

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

Dear Mrs Jones

I write to thank you for the Scrutiny Report 49 of 18 August 2020, which includes comments on the Sexuality and Gender Identity Conversion Practices Bill 2020 (the Bill), and to respond to the matters the Committee has raised.

The Committee therefore requests further information on what other options were considered to more clearly limit the forms of religious teachings or other beliefs that may be within the meaning of conversion practices for the purposes of the Bill and why they were considered inappropriate to achieve the legitimate objectives of the Bill.

As outlined in the Explanatory Statement, the definition of conversion practices is intended to cover practices that actively seek to change the sexuality or gender identity of a person. It is not intended that mere expressions of religious tenets or beliefs relating to sexuality or gender identity would constitute a conversion practice, nor would failing to provide support to a person.

The definition included in the Bill is deliberately narrow to focus on practices that actively seek to change the sexuality or gender identity of a person, rather than a broader definition that could encompass expressions of religious tenets on sexuality. This was considered to be the least rights restrictive approach available to fulfil the objectives of the Bill.

A carve out for religious organisations who perform conversion practices was contemplated but was considered to be inappropriate, given the demonstrable harm caused by conversion practices, the absence of any evidence to suggest any benefit or success in conversion practices, and the evidence of survivors relating to the long term harmful impacts of these practices (see La Trobe University, Gay & Lesbian Health Victorians & the Human Rights Law Centre, [Preventing Harm, Promoting Justice: Responding to LGBT conversion therapy in Australia](#) (2018))

Particular exceptions have been listed in order to clarify kinds of practices which are not sought to be prohibited. As the objective of the legislation is the prevention of harm, these exceptions tend to focus on supportive and professional health services.

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The inclusion of an exception for providing support and affirmation for a person's sexuality or gender identity does not mean that a failure to provide such support is prohibited. The intention is to clarify that individuals seeking to explore their sexuality or gender identity and/or transition would not be prohibited under the Bill.

The Committee therefore seeks further information on the role that consent may play in the context of the removal offence. (and whether it applies to adults with impaired decision-making ability)

The removal offence applies to a 'protected person', meaning a child or a person who has impaired decision-making ability in relation to a matter relating to the person's health or welfare. The offence applies to an adult with impaired decision-making ability in relation to a matter relating to the person's health or welfare, even if they have the capacity to consent to removal from the ACT. This is because the offence is intended to protect vulnerable persons from the harm caused by conversion practices and is not related to a technical ability to consent.

The Committee is concerned that a person may be subject to orders from ACAT—including the practice not be repeated or the payment of compensation—in circumstances where the individual bringing the complaint had consented to the practice and the person complained about played no role in influencing that consent. The Committee therefore requests further information from the Minister as to how consent to the conversion practice, particularly in circumstances where that consent was not influenced by the person carrying out the practice, would affect any order made by ACAT.

The prohibition on conversion practices is targeted at the practices themselves, and the legislation has been developed in a way that allows the complaints framework to respond to matters on a case by case basis. Even if an adult who has the capacity to consent agrees to undertake conversion practices, but later comes to realise the harmful nature of those practices, they are able to make a complaint.

Consent, in these circumstances, can be a nuanced and complex concept, and may be influenced by a range of factors including misleading claims about the efficacy of conversion practices. The Bill has been drafted to ensure that in making orders the ACAT is required to consider mitigating factors and may consider any other matter that it considers relevant. This would allow the ACAT broad scope to consider the individual circumstances of the case, including the conduct of all parties, rather than excluding matters based solely on issues of consent.

Yours sincerely

Andrew Barr MLA
Chief Minister