



YOUR PRACTICE & THE LAW: CONVERSION THERAPY BANS

the implications for medical practitioners in QLD,
ACT and VIC

This paper considers recent legislation that has been passed in Queensland, Victoria and the ACT that prohibits medical practitioners from participating in “conversion therapy” practices and the implications for practitioners in Australia going forward.

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CONVERSION THERAPY LAWS AND THE IMPLICATIONS FOR AUSTRALIAN MEDICAL PRACTITIONERS

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1. **Background**
 - 1.1. In 2020 and 2021, three Australian jurisdictions – Queensland (QLD), the Australian Capital Territory (ACT) and Victoria (VIC)– passed legislation to ban the practice referred to as “conversion therapy”.
 - 1.2. “Conversion therapy” is a broad term that has been coined by lesbian, gay, bisexual, transgender and queer (LGBTQ) advocates. Conversion therapy rests on a number of assumptions:
 - (a) that there are multiple sexual orientations. A person’s sexual orientation is a biologically determined condition that a person is born with and which is fixed for life but which a person will subjectively discover for themselves during their life;
 - (b) that gender identity is a fixed condition that is independent of a person’s biological sex and which is subjectively defined by a person.
 - 1.3. Resting on these assumptions, “conversion therapy” is used to describe any practice which has the purpose of changing an LGBTQ person’s subjectively determined sexual orientation (which purportedly cannot be changed), or subjectively determined gender identity or expression (which also purportedly cannot be changed).
 - 1.4. In common usage, the term is directly associated with long discredited clinical practices from the mid-20th century which used aversion therapy techniques to deal with unwanted same-sex attractions and which allegedly included forms of abuse (including historical practices such as lobotomy, aversion therapy, nausea treatments and confinement).¹
 - 1.5. In the Australian context, while aversion therapy techniques are often a reference point, the main context in which “conversion therapy” is used is in reference to “therapeutic” clinical therapies such as cognitive behavioural therapies that provide thinking and mental strategies or “religious based” therapies (such as counselling, prayer, scripture reading and fasting).
 - 1.6. The rationale behind banning conversion therapy includes a belief that it causes harm to its subjects, including distress, psychological damage, feelings of guilt and isolation and internalised self-hatred, confusion and shame.²
 - 1.7. The medical profession has expressed concerns about the implications for healthcare practitioners for each of the legislative initiatives to introduce a conversion therapy prohibition.³

¹ The Conversation, ‘Why Australia needs a national ban on conversion therapy’, (8 September 2020) at <https://theconversation.com/why-australia-needs-a-national-ban-on-conversion-therapy-145410>.

² The Conversation, ‘Why Australia needs a national ban on conversion therapy’, (8 September 2020) at <https://theconversation.com/why-australia-needs-a-national-ban-on-conversion-therapy-145410>.

³ National Association of Practising Psychiatrists, ‘NAPP Submission on Conversion Therapies’ (2020), at <https://www.parliament.qld.gov.au/work-of-committees/former-committees/HCDSDFVPC/inquiries/past->

- 1.8. Peak bodies within the Australian medical profession have correctly identified that conversion therapy prohibition legislation poses a significant risk to medical practitioners. They are concerned that the legislation could:
 - (a) lead to the prosecution of medical practitioners providing legitimate and evidence-based treatments to patients;
 - (b) limit the access to needed treatment for children and adolescents who present with gender dysphoria;
 - (c) override professional discretion and clinical judgment by exposing legitimate debate within the profession to the courts; and
 - (d) limit medical options and encourage people presenting with gender dysphoria to seek invasive chemical and surgical treatments that pose documented and concerning health risks.⁴
- 1.9. Out of the three jurisdictions that now have enacted conversion therapy laws, QLD was the only state legislature that provided a formal consultation process to the public and the medical profession by inviting parliamentary submissions.
- 1.10. In VIC and the ACT, the Bills were rushed through the legislative process without significant consultation. Peak medical bodies and medical practitioners in both jurisdictions expressed concerns about this lack of consultation.⁵
- 1.11. Medical treatment that encourages gender transition and active embrace and expression of same-sex attraction is given clear protection by these laws. However, any healthcare treatment that does not encourage self-identification or expression of LGBTQ+ sexual orientations or gender identities will expose health practitioners to risk.
- 1.12. What follows is an overview of each of the Acts in QLD, the ACT and VIC and the particular difficulties that they present for medical practitioners dealing with issues of sexual orientation or gender identity in each of these jurisdictions.

[inquiries/HealthLAB2019](#); The Royal Australian and New Zealand College of Psychiatrists, 'RANZCP Submission on Health Legislation Amendment Bill 2019' (23 January 2020), at <https://www.parliament.qld.gov.au/work-of-committees/former-committees/HCDSDVPC/inquiries/past-inquiries/HealthLAB2019>; AMA Queensland, 'AMA Submission on Health Legislation Amendment Bill 2019' (31 January 2020), at <https://www.parliament.qld.gov.au/work-of-committees/former-committees/HCDSDVPC/inquiries/past-inquiries/HealthLAB2019>.

⁴ National Association of Practicing Psychiatrists, 'Letter to the ACT Parliament' (30 June 2020), at <https://static1.squarespace.com/static/5f322e36d5e561588e310a43/t/5f619965efbca1309ee0ae19/1600231781927/2020+Submission+to+ACT+Parliament.pdf>.

⁵ Christian Dental and Medical fellowship of Australia, 'Letter to the ACT Chief Minister', at <https://static1.squarespace.com/static/5f322e36d5e561588e310a43/t/5f619986242abe11d0ff5200/1600231815792/2020+Final+Letter+to+Chief+Minister+ACT.pdf>; – maybe even provide one from the law societies as well if we have time.

2. QLD – Overview of the relevant act and its implications for medical practitioners

- 2.1. In mid-2020, QLD became the first state in Australia to ban conversion therapy.⁶ It enacted the [Health Legislation Amendment Act 2020 \(QLD\)](#) (QLD Act), which added new provisions to the [Public Health Act 2005 \(QLD\)](#).⁷
- 2.2. The relevant bill was passed by a margin of 47-41 votes. While some politicians deemed the covered practices “highly destructive and unethical”, other politicians argued that the law would “turn doctors into criminals”.⁸ Members of the medical profession also raised concerns regarding the potential implications of the QLD Act.⁹
- 2.3. “Conversion therapy” is now defined in the *Public Health Act* in section 213F as follows:

Definition of “conversion therapy”

213F Meaning of conversion therapy

- (1) *Conversion therapy* is a practice that attempts to change or suppress a person’s sexual orientation or gender identity.

Examples–

- a practice attempting to change or suppress a person’s sexual orientation or gender identity by–
 - inducing nausea, vomiting or paralysis while showing the person same-sex images
 - using shame or coercion to give the person an aversion to same-sex attractions or to encourage gender-conforming behaviour
 - using other techniques on the person encouraging the person to believe being lesbian, gay, bisexual, transgender or intersex is a defect or disorder

- 2.4. This definition is extremely broad, meaning that it could be applied to a very wide range of situations. The examples provided give some indication of what parliament was intending to prohibit, but this is not a limit on how broadly this provision can be applied.

Definition of “sexual orientation” and “gender identity”

- 2.5. Medical professionals need to be aware of how “sexual orientation” and “gender identity” are defined in these Acts because this will have a direct bearing on whether a practitioner’s actions can be considered to be directed towards change or suppression of someone’s sexual orientation or gender identity.

sexual orientation, of a person, means the person’s capacity for emotional, affectional and sexual attraction to, and intimate and sexual relations with, persons of a different gender, the same gender or more than 1 gender.

⁶ Nationwide News Pty Limited, ‘Queensland becomes first Australian state to ban gay conversion therapy’, (14 August 2020) at <https://www.news.com.au/national/queensland/courts-law/queensland-becomes-first-australian-state-to-ban-gay-conversion-therapy/news-story/4a8f7778693c0cff14a7d8208cb6135d>.

⁷ Queensland Government, ‘Health Legislation Amendment Act 2020’, (2021) at <https://www.legislation.qld.gov.au/view/html/asmade/act-2020-031/lh>.

⁸ Nationwide News Pty Limited, ‘Queensland becomes first Australian state to ban gay conversion therapy’, (14 August 2020) at <https://www.news.com.au/national/queensland/courts-law/queensland-becomes-first-australian-state-to-ban-gay-conversion-therapy/news-story/4a8f7778693c0cff14a7d8208cb6135d>.

⁹ The Australian, ‘LGBTQ conversion therapy ban misfires’, (February 2020) at <https://www.theaustralian.com.au/nation/lgbtq-conversion-therapy-ban-misfires/news-story/e996543cd8824aef1e0effccca53eff8>.

