, and none identified substantial problems with the Act's administration arising from the construction of its provisions.

Awareness and Education

Awareness and the need for education about various aspects of the Act and conversion practices was the strongest theme across multiple submissions. It was recognised that there was good media coverage when the Act passed, however stakeholders reported that ongoing communications have been minimal.

Issues identified by stakeholders regarding awareness and education included:

Who is protected by the Act?

- The Act takes the definition of sexuality from the *Discrimination Act 1991* ('sexuality includes heterosexuality, homosexuality and bisexuality). Asexual stakeholders indicated uncertainty and concern about whether the Act protects them from conversion practices (see also discussion later in this report).
- A stakeholder reported that people with limited decision-making capacity, particularly adults who rely on others for decision support, are at particular risk of conversion practices.
- There is low awareness about how to access the complaints process.

¹³ *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*.

- One service provider working with LGBTIQ+ people described their experience assisting service users who were seeking information about and support accessing the ACT HRC complaint process. Given there have been no formal complaints to date, this raises a question about whether people had sufficient confidence to initiate a complaint. However, the ACT HRC did note that some people who made inquiries about conversion practices were concerned that they might be occurring, but had not experienced them themselves, and did not necessarily have evidence that they had been undertaken on a person since the Act had commenced.
- The ACT HRC stated there is not enough data to say if the pathway is effective in terms of community awareness and uptake of reporting to ACT HRC and/or ACTP.

Identifying a conversion practice

- One stakeholder raised the question of whether, if a person experiences a forced/arranged marriage for the purpose of changing a person's sexuality, they are protected by the Act.
- Some stakeholders discussed a perceived lack of clarity in Section 7 of the Act, which may impact on health practitioners' understandings of what constitutes a conversion practice, as well as an individual's capacity to identify if they are being subjected to a conversion practice.
- Two stakeholders discussed the underlying cause and nature of conversion practices, which may inform how conversion practices are defined. One stakeholder highlighted the importance of understanding underlying ideology of conversion practices: the belief that any sexuality and gender identity than heterosexual and cisgender is defective and must be fixed. Another indicated that conversion practices can be seen as a manifestation of gender-based violence and related to female genital mutilation and coercive control.
- A stakeholder suggested that conversion practices were difficult to identify because medical conversion practices are normalised amongst the asexual community, meaning they may not be recognised as such by either the health professional or their patient.
- Another stakeholder stated that while the Act could be read by someone with experience understanding legislation, a lay person would have difficulty and benefit from more explicit examples of what a conversion practice is.

Awareness of harm caused by conversion practices

- One stakeholder suggested there is a persistent perception outside the LGBTIQ+ community that a person's sexuality and/or gender identity can be changed, and people should be given the opportunity to do so.
- One stakeholder reported that the Act has increased awareness among health practitioners of the harms caused by conversion practices.

Stakeholders' suggestions included:

- Increase the focus on the deterrence and educative aspects of the Act, in order to prevent conversion practices.
- Conduct awareness raising, education and training to increase knowledge among those who may be at risk of performing conversion practices or experiencing conversion practices. Stakeholders suggested the ACT could consider adopting or seeking permission to use Victorian training packages.

- Clarify the definition of conversion practices in order to assist the community identify practices and better enable anyone experiencing conversion practices to seek support and justice.
- When preparing educative materials, situate conversion practices as a manifestation of gender-based violence.
- Ensure that awareness raising and outreach is suitable for the diversity of cohorts who may be affected by conversion practices, including people in conservative faith communities, LGBTIQ+ forcibly displaced people¹⁴ and people with a disability.
- Seek to use existing structures to deliver awareness material, such as the National Council of Churches in Australia's Safe Church training¹⁵ program and church organisational websites. This stakeholder also recommended information brochures which could be distributed to faith communities.
- Ensure that funding is provided to community organisations led by LGBTIQ+ forcibly displaced people to enable targeted primary prevention of and support after experiences of sexuality and gender identity conversion practices.
- Conduct a public health campaign about the harms of conversion practices.

Legislative Change

Stakeholders raised a variety of potential amendments to the Act which, in their view, would clarify and/or strengthen the Act. The areas for consideration are described below. The issues of consent, inclusion of suppression and the type of offences included in the Act were considered at the time of drafting the Act. Since the passing of the Act, each jurisdiction that has legislated in the field reached slightly different positions on some aspects of how their legislation operates.

The ACT HRC considered that more time should be given to support community awareness of the legislation prior to considering any amendments.

Consenting adults: Three stakeholders raised the concept of consent in relation to a conversion practice. One stakeholder believed the law should allow for adults to seek out and consent to conversion practices. Restricting this via the Act could potentially infringe on a person's Human Rights, particularly the right to freedom of thought, conscience, religion and belief.

