

**Conversion Practices
Prohibition Bill 2026
(Tas.)**

**An analysis of the
final Bill**

**Emeritus Prof. Patrick
Parkinson AM**



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Executive summary

- When Parliament imposes positive obligations on the whole population to do something, or to refrain from doing something, it needs to make it clear to everyone, preferably in multiple community languages and with easy-to-understand examples, what it is the Government is **requiring** of them. This is particularly important when it comes to mandatory reporting requirements (as contained in this Bill) because people are liable to prosecution for failing to report.
- When Parliament creates criminal offences, it must make absolutely clear what constitutes the 'actus reus' of the offence - the conduct that one must not do. That is quite uncertain in this Bill because the definition of a conversion practice is so incoherent and because, in relation to gender identity, there are no known, verified examples of unethical conversion practices.
- When Parliament makes employers criminally responsible for the conduct of their employees, and organisations that involve volunteers criminally responsible for the conduct of these volunteers, as this Bill does, it needs to have a compelling justification for such draconian laws. None have been offered.
- When Parliament makes laws that have the effect of depriving adults of their right to engage in counselling, to seek prayer from others or any other kind of help, it must have a compelling justification for depriving them of such fundamental rights and freedoms. None have been offered.
- When Parliament makes laws that may have the effect of impeding the exercise of people's religious beliefs, it must be mindful of the constraints imposed by s.46 of the Constitution Act 1934 (Tas.) and international human rights guarantees concerning religious freedom.

In essence, these are the problems with this Bill. The proponents of it seem unable to define clearly the conduct that they are seeking to ban; and they fail to provide any examples that could help clarify what Parliament might intend if it enacts this Bill.

The Bill is being proposed by people who believe that there is a serious problem in the Tasmanian community that can only be addressed by some of the most draconian legislation ever to be introduced into an Australian Parliament. However, the evidence that there are still conversion practices in Tasmania today is very weak. No-one is claiming that the old unethical conversion practices used decades ago by some health professionals are still being practised. No credible allegations have been made that people have been subjected to abusive therapies to change their gender identity.

When a law creates a lot of uncertainty, it has unintended consequences. This law will create a chilling effect on the provision of mental health treatment for vulnerable young Tasmanians. It will also cause difficulties and expense for businesses and for organisations that involve volunteers. The problems in this Bill are not minor and cannot be fixed by amendment at committee stage. They go to the very heart of what the Bill is trying to do.

A positive legal obligation on every Tasmanian man, woman and child

A starting point in the analysis of the problems of this Bill is to look at the extraordinary legal obligation that s.11 imposes on all Tasmanian residents (and maybe even tourists) to do their best to avoid engaging in conversion practices.

A person must take reasonable and proportionate measures to eliminate conversion practices engaged in by the person or by another person acting on behalf of the person.

"A person must take"...This is different from saying a person must not do something such as steal or commit fraud. It is a legal requirement for everyone to do something, just as we have a legal requirement to do other things such as register our pets, seek planning permission to engage in construction on our own property or file our tax returns if we have a taxable income.

This obligation applies to every man, woman and child, because 'person' is defined in the Bill to include an organisation, but is not restricted in any way. So the whole population will now be legally required to do something or other. The obligation is not even limited to adults. Everyone in the community, even refugees with little or no English will be under a new legal obligation, and so they will need to know exactly what it is that Parliament wants them to do. They will also be mandatory reporters, as a conversion practice will now be defined as a form of abuse under other legislation discussed below. The Government will have to run a major education campaign to inform people of their new obligations under s.11, in multiple community languages. It will have enormous difficulty doing so, because it is not at all clear what practices the proponents of this Bill want to ban and therefore, what kinds of conduct needs to be reported.

If Parliament were saying in s.11: "don't engage in practices that try to change someone's sexual orientation", people would at least understand that. That's like saying "don't rob a bank". It is a requirement not to do something that the vast majority of people in the population have no intention of doing. That, however, is not what s.11 says. It says that people must take "reasonable and proportionate measures" to eliminate the conversion practices they engage in. That suggests that they can still engage in some conversion practices if eliminating those practices from their own conduct would not be reasonable and proportionate in the circumstances. I doubt that is what the proponents of the Bill intended, but it is just one example amongst many of how incoherent parts of this Bill are.

Vicarious criminal liability of employers and organisations involving volunteers

Another extraordinary provision in the Bill is that employers and organisations that involve volunteers such as community sports clubs will commit a *criminal* offence if any of their employees or volunteers engages in a conversion practice. Section 19(2) says this:

If an employee or agent commits an offence under this Act, the employer or the principal of the agent is taken to have committed the same offence.

'Employee' includes anyone 'engaged as' a volunteer (s.19(1)). 'Volunteer' is not defined in the Bill so it could be anyone who helps out - such as the parent who organises the sale of

second hand sports kit for the local children's soccer club, or the teenager who helps out with the fundraising sausage sizzle at Bunnings.

Whether the criminal liability falls upon the business and organisation or an individual is likely to depend upon the structure of the organisation. If it is a company, then the employer is that company; but if the organisation is an unincorporated association (and a great many community organisations are) then it is quite conceivable that the liability will fall on an individual such as the President. The question might need to be asked, who engaged the volunteer to help out at the sausage sizzle? That could be the head of the organisation or the person who organised the sausage sizzle that day. These individuals will be *criminally* liable.

