

Banning LGBTQ+ Conversion Practices

Consultation Paper

31 July 2023

Contents

Summary – Proposals and Consultation Questions	4
1. Purpose.....	8
Responding to this Paper	8
Terminology.....	8
2. Background	10
Nature of conversion practices.....	10
Prevalence	10
3. Legislative Definition of ‘Conversion Practices’	11
Base definition of conversion practices.....	11
Exceptions or exclusions	13
4. Criminal Law Responses	17
<i>Actus reus</i> : conduct covered by the criminal offence	18
<i>Mens rea</i> : what mental element should be required by the offence?	22
Offence for removal from jurisdiction.....	24
5. Civil Law Responses	26
Civil practices may be civil wrongs	26
Discrimination Law	26
A civil response scheme for conversion practices.....	27
Complaints function	27
Other elements of a civil response scheme	31
6. Regulation of Health Practitioners and Health Service Providers	34
7. Supporting Non-Legislative Actions	36
8. Appendices.....	37
Appendix A: Nature of conversion practices.....	37
Appendix B: Studies on prevalence	39
Appendix C: Other Terminology.....	41

This consultation paper discusses and contains information relating to LGBTQ+ conversion practices may cause distress for some readers. If you require support, please contact: Q Life – 1800 184 527, Beyond Blue - 1300 22 4636, Lifeline - 13 11 14.

Summary – Proposals and Consultation Questions

Issue and Proposal	Questions	Pg. #
Legislative Definition of ‘Conversion Practices’		
<p><u>Base definition of conversion practices</u></p> <p>Issue: a legislative definition is required as a foundation for a ban to clearly set which practices will be covered.</p> <p>Proposal: that conversion practices be defined as any practices (or a collection of practices) directed to a person:</p> <ul style="list-style-type: none"> on the basis of their sexual orientation or gender identity; and with the purpose of changing or suppressing that person’s sexual orientation or gender identity. 	<ol style="list-style-type: none"> Do you agree with the proposed definition of conversion practices? If no, what amendments or adjustments to the definition would you make? 	11-12
<p><u>Exceptions or exclusions</u></p> <p>Issue: the proposed legislative definition may include some legitimate practices that should not be banned.</p> <p>Proposal: that the law specify that the following do not fall within the definition of ‘conversion practices’:</p> <ul style="list-style-type: none"> practices which support or affirm sexual orientation or gender identity, such as services supporting gender transition or gender expression practices which support the development and exploration of sexual orientation or gender identity, such as providing gender affirming care a health service or treatment that is necessary in the health provider’s reasonable professional judgement or that is required to comply with their legal or professional obligations expression of a belief or delivery of religious practices, such as sermons, unless they have the direct purpose of changing or suppressing and individual’s the sexual orientation or gender identity. 	<ol style="list-style-type: none"> Do you agree with the proposed exceptions to the definition of conversion practices? If no, please explain why. Are there practices not covered by these exceptions that should be? If so, please provide some examples. Are there any practices captured by these exceptions that should not be? If so, please provide some examples. Are there any practices where you are unsure whether they would fall under this exception? Are there any practices where you are unsure whether they would have a primary purpose of changing or suppressing an individual’s sexual orientation or gender identity? 	13-16

Issue and Proposal	Questions	Pg. #
Criminal Law Responses		
<p><u>Actus reus: conduct covered by an offence</u></p> <p>Issue: <i>there are multiple models across jurisdictions for describing or limiting the specific conduct criminalised.</i></p> <p>Proposal: that the conduct covered by the criminal offence should be providing or delivering conversion practices, where a reasonable person would consider the practices to be likely to cause harm to the person they are directed towards.</p> <p>Where there are a series of linked or connected practices that occur both in NSW and outside of NSW, the offence will cover all the linked practices.</p>	<p>8. Do you agree with the proposed conduct element for the offence which requires that a reasonable person would consider the conduct is likely to cause harm?</p> <p>9. If no, what amendments should be made to the conduct element instead or in addition to what is proposed?</p> <p>10. Do you support the extraterritorial application of the offence?</p>	17-22
<p><u>Mens rea: mental element of an offence</u></p> <p>Issue: <i>there are multiple models across jurisdictions for the mental element.</i></p> <p>Proposal: that the offence requires an intention to change or suppress the sexual orientation or gender identity of the person the practices are directed against.</p>	<p>11. Do you support the proposed mental element?</p> <p>12. What would you consider to be 'intention' to change or suppress the sexual orientation, gender identity or gender expression of a person?</p> <p>13. Are there any practices where you are unsure whether there would be an intention to change or suppress the sexual orientation, gender identity or gender expression of a person?</p>	22-24
<p><u>Offence for removal from jurisdiction</u></p> <p>Issue: <i>some jurisdictions have also introduced criminal offences for removing a person from the jurisdiction for conversion practices</i></p> <p>Proposal: that an offence be developed to cover taking or arranging to take a person from NSW for the purposes of having conversion practices directed to them or engaging a person outside of NSW to provide or deliver conversion practices on another person in NSW be a criminal offence.</p>	<p>14. Should taking or arranging to take a person from NSW for the purposes of conversion practices be a criminal offence?</p> <p>15. Should engaging a person outside of NSW to provide or deliver conversion practices on a person in NSW be a criminal offence?</p>	24-25

Issue and Proposal	Questions	Pg. #
<i>Civil Law Responses</i>		
<p>Issue: <i>there are multiple models across jurisdictions for civil complaints frameworks.</i></p> <p>Proposal: It should be unlawful for a person to provide or deliver conversion practices. Conversion practices should be defined consistently with the definition used for the criminal offence.</p> <p>The existing complaints mechanism used by Anti-Discrimination NSW should be expanded to include complaints about conversion practices.</p>	<p>16. Should the civil prohibition apply to providing or delivering conversion practices, wherever they occur?</p> <p>17. Should conversion practices be defined consistently across criminal and civil law?</p> <p>18. What, if any, changes should there be to the ADNSW complaints process to deal with conversion practices complaints? For example, are changes needed to</p> <ul style="list-style-type: none"> a) who should be able to bring a complaint b) powers available to deal with complaints, including the discretion to decline a complaint where the conduct occurred more than 12 months ago c) the role of the NSW Civil and Administrative Tribunal, including how a complaint is substantiated and the orders it may make? <p>19. Should complaints be able to be referred to other bodies?</p> <p>20. Should a civil complaint process be available where a matter is being investigated by police, or criminal proceedings are ongoing?</p> <p>21. Should the Anti-Discrimination Board’s general functions be adapted to enable it to address systemic concerns about conversion practices?</p> <p>22. What other issues should be considered in the development of a civil response scheme?</p>	<p>26-33</p>

Issue and Proposal	Questions	Pg. #
Regulation of Health Practitioners and Health Service Providers		
<p>Issue: regulation of healthcare may also be relevant in some cases of conversion practices</p> <p>Proposal: existing regulation through the <i>Health Practitioner National Law (NSW)</i>, the <i>Public Health Act 2010</i> and <i>Health Care Complaints Act 1993</i> is considered sufficiently broad to cover conversion practices.</p>	<p>23. Does the existing professional regulation framework provide sufficient coverage for conversion practices performed by health professionals? If no, what amendments are required?</p>	<p>34-35</p>
Supporting Non-Legislative Actions		
<p>Issue: legislation may need to be supported by non-legislative actions, including support for impacted organisations and individuals.</p> <p>Proposal: that the commencement of any legislation be delayed for 12 months to enable supporting implementation activities to occur, such as practice guidelines, training and education and community awareness campaigns.</p>	<p>24. Do you support a delayed commencement period?</p> <p>25. What implementation actions should be prioritised during this period to support the commencement of legislation?</p>	<p>36</p>

1. Purpose

- 1.1. The NSW Government has committed to:
 - 1.1.1. banning LGBTQ+ conversion practices in NSW, and
 - 1.1.2. establishing a joint working group of the Department of Communities and Justice and NSW Health to develop legislation, in consultation with survivors and other stakeholders.
- 1.2. This paper has been developed by the joint working group to seek preliminary stakeholder feedback to inform the drafting of the legislation. This is the first stage of the consultation process in line with the Government’s commitment to consult with survivors and other stakeholders.
- 1.3. The paper seeks comments and feedback on:
 - 1.3.1. The definition of ‘conversion practices’
 - 1.3.2. The reach of any criminal offence and the conduct that it should capture
 - 1.3.3. The scope of any civil response to conversion practices
- 1.4. In Australia, legislation prohibiting conversion practices has been introduced in Victoria, Queensland, and the ACT. Internationally, legislative bans have been passed in New Zealand, Canada and Malta. Several US States also have legislation creating regulatory prohibitions.¹ These existing models are considered in this paper, noting there is no uniform approach.

Responding to this Paper

- 1.5. Please send all written responses to policy@justice.nsw.gov.au by close of business 25 August 2023. As this is a targeted consultation, submissions will not be made public.

Terminology

- 1.6. This consultation paper uses ‘conversion practices’ throughout as the general umbrella term. It is acknowledged that there are a number of alternative terms, including:
 - 1.6.1. “Conversion therapy” or “reparative therapy”. These terms are no longer commonly used, as the term “therapy” may suggest a therapeutic evidence base which does not exist.²
 - 1.6.2. Sexual orientation change efforts (SOCE), gender identity change efforts (GICE) and sexual orientation and gender identity change efforts (SOGICE). These terms are more recent and are used in academic commentary or by some survivor advocacy groups.³
- 1.7. LGBTQ+ is an umbrella acronym for people of diverse sexualities and gender identities, which includes but is not limited to Lesbian, Gay, Bisexual, Trans and Queer individuals and communities.

¹ California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai’i, Illinois, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia and Washington.