Three stakeholders countered this position, stating that the Act should prohibit conversion practices regardless of consent and explicitly exclude consent as a defence to the charge (as the New Zealand legislation currently does). They argued that full informed consent to conversion practice is not possible due to the deceptive nature of claims, and because such practices take place in the context of deeply reinforced stigma, discrimination, coercion and pressure. They suggest, even if a 'consenting adult' seeks a conversion practice, the ethical response is not to provide such a practice as there is no evidence such practices work and there is evidence the practices harm, even when there is consent.

¹⁴ LGBTIQ+ Forcibly Displaced People are individuals who have been forcibly displaced from their homes due to persecution based on their gender identity or sexual orientation. This includes asylum seekers, refugees and migrants.

¹⁵ <https://www.ncca.org.au/departments/safe-church-program>

Suppression: Four stakeholders sought for ‘suppression’ to be added to the Act’s definition of conversion practices. One stakeholder drew attention to Australian research¹⁶ which documents that 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”*.

As outlined in the [jurisdictional comparison](#), suppression is included in the Victorian, Queensland and New Zealand Acts. Suppression is also a feature in the Australian Medical Association and the Australia Psychological Society position statements on conversion practices as discussed in the section on [LGBTIQA+ Healthcare](#).

Offences: One stakeholder recommended that the offences in the Act transition to a harm-based model rather than the current model, which applies offences only when conversion practices are performed on a protected person. A harm-based model has been applied in Victoria and New Zealand to avoid over-criminalisation, as part of an alternative approach in legislation that extends protections to all people (not just, for example, minors). The New Zealand legislation contains a hybrid model for its offences - the first offence covers performing any conversion practice on a person under 18 or a person lacking decision making capacity, while the second offence, that covers everyone rather than just those lacking decision making capacity, involves performing a conversion practice that causes serious harm.

ACT HRC complaint mechanism: One stakeholder commended the existing powers provided to the ACT HRC, and recommended additional powers which may be considered, to strengthen the ACT HRC complaints scheme. These recommendations include the power to conduct research and collect data to address conversion practices, an obligation to develop and disseminate information and educate the public on the harms caused by conversion practices, the power to investigate ‘tip offs’ about conversion practices from the general public and the power to directly issue compliance notices or seek protective orders.

Section 7: Section 7 of the Act sets out the meaning of sexuality or gender identity conversion practice. It attracted the most discussion among stakeholders, who were generally concerned about whether the clause may be too limited or contain loopholes that could allow conversion practices to continue. Four stakeholders commented specifically on the need to strengthen section 7 (3) of the Act. This subsection states:

- (3) Also, sexuality or gender identity conversion practice does not include a practice by a health service provider that, in the provider’s reasonable professional judgment, is necessary to—
- (a) provide a health service in a manner that is safe and appropriate;
- or
- (b) comply with the provider’s legal or professional obligations

Section 7 (3) of the Act

¹⁶ 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.

A question was raised about what the concept of ‘reasonable’ professional judgement might cover. For example:

- Would it be acceptable to make a judgement that would have been considered ‘reasonable’ in the past, but the practitioner was relying on outdated professional knowledge or a lack of knowledge altogether of appropriate LGBTIQ+ health care?
- Would a practitioner be able to claim their professional judgement was ‘reasonable’ if they could point to other currently practicing professionals holding the same views, even if those were both in a minority and not consistent with a position statement of their profession?

Some stakeholders argued that the ‘or’ between items (a) and (b) could inappropriately protect a practitioner who believes their actions, which may constitute a conversion practice, are safe and appropriate, without regard to their legal or professional obligations. Stakeholders recommended modelling this section instead on New Zealand’s approach, which requires health practitioners to meet legal, ethical and professional obligations.

Two of these stakeholders also sought to strength section 7 (2) of the Act to better protect a person seeking support with their gender identity.

However, sexuality or gender identity conversion practice does not include a practice the purpose of which is to—

- (a) assist a person who is undergoing a gender transition; or
- (b) assist a person who is considering undergoing a gender transition; or
- (c) assist a person to express their gender identity; or
- (d) provide acceptance, support or understanding of a person; or
- (e) facilitate a person’s coping skills, social support or identity exploration and development.

Section 7 (2) of the Act

Point (d) was of particular concern to survivors. The nature of conversion practices is that they are frequently offered or performed under the guise of ‘acceptance, support or understanding’ however the underlying purpose of the practice is to ‘fix’ the person’s sexuality or gender identity.

Another stakeholder recommended a note contained under section 7 (2) of the Act be moved to the body of the Act. The note states ‘it is not intended that the mere expression of a religious tenet or belief would constitute a sexuality or gender identity conversion practice’. The stakeholder argued that moving the note to the body of the Act would improve the clarity of the Act.