Note that, taking a literal view of the wording, the employer or voluntary organisation which 'engages' the volunteer may be liable even if the employee or volunteer conducted a conversion practice entirely in their own time and even if what they did had nothing to do with the business or organisation. Section 19 is to be contrasted with s.54(2) which says that the employer is vicariously subject to the civil response scheme if the employee engaged in conduct that constitutes a conversion practice "in the course of the person's employment". The omission of those words in s.19 must be understood as being deliberate. Courts read statutes as a whole and the inclusion of such important words in one section but not in the other is clear evidence that Parliament intended the position to be different in each circumstance.

Section 19 imposes vicarious criminal liability on employers and voluntary organisations or their leaders, subject to a defence. They will escape conviction "if it is proved that the employer or principal could not, despite taking all reasonable precautions and exercising all due diligence, have known of or prevented the commission of the offence." That should bring a sigh of relief to small business people and leaders of charities and community groups across Tasmania. If they seek legal advice (with all the costs that involves) they are likely to be told that they can satisfy the requirement of taking all reasonable precautions and exercising all due diligence by, for example:

- Adding another mandatory training program for all employees or volunteers, explaining to them clearly, and in words that they can readily understand even if English is not their first language, what it is they are not allowed to do, even in their own time.
- In their written contract of employment or formal statement of responsibilities as a volunteer helping cook the sausages or doing the bookkeeping for the local soccer club, make it clear that under no circumstances is the employee or volunteer to engage in conversion practices.

That might be enough; but all this is yet another compliance burden for small business people such as those who run food stores and restaurants or employ plumbers and electricians. It is also an imposition on volunteer-run organisations already drowning under

a tsunami of paperwork introduced by well-meaning legislators. Yet even in their worst nightmares, I doubt that small business owners would dream that Parliament could enact a law allowing them to be criminally prosecuted for things that their employees have done outside the scope of their employment. If this is enacted, it will become just another reason why not to start up business in Tasmania.

The Faith Leaders, in their submission on the draft Bill, made substantial and very serious criticisms of this section, pointing out the problems for churches and other faith communities. They wrote (at para 69):

The inclusion of volunteers is especially inappropriate. Volunteers may have limited training, irregular involvement and considerable independence from the organisation. A church may have hundreds of volunteers participating in youth activities, small groups, prayer ministries and informal pastoral support. It is unreasonable to deem the church guilty of the same criminal offence whenever any one of those volunteers engages in prohibited conduct unless the church can satisfy such a demanding reverse-onus defence.

It is somewhat alarming then, that the section is unchanged from the draft Bill.

Apart from all these problems, there is also the issue of who decides whether to launch a prosecution under this section and in what circumstances. According to s.19(4), the employer or volunteer-run organisation (or its leaders) can be prosecuted for the offence even if the employee or volunteer is not prosecuted, which seems extraordinary. Prosecution of an employer or volunteer-run organisation under this section does not need the consent of the Director of Public Prosecutions, unlike certain other offences created by this Bill.¹ It is not even clear who can bring a prosecution under s.19. A prosecution for advertising conversion practices can be brought by the Commissioner, a police officer or "a person who is authorised to do so" by the Commissioner (see s.18). However, there is no such provision in relation to s.19. This is another strange anomaly in this Bill.

The Bill neither defines the problem clearly nor gives any examples of it

So obviously, clauses 11 and 19 of the Bill should just be omitted. However, that doesn't address the most fundamental problem with this Bill - that nobody reading this Bill will have any clear idea what are these conversion practices that are meant to be prohibited. A conversion practice is, according to s.5, a practice for the purpose of:

- (i) changing, suppressing or eradicating the sexual orientation or gender identity of the person; or
- (ii) inducing the person to change, suppress or eradicate their sexual orientation or gender identity.

The definition is vague and raises more questions than it answers. Note that the definition doesn't say "attempt to change". That is not in itself banned. What is banned is a practice that is for the purpose of changing, suppressing or eradicating. This is consistent with the view that Tasmanian Labor put in its submission on the draft Bill (sent under the signature of Ella Haddad). It wrote:

¹ See s.21, which does not apply to s.19.

Conversion practices are not merely a matter of differing beliefs or opinions - they are specific, targeted practices delivered specifically to alter somebody's sexuality or gender identity.

The language of Labor's definition is a little clearer than the Bill itself. The practice must be 'delivered specifically to alter' a person's sexuality or gender identity. Yet proponents of the Bill will no doubt say that one cannot, in fact, change one's sexual orientation. So what exactly is being banned? In order for a practice to be for the purpose of changing someone's sexual orientation or gender identity, must it have a reasonable prospect of success? For example, if I tell someone that they can resolve their same-sex orientation by having cold showers for 50 consecutive days, have I engaged in a conversion practice? What if I never really believed that this would do any good? Is the prohibition, in effect, a ban on doing something that is impossible to do?

And how can one 'eradicate' a sexual orientation? Are the proponents of the Bill talking about physical or chemical castration here? In that case, does the Bill ban the practices of penectomy and orchiectomy (removal of the penis or scrotum respectively) as part of a sex reassignment procedure? If not, what other kind of practices to 'eradicate' sexual orientation or gender identity do the proponents of the Bill have in mind?