² ILGA World: Ramon Mendos, L. *Curbing Deception: A world survey on legal regulation of so-called “conversion therapies”* (2020), 17-19; Outright Action International *Harmful Treatment: The Global Reach of So-Called Conversion Therapy* (2019), 7

³ ILGA World (2020): *supra*, 19-20

- 1.8. This paper considers conversion practices as distinct from medical interventions on people born with intersex variations. While it is recognised that unnecessary or deferrable medical interventions for intersex persons raise various issues of concern, this issue is not the focus of this paper. The paper therefore refers to “LGBTQ+” but not “I” conversion practices. It is acknowledged some intersex people are LGBTQ+ and have been subject to LGBTQ+ conversion practices.
- 1.9. Further terminology is set out in **Appendix C**.

2. Background

Nature of conversion practices

- 2.1. LGBTQ+ conversion practices is an umbrella term for practices that seek to change or suppress a person's sexual orientation or gender identity to conform with heterosexuality and identify with the gender that corresponds with their sex assigned at birth (i.e. to be cisgender).⁴
- 2.2. Conversion practices can include conduct that ranges from secular or religious counselling, guidance workshops, spiritual deliverance practices, exorcisms or abusive aversion therapy.
- 2.3. Conversion practices are known to be ineffective and extremely harmful to the physical and mental health of the person subjected to them. Australian professional health bodies, including the Australian Medical Association and the Australian Psychological Society are opposed to conversion practices. This is based on the view that pathologising such identities is unfounded and actively harmful.
- 2.4. This mirrors the general consensus internationally, in which the majority of professional health and medical associations have disavowed the use of conversion practices as harmful, discriminatory and not effective.
- 2.5. A detailed summary of conduct that constitutes conversion practices with reference to the literature is at **Appendix A**.

Prevalence

- 2.6. Australian studies indicate that LGBTQ+ people in Australia continue to be exposed to conversion practices.
 - 2.6.1. A 2019 study of 6,142 LGBTQA+ Australians under 25 found 4% (249) attended counselling, group work, interventions or programs aimed at changing or suppressing sexuality or gender identity. Greater exposure was observed in trans and gender diverse people and people from faith communities.⁵
 - 2.6.2. In a qualitative study undertaken between 2016 and 2021 of 42 Australian victim-survivors, one third experienced conversion practices through formal therapy with a registered psychologist or counsellor, and every participant had experienced spiritual conversion practice.⁶ Of these victim-survivors, those from minority cultural and religious backgrounds were more likely to experience explicit coercion into conversion practices, including threats.
- 2.7. A summary of Australian and international literature on prevalence is at **Appendix B**.

⁴ See for example: UN Human Rights Council: Madrigal-Borloz, V. *Practices of so-called "conversion therapy": Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity* (2020) [17]; SOGICE Survivors. *SOGICE Survivor Statement* (2020), 1

⁵ Jones, T., J. Power, A. Hill, N. Despott, M. Carman, T. Jones, J. Anderson, and A. Bourne 'Religious conversion practices and LGBTQA+ youth' (2021b) 19 *Sexuality Research and Social Policy* 1155, 1158-1159, 1161-1162

⁶ Jones, T., J. Power and T. Jones 'Religious Trauma and Moral Injury from LGBTQA+ Conversion Practices' (2022) 305 *Social Science and Medicine*, 1, 4

3. Legislative Definition of ‘Conversion Practices’

- 3.1. Any legislative ban will need to be based on a definition of conversion practices, regardless of whether the response is in the criminal law, civil law or in regulatory reform. This paper provides:
- 3.1.1. options for the base definition of conversion practices
 - 3.1.2. options for exceptions or exclusions of practices which should not fall within scope, particularly affirmative care and support for exploration of gender identity and/or sexual orientation, and certain religious beliefs and practices.

Base definition of conversion practices

- 3.2. Conversion practices take many forms and change over time. Accordingly, the definition of conversion practices should be grounded in the purpose of practice, rather than any specific form of practice.
- 3.3. Jurisdictions which have existing legislative bans all define conversion practices with an underlying focus on the purposes of the practices and share similar elements. A comparison summary is set out in the table below.

Jurisdiction	Definition of conversion practices
Victoria <i>Change or Suppression (Conversion) Practices Prohibition Act 2021</i>	A practice directed towards a person, with or without their consent: <ul style="list-style-type: none"> • on the basis of their sexual orientation or gender identity; and • for the purpose of changing or suppressing, or inducing the person to change or suppress, their sexual orientation or gender identity.
Queensland Chapter 5B, <i>Public Health Act 2005</i>	A practice that attempts to change or suppress a person’s sexual orientation or gender identity.
ACT <i>Sexuality and Gender Identity Conversion Practices Act 2020</i>	A treatment or other practice which has the purpose or purported purpose of changing a person’s sexuality or gender identity.
New Zealand <i>Conversion Practices Prohibition Legislation Act 2022</i>	Any practice, sustained effort or treatment that is: <ul style="list-style-type: none"> • directed to a person on the basis of their sexual orientation, gender identity or gender expression; and • done with the intention of changing the person’s sexual orientation, gender identity or gender expression.
Canada S.C. 2021, c. 24	A practice, service or treatment designed to: <ul style="list-style-type: none"> • change a person’s sexual orientation to heterosexual

	<ul style="list-style-type: none"> • change a person’s gender identity to cisgender • change a person’s gender expression to conform with sex assigned at birth • repress or reduce non-heterosexual attraction or sexual behaviour • repress a person’s non-cis identity • repress or reduce a person’s gender expression that does not conform to sex assigned at birth
<p>United States of America</p> <p>[N.B. there is variation between States but general elements are shared]</p>	<p>Practices that seek to change sexual orientation or gender identity, including changing behaviours or gender expressions, or to eliminate or reduce sexual or romantic attraction to a person of the same sex/gender.</p>
<p>Malta</p> <p><i>Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act 2016</i></p>	<p>Any treatment, practice or sustained effort that aims to change, repress and, or eliminate a person’s sexual orientation, gender identity and, or gender expression.</p>

- 3.4. It is noted that Canada’s definition is an outlier, in that conversion practices are specifically defined to be those that target non-heterosexual and non-cisgender people. While in practice, conversion practices are directed at LGBTQ+ individuals, this paper proposes that the legislative definition should be neutral.
- 3.5. Based on these existing definitions, it is proposed that conversion practices be defined to encompass any practices (including a collection of practices) directed to a person:
- 3.5.1. on the basis of their sexual orientation, gender identity or gender expression; and
 - 3.5.2. with the purpose of changing or suppressing that person’s sexual orientation, gender identity or gender expression.
- 3.6. The limbs of the proposed definition recognise both the overarching purpose or intended outcome behind conversion practices, as well as the way in which they seek to target people because of their sexual orientation or gender identity. Provisions in Victoria and New Zealand are most similar to this proposal. As noted above, this definition does not seek to capture medical interventions on people with intersex variations.

Proposal

Conversion practices defined as any practices (or collection of practices) directed to a person:

- on the basis of their sexual orientation or gender identity; and
- with the purpose of changing or suppressing that person’s sexual orientation, or gender identity.

Consultation Questions

1. Do you agree with the proposed definition of conversion practices?
2. If no, what amendments or adjustments to the definition would you make?

Exceptions or exclusions

3.7. This paper proposes that legitimate practices to assist or support LGBTQ+ people or to express belief without conversion at the purpose should be covered by an explicit exclusion or exception. Potential exceptions or exclusions are considered here are:

3.7.1. Gender affirmative care and support, including practices supporting gender exploration, transition and expression.

3.7.2. Necessary health care and treatment.

3.7.3. Expression of a belief or delivery of a religious practice, such as sermons, unless they have a primary purpose of changing or suppressing an individual's sexual orientation or gender identity.

3.8. All jurisdictions which have existing legislative bans include exceptions, although there is no uniform approach. A comparison summary is set out in the table below.

Jurisdiction	Exceptions or exclusions
Victoria <i>Change or Suppression (Conversion) Practices Prohibition Act 2021</i>	Practices that support or affirm gender identity or sexual orientation, including: <ul style="list-style-type: none"> • assisting with gender transition or considering gender transition • assisting a person express their gender identity • providing acceptance, support or understanding • facilitating a person's coping skills, social support or identity exploration and development. Practices of a health service provider that in their reasonable professional judgement are necessary to provide a health service or to comply with legal or professional obligations.
Queensland Chapter 5B, <i>Public Health Act 2005</i>	Practices by a health service provider that in their reasonable professional judgement: <ul style="list-style-type: none"> • are part of clinically appropriate assessment, diagnosis or treatment of a person, or clinically appropriate support for a person; or • enables or facilitates a health service in a manner that is safe and appropriate; or • are necessary to comply with legal/professional obligations.
ACT <i>Sexuality and Gender Identity Conversion Practices Act 2020</i>	Practices which have as their purpose: <ul style="list-style-type: none"> • assisting with gender transition or considering gender transition • assisting a person express their gender identity • providing acceptance, support or understanding

	<ul style="list-style-type: none"> • facilitating a person’s coping skills, social support or identity exploration and development. <p>A practice by a health service provider that in their reasonable professional judgement is necessary to provide a health service or to comply with legal or professional obligations.</p>
<p>New Zealand</p> <p><i>Conversion Practices Prohibition Legislation Act 2022</i></p>	<ul style="list-style-type: none"> • actions done by a health practitioner that is appropriate in reasonable professional judgement and complies with relevant legal, professional and ethical standards • assisting an individual undergoing or considering gender transition • assisting an individual express their gender identity • facilitating an individual’s coping skills, development or identity exploration, or facilitating social support • expression only of a belief or a religious principle not intended to change or suppress their sexual orientation, gender identity or gender expression
<p>Canada</p> <p>S.C. 2021, c. 24</p>	<p>Practices, treatment or services relating to the development of an integrated personal identity, such as gender transition, and that is not based on an assumption that a particular sexual orientation, gender identity or gender expression is to be preferred.</p>
<p>Malta</p> <p><i>Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act 2016</i></p>	<ul style="list-style-type: none"> • services or interventions relating to the exploration or free development of a person or affirmation of their identity • any healthcare service related to free development or affirmation of gender identity or expression • any healthcare service related to the treatment of a mental disorder
<p>United States of America</p> <p>[N.B. exceptions vary slightly between States but share the same general elements]</p>	<ul style="list-style-type: none"> • practices assisting with gender transition • practices intended to provide acceptance, support and understanding • practices intended to facilitate a person’s coping, social support or identity exploration and development, including gender identity/sexual orientation neutral interventions to prevent or address unlawful conduct or unsafe sexual practices

Affirmative care or support

3.9. Read without further context, the proposed definition of conversion practices risks being interpreted as capturing gender affirmative care, which is particularly important for trans and gender diverse people. Gender affirming care is defined in the *NSW LGBTIQ+ Health Strategy 2022-2027* as:

“Gender affirming care is respectful and affirming of a person’s unique sense of gender and provides support to identify and facilitate gender healthcare goals. These goals may include supporting exploration of gender expression, social transition, and hormone and/or surgical interventions. This can also include providing support to families, carers and social networks.”⁷

3.10. Capturing such practices as ‘conversion practices’ would be contrary to the purpose of this reform, which is to ensure people, including LGBTIQ+ people, can safely express their unique identities. All jurisdictions which have legislative bans include an exception which goes to gender affirming care.