- 2.6. This definition is very open ended. It is not clear exactly what “someone’s capacity for emotional, affectional and sexual attraction to” actually means, or where the boundaries of that definition ends.
- 2.7. It could mean whether a patient has actual felt attraction or emotional connection to someone, or it could mean if they objectively have the capacity to have such feelings. It is not clear.

213G meaning of gender identity

- (1) *Gender identity*, of a person, is the person’s internal and individual experience of gender, whether or not it corresponds with the sex assigned to the person at birth.
- (2) Without limiting subsection (1), the *gender identity*, of a person, includes –
- (a) the person’s personal sense of the body; and
 - (b) if freely chosen – modification of the person’s bodily appearance or function by medical, surgical or other means; and
 - (c) other expressions of the person’s gender including name, dress, speech and behaviour.

- 2.8. This definition is also broad. It also defines gender identity as something that is *internal* and self-actualised. A medical professional can therefore not assume what someone’s gender identity is, as according to this section it does not have to be in any way correlated to someone’s outward appearance.
- 2.9. Health service providers therefore need to be careful to learn the self-confessed sexual orientation and gender identity of their patients and clients before any treatment or advice is given, if that treatment or advice could in any way be related to someone’s gender identity.
- 2.10. These definitions will make it difficult for practitioners to ensure that they are not engaging in any conversion therapy practice.

Provisions concerning “health service providers”

- 2.11. The prohibition in the QLD Act only applies to a “health service provider” which is given the same meaning as in the *Health Ombudsman Act 2013*, which is defined as a health practitioner under the National Law (the *Health Practitioner Regulation National Law 2009*) and any other individual who provides a health service.
- 2.12. This definition clearly encompasses medical practitioners and will be of primary relevance to Australian paediatricians, GPs, and psychiatrists who are most likely to encounter issues of sexual orientation and gender identity in their practices.
- 2.13. The ambiguous definition of “conversion therapy” is qualified in the Act by outlining what kind of practice by a health provider would be excluded. Wording of particular concern is emboldened:

- (2) *Conversion therapy* does not include a practice by a health provider that, in the provider's **reasonable** professional judgment –
- (d) is part of the **clinically appropriate assessment**, diagnosis or treatment of a person, or clinically appropriate support for a person; or
 - (e) enables or facilitates the provision of a health service for a person in a manner that is safe and appropriate; or
 - (f) is necessary to comply with the provider's legal or professional obligations.
- (3) Without limiting subsection (2), the following are examples of the types of practices to which that subsection may apply –
- (a) Assisting a person who is undergoing a gender transition;
 - (b) Assisting a person who is considering undergoing a gender transition;
 - (c) Assisting a person to express the person's gender identity;
 - (d) Providing acceptance, support or understanding of a person;
 - (e) Facilitating a person's coping skills, development or identity exploration, or facilitating social support for the person.
- Examples of the types of practices –*
- (i) Exploring psychosocial factors with a person or probing a person's experience of sexual orientation or gender identity
 - (ii) 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
 - (iii) Advising a person about the potential side effects of sex-hormonal drugs or the risks of having, or not having, surgical procedures

2.14. These qualifications of the definition of "conversion therapy" only provide clarity in one direction, that of affirmation and support by a health service provider of their patient to pursue gender transition or full expression of their sexual orientation.

2.15. The AMA made submissions that led to some amendments to the protections for health practitioners, though they do not alleviate the main concern, which is that any practice that is nothing short of affirmative could be captured.¹⁰

Criticism from the medical community

2.16. Peak medical bodies made submissions on the QLD Act as it applied to medical practice. Even though some of these groups were largely supportive of the banning of conversion therapy practices, they still outlined significant concerns that they had with the QLD Act.

2.17. AMA Queensland made the following observations about the QLD Act:

- (a) the laws could lead to the criminal prosecution of medical practitioners providing evidence based practices – such as providing comprehensive evaluations of family and dynamic drivers of a child's gender feelings.¹¹

¹⁰ John Sandeman, 'Australia's First Laws Banning Gay Conversion Therapy', (18 August 2020), at <https://www.eternitynews.com.au/australia/australias-first-laws-banning-gay-conversion-therapy/>.

¹¹ AMA Queensland, 'AMA Submission on Health Legislation Amendment Bill 2019' (31 January 2020), page 2, at <https://www.parliament.qld.gov.au/work-of-committees/former-committees/HCDSDFVPC/inquiries/past-inquiries/HealthLAB2019>.

- (b) the laws could preclude children from receiving treatment that will benefit them and could be pushed towards chemical and surgical treatments that have been shown to cause harm.¹²
- (c) may place patients at risk by placing a doctor in danger of prosecution if they do not provide affirmative treatments that could exacerbate psychiatric comorbidities and illnesses.

2.18. AMA Queensland also suggested that the definition of conversion therapy be changed to:

Conversion therapy is a treatment *for which the only intent* is to attempt to change or suppress a person's sexual orientation or gender identity.

- 2.19. This suggestion goes to the heart of the difficulty for health practitioners in QLD in that it distinguishes legitimate medical practices which may fall within the original definition of conversion therapy but that are genuinely advised by the health practitioner for the health benefit of the patient.
- 2.20. This suggestion was not taken up and incorporated into the QLD Act.
- 2.21. The National Association of Practicing Psychiatrists (**NAPP**) made these criticisms of the QLD Act:
- (a) the definition of conversion therapy does not make accommodation for the process methodology of psychiatric practice, which often must explore underlying and possible alternative explanations for someone's presented sexual orientation and gender identity.¹³
 - (b) the laws do not reflect the clinical and evidence-based reality of psychiatric practice in that a patient's sexual orientation and gender identity can change during treatment if it is the product of some other mental phenomena like a delusion or hallucination.¹⁴
- 2.22. AMA and NAPP criticisms highlight the main issue with the law, which is that it lacks clarity and is not sympathetic to the reality of psychiatric or paediatric practice and consultation.
- 2.23. The caveats provided in subsection 3 and the examples of practices that are still legitimate do not rule out the above concerns.
- 2.24. This is because the examples are qualified by the health practitioner to exercise 'reasonable' professional judgment and to provide 'clinically appropriate' treatment.
- 2.25. What determines reasonableness of professional judgment is not clear and is an area of concern because it allows for alternative and possibly ideologically compromised views to be pitted against a Christian doctor's views in court.
- 2.26. The problem for determining clinical appropriateness is similar, as this will be a matter of competing evidence.

¹² Ibid, page 2-3.

¹³ National Association of Practicing Psychiatrists, 'NAPP Submission on Conversion Therapies' (2020), pages 1-2, at <https://www.parliament.qld.gov.au/work-of-committees/former-committees/HCDSDFVPC/inquiries/past-inquiries/HealthLAB2019>.

¹⁴ Ibid, page 2.

3. **ACT – Overview of the relevant Act and its implications for medical practitioners**
 - 3.1. Shortly after the QLD Act, the ACT also introduced a bill to ban conversion therapy.¹⁵
 - 3.2. The Government was accused of “ramming” the legislation through ahead of an upcoming ACT election.¹⁶ The *Sexuality and Gender Identity Conversion Practices Bill 2020 (ACT Act)* was tabled in the Legislative Assembly on 13 August 2020¹⁷ and it was passed by the Legislative Assembly just two weeks later¹⁸ without any public consultation or referral for committee consideration.
 - 3.3. The ACT Act was criticised by the ACT Opposition Leader during debate for being “vague”, extending “much further” than just banning harmful conversion practices and potentially “criminalising ordinary Canberrans”. He also stated that it would mean that the only support that young people could receive from people such as parents and teachers was “active encouragement” to pursue a transition. It was considered that the Bill would affect the ability of religious organisations or schools to teach the tenets of their faith.¹⁹
 - 3.4. The ACT Act took a “much broader” approach to conversion therapy than QLD.²⁰ For example, it contained Objects which affirmed that no combination of characteristics of sexuality and gender identity constituted a disorder or shortcoming. It then criminalised “sexuality or gender identity conversion practices” performed on a “protected person”, which was defined to include children or people with impaired mental judgment.²¹
 - 3.5. The ACT Act also expressly stated that a person could commit an offence regardless of whether the recipient, or their parent or guardian, consented. This is important for medical practitioners to recognise and commentators raised concerns about this, including the possibility that young people (eg. 16-year olds) may be prevented from acting on personal convictions to seek help for unwanted sexual attractions.²²

¹⁵ Nationwide News Pty Limited, ‘Queensland becomes first Australian state to ban gay conversion therapy’, (14 August 2020) at <https://www.news.com.au/national/queensland/courts-law/queensland-becomes-first-australian-state-to-ban-gay-conversion-therapy/news-story/4a8f7778693c0cff14a7d8208cb6135d>.

¹⁶ ABC, ‘LGBTQI conversion therapy bill to be put before ACT Legislative Assembly amid concerns conversion definition is ‘too broad’’, (26 August 2020) at <https://www.abc.net.au/news/2020-08-26/sexuality-gender-conversion-therapy-bill-in-legislative-assembly/12596372>.

