

FACT SHEET

Justice Miscellaneous (Conversion Practices) Bill 2024

Our Government wants Tasmania to be a place where everyone feels valued, included, encouraged and supported to be the best they can be. This is why providing a safe and inclusive community for LGBTIQ+ people that supports health, wellbeing and participation is a priority for the Tasmanian Government.

We are committed to making decisions on the basis of expert advice and best practice with priority focus on the physical and mental health and wellbeing of all Tasmanians.

The Justice Miscellaneous (Conversion Practices) Bill 2024 makes amendments to the *Health Complaints Act 1995* and the *Police Offences Act 1935* to give effect to the Government's commitment to ban harmful sexual orientation and gender identity conversion practices in Tasmania (hereafter referred to as 'conversion practices').

What are conversion practices?

A 'conversion practice', as defined in the Bill, is a practice that attempts to change or eradicate the sexual orientation or gender identity of another person. However, the Bill contains several important exclusions. For example, practices by health service providers that are clinically appropriate and/or in compliance with professional obligations, as well as more general actions such as providing support or understanding to another person, are not conversion practices for the purposes of this Bill. Further, for the avoidance of any doubt, the Bill expressly states that a practice that amounts to no more than the expression of an opinion, idea or belief, including a statement of religious principle or parental guidance, by a person is not a conversion practice for the purpose of the Bill.

Examples of conduct that would constitute a conversion practice include:

- Inducing nausea, vomiting or paralysis while showing the recipient a stimulus connected to their sexual orientation or gender identity (such as same-sex images).
- Providing instruction, direction or advice to the recipient in relation to 'curing' their homosexuality.
- Using coercion to give the recipient an aversion to same-sex attractions.
- Using other techniques on the person encouraging the person to believe being lesbian, gay, bisexual, pansexual, queer, transgender or having innate variations of sex characteristics is a defect or disorder.

Examples of conduct that would likely not constitute a conversion practice include:

- Advising a person about the potential side effects of sex-hormonal drugs or the risks of having, or not having, surgical procedures.
- Exploring psychosocial factors with a person or probing a person's experience of sexual orientation or gender identity.
- Providing a speech pathology or gender transition service for a trans-gender or gender-diverse person wishing to alter the person's voice and communication to better align with the person's gender identity.
- Support or guidance that may be provided to a person by their family or in religious

or spiritual settings.

What classifies as 'sexual orientation' or 'gender identity'?

These terms are already defined in the *Anti-Discrimination Act 1998*.

Sexual orientation includes heterosexuality, homosexuality, and bisexuality.

Gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of an individual including gender expression (whether by way of medical intervention or not), with or without regard to the individual's designated sex at birth, and may include being transgender or transsexual.

Why do we need a ban on conversion practices?

The mainstream medical consensus is that:

- LGBTIQ+ attributes are not faults or dysfunctions;
- Conversion practices lack efficacy (they are not successful in doing what they claim to do in a safe or reliable way); and
- Conversion practices involve a significant risk of causing serious and lasting harm to those subject to them.

Given the absence of a medical basis for these practices, and their potential to cause harm, there is a clear need for regulation.

Will this criminalise parents talking to their children about sex and gender?

No. Government recognises that there are differences of opinion in the medical and mental health professions in relation to care for people with issues of gender identity. Given the evidence available nationally and internationally, the legislation will not restrict supportive care, guidance, or mentoring of a child by a parent or guardian. The ban on conversion practices will not require parents to assist their child to seek gender affirming care nor will it prevent parents from seeking legitimate health care for their child.

Will the ban restrict legitimate medical and religious practices?

Conversion practices are distinct from support that may be provided to a person by health professionals, family and friends, or in religious or spiritual settings. As outlined, the Bill specifically provides that expression of a belief or opinion alone is not a conversion practice.

Our Government supports freedom of religion and the right for all people to express their personal faith, beliefs, and values, including for the purposes of making contributions to public policy debates.

This reform is not intended to limit people's ability to have open discussions as part of policy debates, and within families, faith communities and clinical settings. It will not restrict legitimate health care conducted by health service providers in line with recognised standards. It does not mandate any specific form of treatment and will not require doctors to provide gender affirming treatment for patients seeking assistance with sexual orientation and gender identity issues. It will not limit ordinary faith-based practices, such as prayer or sermons.