3.11. It is proposed that an exception be provided for:

3.11.1. practices which support or affirm sexual orientation or gender identity, such as services supporting gender exploration, transition or expression and

3.11.2. practices which support the development and exploration of sexual orientation or gender identity.

3.12. This exception would be broadly in similar terms to the exceptions in Victoria, the ACT, New Zealand, Canada and Malta.

3.13. It is noted that an exception or exclusion would cover both formal affirmative healthcare, explicitly recognising practices which are intended to support a person’s gender transition, as well as practices which support the development of a person’s identity and self-conception. Understanding one’s sexual orientation and gender identity can be a complex and challenging process for all people, and particularly for LGBTIQ+ people. It is not the intention of this reform to prohibit healthy and respectful support to people (particularly young people) exploring their sexual orientation or gender identity.

Necessary provision of health care and treatment

3.14. Health practitioners and health service providers have a range of competing obligations towards their patients to safeguard their health and wellbeing. An exception could be included for the provision of a health care service or treatment that is necessary in the practitioner or provider’s reasonable professional judgement or that is required to comply with legal or professional obligations. This would be similar to Victoria, Queensland, the ACT and New Zealand.

3.15. This exception is not considered likely to result in a ‘free pass’ for health practitioners and health service providers to deliver conversion practices under the guise of reasonable professional judgement. As noted above, Australian professional medical and health organisations oppose conversion practices. In that context, the exception would apply where it can be determined that treatment or therapy which otherwise meets the definition of a conversion practice was reasonably necessary.

⁷ NSW Health, *NSW LGBTIQ+ Health Strategy 2022-2027* (2022), p. 11. <<https://www.health.nsw.gov.au/lgbtiq-health/Publications/lgbtiq-health-strategy.pdf>> (accessed 7 May 2023)

Religious beliefs and practices

- 3.16. It is proposed to exclude expression of a belief or delivery of religious practices, such as sermons, unless they have a primary purpose of changing or suppressing an individual's sexual orientation or gender identity. This would be similar to New Zealand.
- 3.17. Freedom of belief and freedom of speech are important fundamental principles, and this exclusion recognises that people are free to believe and express their beliefs as long as this does not intend to directly cause harm.
- 3.18. The proposed exclusion seeks to balance these competing rights. It is intended to operate so that beliefs or religious practices must have a primary purpose of changing or suppressing a person's sexual orientation or gender identity to be considered a conversion practice.
- 3.19. This reflects that the NSW Government has also, as part of its election commitment noted that taking offence at religious teachings, expressing religious belief through sermon, or seeking guidance through prayer will not be banned.⁸

Proposal

The definition of conversion practice to include exceptions for practices that:

- support or affirm sexual orientation or gender identity, such as services supporting gender exploration, transition and expression,
- support the development and exploration of sexual orientation or gender identity in a manner that does not seek to change a person's sexual orientation or gender identity, such as providing gender affirming care;
- are necessary in the reasonable professional judgement of a health practitioner or health service provider or that are required to comply with the practitioner provider's legal or professional obligations; and
- constitute the expression of a belief or the delivery of religious practices, such as sermons, unless they have a primary purpose of changing or suppressing an individual's sexual orientation or gender identity.

Consultation Questions

3. Do you agree with the proposed exceptions to the definition of conversion practices? If no, please explain why.
4. Are there practices not covered by these exceptions that should be? If so, please provide some examples.
5. Are there any practices captured by these exceptions that should **not** be? If so, please provide some examples.
6. Are there any practices where you are unsure whether they would fall under these exceptions?
7. Are there any practices where you are unsure whether they would have a primary **purpose** of changing, or suppressing an individual's sexual orientation or gender identity?

- 3.20. The proposed definition and the above exceptions are just a starting point. Further legislative provisions may adopt a more limited scope for a criminal or civil law response– these elements are canvassed in the following sections of the paper.

⁸ Comrack, L. 'Gay conversion ban won't stop right to pray and preach, Minns tells faith leaders', *Sydney Morning Herald* (online, 27 February 2023) <<https://www.smh.com.au/politics/nsw/gay-conversion-ban-won-t-stop-right-to-pray-and-preach-minns-tells-faith-leaders-20230227-p5cnzt.html>> (accessed 7 May 2023)

4. Criminal Law Responses

- 4.1. This section considers a criminal offence for conducting conversion practices.
- 4.2. In general terms, the criminal law serves to identify wrongful behaviour which society regards as deserving of punishment. Criminal offences can carry serious penalties, such as imprisonment, and so are often reserved for equally serious conduct.
- 4.3. Criminal offences are a feature of many jurisdictions which have specifically banned LGBTQ+ conversion practices. This includes all the Australian states and territories with legislative bans (namely Queensland, the ACT and Victoria). Internationally, criminal offences are also in place in New Zealand, Canada and Malta. The United States of America does not have criminal offences for conversion practices.
- 4.4. Generally a criminal offence comprises of two elements:
 - 4.4.1. The conduct (the **physical element**, also known as *actus reus*)
 - 4.4.2. The person's state of mind (the **mental element**, also known as *mens rea*).
- 4.5. For example, stealing is a criminal offence in NSW with these two elements – to be proven, it must be shown that the person stole an item or object (physical element) and knew that they were stealing from another person (mental element).
- 4.6. Not all criminal offences are that simple. When dealing with complex interpersonal behaviours, additional elements may be needed to make sure that the offence captures only serious behaviour. For example, additional elements might include whether:
 - 4.6.1. the conduct is defined
 - 4.6.2. the conduct caused some form of injury or impact on the victim
 - 4.6.3. the conduct violates community standards (often described as considering behaviour from the view of the '**reasonable person**')
 - 4.6.4. there are defences to allow a person to justify their behaviour in certain circumstances
- 4.7. A criminal offence for engaging in or delivering conversion practices is likely to cover complex interpersonal behaviour. This section considers the physical and mental elements in turn.
- 4.8. For the **physical element**, it is proposed that the offence cover a person engaging in, performing or delivering conversion practices (as defined in line with the earlier section) where a reasonable person would consider the practices likely to cause harm.
 - 4.8.1. The offence would also cover circumstances where some conversion practices occur outside of NSW, as long as at least part of the practices occurred in NSW.
- 4.9. For the **mental element**, it is proposed that the offence require the person intended to change or suppress a person's sexual orientation, gender identity or gender expression by providing or delivering in such practices.
- 4.10. This section also proposes a related offence of removing a person from NSW for the purpose of engaging in a conversion practice.
- 4.11. Stakeholder views on any other conduct which should be criminalised are also welcomed.

Actus reus: conduct covered by the criminal offence

- 4.12. The conduct element of the principal criminal offence comprises ‘providing or delivering conversion practices’. All jurisdictions which currently have criminal offences for conversion practices prohibit such conduct. The definition of conversion practices outlined in the prior section would apply.
- 4.13. However, these jurisdictions apply different limitations on when the conduct falls within the criminal offence. Three potential limits are considered: the impact on the victim; the class of victims to be covered; and the class of perpetrators to be covered. There are advantages and drawbacks to each, and more than one could apply at the same time.
- 4.14. The limitations are where the greatest variation between existing offences in other jurisdictions arises. A comparison is summarised in the table below:

Jurisdiction	Limitations on <i>actus reus</i>
Victoria <i>Change or Suppression (Conversion) Practices Prohibition Act 2021</i>	Requires either proof of ‘injury’ or ‘serious injury’, with penalties differing on the level of the injury.
Queensland Chapter 5B, <i>Public Health Act 2005</i>	Only applies to conversion practices engaged in by a health service provider.
ACT <i>Sexuality and Gender Identity Conversion Practices Act 2020</i>	Only applies where the conversion practices are directed at a ‘protected person’, who is either a child (under 18 years old) or a person with impaired decision-making ability in relation to their health or welfare.
New Zealand <i>Conversion Practices Prohibition Legislation Act 2022</i>	Applies without further qualification where the conversion practices are directed at a person under 18 years of age or who lacks capacity to understand the nature and consequences of decisions relating to healthcare. For other classes of people, only applies where there is proof of serious harm.
Canada S.C. 2021, c. 24	No limitations specified – it is a criminal offence to provide conversion practices or cause another person to undergo them.
Malta <i>Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act 2016</i>	Applies without further qualification where the conversion practices are directed at a ‘vulnerable person’, who is either a child under 16 years old, a person suffering from a mental disorder, or a person considered by the court to be particularly at risk when taking into account age, maturity, health, mental disability or other circumstances including situations of dependence and psychological or mental state.

Also applies without further qualification where the person who is offering or performing conversion practices is a health professional.