¹⁷ Neil Foster, Law and Religion Australia, ‘Conversion Therapy laws and religious freedom’, (23 August 2020) at <https://lawandreligionaustralia.blog/2020/08/23/conversion-therapy-laws-and-religious-freedom/#more-7889>.

¹⁸ ABC, ‘LGBTQ conversion therapy banned in Canberra as Sexuality and Gender Identity Conversion Practices Bill passes’, (27 August 2020) at <https://www.abc.net.au/news/2020-08-27/act-bans-gay-conversion-therapy-with-sexuality-gender-bill/12600956>.

¹⁹ ABC, ‘LGBTQ conversion therapy banned in Canberra as Sexuality and Gender Identity Conversion Practices Bill passes’, (27 August 2020) at <https://www.abc.net.au/news/2020-08-27/act-bans-gay-conversion-therapy-with-sexuality-gender-bill/12600956>.

²⁰ Neil Foster, Law and Religion Australia, ‘Conversion Therapy laws and religious freedom’, (23 August 2020) at <https://lawandreligionaustralia.blog/2020/08/23/conversion-therapy-laws-and-religious-freedom/#more-7889>.

²¹ ABC, ‘LGBTQ conversion therapy banned in Canberra as Sexuality and Gender Identity Conversion Practices Bill passes’, (27 August 2020) at <https://www.abc.net.au/news/2020-08-27/act-bans-gay-conversion-therapy-with-sexuality-gender-bill/12600956>.

²² ABC, ‘LGBTQ conversion therapy banned in Canberra as Sexuality and Gender Identity Conversion Practices Bill passes’, (27 August 2020) at <https://www.abc.net.au/news/2020-08-27/act-bans-gay-conversion-therapy-with-sexuality-gender-bill/12600956>.

- 3.6. The ACT Act also made amendments to the [Human Rights Commission Act 2005 \(ACT\)](#) to allow complaints to be taken to the Human Rights Commission relating to conversion practices.²³
- 3.7. The Act provided that such complaints would be considered within the same regime as applies to discrimination claims and vilification claims which includes broad powers of investigation, conciliation and mediation and ultimately referral to the ACT Administrative Tribunal should a complaint of conversion therapy not be resolved by conciliation.

Definition of “conversion practice”

- 3.8. The ACT Act has a similarly broad and ambiguous definition of a conversion practice as the QLD Act. This means the same kind of risks for medical practitioners.

7 Meaning of sexuality or gender identity conversion practice

(1) In this Act:

Sexuality or gender identity conversion practice means a treatment or other practice the purpose, or purported purpose, of which is to change a person’s sexuality or gender identity.

Definition of “sexuality” and “gender identity”

- 3.9. The ACT Act uses the definitions for “sexuality and “gender identity” that are found in the ACT *Discrimination Act 1991*:

gender identity means the gender expression or gender-related identity, appearance or mannerisms or other gender-related characteristics of a person, with or without regard to the person’s designated sex at birth.

Note *Gender identity* includes the gender identity that the person has or has had in the past, or is thought to have or have had in the past (see s 7(2)).

sexuality includes heterosexuality, homosexuality and bisexuality.

- 3.10. The definitions in the ACT Act are not as broad or problematic as those in the QLD or VIC Acts, especially as “sexuality” is confined to a binary distinction between the two sexes.
- 3.11. However, though practitioners should be aware that the definition of gender identity is broad enough to include the whole spectrum of created gender identities which are not necessarily manifested in a patient’s appearance or mannerisms.

Provisions affecting health service providers

- 3.12. Subsection 3 of the conversion practice definition in the ACT Act is of direct relevance to health practitioners in the ACT:

- (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.

²³ ABC, ‘LGBTQ conversion therapy banned in Canberra as Sexuality and Gender Identity Conversion Practices Bill passes’, (27 August 2020) at <https://www.abc.net.au/news/2020-08-27/act-bans-gay-conversion-therapy-with-sexuality-gender-bill/12600956>.

- 3.13. This qualification of the definition of a conversion practice provides limited protection to healthcare practitioners.
- 3.14. It suffers from the same problems as the qualification in the QLD Act, namely that it is unclear what will be considered 'reasonable professional judgment'. This phrase allows a court to equivocate about the standard of reasonableness for a practitioner's medical judgment and it is unclear how this will be affected in contests of competing evidence.
- 3.15. Furthermore, the inclusion of the term 'necessary' weakens this protection by providing another lever to weaken a medical practitioner's case as there is considerable room for argument through evidence whether a particular treatment approach was 'necessary'.²⁴
- 3.16. Also of concern to medical practitioners is the objects section of the ACT Act that asserts an ideological stance that is potentially in conflict with medical evidence:

6 Objects of Act

The objects of this Act are –

- (a) to affirm that –
- (i) all people have characteristic of sexuality and gender identity; and
 - (ii) no combination of those characteristics constitutes a disorder, disease, illness, deficiency, disability or shortcoming; and

Criticism from the medical community

- 3.17. A key area of concern expressed by the CMDFA about the ACT Act is that it does not appreciate the reality of gender dysphoria in practice and prejudices the proper and beneficial treatment of minors in the ACT.²⁵
- 3.18. As the NAPP criticised the QLD Act, the CDMFA pointed out that the ACT Act does not provide for the method or process of medical treatment and consultation. Often patients present with a variety of issues that a practitioner must diagnose and explore.
- 3.19. For these kinds of consultations to take place, a practitioner may be in danger of breaching the ACT Act.
- 3.20. The kinds of affirmative treatments encouraged by the Act could be harmful to children who have a variety of emotional disorders. Placing a child on experimental hormone therapy could seriously prejudice their health if they have underlying anxiety and depression problems.
- 3.21. Philip Morris, President of the NAPP has highlighted that it is an established international therapeutic standard that successful treatments for gender dysphoria in children can result in them being comfortable in their natal sex and that invasive hormonal and surgical procedures should not be the first port of call.²⁶

²⁴ National Association of Practising Psychiatrists, Open Letter on the Change or Suppression (Conversion) Practices Prohibition Bill 2020 (7 January 2021).

²⁵ CMDFA, 'Letter to the ACT Parliament', (30 June 2020), at <https://static1.squarespace.com/static/5f322e36d5e561588e310a43/t/5f619965efbca1309ee0ae19/1600231781927/2020+Submission+to+ACT+Parliament.pdf>.

²⁶ Philip Morris & Patrick Parkinson, 'ACT's conversion therapy ban puts practitioners at risk', (26 August 2020), at <https://www.canberratimes.com.au/story/6894776/acts-conversion-therapy-ban-puts-practitioners-at-risk/>.

3.22. However, the ACT Act almost certainly precludes this kind of body-affirming treatment as a banned conversion practice.

Implications for ACT practitioners

- 3.23. If there was any doubt that this Act will not allow medical practitioners to safely pursue legitimate comprehensive and detailed assessment of their patients, it is cleared up with the contents of the objects clause.
- 3.24. The clause asserts that *any* combination of sexuality and gender identity characteristics are in no way part of an illness or psychiatric disorder. This assertion directly contradicts medical evidence and the experience of psychiatric practice.
- 3.25. Practitioners in the ACT are at risk of having their clinical practice assessed against the sanctions in this Act, which will apply the sanctions and interpretation of conversion practices through the ideological lens in its objects clause.
- 3.26. This is especially concerning because section 8(2) of the ACT Act expressly rules out consent to treatment as a protection against committing an offence.
- 3.27. ACT practitioners must be aware that if they are approached by individuals that want treatments that will explore the reasons for their gender dysphoria or unwanted sexual attraction that the consent of these patients to the treatment will be irrelevant to the committing of an offence under the ACT Act.
- 3.28. Just like with the QLD Act, anything short of completely affirmative treatment poses risk to a practitioner.
- 3.29. The term *necessary* in subsection 3 of the definition of conversion practice is dangerous for medical practitioners. Professionals may differ as to what is necessary in the treatment of a patient.
- 3.30. The inclusion of the reasonable necessity of the treatment as part of the test takes the power of a doctor's own discretion away from them and opens it up to scrutiny by the courts in a battle of evidence.
- 3.31. Practitioners in the ACT will need to exercise extreme caution in the way that they document and justify their treatment of individuals who present with gender dysphoria or who are struggling with confused sexual feelings.
- 3.32. This is a higher bar for practitioners to meet than under the QLD Act.
- 4. VIC – Overview of the process leading to the introduction of conversion therapy ban**
- 4.1. While the QLD and ACT legislation largely mimicked international precedents from Canada and the USA, in VIC, VIC has engaged in a far more substantive legislative program which has led to bespoke conversion therapy legislation that was widely touted by the Victorian government as the “gold standard” for legislation of this type.
- 4.2. The criminal sanctions that can be imposed through this legislation are severe and highly concerning for medical practitioners in Victoria.
- 4.3. Due to the serious nature of the VIC Act, a detailed background is below regarding the process leading to the introduction of conversion therapy legislation in Victoria.