These are all reasonable questions. If Parliament is going to pass a law that could result in people being sent to jail, the legal definition cannot be incoherent.

Essentially, this Bill tries to define what it wants to ban by saying what it does not intend to ban. In s.5(3) and (4) there are 11 specified types of conduct that are not conversion practices. Once the reader works through all of those, the question then arises: so what is a conversion practice? It might be helpful for the legislation to specify a non-exhaustive list of examples, as Queensland has done by way of notes in s.213F of the *Public Health Act 2005*. It gives specific examples of what is intended to be banned. It includes inducing nausea, vomiting or paralysis while showing the person same-sex images; using shame or coercion to give the person an aversion to same-sex attractions or to encourage gender-conforming behaviour; and using other techniques on the person encouraging the person to believe that being lesbian, gay, bisexual, transgender or intersex is a defect or disorder. These examples highlight unethical therapeutic 'techniques', as opposed to mere counselling.

If that is what Parliament wants to ban, it might define a conversion practice like this:

A conversion practice is a practice that is intended to try to bring about a change in a person's fixed and persistent same-sex orientation by therapeutic techniques such as inducing nausea, vomiting or paralysis while showing the person same-sex images; using shame or coercion to give the person an aversion to same-sex attractions; or engaging in similar abusive therapeutic techniques.

It is hard to imagine that anyone in the entire State would disagree with this.

It was put to the Greens in response to the draft Bill that some such examples would help, but they have declined to provide any. The reason for this is likely to be that they recognise that the kinds of conversion therapy practices which have long been regarded as highly

unethical and harmful are no longer practised in Tasmania, or indeed anywhere else in Australia. That is, drafting the definition of a conversion practice in these clear terms, based upon historic practices that deserve to be criminalised, would not address the problem that the proponents of this Bill want to address. However, it is really not very clear what the problem is that they do want to address. Hence the vague and somewhat incoherent definition in the Bill, which is similar in this respect to most such laws in Australia.

If the Parliament is going to make certain behaviour a criminal offence, it is morally imperative that it is crystal clear what behaviour is prohibited.

Why the need for such draconian legislation?

There seems to be broad agreement now that what is typically called 'conversion therapy' of the kind described above is no longer happening and hasn't happened for decades. Conversion therapy, to try to change a person's same-sex orientation, certainly did exist in the past. It is universally recognised as unethical and harmful.

The evidence is very weak that anything that could reasonably be considered a conversion practice is occurring in Tasmania today. Proponents of the Bill say it is still happening. For example, Labor wrote in its formal submission to the Greens' draft Bill that "evidence provided to the Tasmania Law Reform Institute (TLRI) confirms that these practices ... continue to occur in Tasmania". Certainly, the TLRI recorded, from submissions made to it, some examples of practices that it thought might accord with the definition in its Issues Paper and which had occurred in the not too distant past; but the definition it used in the Issues Paper was quite broad. Furthermore, the examples were largely anecdotal and could not be independently verified.

What the TLRI recorded as evidence of conversion practices were non-physical practices rather than the historically reported aversive or physically abusive methods that we typically associate with 'conversion therapy'. Some complaints concerned matters of belief and spiritual practices such as prayer. It is difficult to find anywhere in the TLRI report any evidence that, during the period when its inquiry was being conducted, any practices were still occurring in Tasmania of a kind intended to produce or force change of a person's sexual orientation.

What could be said is that there are religious bodies or individual religious leaders who say that same-sex practices - as contrasted with a same-sex orientation - are not consistent with Christian discipleship (or the requirements of another faith as the case may be). People of faith may offer prayer to those who seek it, and advice on how to live in accordance with their faith while having a same-sex attraction. However, nothing of that kind involves trying to induce or force someone to change their sexual orientation or gender identity. The faith leaders, in their submission to the Greens on the draft Bill, were clear on this. They wrote: "The signatories support laws that protect people from coercive and abusive practices". There used to be a US faith-based organisation, Exodus, that supported Christian people who experienced same-sex attraction to live a life consistent with their understanding of

the Bible's teaching. It disavowed conversion therapy techniques as long ago as 2012, and disbanded not long after.

The Bill recognises, appropriately, that Parliament should not try to control what people believe or how they practice their faith and that people should be free to express their beliefs and to act on them in accordance with their understanding of what discipleship entails. The Bill defines a conversion practice in such a way as to exclude:

- an expression, including in prayer, of a belief or principle, including a religious belief or principle;
- an expression that a belief or principle ought to be followed or applied;
- stating what relevant religious teachings are, or what a religion says, about a specific topic;
- the making, application or communication of general requirements in relation to religious orders, or membership or leadership of a religious community.

So there really isn't much left when it comes to concerns about people being coerced into changing, suppressing or eradicating their sexual orientation. Someone who decides that their Christian discipleship requires them to live a celibate life (and this equally applies to a man or woman with a heterosexual orientation who does not have an intimate partner) is not thereby 'suppressing' their sexual orientation. There is a fundamental difference between having a desire and acting on it.

So what then is a conversion practice? There would be widespread, perhaps universal support for banning abusive and coercive practices such as inducing nausea and vomiting, intended to bring about a change in a person's sexual orientation; but since no-one is doing that anyway, such legislation would be redundant. The real target of the conversion practices legislation is likely to be to influence what kinds of treatment or support should be offered to people who have a gender identity that is incongruent with their natal sex.