In other cases, only applies where the conversion practices are involuntary or forced (i.e. where the person does not consent).

Requiring proof of actual harm

4.15. There are three options for whether an offence should require proof of actual harm:

4.16. **1. Require proof of harm:** The criminal offence could apply only to conduct which causes some form of injury or serious injury. Proof of harm (both physical and mental) is included in the offences in Victoria and New Zealand.

4.16.1. Arguably, requiring proof of actual harm is consistent with the principle that criminal punishment should only be available for the most serious conduct. Criminal offences for assault occasioning actual bodily harm or causing grievous bodily harm require proof of harm, which recognises the criminal conduct is the causing of injury.

4.17. **2. Do not require proof of harm:** A risk with proof of actual harm is the focus this may place on victims, as the offence may rely on them demonstrating the harmful impacts of conversion practices.

4.17.1. Requiring proof of actual harm may unfairly exclude the ‘resilient victim’ who may have shown a capacity to manage the impacts of conversion practices.

4.18. **3. Require that the conduct be of a kind that a reasonable person would consider likely to cause harm:** One of the purposes to criminalising conversion practices is to sanction behaviour which violates community standards and to focus on perpetrator accountability, not how much a victim has suffered.

4.18.1. Criminal offences for hate speech, public disorder such as riot or affray or stalking and intimidation reflect this purpose. To adopt a requirement that the ‘conversion practices are of a kind that a reasonable person would consider likely to cause harm/injury’ would provide a threshold question focussing on the severity of the likely impact of the practices. This may distinguish between practices which call for criminal intervention and those that do not, while mitigating the risks associated with resilient victims and the general focus on the victim survivor. It would apply a community standard to the nature of the conduct.

4.18.2. While no other jurisdiction currently takes this approach, it was adopted for the offence of coercive control (s 53D of the Crimes Act, yet to commence) for similar reasons.

Application to non-consenting individuals

4.19. This paper does not propose that the offence apply only where a person is forced to participate in conversion practices (i.e. where they do not consent).

4.19.1. Malta is the only jurisdiction which limits the criminal offence to such circumstances. Other jurisdictions do not make consent a determining feature of the offence, and in Victoria consent is explicitly excluded.

4.19.2. It is accepted that conversion practices are deeply harmful, and they reinforce the underlying prejudices against LGBTQ+ people, including those that may perpetuate physical or emotional violence. In light of the impact of such practices, the Government has an obligation to uphold international law principles such as the right to be free from discrimination by prohibiting such behaviour.

4.19.3. Distinguishing between free choice and where a person feels forced or coerced into participating in conversion practices may be very challenging. Conversion practice providers may seek to cloak discredited treatments under the guise of freedom of choice, particularly if that choice has been ill-informed or made under emotional or mental stress.

4.20. It is noted that the practices captured by the offence will be determined by the definition proposed in the prior section, including any exceptions. This means that expression of a belief or religious principle which is not directed to changing or suppressing a person's sexual orientation or gender identity would **not** be captured. The offence would therefore not apply when people engage in lawful practices, such as prayer that is not intended to change or suppress the person's sexual or gender identity.

Application only to children and other vulnerable people.

4.21. Some people may not be able to consent, such as children or people with impaired decision making capability and it could be argued that the offence should only apply to those classes of people. This is the approach taken in the ACT and in part in New Zealand and Malta.

4.22. It is noted that Malta adopts an additional category of vulnerable person not seen in other jurisdictions, which is a “person considered by the court to be particularly at risk when taking into account age, maturity, health, mental disability or other circumstances including situations of dependence and psychological or mental state.”

4.23. For the reasons outlined above as to why consent is not considered a determining factor, it is not proposed this element be adopted.

Limiting the offence to certain conversion practice providers.

4.24. The criminal offence could apply to health practitioners only, or it could apply more generally to all people including non-professionals such as religious or spiritual leaders.

4.25. One argument is that higher duties should attach to health professionals, because of their particular role in delivering scientific and evidence-based treatment and the need to observe ethical standards which do not apply in other contexts. This is the approach taken in Queensland and in part in Malta, where the offence criminalises health professionals performing conversion practices in any circumstance.

4.26. However, such a limitation would not reflect the evidence that conversion practices are delivered by a far wider range of persons (see further Appendix B). This includes in both secular and religious contexts. All other jurisdictions apply a general scope and do not limit the offence by the class of provider.

4.27. Accordingly, this paper does not support limiting the application of the offence to certain classes of persons.

4.28. Interactions with religious beliefs or teachings have been considered above in relation to the definition of conversion practices themselves. If a practice does not fall within the definition, it will not be captured by the offence.

Proposal

The conduct element of the offence should cover providing or delivering conversion practices, where a reasonable person would consider the practices to be likely to cause harm to the person they are directed towards.

Consultation Questions

8. Do you agree with the proposed conduct element for the offence which requires that a reasonable person would consider the conduct is likely to cause harm?
9. If no, what amendments should be made to the conduct element instead or in addition to what is proposed?

Extraterritorial application

4.29. Generally speaking, the criminal law in NSW only applies to conduct which occurs in NSW. There are some examples where conduct which happens outside of NSW can be captured by criminal offences (i.e. the offence has extraterritorial application). Under NSW law, the extraterritorial application of NSW offences is usually only enlivened where at least part of the conduct occurs in NSW. For example:

4.29.1. Section 54D of the Crimes Act provides the offence of coercive control (not yet commenced). The offence occurs when an adult engages in a ‘course of conduct’ of abusive behaviour that is intended to coerce or control the other person. A ‘course of conduct’ for this offence includes cases where behaviour occurs both in NSW and another jurisdiction.

4.29.2. Section 66EA of the Crimes Act provides the offence of maintaining an unlawful sexual relationship with a child. The offence occurs when an adult engages in two or more unlawful sexual acts with or towards a child over any period, attracting a maximum penalty of imprisonment for life. Under section 66EA(3), it is irrelevant whether these unlawful sexual acts occurred outside of NSW, as long as one of the unlawful sexual acts occurred in NSW.

4.30. Victoria is the only jurisdiction to have an offence with extraterritorial application, which captures conduct occurring outside Victoria which has a real and substantial link with Victoria. ‘Link’ is defined as where a significant part of the conduct occurs in Victoria or some or all of the effects of the conduct occur in Victoria.

4.31. It is proposed that where a collection of linked conversion practices is in question, the offence should apply to the entirety of the connected practices provided that some of them occur within NSW, consistent with the existing offences above.

4.32. This paper does not propose to adopt the Victorian element of extraterritorial application where some or all of the *effects* of the behaviour occur within NSW, even where all of the *conduct* occurs outside of NSW. This is considered a significant departure from general principles of criminal jurisdiction.

4.33. It is noted that there may be cases where people, particularly young people, are sent overseas for conversion practices. Such conduct is considered further below as part of a dedicated offence of removing a person from NSW, distinct from performing conversion practices.

Proposal

Where there are a series of linked or connected conversion practices that occur both in NSW and outside of NSW, the offence will capture all the linked practices.

Consultation Questions

10. Do you support the extraterritorial application of the offence?

Mens rea: what mental element should be required by the offence?

4.34. The requirement for mental elements in criminal offences reflects the longstanding principle that generally, the criminal law should only apply where people are sufficiently aware of what they are doing, or are taking unjustified risks – that is, where people have chosen their behaviour and the consequences. The main mental elements used in criminal offences in NSW are set out below:

4.34.1. Intention. Intention refers to a state of mind in which a person makes a conscious decision to bring about a particular consequence.

4.34.2. Knowledge. Knowledge refers where the person knows the consequences of their outcomes. Knowledge is a slightly lower threshold than intention, as it does not require a desire to cause consequences, just awareness of them.

4.34.3. Recklessness. In NSW, recklessness refers to engaging in actions despite having the foresight of the possibility that a particular consequence will occur as the result of those actions. This threshold is lower than knowledge because it requires awareness of a *possible* outcome.

4.34.4. Negligence. Negligence refers to a mental state where an ordinary or reasonable person would have foreseen the possibility of a particular consequence as a result of one's actions and would not have engaged in those actions. Negligence is an *objective* mental element, as it does not require proof as to what the state of mind of the accused person is. Instead, the assessment is made on the basis of community standards.

4.34.5. Strict liability. Some offences do not require specific mental element, which means they simply look to whether the physical element has been committed. These are referred to as strict liability offences. Ordinarily strict liability offences are low level and regulatory offences, such as minor traffic offences like speeding or failing to wear a seatbelt. This is not supported for the NSW offence.

4.35. Adoption of a lower threshold mental element still allows other, higher threshold mental elements to be captured. For example, adopting recklessness as the mental element would still capture circumstances where intention or knowledge could be proven.

4.36. A comparison of the *mens rea* elements across jurisdictions is summarised in the table below:

Jurisdiction	<i>Mens rea</i> standard
Victoria <i>Change or Suppression (Conversion) Practices Prohibition Act 2021</i>	The person is negligent as to whether the practices will cause injury or serious injury.

Queensland Chapter 5B, <i>Public Health Act 2005</i>	Strict liability. A health service provider must not engage in conversion practices.
ACT <i>Sexuality and Gender Identity Conversion Practices Act 2020</i>	Strict liability. A person must not perform a conversion practice on a person under 18 or with impaired decision-making capacity.
New Zealand <i>Conversion Practices Prohibition Legislation Act 2022</i>	The person performs conversion practices knowing or being reckless as to whether the practices cause serious harm.
Canada S.C. 2021, c. 24	The person knowingly performs conversion practices.
Malta <i>Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act 2016</i>	Strict liability. A person must not perform conversion practices.