2018 Inquiry by Health Complaints Commissioner

- 4.4. In 2018, it was announced that the Health Complaints Commissioner (HCC) Karen Cusack would conduct an inquiry into the practice of conversion therapy in Victoria (**Inquiry**). This was despite “no complaints” ever having been received by the HCC regarding conversion therapy.²⁷
- 4.5. The HCC report was not released to the public. A two-page summary of the HCC’s findings was released in February 2019 in this ‘[Report on the inquiry into conversion therapy – Executive summary](#)’ (**Inquiry Report**).²⁸ There was no “no transparency in the consultation process”.²⁹
- 4.6. The Inquiry Report contained the following summary regarding the background to the Inquiry and the scope of its definition of “conversion therapy” and its forms (**bold emphasis added**):

On 17 May 2018 the Commissioner commenced an inquiry into conversion therapy/practices, often referred to as gay conversion therapy, which is defined as any practice or treatment that seeks to change, suppress or eliminate an individual’s sexual orientation or gender identity, including efforts to reduce or eliminate sexual and/or romantic attractions or feelings toward individuals of the same gender, or efforts to change gender expressions.

Contemporary forms of conversion therapy/practices can include counselling, psychology or psychotherapy, formal behaviour-change programs, support groups, prayer-based approaches and exorcisms. Providers of conversion therapy/practices may include unregulated health service providers.”

- 4.7. The Terms of Reference for the Inquiry defined ‘conversion therapy/practices’ as:

...any practice or treatment that seeks to change, suppress or eliminate an individual’s sexual orientation or gender identity, including efforts to reduce or eliminate sexual and/or romantic attractions or feelings toward individuals of the same gender, or efforts to change gender expressions.

‘Conversion therapy/practices’ does not include any practice or treatment that:

- provides assistance to an individual undergoing a gender transition, or
- provides acceptance, support and understanding of an individual, or
- facilitates an individual’s coping, social support and identity exploration and development, including sexual orientation-neutral interventions

as long as such practices or treatments do not seek to change an individual’s sexual orientation or gender identity.

- 4.8. The Methodology of the Inquiry was described as including the following interviews and research in respect of other jurisdictions and professional bodies (**bold emphasis added**):

²⁷ HCC, ‘Inquiry into conversion therapy’, (17 May 2018) at <https://hcc.vic.gov.au/news/151-inquiry-conversion-therapy>.

²⁸ Victoria State Government, ‘Report on the inquiry into conversion therapy – executive summary’, (1 February 2019) at <https://www2.health.vic.gov.au/about/publications/researchandreports/report-on-inquiry-into-conversion-therapy-executive-summary>.

²⁹ Quadrant, ‘In Victoria, Government by Deceit and Deception’, (29 January 2021) at https://quadrant.org.au/opinion/qed/2021/01/in-victoria-government-by-deceit-and-deception/?fbclid=IwAR3BUR91akaobtiMive7fGaOlrDf6rsSEkI9Pvi_pBJLfp96jhNGNbGnFRo.

The methodology included structured individual and group interviews with victims of conversion therapy/practices and in some cases discussion with family members of victims.

The methodology also included research into the approach to conversion therapy in other jurisdictions as well as the views of various professional bodies. In summary, there is widespread condemnation of any form of sexual orientation change effort in Australia and overseas. Among professional bodies, including the Royal Australian & New Zealand College of Psychiatrists, Victorian Branch, the Australian Psychological Society, the Australian Medical Association, the Psychotherapy and Counselling Federation of Australia, the Christian Counsellors Association of Australia, and the Australian Counselling Association, the various position statements and codes of ethics recognise the harm caused by conversion therapy/practices and condemn these practices.

Several overseas jurisdictions have introduced legislation to ban the practice of conversion therapy, including Malta, Ireland and at least 14 States in the U.S.A. (with legislation pending in other States). Many have limited the bans to prohibiting conversion therapy of minors. However, Ireland has banned anyone from performing or offering to perform conversion therapy, regardless of the age of the person receiving the therapy or the position or qualification of the person offering the therapy.

- 4.9. The Inquiry Report contained the following findings, including regarding “long-term psychological harm and distress” to people of conversion therapy/practices, and a key finding about the need for a legislative response which sends a “very strong message to the community” that such therapy/practices are unacceptable (**bold emphasis added**):

Findings

The main aims of conversion therapy/practices are generally to suppress or eliminate a person’s sexual orientation or gender identity, including through celibacy or abstinence, and ultimately to change a person’s sexual orientation or gender identity.

The inquiry’s findings detail the long-term psychological harm and distress to people who have undergone conversion therapy/practices. Several key themes which were identified can be summarised as follows:

- *Survivors experience acute distress and/or ongoing mental health issues such as severe anxiety and depression;*
- *Survivors experience feelings of guilt and shame about their sexuality, reporting being “overwhelmed by guilt” and guilt that is “always there”;*
- *Conversion therapy/practices reinforced homosexuality as a form of ‘brokenness’;*
- *Church teachings that homosexuality is sinful;*
- *Pressure to change a person’s sexuality from gay to straight or pressure to stop acting on a person’s same-sex attraction;*
- *Attributing ‘same-sex attraction’ to childhood, developmental or family issues.*

There are still psychologists, counsellors and counselling services offering conversion therapy/practices, despite the overwhelming evidence of the significant and long-term harm caused by these practices.

Accordingly, one of the key findings is that a legislative response sends a very strong message to the community that conversion therapy/practices are unacceptable.

Funding for counselling and psychological services, together with legislation, would provide a very clear message to the community that conversion therapy/practices are not condoned in Victoria.

- 4.10. The Inquiry Report specifically stated that the Inquiry was not concerned with religious freedoms (**bold emphasis added**):

It is important to note that the inquiry has not been concerned with 'religious freedoms'. The inquiry focused on the counselling and therapy practices and/or treatment that seeks to change, suppress or eliminate an individual's sexual orientation or gender identity, including efforts to reduce or eliminate sexual and/or romantic attractions or feelings toward individuals of the same gender, or efforts to change gender expressions.

- 4.11. On the basis of the above findings, the Inquiry Report contained the following recommendations, including recommending that the Minister consider introducing legislation to prohibit conversion therapy/practices (**bold emphasis added**):

Recommendations

Pursuant to section 103 of the Act, on completing the inquiry the Commissioner may make recommendations about the health service matter dealt with in the inquiry to the Minister for Health as the person who referred the matter to the Commissioner. **Based on the findings of this inquiry, as summarised above, I recommend that the Minister considers introducing legislation to prohibit conversion therapy/practices,** and supports for survivors of conversion therapy/practices, which may include resourcing for counselling/support services for those survivors.

Preventing Harm, Promoting Justice Report in 2018

- 4.12. In late 2018, a report was published titled '[Preventing Harm, Promoting Justice](#)' as part of a collaborative project between the Human Rights Law Centre (HRLC), La Trobe University and Gay and Lesbian Health Victoria (PHPJ Report).
- 4.13. The HRLC announced that the PHPJ Report "confirms that religious conversion therapy and related practices are pervasive in many faith communities in Australia and causing real harm to lesbian, gay, bisexual and trans people".
- 4.14. The PHPJ also called "for action by governments, the health sector and religious communities to better respond to people experiencing conflict between their gender identity or sexual orientation and their beliefs".³⁰
- 4.15. While widely heralded as a comprehensive report that sets a compelling basis for taking legislative action, there are fundamental shortcomings in the research underlying the PHPJ Report.
- 4.16. The PHPJ Report expressly acknowledges that to date, there has been no scholarly research on religious conversion therapy in Australia and that only limited international scholarly research (including self-published and unpublished material) exists.³¹
- 4.17. It expressly acknowledges that there are "no studies of the prevalence of conversion therapy in contemporary Australia" and that "further research is required".³² It also notes that there is "no data" on the extent of transgender people's participation in conversion therapy in

³⁰ HRLC, 'Preventing Harm, Promoting Justice: Responding to LGBT conversion therapy in Australia', (30 October 2018) at <https://www.hrlc.org.au/reports/preventing-harm>.

³¹ See pages 7 and 11 of the PHPJ Report.

³² See pages 16 and 19 of the PHPJ Report.