People who are 'born in the wrong body'

Certain practices to assist people, and especially young people, who experience gender incongruence, are said to be 'conversion practices'. So what are they? What could be examples that Parliament could offer to help the people of Tasmania understand the obligations that are being imposed on them and the vicarious criminal liability that employers and leaders of volunteer organisations might face, when it comes to gender identity?

The whole premise of the idea of a 'conversion practice' in relation to gender identity is that it is fixed and innate, and cannot be changed. People, it is said, can be 'born in the wrong body' and this justifies criminalising any attempts to help them to become comfortable with their natal sex.

That may be true of a small number of people, mainly natal males; but the evidence for a genetic or hormonal explanation generally is not widely accepted by experts in the field, although some accept it as a partial explanation along with other factors. The latest large twin study found only just over 20% of identical (monozygotic) twins both identified as transgender or gender diverse.² That means nearly 80% did not. For non-identical twins, the figure was under 9%.

There is a lot of evidence now that many children and young people who identify as 'trans' have had adverse childhood experiences, including dysfunctional family environments, experiences of family breakdown or being victims of child sexual abuse.³ The evidence for this is much stronger than for a hormonal or genetic explanation, although it is possible that both have some explanatory power.

Whether or not some people are born with a disposition to be transgender, it is widely accepted that many young people are "gender-fluid". They move between cisgender, transgender, non-binary and other identifications over time as they work out their identity and sexual orientation. Some have 'detransitioned', having irreversibly altered their bodies.

We really don't know until much later in young people's lives whether a transgender identification will persist. Clinicians from four gender identity clinics in the US wrote in 2013 that 'gender may be fluid, and is not binary, both at a particular time and if and when it changes within an individual across time'.⁴ The acknowledgement of these authors that gender identity in childhood and adolescence may not be stable renders questionable the idea that a young person or an adult should be prohibited from seeking help to resolve distress they have about their gender incongruence without going down the pathway of irreversible medical interventions that will make them lifelong patients.

It is also widely known that gender dysphoria often co-occurs with autism spectrum disorder. In a longitudinal study of children and young people based at the Royal Children's Hospital in Melbourne, 46% of 522 participants were identified as having autistic traits.⁵ Strang, together with 21 other experts on autism and gender incongruence,

² W Conabere et al, "Using twin data to examine heritable and intrauterine hormonal influences on transgender and gender diverse identities," *Scientific Reports*, 1 July 2025.

³ Kasia Kozłowska et al, 'Australian Children and Adolescents with Gender Dysphoria: Clinical Presentations and Challenges Experienced by a Multidisciplinary Team and Gender Service' (2021) 1(1) *Human Systems: Therapy, Culture and Attachments* 70; Kasia Kozłowska et al, 'Attachment Patterns in Children and Adolescents with Gender Dysphoria' (2021) 11 *Frontiers in Psychology* 582688. See also Guido Giovanardi et al, 'Attachment Patterns and Complex Trauma in a Sample of Adults Diagnosed with Gender Dysphoria' (2018) 9 *Frontiers in Psychology* 60 :1–13.

⁴ M Hidalgo et al, 'The Gender Affirmative Model: What We Know and What We Aim to Learn' (2013) 56(5) *Human Development* 285.

⁵ M Tollit et al. "A Comparison of Gender Diversity in Transgender Young People with and without Autistic Traits from the Trans20 Cohort Study," (2024), 47 *The Lancet Regional Health – Western Pacific* 101084.

have produced guidelines on diagnosis and treatment known as the Strang Guidelines.⁶ They make clear that ASD is relevant to diagnosis, observing that "in some cases GD symptoms appear to stem from ASD symptoms".

Anorexia is also highly relevant to diagnosis and treatment. In another Australian study,⁷ 25% of a cohort of 660 gender-diverse adolescents reported anorexia or bulimia symptoms, the majority of them born female. With young people who currently suffer, or have suffered, from anorexia or bulimia, a reasonable question ought to be whether the eating disorders, indicative of some form of body dysmorphia, might be closely related to the gender incongruence and have a similar aetiology. A therapist's questioning of a child or young person's gender identification, or the reasons for it, may be interpreted by the young person as attempts at 'conversion therapy'. It is possible that some of the cases that the TLRI identified as possible 'conversion practices' in Tasmania are of this kind.

International guidelines on the practice of 'gender affirming' care insist that clinicians must conduct a comprehensive biopsychosocial assessment and in particular seek to explore issues concerning the aetiology of a person's gender identity, including complicating mental health histories and co-occurring autism spectrum characteristics.⁸ Exploration of these issues may well lead a patient to resolve issues of gender incongruence or dysphoria without going down the pathway of irreversible hormonal medications and surgeries. That is not conversion therapy. It is responsible medical practice advocated by the leaders in the field of 'gender-affirming' care.

So what exactly is a conversion practice then? There is simply not the same history of abusive therapeutic conversion practices in relation to gender identity as there is for sexual orientation. Treatment of children and young people who presented as gender incongruent in the past involved advice to parents to let children explore their gender identity and to engage in 'watchful waiting' rather than therapeutic interventions to try to change the child. Most children naturally resolved their gender incongruence before or while going through puberty as a result of that cautious approach. The great majority of them grew up to be gay or lesbian adults. So that therapeutic approach, which some have called 'conversion therapy', was actually protective of the emerging same-sex orientation of gender non-conforming children and young people.