6. Conclusion

The 2020 Explanatory Statement for the original legislation states: “The ACT Government is committed to the prevention of harm and supporting equality, diversity and inclusion within the Territory.” The

government's intention is that no-one should ever be subjected to any treatment the purpose, or purported purpose, of which is to change a person's sexuality or gender identity. These treatments represent the rejection of equality and diversity among our community and as noted in the Explanatory Statement, "these practices are based on misleading claims and have been shown to be ineffective and harmful."¹⁷

The most important purpose of the reform is to prevent conversion practices from occurring. While the legislation creates both a civil complaints-based scheme and criminal penalties, these require a conversion practice to have been undertaken, which means a vulnerable person will already have been harmed. The main purpose of the civil and criminal provisions is to support a clear understanding in the community that conversion practices are always wrong, and that there are better ways – inclusive ways – to support people, especially young people, who have diverse sexualities or gender identities.

The review found no definite evidence of any conversion practices being performed within the ACT since the commencement of the legislation, which is encouraging, and an indication that the legislation may be proving effective.

The review also heard concern in the LGBTIQ+ community about whether those at risk of performing conversion practices had sufficient understanding of what these practices are and that they are wrong. It also observed concern about whether all health practitioners are sufficiently up-to-date in their training and their understanding of practices that could be considered conversion practices that must be avoided, particularly in respect of gender diverse children, and asexual adults. These concerns were raised not in the context of known conversion practices currently taking place, but because stakeholders considered that poor awareness of the law, and in some places resistance to the protections it puts in place, may mean some people are still being placed at risk of harm through these practices.

The key message from the review was that awareness could be increased about the reforms and about the harms that can be caused by conversion practices, to ensure they never occur again.

Questions about the adequacy of the provisions and wording of the legislation are more complex. It is not clear, for example, whether the legislation already does provide protections in some areas where some stakeholders are worried it may not. For example, asexual stakeholders indicated uncertainty and concern about whether the Act protects them from conversion practices. The *Sexuality and Gender Identity Conversion Practices Act 2020* takes the definition of sexuality from the *Discrimination Act 1991* ('sexuality includes heterosexuality, homosexuality and bisexuality'). The Government has considered the history of the relevant legislative scheme. The definition in the *Discrimination Act* is not designed to be exhaustive and should be read to include other kinds of sexuality, including asexuality and sexualities that are self-defined by an individual. This understanding is consistent with the Explanatory Statement to the *Justice Legislation Amendment Bill 2020*, which introduced the current definition. The Explanatory Memorandum stated that the Bill was to amend "the definition of 'sexuality' to be non-exhaustive, to include other kinds of sexuality".

¹⁷ Sexuality and Gender Identity Conversion Practices Bill 2020 Explanatory Statement, https://legislation.act.gov.au/View/es/db_62959/20200813-74809/html/db_62959.html

Given the lack of confirmed cases of conversion practices in the ACT, and the lack of evidence that any complaint was unable to be pursued, there is not a compelling case that the Act needs to be adjusted in order to ensure the protections it set out to give Canberrans.

The review heard that other jurisdictions are in the process of considering reform and the largest jurisdiction with protections currently in place – Victoria – is just about to undertake a review of its legislation, to be completed this year.

In these circumstances, the review concludes that, while there are provisions in the Act, particularly section 7, that could be considered for refinement, three things should occur before that is undertaken:

- more expert advice, including legal advice, should be sought about the effects of the current provisions;
- the government should take account of the findings of the Victorian legislation review, with a particular focus on whether the alternative language and approaches in some of its legislative provisions have either made it more effective, or raised potential issues, that the ACT should then consider; and
- steps be taken to create greater awareness of the legislation and of the harms caused by conversion practices, particularly among those at risk of offering conversion practices, and among members of the community at risk of being subjected to these practices.

In raising community awareness around the legislation, attention should be paid to making connection with practitioners and populations that the review was made aware may face particular risks of causing, or experiencing, harm. The review did not receive extensive detailed evidence in these areas, but did have sufficient issues raised with it to warrant the government noting a need to examine these more closely as awareness-raising continues. These include:

- culturally and linguistically diverse populations where conversion practices may take on different forms that are not well understood to be harmful or illegal;
- adults with impaired decision-making capacity and their guardians; and
- health professionals, particularly with regard to offering safe care for gender diverse young people, and asexual adults.

7. Recommendations

Recommendation 1: The Office of LGBTIQ+ Affairs in partnership with the ACT Human Rights Commission conduct awareness raising and educational activities with stakeholders who may be at risk of performing conversion practices, explaining those practices, the harm they cause and the protections put in place by the Act.

Recommendation 2: The Office of LGBTIQ+ Affairs in partnership with the ACT Human Rights Commission conduct awareness raising and education activities informing community members who may be at risk of experiencing conversion practices about the protections available under the Act and how to access the complaints mechanism.

Recommendation 3: The government give further consideration to whether current legislative provisions would provide protection in situations raised by survivor groups and other stakeholders as needing protection and, subject to advice, consider possible amendments to the Act in the future, including the definition of conversion practices. Consideration of future amendments should take account of the effects of further awareness raising and education, outcomes of the Victorian government’s review of its conversion practices legislation occurring in 2024 and other jurisdictional legislation.