- Australia and without further research, it “remains unclear where and to what extent trans conversion therapy is actually promoted and practised in Australia”.³³
- 4.18. The PHPJ Report apparently just draws on international statistics about conversion therapy and general statistics regarding faith and belief in Australia to make comparative conclusions about the percentage of Australians which “may be vulnerable” to conversion therapies.³⁴ This is essentially just an extrapolative exercise which is not grounded in any scholarly research which actually evidences any extent of conversion practices actually occurring in Australia.
 - 4.19. The Report represents itself as representing the first academic research on the nature and extent of LGBTQ conversion movements in Australia.³⁵
 - 4.20. Despite this claim, it seems that the PHPJ Report itself is very limited in the “academic research” it presents. The PHPJ Report states that it contains “social research”, being stories from “survivors of conversion therapy”.³⁶ However, this “social research” came from a sample size of just 15 participants, none of whom apparently currently identified as heterosexual when interviewed.³⁷
 - 4.21. The “social research” in the PHPJ Report is therefore based on a very small sample size of participants recruited exclusively from the LGBTQ community. This does not, as the PHPJ Report claims, represent a “diverse cross-section of both the LGBT and mainstream Australian communities”³⁸ nor provide evidence of any large-scale issue. Some commentators have called the sample size “statistically meaningless”.³⁹
 - 4.22. Further, the 15 stories reveal that only one participant was subject to aversion therapy (and this occurred in the 1980’s).
 - 4.23. The other participants were only subject to things such as Christian counselling, sermons and study regarding gender identity, church events hosting “ex-gay” speakers, “gay camps” (which were described positively), prayer groups or “spiritual deliverance” prayers, and “ex-gay” messaging and culture in faith communities generally. It seems that most, if not all, of these activities also occurred with the consent of participants.
 - 4.24. The “social research” therefore clearly does not evidence any extent of ongoing aversive therapies currently occurring in Australia, nor apparently any non-consensual practices at all. The Report even acknowledges that non-consensual therapies are already illegal in Australia.⁴⁰
 - 4.25. Overall, the PHPJ Report clearly acknowledges that there is no scholarly research evidencing that coercive conversion therapy is occurring in Australia today. The comparative conclusions which are drawn also have no basis in actual evidence about coercive conversion therapies occurring in Australia. The “social research” presented does not seem to evidence this either.

³³ See page 18 of the PHPJ Report.

³⁴ See page 19 of the PHPJ Report.

³⁵ See page 3 of the PHPJ Report.

³⁶ See acknowledgements and page 8 of the PHPJ Report.

³⁷ See pages 21 and 8 of the PHPJ Report.

³⁸ See page 21 of the PHPJ Report.

³⁹ Quadrant, ‘In Victoria, Government by Deceit and Deception’, (29 January 2021) at https://quadrant.org.au/opinion/ged/2021/01/in-victoria-government-by-deceit-and-deception/?fbclid=IwAR3BUR91akaobtiMive7fGaOlrDf6rsSEki9Pvi_pBJLfp96jhNGNbGnFRo.

⁴⁰ See pages 48 and 63 of the PHPJ Report.

- 4.26. There are also concerns with respect to the potential bias of a report sponsored by Gay and Lesbian Health Victoria, as well as the validity of “social research” drawn from a sample size of just 15 people which did not include any people identifying as heterosexual. For example, some commentators have discussed that the PHPJ Report is “compromised by its selective data-gathering, by its patent bias, and, most seriously, by the lack of transparency in its funding”.⁴¹
- 4.27. The weaknesses and flaws in the research underlying the PHPJ Report may therefore cast doubt on the HRLC’s claims that the report “confirms that religious conversion therapy and related practices are pervasive in many faith communities in Australia and causing real harm”. It may also cast doubt on the HRLC’s claim that action is needed in this regard.⁴²
- 4.28. However, the PHPJ Report has nonetheless become the basis of the policy behind bills such as the conversion therapy ban subsequently introduced in Victoria (discussed below).⁴³

The “Free to Change” Report

- 4.29. In contrast to the PHPJ Report, in December 2020 the Coalition Against Unsafe Sexual Education (CAUSE) released “Free to Change”, a report regarding a survey of ex-LGBT people on whether conversion therapy constituted “harm or help”. As additional people participated, another version was released in January 2021, also titled “Free to Change” (FTC Report).
- 4.30. The FTC Report tested the accuracy of assumptions underlying the alleged harms of conversion therapy and resulting public policy.⁴⁴ It also explored understandings of sexual orientation and gender identity, including regarding whether change is possible, beneficial and long-lasting.⁴⁵ It found that enforcing acceptance of social assumptions ignored the lived experience of those who had found change both possible and beneficial.⁴⁶
- 4.31. The FTC Report specifically referred to the PHPJ Report and discussed a “glaring gap” in its research, stating that the PHPJ Report examined “only one side of the question and looks only at negative experiences”.⁴⁷
- 4.32. While the PHPJ Report only relied on the testimony of 15 individuals who found conversion therapy harmful and damaging, the FTC Report presented the collated experiences of 78 ex-LGBT people who experienced unwanted same-sex attraction or gender dysphoria but had

⁴¹ Quadrant, ‘In Victoria, Government by Deceit and Deception’, (29 January 2021) at https://quadrant.org.au/opinion/qed/2021/01/in-victoria-government-by-deceit-and-deception/?fbclid=IwAR3BUR91akaobtjMive7fGaOlRdf6rsSEki9Pvi_pBJLfp96jhNGNbGnFRo.

⁴² Institute for Civil Society, ‘Briefing Sheet – Victorian Conversion Practices Bill’, (28 January 2021) at <http://www.i4cs.com.au/briefing-sheet-victorian-conversion-practices-bill/>.

⁴³ Institute for Civil Society, ‘Problems and Proposed Amendments: Victoria’s ‘Change or Suppression (Conversion) Practices Prohibition Bill 2020’, (17 January 2021) at <http://www.i4cs.com.au/problems-and-proposed-amendments-victorias-change-or-suppression-conversion-practices-prohibition-bill-2020/>. See also

Quadrant, ‘In Victoria, Government by Deceit and Deception’, (29 January 2021) at https://quadrant.org.au/opinion/qed/2021/01/in-victoria-government-by-deceit-and-deception/?fbclid=IwAR3BUR91akaobtjMive7fGaOlRdf6rsSEki9Pvi_pBJLfp96jhNGNbGnFRo.

⁴⁴ See Introduction in the FTC Report.

⁴⁵ See page 4 of FTC Report.

⁴⁶ See Introduction in the FTC Report.

⁴⁷ See Introduction in the FTC Report.

found lasting change and/or relief through counselling. This sample size was more than five times as large as that presented in the PHPJ Report study.⁴⁸

4.33. The FTC Report study was based exclusively on the testimony of formerly LGBT individuals who had left their LGBT lives behind.⁴⁹ Otherwise, the sample group was unrestricted, so respondents came from a wide range of age groups, countries, ethnicities and education levels.⁵⁰

4.34. Data was collected through an online portal where ex-LGBT people could come of their own free will to answer a questionnaire about their lived experiences. Around 77% of people had used conversion therapy (counselling).⁵¹

4.35. The FTC Report reported results including:

- (a) out of 62 former LGB people, 52.9% are now exclusively heterosexual, 70.6% are now living heterosexual lives, and 29.4% were no longer involved in same-sex attracted or other relationships despite still being same-sex attracted or classifying themselves as "other";⁵²
- (b) out of 10 former transgender people, 100% reported their post-change sexual orientation as heterosexual and 40% are in heterosexual relationships;⁵³
- (c) of the 78 individuals in the cohort, 21.8% had begun change 30 years ago or longer, and 71.8% had begun change 10 years ago or longer;⁵⁴
- (d) those who experienced change with counselling (conversion therapy) often utilised those services for a considerable number of years, and it appears to have been "significant" in supporting and effecting the desired change;⁵⁵
- (e) the "vast majority" of the cohort reported that after leaving their LGBT lifestyles they experienced "a notable improvement in their quality of life";⁵⁶ and
- (f) 75.6% of participants had a notable average baseline reduction in suicidal ideation of 39%.⁵⁷

4.36. As such, the study concluded that the participants "clearly demonstrated" that:⁵⁸

- (a) they changed their sexual orientation and gender identity;
- (b) they did so by extensively accessing professional and/or religious counselling, which today is placed in the category of "conversion therapy";
- (c) the majority reported that their change is long lasting, indicating the change is permanent;

⁴⁸ See Introduction in the FTC Report.

⁴⁹ See page 4 of FTC Report.

⁵⁰ See page 8 of the FTC Report.

⁵¹ See page 4 of FTC Report.

⁵² See page 10 of FTC Report.

⁵³ See page 11 of FTC Report.

⁵⁴ See page 12 of FTC Report.

⁵⁵ See page 13 of FTC Report.

⁵⁶ See page 14 of FTC Report.

⁵⁷ See page 16 of FTC Report.

⁵⁸ See page 16 of FTC Report.

- (d) the data reveals that the change in participants' lives and/or the counselling they received is associated with extensive improvements in the quality of their lives; and
- (e) not one participant made any mention of the claimed abuses in the PHPJ Report. However, it should be well noted that a number claimed harm from counsellors who discounted their wishes and even berated them for wanting to change their LGBT lives.

