

Briefing Sheet – Victorian Conversion Practices Bill



Victoria set to create the broadest and harshest limits on free speech and access to advice, health care, counselling and prayer for same-sex attracted and gender dysphoric people.

Summary

The Victorian Change or Suppression (Conversion) Practices Prohibition Bill 2020 started with a good idea of banning coerced or invasive aversion therapies to change sexual orientation. But like the cane toad, it has grown out of all proportion to the original problem. It will cause far more harm than it prevents by making criminals of family members, friends, counsellors, therapists and religious leaders who respond to a person's request for advice, counselling, therapy or prayer. It will also force clinicians to push gender dysphoric people into body transition rather than more cautious approaches even if they are clinically appropriate. The Bill needs substantial amendments and a fully transparent inquiry.

Unprecedented Restrictions in the Victorian Bill

Adults who want to receive any advice, counselling, therapy or prayer about managing or changing their unwanted sexual desires or unwanted feelings of being in the wrong gender body will be unable do so legally.

It will be illegal and in some cases a crime for any person, whether family, friend, health care professional, counsellor or religious leader to provide such advice, counselling, therapy or prayer to the adult ***even if the adult asks for it and consents to it***

None of the other 27 laws on this subject in the world is this broad, paternalistic and harsh. Even conversations with family or friends could see the compassionate friend or family member trying to help, charged with a "change or suppression practice" a criminal offence with fines of up to \$200,000 or 10 years imprisonment if convicted.

Health professionals will be severely limited in providing care

In 23 of the 27 jurisdictions that have imposed bans like this, including Queensland, only health professionals are banned from engaging in advice, counselling or therapy. The Victorian Bill goes much broader but it does include health professionals in its ban.

The Victorian Bill gives health care professionals a defence to its criminalising of some health care treatment if they can show they engaged in conduct that was necessary to provide a health service. But that is far too high a standard - rarely is it clear that there is just one necessary treatment – more often a range of suitable options is available and the clinician needs to choose which of them are appropriate for the particular person. Clinicians need the freedom to conduct clinically appropriate diagnostic tests and try clinically appropriate treatment options. The equivalent Queensland law's test lets clinicians do what is clinically appropriate in their reasonable professional judgment.

Victoria's Bill makes it illegal and in some cases a crime for healthcare providers to provide clinically appropriate treatment to people unless the provider can prove it was "necessary". It is illegal even if the person requests and specifically consents to the treatment. This is Big Brother interference in the health care choices of people and the clinical judgment of healthcare professionals.

In summary, trying to provide help or healthcare, especially to someone seeking it, should not be a crime.

Politicians micromanaging day to day clinical health decisions

The Bill assumes that no person can ever benefit from the conversations, advice, counselling healthcare and prayer it bans. This is not the case.

Some same-sex attracted people who have freely chosen to engage in practices the Bill would ban have found them highly beneficial, in some cases even preventing suicidal ideation.¹

On the other side, there is also evidence that some same-sex attracted people who engaged in practices the Bill would ban have experienced them as very harmful, including causing them significant trauma and depression.²

It is not unusual that different people experience advice or counselling or therapy very differently. What is unusual is the Victorian government's approach to ban an enormously broad range of conduct by anyone including counselling and conversations without making any attempt to just ban conduct that is always harmful for everyone. Banning any family conversations and access to counselling and professional health care for adults just because it does not fit a particular ideology creates more, not less, harm.

The Andrews government Bill should confine the banned conduct much more narrowly to that which the evidence shows *always* causes harm to *everyone*. ***For the rest, adults and children over 16 should be free to choose to access whatever advice, counselling, therapy or prayer they wish, as long as it is their free choice to start and stop whenever they wish.***

Gender identity provisions are incoherent and will cause great harm

In gender theory, gender identity is self-determined by the individual and fluid.

How then can anyone counselling or assisting a person with gender confusion tell whether they are illegally inducing the person to change their gender identity or legally assisting the person to express their gender identity?

The answer won't be known until the person arrives at or changes their self-determined identity and by then it will be too late for the person providing the counselling or assistance.