So we come back to the same question, what do the proponents of this Bill say is such a harmful practice engaged in by someone for the purpose of changing, suppressing or

⁶ J Strang et al, 'Initial Clinical Guidelines for Co-Occurring Autism Spectrum Disorder and Gender Dysphoria or Incongruence in Adolescents' (2018) 47(1) *J Clin Child Adolesc Psychol* 105.

⁷ J. Kerr et al. 'Prevalence of Eating Disorder Symptoms in Transgender and Gender Diverse Adolescents Presenting for Gender-Affirming Care' (2024) 74 *J Adolesc Health*, 850.

⁸ E. Coleman, A. E. Radix, W. P. Bouman, et al. 'Standards of Care for the Health of Transgender and Gender Diverse People, Version 8', (2022) 23 (sup 1) *International Journal of Transgender Health*, S1, at S51; Wylie Hembree et al, 'Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline', (2017) 102(11) *Journal of Clinical Endocrinology & Metabolism*, 3869 at 3876.

eradicating another person's gender identity that it should be a criminal offence? The great risk of this legislation is that despite the provisions in s.5(4) that say health practitioners are not engaging in conversion practices if certain conditions are satisfied, the legislation will have a chilling effect.

The harm that could be done by this legislation to children and young people

I have seen similar legislation have seriously harmful effects, particularly in Victoria where even LGBTQ+ focused mental health clinicians are extremely reluctant to provide mental health treatment to any minor who has a gender identity that is incongruent with their natal sex. The great majority of the children and young people who attend gender clinics such as RCH, Melbourne, have significant mental health issues.

It may not be possible to treat these comorbid conditions without exploring issues concerning trans-identification. Human beings are complex and often these various issues in the lives of children and young people are interrelated. Of course, this Bill seeks to provide protection for clinicians engaging in good faith exploration of these issues from a mental health perspective (s.5(3)); but that is so in other jurisdictions in Australia also, and it has not prevented the legislation causing a chilling effect that prevents some children and young people getting the mental health support they need.

Section 5(3) will also provide limited comfort to other mental health professionals, many of whom are extremely anxious about being accused of conversion therapy. They fear losing their licence to practice, or having to defend against a criminal prosecution or civil suit. The defence in s.5(3) only applies when the person has complied with all relevant legal, professional and ethical requirements (s.5(3)(a)(ii)). In a situation where so much is contested concerning gender-affirming care, there could be enormous room for doubt about what those professional and ethical requirements are. For that reason, this subsection is unlikely to be sufficient to prevent the chilling effect on mental health services that has been seen elsewhere.

There is also some vagueness also about the paragraph (s.5(3)(b)) that refers to "genuinely facilitating" coping skills or exploration etc. Who determines genuineness? If the answer is that the court will do so, either by a judge sitting alone or with a jury, that is no comfort at all. The punishment is in the process of being charged with a criminal offence, or facing civil action, and having to defend oneself.

For these reasons, it is very likely that this legislation will make therapists more reluctant to take on clients or patients for therapy that involves exploration of adverse childhood experiences or other sources of distress, when the client or patient also has a gender identity that is incongruent with their natal sex. To take on a client or patient in these circumstances is to expose themselves to considerable risk, and there are plenty of other people who are on a waiting list for their services. Child and adolescent psychologists and psychiatrists are very busy people. Demand for their services exceeds supply. It is easier to

turn someone away than risk that the clinician will later be accused of 'conversion therapy' by a mentally unstable teenager.

Other problems with the Bill

The definitions of sexual orientation and gender identity

I recognise that this definition is essentially a copy and paste from legislation elsewhere; but it is important to identify the drafting problems, so that we do not import into Tasmania difficulties that will, sooner or later, emerge elsewhere.

The definition of conversion therapy in s.5 of the Bill rests upon two other definitions, which are to be found in the *Anti-Discrimination Act 1998*. The first is the definition of sexual orientation. The second is the definition of gender identity.

Sexual orientation

Schedule 1 of the Bill changes the definition of sexual orientation in the *Anti-Discrimination Act* and this will be the operative definition in this legislation as well. The new definition is:

sexual orientation means –

- (a) a person's emotional, affectional and sexual attraction to, or intimate or sexual relationship with, persons of a different gender, the same gender or more than one gender; or
- (b) a person's absence of emotional, affectional or sexual attraction to, or intimate or sexual relationship with, any person of any gender;

This raises some questions. First, does Parliament really intend to make it unlawful for someone to seek therapy to address an unwanted heterosexual orientation? If so, why? Second, what does it mean to seek to change, suppress or eradicate someone's attraction to "more than one gender"? Someone who we might previously have described as 'bisexual' is in this category. Does this mean that the prohibited conduct is to seek to change, suppress or eradicate their sexuality in its entirety? Who would wish to do that?

Bisexuality is an important issue, because a lot of women are bisexual up until the age of about 30 before, usually, settling into a heterosexual marriage or de facto relationship. Other women enter same-sex relationships after a heterosexual relationship ends. Some men are also bisexual, but it seems to be far less common.