4.37. Overall, the FTC Report results "significantly challenge" the conclusion of the PHPJ Report that conversion therapy is harmful. The therapies that respondents to the survey obtained were not only beneficial but, in many cases, life-saving.⁵⁹

4.38. On that basis, the FTC Report challenged the need for legislation in Victoria purporting to help LGBTQ people by preventing conversion therapies, and detailed the potential for such legislation to actually hurt them.⁶⁰

5. Legislative process for the Victorian Conversion Therapy Bill

5.1. Against this background, on 11 November 2020, the *Change or Suppression (Conversion) Practices Prohibition Bill 2020* (Vic) was introduced to the Legislative Assembly in Victoria.⁶¹

5.2. Politicians and community leaders expressed views that Bill was being rushed through Parliament⁶² and the process occurred without community consultation.⁶³ Commentators noted that the Bill was "vigorously advanced with a minimum of information, time and transparency".⁶⁴

5.3. In any case, on 4 February 2021, the *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic) (VIC Act) was passed in Victoria. It received royal assent on 16 February 2021.⁶⁵ The Bill passed the Legislative Council following a 12-hour debate.⁶⁶

⁵⁹ See Introduction in the FTC Report.

⁶⁰ See Introduction in the FTC Report.

⁶¹ State Government of Victoria, 'Change or Suppression (Conversion) Practices Prohibition Bill 2020', (2021) at <https://www.legislation.vic.gov.au/bills/change-or-suppression-conversion-practices-prohibition-bill-2020>.

⁶² The Age, 'Liberal rift deepens over bill banning gay conversion therapy', (1 February 2021) at <https://www.theage.com.au/politics/victoria/liberal-rift-deepens-over-bill-banning-gay-conversion-therapy-20210201-p56yji.html>.

⁶³ SBS, 'Unintended consequences': Faith groups, psychiatrists say Victoria's new gay conversion ban laws are too vague', (5 February 2021) at <https://www.sbs.com.au/news/unintended-consequences-faith-groups-psychiatrists-say-victoria-s-new-gay-conversion-ban-laws-are-too-vague>. See also Institute for Civil Society,

'Problems and Proposed Amendments: Victoria's 'Change or Suppression (Conversion) Practices Prohibition Bill 2020'', (17 January 2021) at <http://www.i4cs.com.au/problems-and-proposed-amendments-victorias-change-or-suppression-conversion-practices-prohibition-bill-2020/>.

⁶⁴ Quadrant, 'In Victoria, Government by Deceit and Deception', (29 January 2021) at https://quadrant.org.au/opinion/qed/2021/01/in-victoria-government-by-deceit-and-deception/?fbclid=IwAR3BUR91akaobtjMive7fGaOlrDf6rsSEkl9Pvi_pBJLfp96ihNGNbGnFRo.

⁶⁵ State Government of Victoria, 'Change or Suppression (Conversion) Practices Prohibition Bill 2020', (2021) at <https://www.legislation.vic.gov.au/bills/change-or-suppression-conversion-practices-prohibition-bill-2020>.

⁶⁶ SBS News, 'The Victorian parliament has passed a bill banning gay conversion therapy', (5 February 2021) at <https://www.sbs.com.au/news/the-victorian-parliament-has-passed-a-bill-banning-gay-conversion-therapy>.

- 5.4. The VIC Act will come into effect 12 months from the day after it received royal assent, or earlier if proclaimed.⁶⁷ Some sources suggest that the Government has signalled that the legislation will not come into operation for 12 months after it receives royal assent.⁶⁸
- 5.5. Some sources describe the VIC Act as the “harshest laws anywhere in the world and with the heaviest possible penalties” regarding conversion therapy.⁶⁹
- 5.6. The VIC Act constitutes a completely new approach to conversion therapy legislation as compared to international instruments and the QLD and ACT legislation. The VIC Act has several aspects that are considered below including:
 - (a) “Purposes” and “Objects” which are uniquely ideological in formulation;
 - (b) definitions of key terms which target religious practice and which replace previously concrete definitions of “sexual orientation” and “gender identity” with vague and ambiguous definitions;
 - (c) criminal provisions which impose some of the harshest penalties in the world for a contravention
 - (d) and a “Civil Response Scheme” which will empower the Victorian Equal Opportunity and Human Rights Commission (**Commission**) with broad powers of investigation, re-education, compulsion and sanction in respect of any conversion practice.

Purposes and Objects

- 5.7. Section 1 of the VIC Act sets out the Purposes which include the key purpose to “denounce and prohibit change or suppression practices”. It is unusual for legislation to denounce behaviour or conduct. Usually, legislation allows courts to denounce conduct that an offender might engage in during sentencing, but in this case such denunciation is contained as the very first purpose of the VIC Act. This betrays the ideological roots of the legislation.⁷⁰
- 5.8. The Objects of the VIC Act are contained in clause 3:

- (1) The objects of this Act are—
- (a) to eliminate so far as possible the occurrence of change or suppression practices in Victoria; and

⁶⁷ Engage Victoria, ‘Change or Suppression Practices – Legislative Ban’, (2021) at <https://engage.vic.gov.au/changeorsuppression>,

⁶⁸ Neil Foster, Law and Religion in Australia, ‘Collision of laws: the impact of Commonwealth law on the Victorian CSP law’, (14 February 2021) at <https://lawandreligionaustralia.blog/2021/02/14/collision-of-laws-the-impact-of-commonwealth-law-on-the-victorian-csp-law/>. See also Murray Campbell, ‘Victoria Bans Conversion Practices Despite Significant Flaws in the Bill’, (4 February 2021) at <https://murraycampbell.net/2021/02/04/victoria-bans-conversion-practices-despite-significant-flaws/>.

⁶⁹ Murray Campbell, ‘Victoria Bans Conversion Practices Despite Significant Flaws in the Bill’, (4 February 2021) at <https://murraycampbell.net/2021/02/04/victoria-bans-conversion-practices-despite-significant-flaws/>. See also Institute for Civil Society, ‘Problems and Proposed Amendments: Victoria’s ‘Change or Suppression (Conversion) Practices Prohibition Bill 2020’, (17 January 2021) at <http://www.i4cs.com.au/problems-and-proposed-amendments-victorias-change-or-suppression-conversion-practices-prohibition-bill-2020/>.

⁷⁰ <https://lawandreligionaustralia.blog/2021/01/15/victorias-conversion-practices-bill-is-as-bad-as-they-say-it-is/>

- (b) to further promote and protect the rights set out in the Charter of Human Rights and Responsibilities; and
 - (c) to ensure that all people, regardless of sexual orientation or gender identity, feel welcome and valued in Victoria and are able to live authentically and with pride.
- (2) In enacting this Act, it is the intention of the Parliament—
- (a) to denounce and give statutory recognition to the serious harm caused by change or suppression practices; and
 - (b) to affirm that a person's sexual orientation or gender identity is not broken and in need of fixing; and
 - (c) to affirm that no sexual orientation or gender identity constitutes a disorder, disease, illness, deficiency or shortcoming; and
 - (d) to affirm that change or suppression practices are deceptive and harmful both to the person subject to the change or suppression practices and to the community as a whole.

5.9. These Purposes and Objects contain ideological language⁷¹ that betrays the social engineering and coercive goals of the Vic Act, including to “denounce”, “prohibit” and “eliminate” change or suppression practices, affirm all sexual orientations and gender identities and affirm that change or suppression practices are “deceptive and harmful”.

Definition of “change or suppression practice”

5.10. The definition of “change or suppression practice” (**COS Practice**) is defined in section 5 of the Vic Act, including:

- 5 Meaning of change or suppression practice**
- (1) In this Act, a 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.
- (2) For the purposes of subsection (1), a practice or conduct is not a change or suppression practice if it—
- (a) is supportive of or affirms a person's gender identity or sexual orientation including, but not limited to, a practice or conduct for the purposes of—
 - (i) assisting a person who is undergoing a gender transition; or
 - (ii) assisting a person who is considering undergoing a gender transition; or
 - (iii) assisting a person to express their gender identity; or
 - (iv) providing acceptance, support or understanding of a person; or
 - (v) facilitating a person's coping skills, social support or identity exploration and development; or

⁷¹ The Gospel Coalition, ‘Urgent Concerns over Victoria’s Change or Suppression Bill’, (1 February 2021) at <https://au.thegospelcoalition.org/article/urgent-concerns-over-victorias-change-or-suppression-bill/>.

