

# Conversion Practices Prohibition Legislation Bill

Government Bill

## Explanatory note

### General policy statement

The Conversion Practices Prohibition Legislation Bill (the **Bill**) is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The policy implemented by the Bill is the prohibition of conversion practices in New Zealand.

Conversion practices encompass a broad range of practices that seek to change or suppress a person's sexual orientation, gender identity, or gender expression. Research emphasises that conversion practices do not work and can contribute to issues such as low self-esteem, depression, anxiety, and suicidal thoughts and attempts.

The Government's objectives in prohibiting conversion practices are to—

- affirm the dignity of all people and that no sexual orientation or gender identity is broken and in need of fixing;
- prevent the harm conversion practices cause in New Zealand and provide an avenue for redress;
- uphold the human rights of all New Zealanders, including of rainbow New Zealanders, to live free from discrimination and harm.

### *Defining conversion practices*

The Bill defines conversion practice as a practice that is—

- directed towards a person because of their sexual orientation, gender identity, or gender expression; and
- performed with the intention of changing or suppressing their sexual orientation, gender identity, or gender expression.

It is important to ensure that health practitioners and others are not discouraged from offering legitimate support or therapy for fear of incurring liability under the prohibition. As such, the definition explicitly excludes practices by health practitioners acting within their scope of practice, and other practices such as assisting a person who is undergoing a gender transition, or facilitating a person's coping skills, development, or identity exploration. The definition clarifies that it does not capture the expression only of a religious principle or belief that is not intended to change or suppress a person's sexual orientation, gender identity, or gender expression.

### *New criminal offences*

To deter the performance of conversion practices, the Bill creates 2 new criminal offences where there is a heightened risk of harm (as in the case of children or people with impaired decision-making capacity) or where serious harm is caused.

It will be an offence for any person to perform conversion practices on a person who—

- is under the age of 18 years; or
- lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to their health or welfare.

The maximum penalty for this offence is a term of imprisonment not exceeding 3 years.

It will also be an offence for any person to perform conversion practices on any other person where the practices cause serious harm. The maximum penalty for this offence is a term of imprisonment not exceeding 5 years.

### *Civil redress scheme*

The Bill utilises the Human Rights Commission's (the **Commission**) existing functions and complaints system to provide a civil redress scheme for conversion practices. This provides another pathway of redress for survivors of conversion practices, with a focus on remedying harm and preventing it from happening again. The Commission will also play an important role in providing education about conversion practices and the prohibition, and in making survivors aware of how to access the support that they may need.

The Bill amends Part 2 of the Human Rights Act 1993 to provide that performing or arranging for the performance of conversion practices is unlawful. This will allow the Commission to receive and deal with complaints about the performance of conversion practices. The existing section 67 of the Human Rights Act 1993 will also allow the Commission to receive and deal with complaints about advertisements that indicate, or could reasonably be understood as indicating, an intention to perform conversion practices.

Where complaints about conversion practices cannot be resolved through the Commission's process, parties will be able to take their case to the Human Rights Review

Tribunal (the **Tribunal**). The Tribunal will be able to grant a range of remedies under the existing section 92I of the Human Rights Act 1993.

#### *Bill to be divided*

It is intended to divide this Bill, at Committee of the whole House stage, into 2 separate Bills as follows:

- *Parts 1 and 2 and the Schedule* will become the Conversion Practices Prohibition Bill:
- *Part 3* will become the Human Rights Amendment Bill.

### **Departmental disclosure statement**

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2021&no=56>.

### **Regulatory impact statement**

The Ministry of Justice produced a regulatory impact statement on 15 April 2021 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. It provides that the Bill, except the provisions relating to civil liability, comes into force on the day after the Bill receives the Royal assent. The provisions relating to civil liability come into force 6 months later.

## **Part 1**

### **Preliminary provisions**

*Clause 3* states the purpose of the Bill.

*Clause 4* defines key terms used in the Bill, including serious harm.

*Clause 5* defines conversion practice.

*Clause 6* gives effect to any transitional, savings, and related provisions set out in *Schedule 1*.

*Clause 7* states that the Bill binds the Crown.

## Part 2

### Offences and civil liability in relation to conversion practices

#### Subpart 1—Offences relating to conversion practices

*Clause 8* provides that it is an offence to perform a conversion practice on an individual under the age of 18 years or lacking decision-making capacity. The penalty on conviction is imprisonment for a term not exceeding 3 years.

*Clause 9* provides that it is an offence to perform a conversion practice on an individual that causes the individual serious harm. The penalty on conviction is imprisonment for a term not exceeding 5 years.

*Clause 10* provides that consent is not a defence to a charge under *clause 8 or 9*.

*Clause 11* provides that a person on whom a conversion practice is performed cannot be charged as a party to an offence under *clause 8 or 9*.

*Clause 12* provides that a criminal proceeding for an offence under *clause 8 or 9* may not be commenced without the consent of the Attorney-General.

#### Subpart 2—Civil liability relating to conversion practices

*Clause 13* states that a person on whom a conversion practice has been performed may make a complaint under *new section 63A* of the Human Rights Act 1993.

## Part 3

### Amendment to Human Rights Act 1993

*Clause 14* provides that *Part 3* amends the Human Rights Act 1993 (the **principal Act**).