Bisexuality gives people some level of choice about their sexual relationships. What if a woman is comfortable with her heterosexual attractions, but, for whatever reason, wants not to have sexual feelings for other women? There could be a range of reasons for that, including cultural or religious reasons. Tasmania is an increasingly multicultural society and we have people who adhere to a range of faiths. Does the Tasmanian Parliament want to prohibit those who are bisexual from asking for such help as may be available to them to be able to act upon one kind of sexual attraction rather than another? If so, why is this a sufficiently important public policy objective to justify criminal sanctions?

Finally, there is an issue about the inclusion of those who identify as "asexual" (that is, category (b) in the above definition). The Bill will, on its face, prohibit any conduct or practice that seeks to change or eradicate a person's lack of "emotional, affectional or sexual attraction to" anyone at all. So it may prohibit conduct that seeks to provide pastoral support of, or therapy for, someone who seeks help because they don't feel any emotional, affectional or sexual attraction to another human being. Of course, it may be that the clinician's work in helping them to feel normal human emotions and attractions will be covered by one of the exemptions in s.5(3) or (4), but the phenomenon of people identifying as "asexual" (as opposed to just not yet sexually active) is a new one and ethical guidelines on treatment may not be well-established.

Such therapy may be prohibited even if they desperately desire that help. Such people may well have suffered serious trauma that blunts their emotions and desires for intimate human relations. Why prohibit such important clinical work? Again, these are the unintended consequences of poorly thought-through legislation.

[Gender identity](#)

The relevant definition from the Anti-Discrimination Act is as follows:

Gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of an individual including gender expression (whether by way of medical intervention or not), with or without regard to the individual's designated sex at birth, and may include being transgender or transsexual.

On this definition, everyone in the world has a 'gender identity'. For the great majority of people, that gender identity is congruent with their sex. Their appearance, mannerisms and other gender-related characteristics are likewise congruent with their sex. However, for a few people, there is an incongruence between gender identity and sex.

The proposed legislation does not focus just on those few people. It says that it is a conversion practice to seek to change or suppress anyone's gender identity, including the vast majority of the population that is cisgender.

[The interrelationship between the two definitions](#)

I suggest it is very important to consider how the two definitions might interact and with what effect. We know from overwhelming research evidence that most children who identify as transgender or who are 'gender diverse' will grow up to be same-sex attracted if they are left to develop and go through puberty normally without medical interventions. Those medical interventions, so far as children and young people are concerned, are very controversial in the medical professions. Internationally, the tide is turning against these practices. Lawsuits against clinicians for malpractice are beginning to succeed overseas. Some medical insurers are getting nervous. The Medical Defence Union in Australia won't insure treatment of minors with puberty blockers or cross-sex hormones as a response to gender dysphoria.

A likely consequence of this legislation, if enacted, is that clinicians who practice "gender-affirming care" will find themselves on the wrong side of this law unless they can claim the benefit of the health professionals' exemption in s.5(3). Clinicians in the Tasmanian Gender Service, and private practitioners, could well be accused of engaging in conduct that changes or suppresses the sexual orientation of an individual who has received irreversible treatments and has now come to understand himself or herself as a cisgender, but same-sex attracted, adult.

The nature of the irreversible treatments of hormone therapy and surgery is that the body is changed to be congruent with the sex with which the person identifies. The effect of that, in turn, is to change their sexual orientation. This is because the natal male who is same-sex attracted will have been irreversibly changed to conform to a female identity. They may legally register themselves as female. If they continue to be attracted to men (the hormonal treatments won't change that) then, once homosexual, they are now heterosexual, or to use the new language of the definition of sexual orientation, they now have a sexual attraction to, or intimate or sexual relationship with, a person of a different gender. There has been a change in their sexual orientation consequent upon transitioning to a female presentation and a legally recognised female status.

It has been a very common complaint of those who regret their gender-affirming care that the treating clinicians did not recognise that their gender non-conformity was really just an emerging same-sex orientation. The adolescent years are a time of identity formation and development, and all the research shows that sexual orientation, at this stage, is quite fluid and changeable.

What if the clinician didn't realise that the gender non-conforming child is showing an emerging same-sex orientation? According to the Bill, that is no defence, because s.5(2) says this:

For the purposes of subsection (1), it is irrelevant whether a practice or conduct directed towards a person on the basis of the person's sexual orientation or gender identity is based on an incorrect assumption or belief about the person's sexual orientation or gender identity.

The clinician who wrongly assumes a child has an incongruent gender identity when really they are just gender non-conforming and same-sex attracted, will have no defence of mistake as a consequence of this subsection.

The criminal offences: causing psychological harm

An offence is committed if the person intentionally engages in a conversion practice and causes injury to the recipient. Injury includes 'harm to mental health', which could be merely temporary. To understand that definition requires reference to another definition:

harm to mental health includes psychological harm, but does not include an emotional reaction (including distress, grief, fear or anger) unless it results in psychological harm.

The difficulty with this definition is that 'psychological harm' is not defined. It is distinguished to some extent from an emotional reaction, but then the definition becomes circular again since it can include an emotional reaction that results in psychological harm. In effect, the definition says that an emotional reaction is not psychological harm unless it is.