- 5.11. The definition of COS Practices to be banned in the Vic Act is broad and imprecise. Practices include any “practice or conduct directed towards a person, whether with or without the person’s consent”.
- 5.12. On its plain meaning, this could include virtually anything directed towards a person, not just professional or therapeutic services, even if consented to or requested by someone struggling with unwanted desires. It goes far beyond banning coercive practices.⁷²

Definitions of “gender identity” and “sexual orientation”

- 5.13. The COS Practice must be for the purpose of changing or suppressing a person’s “sexual orientation” or “gender identity”. These terms are very vaguely defined under amendments contained in section 59 of the Vic Act to the [Equal Opportunity Act 2010 \(Vic\) \(EOA\)](#).
- 5.14. Previously, under section 4 of the EOA, “gender identity” was defined to mean when a person of one sex identified on a bona fide basis as a member of the other sex:

gender identity means—

(a) the identification on a bona fide basis by a person of one sex as a member of the other sex (whether or not the person is recognised as such)—

(i) by assuming characteristics of the other sex, whether by means of medical intervention, style of dressing or otherwise; or

(ii) by living, or seeking to live, as a member of the other sex; or

(b) the identification on a bona fide basis by a person of indeterminate sex as a member of a particular sex (whether or not the person is recognised as such)—

(i) by assuming characteristics of that sex, whether by means of medical intervention, style of dressing or otherwise; or

(ii) by living, or seeking to live, as a member of that sex.

- 5.15. However, under the Vic Act, “gender identity” means a person’s “gender related identity” and includes a person’s “personal sense” of their body and other expressions:

gender identity means a person's gender-related identity, which may or may not correspond with their designated sex at birth, and includes the personal sense of the body (whether this involves medical intervention or not) and other expressions of gender, including dress, speech, mannerisms, names and personal references.

- 5.16. Previously, under section 4 of the EOA, “sexual orientation” was defined to just mean homosexuality (including lesbianism), bisexuality or heterosexuality:

⁷² Neil Foster, Law and Religion in Australia, ‘Collision of laws: the impact of Commonwealth law on the Victorian CSP law’, (14 February 2021) at <https://lawandreligionaustralia.blog/2021/02/14/collision-of-laws-the-impact-of-commonwealth-law-on-the-victorian-csp-law/>. See also Institute for Civil Society, ‘Problems and Proposed Amendments: Victoria’s ‘Change or Suppression (Conversion) Practices Prohibition Bill 2020’, (17 January 2021) at <http://www.i4cs.com.au/problems-and-proposed-amendments-victorias-change-or-suppression-conversion-practices-prohibition-bill-2020/> and Quadrant, ‘In Victoria, Government by Deceit and Deception’, (29 January 2021) at https://quadrant.org.au/opinion/qed/2021/01/in-victoria-government-by-deceit-and-deception/?fbclid=IwAR3BUR91akaobtiMive7fGaOlRdf6rsSEki9Pvi_pBJLfp96ihNGNbGnFRo.

sexual orientation means homosexuality (including lesbianism), bisexuality or heterosexuality.

- 5.17. However, under the Vic Act, “sexual orientation” can relate to a person’s “emotional, affectional and sexual attraction” generally:

sexual orientation means a person's emotional, affectional and sexual attraction to, or intimate or sexual relations with, persons of a different gender or the same gender or more than one gender.

- 5.18. Overall, the new definitions in the Vic Act for “gender identity” and “sexual orientation” are very broad and vague compared to the previous definitions in the EOA. They could apply to all sorts of sexual behaviours⁷³ and virtually anything related to gender identity and expression.

- 5.19. These fluid definitions may create difficulty for people seeking to counsel or assist those with unwanted same-sex attraction or gender dysphoria, including in determining whether they are inducing a person to change their gender identity or legally assisting them to express it in contravention of the law.⁷⁴

Extra-territorial application

- 5.20. Clause 8 of the Vic Act also provides for the extra-territorial application of the sanctions to any conduct occurring in Australia if there is a “real and substantial” link between the conduct and Victoria. This clause states (**bold emphasis added**):

8 Extra-territorial application

- (1) This section applies if—
 - (a) **a person engages in conduct outside, or partly outside, Victoria; and**
 - (b) **there is a real and substantial link between the conduct and Victoria.**
- (2) **This Act has effect in relation to the conduct** as if it had been engaged in wholly within Victoria.
- (3) For the purposes of subsection (1), there is a real and substantial link with Victoria if—
 - (c) a significant part of the conduct occurs in Victoria; or
 - (d) the conduct occurred wholly outside Victoria, but the effects of the conduct occurred wholly or partly in Victoria.

- 5.21. This clause will allow people to be subject to the risk of severe sanction for conduct which is not prohibited in their own jurisdiction if it affects someone in Victoria. Given the widespread reach of the internet and the vast information database readily available at the click of a button, there is real risk that people in other States and Territories could find themselves the subject of investigation by Victorian police or an inquiry by the VEOHRC.

⁷³ Neil Foster, Law and Religion in Australia, ‘Collision of laws: the impact of Commonwealth law on the Victorian CSP law’, (14 February 2021) at <https://lawandreligionaustralia.blog/2021/02/14/collision-of-laws-the-impact-of-commonwealth-law-on-the-victorian-csp-law/>.

⁷⁴ Institute for Civil Society, ‘Briefing Sheet – Victorian Conversion Practices Bill’, (28 January 2021) at <http://www.i4cs.com.au/briefing-sheet-victorian-conversion-practices-bill/>.

5.22. COS Practices also include, under section 5(4), practices or conduct directed towards a person “remotely (including online)”, not just those conducted in person:

(4) For the purposes of subsection (1), a practice or conduct may be directed towards a person remotely (including online) or in person.

5.23. This also broadens the potential application of the provisions. For example, online activity, such as on social media, websites or blogs, may also be captured.

5.24. Health practitioners outside of Victoria therefore need to be very careful about their advertising and reach of any online materials connected to their practice that could be accessible to a Victorian.

5.25. Practitioners also need to be aware of the place of residence of their patients. If treatment that is given in NSW which could potentially breach the VIC Act has some kind of effect on their Victorian patient, or indeed, patient who is in Victoria at the time of being negatively affected, this could put them at risk of breaching the Act.

Provisions affecting health service providers

5.26. The VIC Act has similar qualifications of the definition of a conversion practice as the ACT Act. It also uses the language of *necessary* treatment, which includes the same issues for practitioners as outlined previously under the ACT Act:

(b) is a practice or conduct of a health service provider that is, in the health service provider's reasonable professional judgement, necessary—
 (i) to provide a health service; or
 (ii) to comply with the legal or professional obligations of the health service provider.

5.27. Like under the ACT Act, the Victorian Act will seriously limit the ability of practitioners to administer quality and targeted care to their patients without potentially breaching the Act. The practice or conduct of health care professionals will need to constitute “necessary” conduct in their reasonable professional judgment to avoid being criminal.⁷⁵

5.28. Practitioners should be aware of the express identification of psychiatric practice as an example of a conversion practice in section 5(3)(a):

(3) For the purposes of subsection (1), a practice includes, but is not limited to the following –
 (a) Providing a psychiatry or psychotherapy consultation, treatment or therapy, or any other similar consultation, treatment or therapy;

5.29. Any kind of discussion or consultation with a patient is captured by this provision, only being protected if the practitioner is providing the health service in accordance with it being necessary in their reasonable professional judgment.

5.30. Practitioners also should be aware that a referral of a patient will also be regarded as a conversion practice if that referral could be seen to have the purpose of a change or suppression practice being directed towards that person, see section 5(3)(c).

⁷⁵ Institute for Civil Society, ‘Briefing Sheet – Victorian Conversion Practices Bill’, (28 January 2021) at <http://www.i4cs.com.au/briefing-sheet-victorian-conversion-practices-bill/>.

- 5.31. This is of particular concern to practitioners because of their duty to a patient and their receiving the care they need. Under this law, even if the practitioner is not willing to take on the risk of ambiguity about their treatment of a patient under this Act, they are still at risk even if they don't provide treatment and refer the patient on.
- 5.32. Practitioners will have to be assured that their referred practitioner will not engage in any treatment that could be interpreted as a change or suppression practice. This level of risk to a medical practitioner is high and could seriously limit much needed care for people in the LGBTQI+ community.
- 5.33. This may also make it harder for people to access help if health professionals choose to withdraw certain services.⁷⁶

Concerns raised by the medical profession

- 5.34. Significant concerns were raised by the Australian Medical Association and the Royal Australian and New Zealand College of Psychiatrists about the Victorian Bill.⁷⁷
- 5.35. Even though the RANZCP is a strong supporter of the Victorian Act, it still raised concerns about the broad and vague drafting of the Bill, which did not allow for practitioners to confidently engage in evidence based practice to support the needs of their LGBTQI+ patients.⁷⁸ The chair of RANZCP's Victoria branch, Dr Kerry Rubin said that he feared the bill would restrict the care going to LGBTQI+ patients, when they need more care and not less.⁷⁹
- 5.36. This concern was also raised by AMA Victorian branch president Julian Rait, who cautioned that the extreme sanctions imposed by the Bill could discourage practitioners from providing needed care.⁸⁰
- 5.37. In an open letter to the Victorian Attorney General, NAPP President and Philip Morris and Professor Patrick Parkinson of University Queensland outlined their main concerns about the Act that touch on this restriction of care. They pointed out that:⁸¹
- (a) the Act is drafted on a misguided understanding of the nature of gender identity in clinical practice. There is strong evidence that gender identity is changeable and that therapy aimed at assisting minors deal with their gender dysphoria can often result in them reaching adulthood and being reconciled to their natal sex.