- 4.37. These examples set out mental elements for two different things. In Victoria and New Zealand, the mental element relates to the impact or consequences of the behaviour (i.e., injury or harm). In Canada, the mental element is in relation to the performance of the conversion practices.
- 4.38. A mental element for the impact of the conduct is not proposed. This is because this paper is proposing a requirement that the practices are likely to cause harm to the person they are directed towards, as part of the physical element discussed above, rather than proof of injury. This is an objective standard.
- 4.39. In relation to the mental element for the performance of conversion practices, this paper proposes that the offence should require an intention to change or suppress the sexual orientation or gender identity of the person the practices are directed to. This reflects the definition of conversion practices above, which captures behaviour is designed to change or suppress LGBTQ+ identity, motivated by the view such identities are undesirable or illegitimate.
- 4.40. It may be too hard to prove that a person who engages in or delivers conversion practices intends to cause harm, or is reckless as to the harm that they may cause. Many conversion practice providers believe they are doing a good or right thing, or that they are seeking to help people.

Proposal

The offence should require an intention to change or suppress the sexual orientation or gender identity of the person the practices are directed against.

Consultation Questions

11. Do you support the proposed mental element?
12. What would you consider to be ‘intention’ to change or suppress the sexual orientation or gender identity of a person?
13. Are there any practices where you are unsure if there would be an intention to change or suppress the sexual orientation or gender identity of a person?

Offence for removal from jurisdiction

4.41. In some cases, people are sent overseas to have conversion practices performed on them, or international online providers are engaged to provide conversion practices remotely. This can also occur to avoid the legislative bans on conversion practices in certain jurisdictions. This conduct may also need to be criminalised.

4.42. There are relevant offences in Victoria, the ACT and Canada .

Jurisdiction	Removal from jurisdiction offence
Victoria <i>Change or Suppression (Conversion) Practices Prohibition Act 2021</i>	Offence to take a person from Victoria or to arrange for a third party to take them from Victoria where: <ul style="list-style-type: none"> • The person intends that a conversion practice be engaged in • The conversion practice is engaged in and it causes injury
ACT <i>Sexuality and Gender Identity Conversion Practices Act 2020</i>	Offence to remove a ‘protected person’ from the ACT for the purpose of a conversion practice being performed. Protected person is either a child (under 18 years old) or a person with impaired decision-making ability in relation to their health or welfare.
Canada S.C. 2021, c. 24	Offence to remove a person under 18 from Canada with the intention that an act be committed that would constitute prescribed offences (including the conversion practices offence). N.B. this is a general removal from jurisdiction offence which also applies to a range of other intended offences.

4.43. This paper proposes an offence to cover removal of a person from NSW for the purposes of a conversion practice. The conduct being criminalised here is not the fact that a conversion practice has been engaged in, but rather that a person has sought to circumvent the criminal

law by taking or arranging for a person to be taken to a jurisdiction where such practices are not a crime.

4.44. Such an offence would be similar to the existing NSW offence of removing a person from NSW with the intention of having female genital mutilation performed on the person under section 45A of the Crimes Act.

4.44.1. The intention to perform female genital mutilation will be presumed to be shown if the person was taken from NSW and female genital mutilation was performed on the person. The presumption can be rebutted (i.e. it can be disproven if evidence is provided to the contrary that the intention did not exist).

4.44.2. Consent to being removed from NSW is excluded as a defence.

4.45. It is also proposed that the offence cover arranging for a person outside of NSW to perform conversion practices on another person in NSW. This is intended to capture circumstances where conversion practices are delivered purely remotely from outside of NSW. Such actions are considered analogous to seeking to send someone outside of NSW for conversion practices, as they aim to circumvent a legislative ban.

Proposal

An offence be developed to cover taking or arranging to take a person from NSW for the purposes of having conversion practices directed to them or engaging a person outside of NSW to provide or deliver conversion practices on a person in NSW.

Consultation Questions

14. Should taking or arranging to take a person from NSW for the purposes of conversion practices be a criminal offence?
15. Should engaging a person outside of NSW to provide or deliver conversion practices on another person in NSW be a criminal offence?

5. Civil Law Responses

- 5.1. This section considers potential civil law responses to conversion practices.
- 5.2. The paper proposes that the remit of Anti-Discrimination NSW should be expanded to receive complaints about conversion practices.

Civil practices may be civil wrongs

- 5.3. In some cases, conversion practices may amount to a tort or civil wrong and give rise to civil liability. Claims in tort are civil claims and are generally brought by people seeking compensation for injury or loss. Civil wrongs that may be applicable to conversion practices would depend on the conduct involved, but may include intentional torts such as assault and battery, as well as negligence.
- 5.4. However, there are a range of barriers for complainants in bringing these actions. Civil actions may be lengthy and expensive. In addition, claims may face a number of evidentiary challenges.⁹ For example, to establish negligence a plaintiff must be able to establish that
- A duty of care existed between the plaintiff and the person claimed to be negligent
 - The duty was breached
 - Damage or injury was caused by the breach.
- 5.5. In addition, the *Civil Liability Act 2002* limits the ability to recover for mental harm – there is no liability to pay damages for mental harm unless the harm is a recognised psychiatric illness.

Discrimination Law

- 5.6. In NSW the *Anti-Discrimination Act 1977* (Anti-Discrimination Act) prohibits discrimination in certain areas of public life, on a range of grounds, including homosexuality and transgender status.
- 5.7. It may be arguable that a person could make a complaint of unlawful discrimination on the grounds of homosexuality, or transgender status in relation to the use of conversion practices, where this occurs in certain areas of public life, such as in the provision of goods and services. Such conduct may amount to treating the person less favourably than another person would be treated if they were not homosexual or transgender.
- 5.8. However, in a submission to the Tasmania Law Reform Institute review of this issue, Equal Opportunity Tasmania observed that, while a person may have grounds to make a complaint under Tasmania’s discrimination legislation, ‘in reality, this is unlikely’. It identified that a ‘significant barrier for individuals is the identification of the treatment they are subject to during SOGI [sexual orientation and gender identity] conversion practices as being ‘less favourable’, let alone unlawful’.¹⁰
- 5.9. It is likely that similar challenges would arise in relation to a complaint made under the NSW discrimination law framework. A further limitation with the Anti-Discrimination Act is that the protected grounds relating to sexuality and gender identity are limited to homosexuality and transgender status. The NSW Government has committed to referring the Anti-Discrimination

⁹ See also the discussion in Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices: Final Report No 32* (April 2022), [8.2.1]-[8.2.4].

¹⁰ Equal Opportunity Tasmania, submission to Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* (Issues Paper 31) 2.

Act to the NSW Law Reform Commission for comprehensive review, and this review will consider reform to the protected grounds in the Act.

A civil response scheme for conversion practices

- 5.10. Jurisdictions which have introduced legislation to prohibit conversion practices have taken different approaches to civil response frameworks. Queensland has not provided for a civil response scheme. Victoria, the ACT and New Zealand made specific amendments to enable the bodies established to receive discrimination complaints to receive complaints or reports of conversion practices.
- 5.11. A civil response regime, in addition to a criminal prohibition would provide an alternative mechanism for an individual to report their experience and receive civil remedies. Depending on the design of the scheme, it may offer a range of forms of redress for a person affected, including a conciliated outcome or Tribunal orders to pay compensation, apologise, or refrain from continuing or repeating conduct. The appropriate elements of a civil response regime will be guided by its desired purpose. Stakeholder feedback is welcomed on this issue.
- 5.12. An overview of the civil scheme in Victoria, the ACT and NZ is set out below.

Jurisdiction	Civil complaints provisions
Victoria <i>Change or Suppression (Conversion) Practices Prohibition Act 2021</i>	The Victorian Equal Opportunity and Human Rights Commission is: <ul style="list-style-type: none"> • required to establish information and education programs, including educating the public • able to conduct research on relevant matters • able to receive reports of conversion practices and offer facilitation and dispute resolution • able to undertake investigations of serious or systemic conversion practices, and to undertake compliance action such as receive enforceable undertakings or issue compliance notices.
ACT <i>Human Rights Commission Act 2005 (as amended by the Sexuality and Gender Identity Conversion Practices Act 2020)</i>	Enables complaints about conversion practices to be made to the ACT Human Rights Commission. Existing processes under the <i>Human Rights Commission Act 2005 (ACT)</i> apply to such complaints.
New Zealand <i>Human Rights Act 1993 (as amended by the Conversion Practices Prohibition Legislation Act 2022)</i>	Enables complaints of conversion practices to be made to the New Zealand Human Rights Commission. Existing processes under the <i>Human Rights Act 1993 (NZ)</i> apply to such complaints.

Complaints function

- 5.13. In relation to individual complaints of conversion practices, the ACT and New Zealand have made amendments that, in summary, enable complaints about conversion practices to be dealt with by their human rights commissions through conciliation or to be referred for Tribunal determination. Victoria has established a scheme that allows the Victorian Equal Opportunity

and Human Rights Commission (**VEOHRC**) to take a range of actions in response to a report, including offering targeted education, facilitation of an outcome, and referral of a report to another person or body. Unlike the ACT and NZ regimes, and unlike the regime for complaints of discrimination in Victoria, there is no provision for referral of complaints to the Victorian Civil and Administrative Tribunal (**VCAT**) for determination.

