

**LABOR GOVERNMENT IN VICTORIA MAKES PRAYER A CRIMINAL OFFENCE**

**A Commentary by Freedom for Faith**

In the most aggressive action ever taken by an Australian government to attack freedom of religion, the Labor Government in Victoria proposes to make it a criminal offence, punishable by several years' imprisonment, for a person to pray with another person about issues they are having concerning their sexual orientation or gender identity. It will not be a defence that the person actually wanted prayer.

In order to convict someone of a criminal offence, the prosecution will have to demonstrate that injury has occurred to the person being prayed for and that the person praying with that person is negligent as to whether engaging in prayer will cause injury. While these additional requirements will make it difficult for the prosecution to achieve a conviction in such a case, laws of this kind have a chilling effect on people's behaviour. That is, pastors and other faith leaders may feel they cannot pray with a person in need about issues of same-sex attraction or gender identity for fear that the police will come knocking at the door.

No Labor Government minister who pretends otherwise should be believed.

It is not only prayer that is under attack from this Bill. Mental health providers ought to be concerned as well. The proposed legislation explicitly threatens psychiatrists and psychotherapists with lengthy jail terms for engaging in therapy with the purpose of helping a person struggling with same-sex attraction or gender confusion, unless the therapy supports their same-sex orientation or affirms their belief that they are 'trans'.

There is an exception if the therapy is 'necessary to provide a health service', in the reasonable professional judgment of the therapist, but the word 'necessary' limits the scope of the exemption. The prosecutor may argue that while the psychiatrist or psychologist may have been justified in thinking that the particular therapy was desirable or in the best interests of the patient, the practice was not 'necessary' to provide a health service.

This leaves health professionals with great uncertainty about their position. The consequence is likely to be that they will turn away many people in need.

The Bill is also aimed at parents. It makes it a criminal offence to take a child out of Victoria for the purposes of getting the kind of therapy or other support that the Bill outlaws, if certain other conditions are satisfied. It could even be a criminal offence for one adult to drive another adult out of Victoria for the purpose of engaging in an outlawed therapy. That is, giving a person a lift in the car from Wodonga in Victoria to Albury in NSW for prayer or therapy, a journey that may be less than 5 kms, could involve the commission of a criminal offence, if other conditions are satisfied.

In addition to creating new and serious criminal offences for supporting a person to change or suppress a perceived sexual orientation or gender identity, the Bill also arms the Victorian Equal Opportunity and Human Rights Commission with extensive powers to investigate the practices and teaching of church leaders, rabbis, imams and other faith leaders. There can be little doubt, from past experience, that these powers will be weaponised to attack people of faith who do not share the same worldview on issues of sexuality and gender identity as the authors of this Bill.

The Bill follows recent legislation in Queensland and the ACT for a similar purpose; but this Bill is by far the most draconian.

The Bill has been released at a time when the federal Labor Party is trying to mend fences with people of faith. It appears that Premier Daniel Andrews did not get the memo.

**The Change or Suppression (Conversion) Practices Prohibition Bill**

These proposed laws are contained in a new Bill, the [Change or Suppression (Conversion) Practices Prohibition Bill 2020](https://www.legislation.vic.gov.au/bills/change-or-suppression-conversion-practices-prohibition-bill-2020), which was introduced into Parliament in late November. It is supposed to address the evils of 'gay conversion' therapy, but does much more than this.

In the main, the Bill seeks to criminalise practices that died out in Australia - and all other western countries - over thirty years ago. These include aversion therapy, for example, seeking to induce vomiting while showing a person same-sex images. These practices no longer occur, and so there is no need for draconian legislation to prohibit them. For the record, Freedom of Faith does not support, and has never supported, such harmful practices. They would now be regarded as professional malpractice.

However, the legislation also involves the Parliament of Victoria in taking one side of an important debate about how best to support children and young people who are confused about their gender identity or who wish to transition either to the opposite sex or to some intermediate, non-binary identity. If the Bill passes, it will be lawful to encourage and support a child to transition to another gender presentation. It will be unlawful, or at least it may be unlawful, to help them to be comfortable in their natal sex.

This is troubling, because [research has consistently shown](https://pubmed.ncbi.nlm.nih.gov/26754056/) that the great majority of children who go to specialist clinics because they are experiencing gender confusion will resolve their difficulties by the time they go through puberty if they are provided with the right kind of therapy and support. Most grow up to have a same-sex orientation.

There is a huge debate in the medical and psychiatric professions about how best to help troubled young people who believe they are 'trans'. Frequently, they have [other serious mental health issues](https://pediatrics.aappublications.org/content/141/5/e20173845), or have been diagnosed to be on the [autism spectrum](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5889781/). The majority nowadays are [teenage girls](https://pubmed.ncbi.nlm.nih.gov/25873995/). There is [increasing concern about those who have desisted or detransitioned](https://acamh.onlinelibrary.wiley.com/doi/abs/10.1111/camh.12380) after receiving medical interventions that they regret.

The Andrews Government, in this legislation, is siding with those who believe irreversible medical treatments for these troubled children to help them pass as the opposite sex are in their best interests. Some of the [world's leading medical experts](https://blogs.bmj.com/bmjebmspotlight/2019/02/25/gender-affirming-hormone-in-children-and-adolescents-evidence-review/) have criticised these treatment protocols as experimental, and not based upon an adequate level of scientific evidence. The [National Association of Practising Psychiatrists](https://napp.org.au/) in Australia has recently released a position statement on [managing gender dysphoria](https://napp.org.au/2020/11/management-of-gender-dysphoria/) which recommends a cautious approach to the care and treatment of young people coming for help with issues of gender identity. The Andrews Government evidently rejects this expert medical advice - so much so that psychiatrists who follow it risk a lengthy jail term.