⁷⁶ SBS News, "Unintended consequences': Faith groups, psychiatrists say Victoria's new gay conversion ban laws are too vague', (5 February 2021) at <https://www.sbs.com.au/news/unintended-consequences-faith-groups-psychiatrists-say-victoria-s-new-gay-conversion-ban-laws-are-too-vague>.

⁷⁷ Neil Foster, Law and Religion in Australia, 'Collision of laws: the impact of Commonwealth law on the Victorian CSP law', (14 February 2021) at <https://lawandreligionaustralia.blog/2021/02/14/collision-of-laws-the-impact-of-commonwealth-law-on-the-victorian-csp-law/>. See also Murray Campbell, 'Victoria Bans Conversion Practices Despite Significant Flaws in the Bill', (4 February 2021) at <https://murraycampbell.net/2021/02/04/victoria-bans-conversion-practices-despite-significant-flaws/>.

⁷⁸ The Royal Australian and New Zealand College of Psychiatrists, 'Psychiatrists raise concerns regarding Conversion Practices Bill' (2 February 2021), at <https://www.ranzcp.org/news-policy/news/psychiatrists-raise-concerns-regarding-conversion>.

⁷⁹ Annika Smethurst, 'Doctors fear conversion therapy ban will deny treatment to vulnerable patients', (2 February 2021), *The Age*, at <https://www.theage.com.au/politics/victoria/doctors-fear-conversion-therapy-ban-will-deny-treatment-to-vulnerable-patients-20210202-p56yuy.html>.

⁸⁰ *Ibid.*

⁸¹ National Association of Practising Psychiatrists, Open Letter on the Change or Suppression (Conversion) Practices Prohibition Bill 2020 (7 January 2021).

- (b) the Act lacks sufficient evidence to criminalise the psychotherapy provided by medical practitioners to help people suffering with gender dysphoria and has conflated claims of harm from therapies with the effects of long abandoned aversion practices.
- (c) the protections provided for medical practitioners in the Act are wholly inadequate. By using the language of *necessity* a practitioner's professional clinical judgment is exposed to equivocation in the court room. Not all practitioners agree on the same approach.

Implications for Victorian health practitioners

- 5.38. Part 2 of the VIC Act creates criminal offenses for COS Practices which will impose significant jail time and/or fines for both "injury" and "serious injury" that result from conversion or suppression practices.
- 5.39. The terms "injury" and "serious injury" will have the same meanings as in section 15 of the [Crimes Act 1958 \(Vic\)](#) and will extend to temporary mental harms. For example, "injury" may mean both physical injury or "harm to mental health" (which is further defined) "whether temporary or permanent".
- 5.40. For a person, the penalties could be as much as 10 years' imprisonment and fines of up to \$200,000. These are potentially very serious penalties.⁸²
- 5.41. The prospect of temporary mental harms being enough to trigger the offence provision is of serious concern to medical practitioners in Victoria. Any treatment or practice relating to a patient's sexual orientation or gender identity that falls short of promotion and affirmation could pose a risk to a practitioner.
- 5.42. Part 3 of the VIC Act establishes a "civil response scheme" (**Scheme**) within the Equal Opportunity and Human Rights Commission (**Commission**).
- 5.43. The new functions and powers given to the Commission under the Scheme will enable it to pursue, investigate, sanction, re-educate, punish and suppress organisations and individuals, including health professionals.
- 5.44. The Commission will also receive and investigate complaints about COS Practices. Concerningly, the VIC Act has a very low bar for allowing the Commission to receive and investigate reports. For example, sections 17(1)(b), 21 and 24 make it clear that the Commission may receive reports "from any person", even those who are not affected by the relevant COS Practices.⁸³ These complainants can make anonymous reports and there are very strict secrecy provisions that can be used to obscure these investigations from public scrutiny.
- 5.45. A targeted person may then be subject to long, stressful and costly processes, including potential referral to the Health Complaints Commissioner, the Australian Health Practitioner Regulation Agency, the Ombudsman and Victoria Police, being compelled to provide information or documents or appear before the Commission, remedies (such as enforceable

⁸² Institute for Civil Society, 'Problems and Proposed Amendments: Victoria's 'Change or Suppression (Conversion) Practices Prohibition Bill 2020', (17 January 2021) at <http://www.i4cs.com.au/problems-and-proposed-amendments-victorias-change-or-suppression-conversion-practices-prohibition-bill-2020/>.

⁸³ Institute for Civil Society, 'Problems and Proposed Amendments: Victoria's 'Change or Suppression (Conversion) Practices Prohibition Bill 2020', (17 January 2021) at <http://www.i4cs.com.au/problems-and-proposed-amendments-victorias-change-or-suppression-conversion-practices-prohibition-bill-2020/>.

- undertakings and compliance notices), associated applications to the Victorian Civil and Administrative Tribunal, and proceedings for any offences.
- 5.46. Such provisions therefore pose significant additional risks to Victorian medical practitioners.
- 5.47. The VIC Act contains the same issues as the QLD and ACT Acts, but poses a more significant risk due to its harsher penalties and differences in the definition of a change or suppression practice that include express mention of psychiatry and psychotherapy and make referrals a risk.
- 5.48. Practitioners will need to take careful steps to make sure that their patients are aware that they are not intending to perform any change or suppression practice.
- 5.49. As with the ACT Act, a patient's consent to treatment will not protect a medical practitioner.
- 5.50. Medical Professionals will also need to revise their method of referrals to ensure that they are not taking on any risk by misapprehending the nature of the treatment that their colleague will be administering to their patient.
- 5.51. As under the other Acts, nothing short of complete affirmation and support of someone's feelings and desires in relation to their felt gender identity or sexual orientation will be safe for a medical practitioner in treating their patient.

Inconsistency with fundamental rights

- 5.52. The Victorian Attorney General produced a disingenuous "[statement of compatibility](#)" that considered how the Bill would interact with the [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#) (Charter). This statement is sheer ideological advocacy and obscured the Bill's threats to fundamental rights and freedoms that are supposedly protected by the Charter.
- 5.53. The VIC Act is inconsistent with the following fundamental freedoms under the Charter:
- (a) **Section 8 – Recognition and equality before the law:** The VIC Act gives unequal protection to persons promoting a single controversial practice in relation to issues of sexual orientation and gender identity and discriminates in favour of gender transition treatments that involve experimental chemical and hormone treatments and invasive surgical practices.
 - (b) **Section 10 – Protection from torture and cruel, inhuman or degrading treatment:** The disproportionate protection of gender transition treatments in the VIC Act fails to protect children from being exposed to the dangerous effects of these procedures at a time when they are incapable of giving informed consent.
 - (c) **Section 12 – Freedom of movement:** Parents and others may be criminalised where a journey outside of Victoria is considered to be intended for change or suppression practices to be directed towards a person. This is a limitation on freedom of movement.
 - (d) **Section 13 – Privacy and reputation:** The family has the right not be interfered with arbitrarily. The Vic Act will allow unjustifiable interference with this right to privacy, enabling the State to police communications between a parent and their child.
 - (e) **Section 14 – Freedom of thought, conscience, religion and belief and Section 19 – Cultural Rights:** Any teaching by parents to children of body affirmation beliefs or the teaching of orthodox religious beliefs on sexual orientation or gender identity could be criminal "change or suppression practices".

- (f) **Section 15 – Freedom of Expression:** Parents and teachers may be restricted from sharing and imparting information and ideas about sexual orientation and gender identity.
 - (g) **Section 17 – Protection of families and children:** The potential criminalisation of parents and guardians for providing moral and ethical teaching and formation of a child on sexual orientation and gender identity issues may breach of the fundamental rights of the family.
- 5.54. The far-reaching effects of the VIC Act are disproportionate to the harms that it seeks to prevent. Thus, the requirements of section 7 of the Charter (which sets out the reasonable limits that can be imposed on rights) are not satisfied.
- 5.55. The VIC Act places unjustifiable limits on fundamental rights and freedoms that are completely unnecessary to achieve legitimate aims.
- 5.56. The above rights are central to a healthy and functioning free society. Any law that violates them would need to have a compelling rationale. However, no actual need for the VIC Act has been established by reliable evidence.
- 5.57. The VIC Act is also exceptionally vague and broad, and imposes extensive limitations on the rights of individuals, families, parents, teachers, counsellors, health professionals and clergy that have no connection with the purpose of preventing serious harm. There are clearly less restrictive means available to effect that purpose.

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