- 5.14. One option for a civil response scheme is to enact a civil prohibition on the performance of a conversion practice on a person, and to enable complaints about conversion practices to be made and dealt with consistently with complaints made under the Anti-Discrimination Act. In NSW, the body that handles discrimination complaints is Anti-Discrimination NSW (**ADNSW**), the agency that supports the President of the Anti-Discrimination Board (**ADB**). This would be similar to the approach taken in the ACT and NZ.
- 5.15. This could operate similarly to how ADNSW handles complaints about vilification complaints. Currently, under the Anti-Discrimination Act it is unlawful to vilify a person or group of persons on a number of protected grounds. A related criminal offence in section 93Z of the Crimes Act prohibits publicly threatening or inciting violence towards a person or group on a number of overlapping grounds. A civil and criminal regime for conversion practices could co-exist in a similar way.
- 5.16. This approach has the merit of following established processes for dealing with a complaint, which broadly enables the President of the ADB to consider and attempt to conciliate a complaint, as well as to refer certain complaints to the NSW Civil and Administrative Tribunal (**NCAT**).
- 5.17. If a complaint is conciliated, the process does not involve a determination about whether or not prohibited conduct has occurred. Instead, the focus of conciliation is to seek to resolve the complaint by agreement.
- 5.18. If a conciliated outcome cannot be reached, and the complaint proceeds to NCAT for determination, NCAT is able to make a range of orders that provide a direct remedy to the complainant if the complaint is substantiated. These include orders for payment of damages to prevent a person from continuing or repeating unlawful conduct and for an apology.
- 5.19. Threshold issues for a civil complaints scheme are:
 - 5.19.1. how ‘conversion practices’ are defined for the purposes of making, and substantiating, a complaint. This paper proposes conversion practices should be defined consistently with the definition used in the criminal contexts discussed earlier in this paper.
 - 5.19.2. what conduct should be the subject of a civil prohibition. This paper proposes that it be unlawful for a person to provide or deliver conversion practices. Such a civil prohibition would not contain the additional conduct element proposed for the criminal offence: that a reasonable person would consider the practices to be likely to cause harm to the person they are directed towards. This paper proposes that the civil prohibition should apply in all contexts. That is, unlike discrimination, which is unlawful only in specified areas of public life, the prohibition on providing or delivering conversion practices would apply no matter where these occur.
- 5.20. A question arises as to whether a civil process should be available where a matter is being investigated by police, or criminal proceedings are ongoing. The Victorian legislation provides that VEOHRC must not perform the functions or duties or exercise its power in relation to

conversion practices in a manner that would prejudice criminal proceedings or criminal investigations.

Stakeholder feedback is welcomed on these issues.

- 5.21. The main elements of ADNSW’s current complaints process are included below, along with the President’s existing powers and functions under the ADA. Stakeholder feedback is welcomed on these elements and whether the current provisions of the ADA are appropriate to them.

Anti-Discrimination Act 1977 (NSW) complaints mechanism

- Who may make a complaint or report*
- The affected person on their own behalf, or on behalf of themselves and others (with their consent)
 - A parent or guardian of a person who lacks legal capacity to make a complaint
 - A representative body on behalf of a named person or persons (with their consent)

Acceptance of complaint

The President determines whether to accept or decline a complaint.

A complaint may be declined at lodgement for specified reasons, set out in section 89B, including:

- no part of the conduct complained of could amount to a contravention of a provision of the Act
- the conduct occurred more than 12 months before the making of the complaint

A complaint may also be declined during investigation for specified reasons, set out in section 92, including

- the complaint is frivolous, vexatious, misconceived or lacking in substance
- another more appropriate remedy is available
- the respondent has taken appropriate steps to remedy or redress the conduct

Investigation

If a complaint is accepted the President is to investigate it.

The President may require a complainant or respondent, or other person, to provide information or documents by notice in writing.

When information or documents are required:

- a person must provide any of the relevant material that is in the person’s possession, custody or control within the period specified in the notice, unless there is a reasonable excuse not to
 - if the person has a reasonable excuse, must give notice to the President of the excuse and of the
-

relevant material to which the excuse relates within the period specified in the notice.

Failure to comply is an offence, with a maximum penalty of 50 penalty units for a body corporate, or 10 penalty units in any other case.

Conciliation

The President may seek to resolve a complaint by conciliation.

The President may by notice in writing require a person to appear before them for the purpose of endeavouring to resolve the complaint by conciliation.

If the President is satisfied that the complaint has been settled or resolved by agreement between the parties, the President may terminate the complaint.

Agreement following conciliation

A record of the agreement is to be made and signed by the parties if any party requests this within 28 days after the agreement is reached.

If a party to a recorded agreement is of the opinion that any other party has not complied with it, they may apply to NCAT to have the agreement registered within 6 months of the date of the agreement.

If satisfied that a party to the agreement has not complied with the terms of the agreement, NCAT may register it if it could have been the subject of an order in proceedings before it. The registered agreement will be taken as an order of NCAT.

Referral of complaint to Tribunal

A complaint may be referred to the Tribunal if:

- the President has required the complainant or respondent to supply material, and this has not been provided
 - the President declines the complaint during investigation and the complainant requires the complaint to be referred
 - the President is of the opinion that a complaint cannot be resolved by conciliation
 - the President has unsuccessfully endeavoured to resolve a complaint by conciliation
 - the nature of a complaint is such that it should be referred to the Tribunal
 - the President is satisfied that all parties wish the complaint to be referred to the Tribunal and that it is appropriate to do so
 - the complaint is unresolved after 18 months
-

<i>Orders that may be made by NCAT</i>	<p>NCAT may dismiss the complaint or find it substantiated in whole or part.</p> <p>If substantiated, it may make orders including:</p> <ul style="list-style-type: none"> • for payment of damages not exceeding \$100,000 by way of compensation for any loss or damage suffered • to enjoin the respondent from continuing or repeating unlawful conduct • to order the respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant, • to order the respondent to publish an apology or a retraction
--	---

Other elements of a civil response scheme

5.22. It may be appropriate that there are other elements of a civil response scheme to address conversion practices. Possible options are set out below, and stakeholder feedback is welcomed on whether these should be a component of the prohibition on conversion practices in NSW.

Investigation and enforcement powers

5.23. In general, investigation and enforcement of breaches of legislation is limited to police or dedicated regulatory bodies, who have specialised expertise.

5.24. However, in addition to a mechanism for handling individual reports about conversion practices, the civil response scheme in Victoria empowers VEOHRC to proactively undertake investigations into systemic or serious issues, and take enforcement action in relation to these. This includes accepting enforceable undertakings or issuing compliance notices.

5.25. In Victoria, VEOHRC is empowered to undertake an investigation into any matter relating to change or suppression practices that:

5.25.1. raises an issue that is serious in nature or indicates change or suppression practices that are systemic or persisting

5.25.2. indicates a possible contravention of the Victorian Act

5.25.3. relates to a class or group of persons

5.25.4. would advance the objects of the Victorian Act.

5.26. The power to accept enforceable undertakings and issue compliance notices is not a power that the VEOHRC has in relation to its discrimination functions. Unlike for discrimination, the Victorian scheme does not enable a person who has made a report to VEOHRC about conversion practices to apply to VCAT for determination.

5.27. Currently the ADB has general functions under section 119 that enable it to carry out investigations, research and inquiries on specified matters relating to discrimination. Section 120 of the Anti-Discrimination Act also enables the Minister to refer matters relating to laws or practices that may conflict with the Act to the ADB for report. These functions could be adapted to enable investigation and report into systemic issues relating to conversion practices.

5.28. Stakeholder feedback is sought on whether it is necessary or appropriate for a body receiving complaints about conversion practises to exercise these regulatory functions. Relevant to this assessment are considerations including the purpose of the regulatory power, its utility in addressing the use of conversion practices, the appropriate expertise of agencies in utilising these powers, and enforcement of the undertakings or compliance notices.

Referral to other bodies

5.29. It may be appropriate for a body that receives complaints of conversion practices to refer matters to other bodies, including police. On receipt of a complaint or report, ACT and Victorian legislation makes provision for referral of these complaints to other bodies if their respective Commissions consider it may be more adequately dealt with by them. In Victoria, these bodies include the Health Complaints Commissioner the Australian Health Practitioner Regulation Agency, the Ombudsman, Victoria Police.

5.30. In Victoria, a referral must not occur without the consent of the person affected by the practice, unless there is a mandatory reporting obligation in relation to the matter.

Education and research

5.31. Among the purposes of an explicit legislative prohibition on conversion practices is to bring about behavioural change, so that these practices no longer occur. Thus, proactive education and research functions may be appropriate, in addition to remedial functions.

5.32. In NSW, ADNSW has a role in raising awareness of discrimination, and to conduct research and undertake inquiries. It could also be tasked with this function in relation to conversion practices. The Victorian Act also confers specific education and research functions on VEOHRC, under which it is required to establish and undertake information and education programs in relation to conversion practices and may undertake research and collect and analyse information and data relevant to conversion practices.

Proposal

It should be unlawful for a person to provide or deliver conversion practices. Conversion practices should be defined consistently with the definition used for the criminal offence.

The existing complaints mechanism used by ADNSW should be expanded to include complaints about conversion practices.

Consultation questions

16. Should the civil prohibition apply to providing or delivering conversion practices, wherever they occur?
17. Should conversion practices be defined consistently across criminal and civil law?
18. What, if any, changes should there be to the ADNSW complaints process to deal with conversion practices complaints? For example, are changes needed to:
 - a) who should be able to bring a complaint
 - b) powers available to deal with complaints, including the discretion to decline a complaint where the conduct occurred more than 12 months ago
 - c) the role of the NCAT, including how a complaint is substantiated and the orders it may make?
19. Should complaints be able to be referred to other bodies?

20. Should a civil complaint process be available where a matter is being investigated by police, or criminal proceedings are ongoing?
21. Should the ADB's general functions be adapted to enable it to address systemic concerns about conversion practices?
22. What other issues should be considered in the development of a civil response scheme?