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1. See for example the testimonies of 78 ex-LGB people (the majority of whom are Australian) who say they benefited greatly from some of the practices made illegal by the Bill) - explanatory video at https://media.freetochange.org/Video/CAUSE_data_video_updated_results_REV001.mp4 and the report on the 2020 survey of 78 of these people at <https://www.freetochange.org/wp-content/uploads/Free-To-Change-2020-Conversion-Therapy-Report-V4F.pdf>
 2. See for example the La Trobe University/HRLC report *Preventing Harm Promoting Justice* (2018) which describes the experiences of 15 LGBT people (14 experiences in Australia) who experienced some of the practices to be banned by the Bill as very harmful and traumatic - <https://www.hrlc.org.au/reports/preventing-harm>

With respect, these provisions are hopelessly confused yet criminal liability turns on them.

There is no evidence base in government reports for putting gender identity into this Bill.

The three reports the government relies upon to indicate practices intended to “suppress or change” another person’s gender identity do not support the ban.

The Latrobe/HRLC report described 14 stories in Australia of sexual orientation change practices but not one on gender identity change practices.

The Department of Justice and Community Safety consultation report on the policy proposals for the Bill described 4 stories of sexual orientation change practices but not one on gender identity change practices.

The withheld Health and Complaints Commissioner Report only looked at sexual orientation conversion therapies, not gender identity, with only a two page summary released

Policy Contradictions on Gender Identity

The Bill also exposes a bizarre contradiction in government policy.

In 2019, the current Victorian government legislated to allow people to change their birth certificate gender once each year to reflect their gender identity – clearly this implies that people can change their gender identity at least annually.³

If an annual change in gender identity is expressly contemplated by one law, how then can the same government propose a law to ban people from helping others change their gender identity?

Flawed Policy Process

The bill incoherently prohibits any conduct intended to “suppress or change” a second person’s gender identity, but excludes from the ban any assistance to a person considering or undergoing a gender transition. The term gender transition is unhelpfully not defined.

This will effectively force clinicians to adopt an affirmation approach to people presenting with gender dysphoria by uncritically affirming their wrong body feelings and moving them into body transition. That is the legally safe path under this Bill. To do otherwise will involve advising the person to wait while other issues (e.g. depression or autism spectrum issues) are explored and resolved or to wait to see if puberty resolves the gender dysphoria. But telling a person to hold off expressing their gender identity through a body transition for a time is “suppressing” their gender identity and illegal and criminal under the Bill. Clinicians won’t take that risk.

Remarkably the government’s documents are silent on the controversies about affirmation approaches to body transition therapies. This is despite serious concerns about young people being pushed too quickly into gender transition of their bodies. In a recent UK court case a young woman Keira Bell regretted her body transition to a trans male starting at 15 and the court held that the gender clinic could not say it had informed consent from a person of 15 for such experimental body changing treatment which left her infertile

³ Births, Deaths and Marriages Registration Amendment Act 2019

A cautious approach in considering whether to proceed to body transition is the prudent medical course for people presenting with gender dysphoria – especially in childhood or adolescence.⁴

Appropriate medical decisions for a particular child are a matter for the child, the parents and the health practitioner, not for blanket rules set by the Parliament. The proposals in the Bill have never had a fully transparent public inquiry. The lack of transparency is highlighted by closed door consultations and limited reports.

The Way Forward

For such important legislation with life changing health and criminal consequences, a fully transparent public inquiry is needed. Government consultations have occurred behind closed doors with very limited reporting.

If the Bill does proceed it needs substantial amendment to reduce its gross overbreadth. Key amendments include:

- Restrict the Bill's ban to conduct and practices directed to those under 16 and those with diminished mental capacity. People over 16 if they can freely choose whether to ask for and exit counselling, therapy and prayer, should be able to choose for themselves what is helpful without the State telling them.
- Stop the Bill applying to conversations and advice with family and friends and community members
- Give health practitioners freedom to do what is clinically appropriate for the person as is the case in Queensland (not a narrow defence of just doing what is “necessary” to provide a health service)
- Remove the provisions banning gender identity change or suppression or at the very least remove the bias in the Bill which promotes body transition by allowing people and doctors to advise and provide any clinically appropriate treatment options for gender dysphoria.

For more information contact

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⁴ See the principles on this formulated by the National Association of Practising Psychiatrists on the Management of Gender Dysphoria at <https://napp.org.au/2020/11/management-of-gender-dysphoria/>