*Clause 15* inserts into Part 2 of the principal Act *new section 63A*, which provides that it is unlawful for a person to perform a conversion practice on any other person or to arrange for a conversion practice to be performed on any other person. Any breach of *new section 63A* may be made the subject of a complaint to the Human Rights Commission and be dealt with under the dispute resolution processes in the principal Act.

*Hon Kris Faafoi*

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**Schedule 1**  
**Transitional, savings, and related provisions**

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Conversion Practices Prohibition Legislation Act **2021**.

**2 Commencement**

- (1) This Act, except the provisions specified in **subsection (2)**, comes into force on the day after the date on which it receives the Royal assent. 5
- (2) The following provisions come into force 6 months after the date on which this Act receives the Royal assent:
- (a) **subpart 2 of Part 2:**
- (b) **Part 3.** 10

**Part 1**  
**Preliminary provisions**

**3 Purpose of this Act**

The purpose of this Act is to—

- (a) prevent harm caused by conversion practices; and 15
- (b) promote respectful and open discussions regarding sexuality and gender.

**4 Interpretation**

In this Act, unless the context otherwise requires,—

**conversion practice** has the meaning given to it in **section 5**

**health practitioner** has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003 20

**health service** has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003

**scope of practice** has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003 25

**serious harm**, in relation to an individual, means any physical, psychological, or emotional harm that seriously and detrimentally affects the health, safety, or welfare of the individual.

**5 Meaning of conversion practice**

- (1) In this Act, **conversion practice** means any practice that—
- (a) is directed towards an individual because of the individual’s sexual orientation, gender identity, or gender expression; and
  - (b) is performed with the intention of changing or suppressing the individual’s sexual orientation, gender identity, or gender expression. 5
- (2) However, **conversion practice** does not include—
- (a) a health service provided by a health practitioner in accordance with the practitioner’s scope of practice; or
  - (b) assisting an individual who is undergoing, or considering undergoing, a gender transition; or 10
  - (c) assisting an individual to express their gender identity; or
  - (d) providing acceptance, support, or understanding of an individual; or
  - (e) facilitating an individual’s coping skills, development, or identity exploration, or facilitating social support for the individual; or 15
  - (f) the expression only of a religious principle or belief made to an individual that is not intended to change or suppress the individual’s sexual orientation, gender identity, or gender expression.

Compare: Public Health Act 2005 s 213F (Qld); Sexuality and Gender Identity Conversion Practices Act 2020 s 7 (ACT); Change or Suppression (Conversion) Practices Prohibition Act 2021 s 5 (Vic) 20

**6 Transitional, savings, and related provisions**

The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.

**7 Act binds the Crown**

This Act binds the Crown. 25

**Part 2****Offences and civil liability in relation to conversion practices**

## Subpart 1—Offences relating to conversion practices

**8 Offence to perform conversion practice on person under age of 18 years or lacking decision-making capacity** 30

- (1) A person commits an offence if the person performs a conversion practice on an individual and knows that, or is reckless as to whether, the individual—
- (a) is under the age of 18 years; or
  - (b) lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to their health or welfare. 35

- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a term of imprisonment not exceeding 3 years.  
Compare: Public Health Act 2005 s 213H (Qld); Sexuality and Gender Identity Conversion Practices Act 2020 s 8 (ACT)
- 9 Offence to perform conversion practice that causes serious harm** 5
- (1) A person commits an offence if the person performs a conversion practice on an individual that causes serious harm to the individual and the person—
- (a) knew that performing the conversion practice would cause serious harm to the individual; or
- (b) was reckless as to whether the performance of the conversion practice would cause serious harm to the individual. 10
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a term of imprisonment not exceeding 5 years.  
Compare: Change or Suppression (Conversion) Practices Prohibition Act 2021 s 10 (Vic)
- 10 Consent not defence** 15
- It is not a defence to a charge under **section 8 or 9** that—
- (a) the individual on whom the conversion practice was performed, or a person on behalf of that individual, consented to the performance of that practice; or
- (b) the person charged believed that such consent was given. 20  
Compare: 1961 No 43 ss 204A(6), 204B(4)
- 11 Person on whom conversion practice performed not party to offence**
- A person on whom a conversion practice is performed may not be charged as a party to an offence committed on them under **section 8 or 9**.  
Compare: 1961 No 43 ss 204A(7), 204B(5) 25
- 12 No prosecution without Attorney-General's consent**
- No prosecution for an offence against **section 8 or 9** may be instituted without the consent of the Attorney-General.  
Compare: 1993 No 82 s 132
- Subpart 2—Civil liability relating to conversion practices 30
- 13 Complaint may be made under Human Rights Act 1993**
- A person may make a complaint under the Human Rights Act 1993 alleging that there has been a breach of **section 63A** of that Act.



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### Part 3

## Amendment to Human Rights Act 1993

#### 14 Principal Act

**This Part** amends the Human Rights Act 1993.

#### 15 New section 63A inserted (Conversion practices)

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After section 63, insert:

#### 63A Conversion practices

(1) It is unlawful for any person to—

(a) perform a conversion practice on any other person; or

(b) arrange for a conversion practice to be performed on any other person.

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(2) In this section, **conversion practice** has the same meaning as in **section 5 of the Conversion Practices Prohibition Legislation Act 2021**.

**Schedule 1**  
**Transitional, savings, and related provisions**

**s 6**

**Part 1**  
**Provisions relating to this Act as enacted**

**5**

There are no transitional, savings, or related provisions relating to this Act as enacted.