These days, the term 'psychological harm' is sometimes used in a very expansive manner. It is largely subjective. If I am physically injured, that is something that a doctor can confirm, perhaps with the benefit of x-rays or scans; but there is no objective test for psychological harm. It may be that if the definition were limited to mental disorders as listed in the DSM-5, the concept of harm would be more constrained. Limited in that way, impacts that meet the diagnostic criteria for PTSD or major depressive disorder might be included; however, with something like depression, proving causation is highly problematic. Depressive episodes in our adult lives might have a variety of causes traceable back to childhood as well as to more recent adverse events such as a marriage breakup or an accident that leaves us in pain or impaired. The effects of different adverse experiences may be cumulative and hard to separate from one another.

The staff needed by the Commissioner

The Anti-Discrimination Commissioner will be given an additional title, the 'Conversion Practices Commissioner', and another bureaucracy will have to be established to deal with the substantial range of responsibilities she will have. Some of those are listed in s.23 of the Bill. Other functions contained in the Bill concern investigations and other actions. Given Tasmania's precarious budget position, this is likely to be at the cost of having to find savings through public service cuts elsewhere.

Since there is most likely no problem with conversion practices in Tasmania on any reasonable definition (and that has been, I understand, the experience in the last four years in Victoria), there is risk that the staff attached to the Commissioner will end up doing a lot of 'busy work' at taxpayer expense. There will be conferences, events and committees. Publications will be produced and reports provided to ministers, but little real work done that is of any benefit to Tasmanians. Arguably this money could be much better spent on front-line health services.

The role of the Commissioner in explaining the legislation

One of the functions of the Commissioner will be to disseminate information about conversion practices, the effects of conversion practices, and the operation and objects of the legislation. Clear, understandable information about what is a conversion practice will be essential. The Bill amends the Child and Youth Safe Organisations Act 2023 to make conversion practices directed towards a child a matter of reportable conduct. Section 105A of the Criminal Code makes it an offence to fail to report abuse of a child and as a result of an amendment made by this Bill, the definition will now include a conversion practice. The

consequence of this is that people in Tasmania will now be under the threat of criminal prosecution if they fail to report what a reasonable person would consider to be a 'conversion practice':

A person is guilty of a crime if the person –

- (a) has information that leads the person to form a reasonable belief that [a conversion practice] has been committed against another person who was a child at the time of the alleged offence; and
- (b) fails without reasonable excuse to disclose that information to a police officer as soon as practicable.

Both the mandatory reporter and the police officer will need to have a good understanding of what is, and is not, a conversion practice, and that means, in effect, that the whole community is going to need to be trained in understanding this, with relevant practical examples. That means also that they will need to understand the eleven circumstances in which something is *not* a conversion practice. Given all that I have said above about the lack of clarity concerning the practices that the proponents of the Bill believe are occurring in Tasmania at the present time and wish to prohibit, the educational task may simply prove too difficult. Much effort will be wasted on unnecessary, expensive and burdensome reportable conduct investigations and on assessing or responding to ill-informed reports of conversion practices.

Treasury really needs to cost the cumulative impact of these various reporting and investigation requirements both on the public purse and in terms of staff time and other costs for every business and not-for-profit organisation in Tasmania to conduct training programs.

If the Commissioner is going to put out educational materials, she is going to have to give concrete examples that can fairly be said to reflect the intentions of Parliament and not just her subjective opinion of what the law means. For the reasons given above, that will be challenging, unless she confines herself to historical examples such as aversion therapy.

Venturing into the area of faith and religious practices will be fraught with difficulty. The material put out by the NSW Anti-Discrimination Commission illustrates the enormous problems of interpretation that will arise in Tasmania as well. In NSW, the Commission says that:

praying with or over a particular person in an attempt to try to change or suppress that person's sexuality or gender is unlawful.

Prayer is not a way for people of faith to try harder. It is a petition to the Creator to exercise powers that only the Creator has to bring about a change in a person that they cannot make for themselves. The Commissioner must remain neutral on issues of faith. Whatever her personal opinion might be, she cannot in her official capacity either accept or deny that there is a Divine Creator who answers prayer. Law must be secular, in this sense.

Logically, it can only be even an 'attempt' to change someone's sexual orientation or gender identity if there is such a Divine Creator who might answer that prayer.⁹ Otherwise, it is speech addressed to no-one and cannot reasonably be interpreted as being 'for the purpose of ' bringing about the requested change. Indeed, s.5 says that it must be a practice or conduct 'directed towards a person'. Prayer, by its very nature, is addressed towards God. The Tasmanian Commissioner will need to be particularly mindful of s.46 of Constitution Act 1934 (Tas.), which provides that:

Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

Prayer in the privacy of one's home or church building is not a challenge to public order and nor is it, in any conventional meaning of the term, offensive to public morality. The legislation will need to be read down in its scope so as to remain compatible with the Constitution. That requires that Parliament be understood as not intending to violate the right to religious freedom contained therein.

Civil Response Scheme

Reports and investigations

Reports can be made by anyone, whether or not affected by the alleged conversion practice (s.27). That sets up a situation where a person may report to the Commissioner conduct that they believe to have occurred, without the knowledge and consent of the person alleged to be affected by that conduct.

This could be another source of difficulty for mental health practitioners. It could be damaging to the work of dedicated mental health professionals to have to respond to erroneous complaints made by activists who believe that a professional is engaging in conversion practices when they have no means whatsoever of knowing what goes on in the privacy of the clinician's consulting rooms, and there have been no complaints. I have recently seen evidence from mental health practitioners in other States of precisely this kind of harassment based upon erroneous assumptions concerning their therapeutic practices.