What role does the *Health Complaints Act 1995* have in this space?

The health complaints framework is designed to promote and protect the rights of consumers

who use health services in Tasmania, as well as improve the safety and quality of those health services. It is already capable of responding to allegations of conversion practices conducted in traditional health service settings, such as in hospitals or doctors' offices. The Commissioner has the power to investigate the provision of 'health services' provided by 'health service providers', and make a report containing information, comments, and recommendations for action. For example, a person could lodge a complaint of negligent or unprofessional behaviour by a health service provider, or the provision of a service that was unnecessary.

Under the Act, a 'health service provider' is broadly defined as being a person who provides, or holds themselves out as being able to provide, a health service. Professionals such as general practitioners or psychologists clearly fall within this definition.

The current definition of 'health service' is 'a service provided to a person for, or purportedly for, the benefit of human health', which is further defined as specifically including services specified in Part I of Schedule I of the Act. Part I contains a list of established health services, such as services provided at a hospital, health institution or nursing home, as well as 'any other service provided by a provider for, or purportedly for, the care or treatment of another person'.

Do people performing pseudo-medical or pseudoscientific practices fall within the scope of the Health Complaints Act 1995?

The Commission is able to receive complaints about both registered and unregistered health service providers, providing the practice fits within the definition of a health service within Part I of Schedule I.

Has the National Code of Conduct been implemented in Tasmania?

The *Health Complaints Amendment (Code of Conduct) Act 2018* has been passed by Parliament, but has not yet received Proclamation. The purpose of the Act is to set minimum standards of conduct and practice for all unregistered health care workers who provide a health service (for example, by requiring them to provide safe and ethical healthcare, and to obtain consent for treatment). The Act implements the national standards set, and ensures disciplinary action can be taken, and if necessary, prohibition orders issued to ensure public safety. Such an order may either prohibit the health care worker from providing the health service, or it may impose conditions on the health care worker (for example, a condition that the person is unable to provide health services to children). Contravention of a prohibition order is an offence punishable by a fine not exceeding 150 penalty units (\$27,150) or a term of up to one year imprisonment. Health occupations likely to be captured by this new framework include counsellors, massage therapists, naturopaths, and alternative therapists.

What amendments are being made to the Health Complaints Act 1995?

The only amendments the Bill makes to this Act relate to the definition of 'health service', to ensure any conduct relating to the assessment or treatment or sexual orientation or gender identity falls within the scope of the Act.

The first amendment is to remove the requirement that, to constitute a 'health service', the service must be 'for the benefit of human health'. This requirement has led to practices which should constitute a health service, such as cosmetic procedures or surgery, being unnecessarily excluded from the jurisdiction of the Health Complaints Commissioner. This change will mean that 'health services' will simply be a service listed in Part I of Schedule I,

but not listed in Part 2 (the services in Part 2 are very limited in scope, relating to either workers compensation or asbestos-related diseases).

The next amendment inserts a new item into Part 1 of Schedule 1 as constituting a 'health service'. It is likely that a doctor conducting a conversion practice on a patient in a hospital would fall within the existing scope of the Act. However, conversion practices might be performed in other settings, such as in educational or religious facilities. To cover these scenarios, the Bill amends the definition of 'health service' to specifically address services provided for, or purportedly for, the assessment or treatment of a person in relation to their sexual orientation or gender identity, including attempts to change or eradicate those attributes. This amendment ensures such conduct is capable of being subject to the oversight of the Health Complaints Commissioner, noting however that the person conducting the practice must also be a 'health service provider' (whether registered or unregistered).

What amendments are being made to the *Police Offences Act 1935*?

The Bill introduces two new offences relating to conversion practices. As these are criminal offences, all elements must be proved by the prosecution beyond reasonable doubt before the offence is established.

The first offence, proposed new section 29, makes it an offence to carry out a conversion practice that causes physical or mental harm to the recipient of that conversion practice. Consent will be a defence if the person consenting was an adult – the definition of consent is consistent with the provisions in section 2A of the *Criminal Code Act 1924*.

The second offence, proposed new section 30, makes it an offence to publish or display an advertisement or notice that promotes conversion practices.

The remaining new sections set out the circumstances in which a body corporate may be found liable for the new offences and provide that the offences are summary offences.