

Legislative Statement
Conversion Practices Prohibition Legislation Bill

Second Reading

Presented to the House of Representatives
In accordance with Standing Order 272

Legislative Statement for Conversion Practices Prohibition Legislation Bill

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Introduction

- 1 The Conversion Practices Prohibition Legislation Bill prohibits the performance of conversion practices in New Zealand.

Background

- 2 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. They are not currently expressly illegal in New Zealand.

Definition of conversion practice

- 3 As introduced, the Bill defines a conversion practice as a practice that is
 - a) directed towards a person because of their sexual orientation, gender identity, or gender expression, and
 - b) performed with the intention of changing or suppressing their sexual orientation, gender identity, or gender expression.
- 4 The Justice Committee recommended three changes to make the definition clearer. The Committee agreed to add the words "sustained effort or treatment" after "a practice" to provide further clarity on the kinds of actions that may be captured by the definition. The Committee also agreed to add examples of what could constitute a conversion practice to the Bill. These are based on examples provided in the Queensland Public Health Act 2005 and the Victoria Change or Suppression (Conversion) Practices Prohibition Act 2021.
- 5 The definition of conversion practice in the Bill as introduced 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.
- 6 The Justice Committee recommended removing the reference to a health practitioner's scope of practice, which it considered was too broad and did not sufficiently convey the existing restrictions on health practitioners. The revised clause now provides that a conversion practice does not include an action that a health practitioner takes when providing a health service, if the health practitioner considers in their reasonable professional judgement it is appropriate to take that action and complies with all legal, professional, and ethical standards when taking the action.
- 7 As introduced, the definition of conversion practice 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. The Justice Committee recommended including a reference to the expression of a personal belief.

Criminal offences

- 8 To deter the performance of conversion practices, the Bill creates two 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.
- 9 Under the Bill, it will be a criminal offence to perform conversion practices on a person who:
- 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.
- 10 The maximum penalty for this offence is a term of imprisonment not exceeding 3 years.
- 11 Under the Bill, 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.
- 12 No prosecution for an offence against these criminal offences may be instituted without the consent of the Attorney-General. This requirement is intended to act as an additional safeguard against prosecutions that do not come within the intended scope of the prohibition.

Civil redress

- 13 The Bill amends Part 2 of the Human Rights Act 1993 to provide that performing conversion practices or causing conversion practices to be performed is unlawful. This will allow the Human Rights Commission (the Commission) to receive and deal with complaints about the performance of conversion practices. 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.
- 14 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 pursuant to the existing section 92I of the Human Rights Act 1993.