6. Regulation of Health Practitioners and Health Service Providers

- 6.1. In the USA, legislation has focussed on professional regulation, with states generally enacting similar legislation to make it a specific ground of professional misconduct for a health professional to provide or deliver conversion practices.
- 6.2. Health practitioners and health service providers in NSW are already subject to regulation, including under the *Health Practitioner National Law (NSW)*, the *Public Health Act 2010*, and the *Health Care Complaints Act 1993*.
- 6.3. Registered health practitioners in NSW, such as medical practitioners and psychologists, are subject to codes and guidelines set by the relevant National Health Practitioner Board and are required to conduct their practice in a safe and ethical manner. Complaints can be made and disciplinary action can be taken against a registered health practitioner who breaches these codes or guidelines or who otherwise act in an unethical manner. The Psychology Board of Australia has adopted the Position Statement of the Australian Psychology Association which opposes practices that seek to change a person's sexuality or gender¹¹. Disciplinary action includes placing conditions on a practitioner's registration, suspending the practitioner or de-registering the practitioner.
- 6.4. Non-registered health practitioners, such as counsellors, in NSW must comply with the Code of Conduct for non-registered health practitioners set out in Schedule 3 of the Public Health Regulation 2022. The Code sets out standards of practice for non-registered health practitioners, including that a health practitioner:
 - 6.4.1. must provide health services in a safe and ethical manner. This includes that the practitioner must comply with the principles that they:
 - must not provide services that he or she is not qualified to provide
 - must maintain the necessary competence in his or her field of practice; and
 - must not provide health care of a type that is outside his or her experience or training
 - 6.4.2. must not diagnose or treat an illness or condition without an adequate clinical basis; and
 - 6.4.3. must not make claims, either directly or in advertising or promotion material, about the efficacy of treatment or services provided if those claims cannot be substantiated.
- 6.5. Under the *Health Care Complaints Act 1993*, any person may make a complaint to the Health Care Complaints Commission about a breach of the Code of Conduct for non-registered health practitioners. The Health Care Complaints Commission can investigate breaches of the Code and issue a prohibition order if there is a breach of the Code and the practitioner poses a risk to the health or safety of members of the public.
- 6.6. The existing scope of regulation of health professionals and complaints mechanisms under the *Health Practitioner National Law (NSW)*, the *Public Health Act 2010* and *Health Care Complaints Act 1993* is considered sufficiently broad to cover conversion practices. This paper does not propose further amendments are required.

¹¹ See <https://www.psychologyboard.gov.au/Standards-and-Guidelines/Codes-Guidelines-Policies.aspx>

Proposal

Existing regulation through the *Health Practitioner National Law (NSW)*, the *Public Health Act 2010* and *Health Care Complaints Act 1993* will continue to be relied on for professional regulation of health professionals and health service providers.

Consultation Questions

23. Does the existing practitioner regulation framework provide sufficient coverage for conversion practices performed by health practitioners? If no, what amendments are required?

7. Supporting Non-Legislative Actions

- 7.1. This consultation and the Government’s election commitment is focussed on developing and implementing a legislative ban on LGBTQ+ conversion practices. However, the development and drafting of laws is only one part of the overall picture. Successful implementation will require further, non-legislative efforts to support any new laws.
- 7.2. These actions will take time. This paper proposes the new legislation have a delayed commencement period of 12 months to enable supporting implementation activities such as sector training to occur. A 12 month delayed commencement will mirror the legislation passed in Victoria. Delayed commencements were also included in the legislation in the ACT and in New Zealand.
- 7.3. Stakeholder views are also sought on the implementation actions that should be prioritised. As a starting point, some actions that are likely to be required may be training and education for relevant professionals, development of professional guidance documents, general and targeted community awareness and education campaigns, with a focus on impacted communities and sectors, and consideration of the availability of support services for those who experience conversion practices.

Proposal

A delayed commencement period for the legislation of 12 months to enable supporting implementation activities to occur.

Consultation Questions

24. Do you support a delayed commencement period?
25. What implementation actions should be prioritised during this period to support the commencement of legislation?

8. Appendices

Appendix A: Nature of conversion practices

- 8.1. ‘LGBTQ+ conversion practices’ is an umbrella term for practices that seek to change a person’s sexual orientation or gender identity to conform with heterosexuality and cisgender identity, with a view that it is most desirable for people to be heterosexual and to identify with the gender that corresponds with their sex assigned at birth (i.e. to be cisgender).¹² The core beliefs behind conversion practices are that:
- 8.1.1. identities which deviate from heterosexual and cisgender are not desirable, and represent deviancy of the soul or ‘sexual brokenness’¹³
 - 8.1.2. all people are born with the potential to develop heterosexual attraction and cisgender identity,¹⁴ or otherwise LGBTQ+ identities can be ‘overcome’ so they are not acted upon (e.g. through celibacy or living as a cisgender heterosexual person)¹⁵
- 8.2. Practices span a broad spectrum and can be used in combination with each other. Specific practices have evolved over time and fallen in and out of favour, often based on the wider social and regulatory circumstances.¹⁶ Globally, conversion practices include:
- 8.2.1. Behaviour and ‘talking therapies’ which involve counselling and speech therapy. They may include telling a person continually their sexual orientation or gender identity is immoral and objectionable,¹⁷ or framing negative life experiences (e.g. poor relationship with parents) and current problems (e.g. anxiety, depression) as both a cause and consequence of LGBTQ+ identity.¹⁸ Behavioural ‘training’ to act in conventional gender roles and expressions has also been observed as part of these practices.¹⁹
 - 8.2.2. Religious based practices, which may involve some or all of the practices used in secular settings with a specific religious lens. Religious specific practices have also been observed, such as formal and informal prayer-based practices including conferences and community prayer,²⁰ and spiritual deliverance practices or exorcisms.²¹

¹² See for example: UN Human Rights Council *supra* at [17]; SOGICE Survivors (2020) *supra* 1

¹³ Despott, N., J. Anderson, J. Power, T. Jones, M. Pallotta-Chiarolli, P. Gurtler and T. W. Jones. *Supporting Survivors of LGBTQ+ Conversion Ideology and Practices: A Reference Guide* (La Trobe University, 2022), 3; SOGICE Survivors (2020) *supra* 2; UN Human Rights Council (2020) *supra* at [51]; Outright Action International (2019) *supra* 10; Jones, T. W., A. Brown, L. Carnie, G. Fletcher, W. Leonard. *Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia* (GLHV@ARCSHS and the Human Rights Law Centre, 2018), 2, 11, 18-19.

¹⁴ Andrade, G. and M. Campo Redondo ‘Is Conversion Therapy Ethical? A Renewed Discussion in the Context of Legal Efforts to Ban It’ (2022) 20 *Ethics, Medicine and Public Health*, 1, 6; Despott et al (2022) *supra* 3; SOGICE Survivors (2020) *supra* 2; Shidlo, A. and M. Schroeder. ‘Changing Sexual Orientation: A Consumers’ Report’ (2002) 33(3) *Professional Psychology, Research and Practice*, 249, 252

¹⁵ Despott (2022) *supra* 3; Australian Medical Association. *LGBTQIA+ Health – 2021: AMA Position Statement* (2021) 9; UN Human Rights Council (2020) *supra* at [42]; Outright Action International (2019) *supra* 8

¹⁶ UN Human Rights Council (2020) *supra* at [40]; Jones, et al. (2018) *supra* 12-15

¹⁷ Dromer, E., O. Ferlatte, T. Goodyear, D. J. Kinitz, T. Salway ‘Overcoming Conversion Therapy: A Qualitative Investigation of Experiences of Survivors’ (2022) 2 *SSM – Qualitative Research* 1, 2; ILGA World (2020) *supra* 30-33

¹⁸ Boulos, S. and C. Gonzalez Canton. ‘No Such Thing as Acceptable Sexual Orientation Change Efforts: An International Human Rights Analysis’ (2022) 32(1-2) *Women & Criminal Justice*, 185, 188-189; Despott et al. (2022) *supra* 5; ILGA World (2020) *supra* 34-35, 39-40; Shidlo and Schroeder (2002) *supra* 253

¹⁹ Despott et al. (2022) *supra* 4; Glassgold, J. ‘Research on Sexual Orientation Change Efforts’ in Haldeman, D. (ed) *The Case Against Conversion Therapy: Evidence, Ethics and Alternatives* (American Psychological Association, 2022) 19, 20-21; Rivera, D. and S. Pardo ‘Gender Identity Change Efforts’ in Haldeman, D. (ed) *The Case Against Conversion Therapy: Evidence, Ethics and Alternatives* (American Psychological Association, 2022) 51, 58; ILGA World (2020) *supra* p. 47-48; SOGICE Survivors (2020) *supra* 5; UN Human Rights Council (2020) *supra* at [45]

²⁰ Jones, Power and Jones (2022) *supra* 4; UN Human Rights Council (2020) *supra* at [30], [50]-[51]; ILGA World (2020) *supra* 38-39; SOGICE Survivors (2020) *supra* 3-5; Jones et al. (2018) *supra* 13, 33-35

²¹ ILGA World (2020) *supra* 43-45; UN Human Rights Council (2020) *supra* at [18], [30], [53]

- 8.2.3. Aversion therapies and other physical abuse. These practices are most commonly documented in relation to sexual orientation change efforts. Participants were asked to view homoerotic or explicitly homosexual materials (e.g. gay porn) and then exposed to external negative stimuli to associate pain or discomfort. This has included electric shocks to the body and the use of medication to induce nausea.²² Physical and sexual abuse has also been observed as part of conversion practices, such as ritualised beatings, so-called ‘corrective rapes’ and associated sexual assaults, starvation and force feeding, and kidnapping and forced isolation.²³
- 8.3. There is no backed scientific or medical evidence which indicates that conversion practices are in fact able to change a person’s sexual orientation or gender identity.²⁴ There have been no experimental studies in the modern era which can demonstrate a clear causal impact, with the focus on studies using retrospective reports.²⁵
- 8.4. The overwhelming medical evidence has concluded that conversion practices cause significant harms for participants. Documented harms include:
- 8.4.1. Heightened suicidal ideation and suicide attempts in comparison with other LGBTQ+ people not exposed to conversion practices.²⁶
 - 8.4.2. Poor mental health, including depression, anxiety, and poor self esteem.²⁷
 - 8.4.3. Alienation, loneliness and social isolation, including the loss of support networks both when commencing conversion practices and when leaving them.²⁸
 - 8.4.4. Physical injury where conversion practices use physical or sexual violence, or aversive techniques such as electroshock therapy or forced starvation. Analogies have been drawn with such practices and torture or other cruel, inhuman or degrading treatment.²⁹
- 8.5. Australian professional health bodies including the Australian Medical Association³⁰ and the Australian Psychological Society³¹ are opposed to conversion practices. These positions are based on the view that pathologisation of such identities is unfounded and actively harmful.
- 8.6. This mirrors the consensus internationally, in which the majority health professional associations have disavowed the use of conversion practices as harmful, discriminatory and not effective.³²