This is also a problem in relation to 'own motion' investigations under s.39. If there is no complaint, it is very hard to see how the Commissioner has any reasonable basis for initiating an investigation, when in the vast majority of cases, the conduct alleged is said to have occurred in the privacy of a discussion between two people, whether in a therapeutic context or otherwise.

Tasmania should avoid passing laws that can be weaponised in the conflicts over gender-affirming care for minors and therapeutic support of adults who experience gender incongruence.

⁹ <https://antidiscrimination.nsw.gov.au/discrimination/conversion-practices/frequently-asked-questions.html#What3>

Vicarious liability

Section 54 imposes vicarious liability on employers, including small businesses and charitable organisations that involve volunteers. The problems that vicarious liability will cause have already been discussed. At least in s.54 that is limited to conduct "in the course of the person's employment" but that also means "in the course of volunteering". As the Faith Leaders' submission noted, organisations have much less control over what volunteers do than employees. A large proportion of a church congregation might be considered to be 'volunteers' since they play their part as members in doing all kinds of little tasks such as helping with the service of morning tea or arranging flowers.

Vicarious liability has long related only to paid employment. The extension of vicarious liability to volunteers in an open-ended and undefined way is a serious problem for churches, charities and other community groups. The same issues arise concerning how to comply with the reasonable precautions test as given above in discussing s.19.

The imposition of new forms of vicarious liability may impose higher insurance costs on businesses and community organisations, and will increase compliance costs in a variety of other ways.

Unlimited civil actions for personal injury that apply retrospectively

In Schedule 1 of the Bill there are consequential amendments to other legislation. Of particular concern is that the Bill allows people to sue for personal injury from conversion practices that occurred while they were minors without any limitation period. This is achieved by adding this provision to the existing exemptions from limitation periods in relation to child sexual abuse or serious physical abuse (s.5B, Limitation Act).

The current legislation allowing for lawsuits to be brought decades after the events in relation to child abuse is already causing great difficulty to churches and welfare organisations. The longer the interval between the alleged events and the commencement of the lawsuit, the harder it can be to test the allegations or defend the claim. The alleged perpetrator may have died, witnesses may have died or be untraceable, and memories become more and more unreliable over time. To now add conversion therapy practices to the list of matters where there is no limitation period could cause considerable further difficulties.

The right to sue without limitation is retrospective. The section refers to:

an action for damages for personal injury to a person arising from or related to a conversion practice, within the meaning of the Conversion Practices Prohibition Act 2026, directed towards that person when the person was a minor.

That is not limited to conduct that occurs after the legislation is passed. The proposed s.38B is specific about this. The new unlimited period to bring a claim relation to an action in respect of a personal injury applies "whether the cause of action accrued before, on or after

the amendment day" and even, if, under the previous law, the limitation period had long since expired.

It means that if a person brings an application for personal injury based on a 'conversion practice' that allegedly occurred when they were a minor, then the case may proceed without a limitation bar even though the conduct complained of happened fifty or more years earlier.

Section 5C, which concerns reopening settlements, redefines 'child abuse' to include conversion practices but this does not apply to "an act that is lawful at the time at which it occurs". There is no such carve out in relation to section 5B concerning actions for personal injury.

Health professionals and the Department of Health (as a consequence of vicarious liability) may escape the adverse effects of retrospective legislation because of s.22 of the *Civil Liability Act* 2002. This provides:

- (1) A person practising a profession ("a professional") does not breach a duty arising from the provision of a professional service if it is established that the professional acted in a manner that (at the time the service was provided) was widely accepted in Australia by peer professional opinion as competent professional practice.

Clergy, being professionals, may also be able to rely on this provision. However, those exercising voluntary or non-professional roles may not. They will be able to be sued in their personal capacity decades after the event.

Depending on how the legislation is interpreted, and taking into account the large damages settlements now being reached in cases against churches and social welfare organisations for historic child sexual assault claims, there is at least a real risk that many organisations could be driven to bankruptcy by this provision, especially given the vagueness of the definition of 'conversion practice'. It must be remembered that until very recently, homosexual conduct was unlawful in Tasmania and so any therapy conducted to try to help people overcome their same sex attraction was probably undertaken in good faith and at the person's request. The legal costs in defending even erroneous claims will be enormous. This is most unlikely to be an insured liability.

Even if organisations are not driven into bankruptcy, there is a very real risk that the community will lose a large number of facilities and resources that churches and other faith-based organisations have long provided. Assets have to be sold to pay damages awards and legal fees. As an example, the Anglican Church has had to sell some churches to meet redress claims and its potential liability into the future is enormous. Those Anglican churches were at the centre of Tasmanian communities. People were married there, family members were buried in the churchyard. So laws of this kind have an impact far beyond the churches and their current members.

Conclusions

With respect, there are huge legal problems with this Bill, and these problems are fundamental. The Greens put out a draft Bill, which was commendable. A few changes have been made in this version; but what is striking is how many provisions that caused serious concern to organisations have not been amended at all.

The problems with the Bill are so fundamental that it would be unsafe to rely on the somewhat chaotic processes of amendments in committee stage to address its deficiencies. The Lower House should reject it at Second Reading and ask proponents to go back to the drawing board.

Emeritus Professor Patrick Parkinson AM

September 17th 2026