A growing number of young adult women are now emerging who profoundly regret transitioning, but for them it is too late. They have irreversibly altered their bodies, having persuaded surgeons to remove healthy breasts and taking testosterone to deepen their voices. Many have lost their capacity to have children. Males who take oestrogen and accept other medical interventions may similarly make irreversible changes to their bodies.

It is for the medical profession to work these important issues out and to reach an evidence-based consensus on the best treatment of troubled teenagers who present with gender dysphoria. Parliament has no role to play in dictating what treatments and therapies doctors should provide when doctors are, themselves, deeply divided on the issue.

**How does the Bill make prayer unlawful?**

The Bill defines a change or suppression practice as being a practice or conduct directed towards a person, with or without the person's consent, which has the purpose of changing or suppressing the sexual orientation or gender identity of the person; or inducing the person to change or suppress their sexual orientation or gender identity.

The [Explanatory Memorandum](https://content.legislation.vic.gov.au/sites/default/files/bills/591143exi1.pdf) (an official explanation of the purpose of the Bill) indicates that "informal practices, such as conversations with a community leader that encourage change or suppression of sexual orientation or gender identity" are covered in the definition.

That would appear to mean that a pastor, priest, rabbi or imam who encourages a same-sex attracted person to remain celibate could be guilty of a serious criminal offence if the other elements of the offence - such as harm - could be proven.

The Bill is also quite explicit that prayer with someone could be unlawful. It states that the definition of a change or suppression practice extends to "carrying out a religious practice, including but not limited to, a prayer based practice, a deliverance practice or an exorcism." It follows that it could be a criminal offence to pray with someone who is struggling with a same-sex attraction and who wants strength from God to remain celibate, or to help someone who feels they were 'born in the wrong body' to become comfortable with their sex. A prosecution could only be successful if the other elements of the offence could be proven.

It is unclear how the legislation would apply to those who are bisexual. This is a substantial proportion of those who experience same-sex attraction, particularly women. If someone comes to a pastor for prayer seeking help from God to suppress their same-sex attraction, while having a bisexual orientation, does this constitute prayer to change their sexual orientation or to suppress it? The Bill appears to begin from the premise that people are either heterosexual or homosexual and that these are distinct and immutable sexual orientations. It is difficult to see, therefore, where bisexuals fit in the Andrews Government's understanding of sexuality.

It is also unclear how the legislation applies to people who define themselves as ['gender fluid](https://www.health.com/mind-body/gender-fluid)'. These are people whose sense of themselves as male, female, non-binary or something else is in a state of flux and changeable over time. Can a pastor or other person of faith be jailed for praying with someone to gain a more stable sense of gender identity? Does the Andrews Government believe that someone can be 'gender fluid' at all? If so, then it is axiomatic that gender identity can change or be changed. The Andrews Government appears to be confused both about the medical science on sexuality and about the latest iterations of queer theory coming from the humanities departments of our universities.

These are amongst the multitude of problems with the definitions in this legislation.

**Will preaching be unlawful too?**

There ought also to be concerns about the freedom to discuss issues concerning sexual orientation and gender identity, including through preaching and teaching. The problem arises again from the broad definition of the conduct that the Andrews government is seeking to outlaw. It seeks to prohibit a practice or conduct that induces a person to change or suppress their sexual orientation or gender identity. This could be broad enough to include teaching about the religious meaning of marriage or about celibacy, which involves the disciplined suppression of sexual attractions and desires. Preaching on its own would be unlikely to trigger the criminal offence provisions because the expression of a viewpoint alone is not enough.

Other elements of the offence would also need to be proven. Importantly, these include that the conduct complained of must be 'directed towards a person' and 'on the basis of the person's sexual orientation or gender identity'. A sermon or lesson directed to a general audience or classroom of students would be unlikely to satisfy these criteria. Furthermore, it would need to be proven that there was harm flowing from the conduct and that the preacher was negligent about whether the preaching and teaching will cause injury.

While prosecution may be difficult, if the conversation were directed towards an individual who was struggling with same-sex attraction or gender identity, it may well be that those additional requirements could be met. There is, at least, some likelihood that the police could be persuaded to investigate cases of individual counselling or advice. A person so counselled may claim psychological injury resulting therefrom, and the only additional step the prosecution would need to prove is negligence as to whether engaging in the change or suppression practice would cause injury. A prosecution is certainly foreseeable if there is a determined enough complainant, backed up by a mental health professional prepared to confirm psychological injury.

There could also be a chilling effect from the powers given to the Victorian Equal Opportunity and Human Rights Commission to investigate alleged practices involving change or suppression of a gender identity or sexual orientation. The investigatory powers include orders to produce documents and a power to compel someone to attend to answer questions. The response powers include referral to health profession regulators and the police, accepting an enforceable undertaking, and issuing a compliance notice requiring a person to take or refrain from taking specified actions. The Victorian Civil and Administrative Tribunal has powers to enforce undertakings or deal with failures to comply as directed. Non-compliance with a directive of the Tribunal is an offence.

**Conclusion**

For a great many reasons, this is unnecessary and dangerous legislation.

* It is not necessary to criminalise practices which have long since disappeared.
* It is dangerous to children and young people in particular, by deterring psychiatrists and other mental health professionals from providing the professional care and support to children that will help them to address their issues about gender identity.
* It is likely to lead to increased suicides or other self-harm if troubled young people cannot find the therapeutic help they need.
* It is dangerous to freedom of religion if people risk a jail term for praying for one another, when someone is turning to God for help with the difficulties they are having.

It is also the thin edge of the wedge. What aspect of religion will the Labor Party want to ban next?