²² Boulos and Gonzalez Canton (2022) *supra* 187; ILGA World (2020) *supra* 25-27; UN Human Rights Council (2020) *supra* at [43], [52]; Haldeman, D. ‘Gay Rights, Patient Rights: The Implications of Sexual Orientation Conversion Therapy’ (2002) 33(3) *Professional Psychology: Research and Practice* 260, 260

²³ ILGA World (2020) *supra* 29-30; UN Human Rights Council (2020) *supra* at [18], [38]-[39]

²⁴ Despott et al (2022) *supra* 7; Outright Action International (2019) *supra* 16-18

²⁵ Glassgold (2022) *supra* 29, 33-34

²⁶ Boulos and Gonzalez Canton (2022) *supra* 190-191; Glassgold (2022) *supra* 34-35; Jones, Power and Jones (2022) *supra* 2-4; Outright Action International (2019) *supra* 14-15

²⁷ Campbell, L. ‘The Application of Ethical Principles, Standards, and Practices to Sexual Orientation Change Efforts and Gender Identity Change Efforts’ in Haldeman, D. (ed) *The Case Against Conversion Therapy: Evidence, Ethics and Alternatives* (American Psychological Association, 2022) 169, 171; Jones, Power and Jones (2022) *supra* 4; UN Human Rights Council (2020) *supra* at [56]; Jones et al (2018) *supra* 34, 38-41; Shidlo and Schroeder (2002) *supra* 253-6;

²⁸ Shidlo and Schroeder (2002) *supra* 255-256. On isolation and social networks, see also Jones et al (2018) *supra* 39

²⁹ Boulos and Gonzalez Canton (2022) *supra* 193-196; ILGA World (2020) *supra* 59-60; UN Human Rights Council (2020) *supra* at [83]-[87]; Outright Action International (2019) *supra* 20

³⁰ Australian Medical Association (2021) *supra*

³¹ Australian Psychological Society. *Use of psychological practices that attempt to change or suppress a person’s sexual orientation or gender: Position statement* (2021)

³² ILGA World (2020) *supra* pp. 49, 115-125,

Appendix B: Studies on prevalence

- 8.7. While there have been no significant population wide Australian studies around the prevalence of conversion practices,
- 8.7.1. A 2019 study of 6,142 LGBTQA+ Australians under 25 found 4% (249) attended counselling, group work, interventions or programs aimed at changing or suppressing sexuality or gender identity. Greater exposure was observed in trans and gender diverse people and people from faith communities.³³
- 8.7.2. Similarly, a 2017 UK Government survey of LGBT people over 16, and found that from 108,100 respondents, 2% underwent “conversion therapy”, and a further 5% were offered “conversion therapy”.³⁴
- 8.8. Available evidence demonstrates that conversion practices occur in both secular and religious contexts, with many being exposed to conversion practices as young adults. Modern international evidence shows that the majority of practitioners are religious rather than secular (noting some have clinical training).³⁵
- 8.8.1. In a qualitative study of 42 Australian victim-survivors, one third had experienced conversion practices through formal therapy with a registered psychologist or counsellor, and every participant had experienced spiritual conversion practice.³⁶
- 8.8.2. The 2017 UK Government Survey found that conversion therapy was most likely offered (53%) or conducted (51%) by faith organisations. 19% said that it was conducted by healthcare providers or medical professionals, and 16% said it was conduct by parents or other family.³⁷
- 8.8.3. In the US, 2019 estimates developed by the Williams Institute found that:³⁸
- 8.8.3.1. 698,000 adults in the US have received conversion therapy, including 350,000 who were subjected to the practice as adolescents
- 8.8.3.2. 16,000 youth will receive conversion therapy from a licensed health care professional in states that do not ban the practice before they turn 18.
- 8.8.3.3. 57,000 youth will receive conversion therapy from religious or spiritual advisors, including 38,000 who will receive it exclusively from religious or spiritual advisors, before they turn 18.
- 8.9. The reasons why people engage with conversion practices are also varied. Some people are coerced or forced into participating in conversion practices, while others seek out conversion practices of their own regard.
- 8.9.1. In a study of 42 Australian victim survivors, those from minority cultural and religious backgrounds were more likely to experience explicit coercion into conversion practices, including threats.³⁹

³³ Jones et al. (2021b) *supra* 1158-1159, 1161-1162

³⁴ UK Government. *National LGBT Survey: Research Report* (2018) 83-92

³⁵ Andrade and Campo Redondo (2021) *supra* 4; ILGA World (2020) *supra* 53-54; SOGICE Survivors (2020) *supra* 4-5

³⁶ Jones, Power and Jones (2022) *supra* 4

³⁷ UK Government (2018) *supra* 93-94

³⁸ Mallory, C., T. Brown and K. Conlon. *Conversion Therapy and LGBT Youth: Update* (2019) 1

³⁹ Jones, Power and Jones (2022) *supra* 6

- 8.9.2. Individuals may experience implicit coercion, feeling that conversion practices are the only way to maintain their membership of their community or their relationships.⁴⁰ An Australian study of interviews with 15 victim-survivors found the majority chose to engage in conversion practices to sustain family and faith community ties, because of the belief that being LGBTQ+ was incompatible with their faith.⁴¹
- 8.9.3. Research shows that when LGBTQ+ individuals seek out conversion practices, particularly in minority faith-based communities, it is because of the significant role that religion plays in their life, and how being accepted by their community shapes the individual's sense of self and purpose.⁴²
- 8.9.4. In the case of children, research shows conversion practices are engaged as a result of the desire of parents or guardians to conform to social or community expectations.⁴³

⁴⁰ Glassgold (2022) *supra* 33; Plante, T. 'The Role of Religion in Sexual Orientation Change Efforts and Gender Identity Conversion Efforts' in Haldeman, D. (ed) *The Case Against Conversion Therapy: Evidence, Ethics and Alternatives* (American Psychological Association, 2022) 109, 117

⁴¹ Jones, T., T. Jones, J. Power, N. DFespott and M. Pallotta-Chiarolli. *Healing Spiritual Harms: Supporting Recovery from LGBTQA+ Change and Suppression Practices* (2021a) 14-15. See also Shidlo and Schroeder (2002) *supra* 252

⁴² Glassgold (2022) *supra* 19, 33; Haldeman (2002) *supra* 176.

⁴³ ILGA World (2020) *supra* 62; UN Human Rights Council (2020) *supra* at [26]

Appendix C: Other Terminology

8.10. Terminology in this paper uses the definitions set out in the NSW LGBTIQ+ Health Strategy 2022-2027. Key definitions in that strategy are reproduced below for completeness. It is acknowledged this list is not comprehensive, and that language in this area continues to evolve.

Bodies

8.11. **Sexual characteristics:** physical parts of the body that are related to body development/regulation and reproductive systems. Primary sex characteristics are gonads, chromosomes, genitals and hormones.

8.12. **Intersex / People with innate variations of sex characteristics:** people who are born with anatomical, chromosomal and hormonal characteristics that are different from medical and conventional understandings of female and male bodies. The term ‘intersex’ incorporates a wide range of physical variations and conditions. There are currently at least 40 relevant clinical entities known.

8.13. **Endosex:** a word used to describe people who are not intersex.

Gender

8.14. **Gender:** one’s sense of whether they are a man, woman, non-binary, agender, genderqueer, genderfluid, or a combination of one or more of these definitions.

8.15. **Gender experience:** describes the relationship between a person’s gender, and the gender they were presumed at birth.

8.16. **Binary:** binary genders are male and female, and nonbinary genders are any genders that are not just male or female or aren’t male or female at all.

8.17. **Non-binary:** an umbrella term for any number of gender identities that sit within, outside of, across or between the spectrum of the male and female binary. A non-binary person might identify as gender fluid, trans masculine, trans feminine, agender, bigender.

8.18. **Transgender and gender diverse:** these are inclusive umbrella terms that describe people whose gender is different to what was presumed for them at birth. Transgender people may position ‘being trans’ as a history or experience, rather than an identity, and consider their gender identity as simply being female, male or a non-binary identity.

8.19. **Cisgender/Cis:** a term used to describe people who identify their gender as the same as what was presumed for them at birth (male or female). ‘Cis’ is a Latin term meaning ‘on the same side as’.

8.20. **Sistergirl/Brotherboy:** terms may be used to refer to Aboriginal people who identify as gender diverse within some Aboriginal communities.

8.21. **Affirmation:** the process of socially, medically, legally or otherwise affirming a person’s gender when it does not align to their sex assigned at birth.

Sexualities

8.22. **Sexuality:** describes a person’s sexual, romantic, spiritual, or emotional attraction to other people.

8.23. **Lesbian:** a woman who is attracted to women.

- 8.24. **Gay:** a man who is attracted to men.
- 8.25. **Bisexual:** a person who is attracted to people of their own and other genders.
- 8.26. **Pansexual:** a person who is attracted to any person.
- 8.27. **Queer:** a range of non-normative genders and sexualities. Although once used as a derogatory term, queer now also encapsulates political ideas of resistance to heteronormativity and homonormativity and is sometimes used as an umbrella term to describe the full range of LGBTIQ+ identities.
- 8.28. **Heterosexual:** a person who is only attracted to people with a different gender to their own.
- 8.29. **Asexual/Ace:** a person with a lack or rarity of sexual attraction.

Locked Bag 5000
Parramatta NSW 2124

T: (02) 9377 6000

E: policy@justice.nsw.gov.au

W: www.dcj.nsw.gov.au