

Our ref: 20-0020

PROHIBITION OF CONVERSION PRACTICES IN THE ACT FEEDBACK TO THE ACT GOVERNMENT

DATE: 29 June 2020

TO: ACT Government - conversionpracticesban@act.gov.au

FROM: Human Rights Law Alliance Limited

RE: **Conversion Practices Ban**

1. This is the feedback of the Human Rights Law Alliance (**HRLA**) to the ACT government document titled "*Prohibition of Conversion Practices in the Act – Factsheet*".
2. The ACT government has invited feedback from various stakeholders about the best way to implement a legislated ban on conversion practices.

ABOUT HRLA

3. HRLA was established in 2019 as a not-for-profit law firm based in Canberra, ACT that acts for parties in all States and Territories of Australia in matters involving freedom of religion, thought, speech and conscience. A core part of HRLA's work is to act for Australians who face unfair treatment and legal action aimed at suppressing religion and silencing their freedom of thought and speech, and to be a voice advocating for good laws which preserve and protect fundamental freedoms, religious liberty and viewpoint diversity in Australia.
4. Since incorporation in 2019, HRLA has assisted in over fifty matters and provided legal assistance in over twenty legal disputes that have been the subject of disciplinary and Court proceedings.

GENERAL FEEDBACK

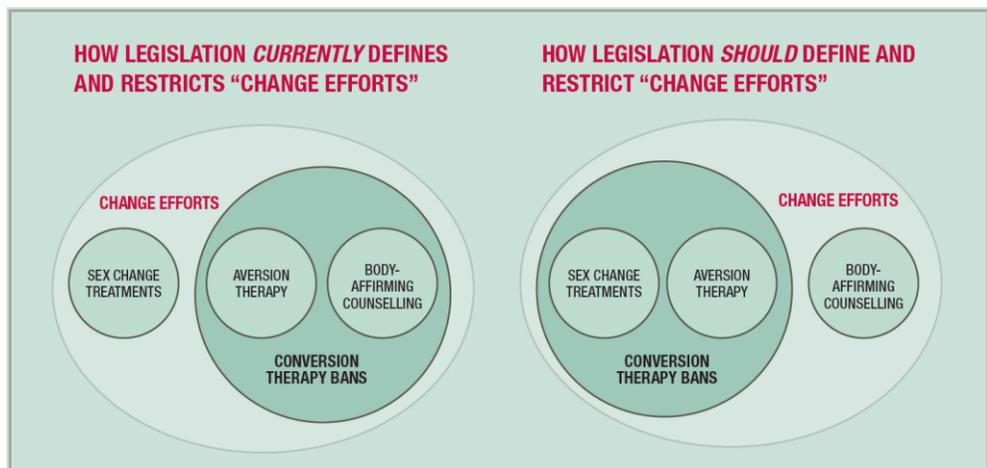
5. HRLA gives the following feedback:
 - 5.1 **"Conversion Practices" badly defined.** If enacted, the current description of "conversion practices" will place unreasonable limits on fundamental rights under the *Human Rights Act 2004*. Conversion practices must be defined to prohibit change efforts that are sex change treatments or aversion therapy only, not body-affirming counselling or counselling for unwanted sexual desires.
 - 5.2 **No evidence of harmful practices.** Aversion therapy – which inflicts pain or shame in an attempt to modify same-sex attraction or gender confusion – is harmful and there is no evidence that it is practised in Australia. There is no evidence that there is a link of causality between issues of depression, suicide, self-esteem or social isolation and *body-affirming counselling* – talk therapy that explores questions, issues and personal history in order to better understand and address unwanted sexual attraction or manage gender confusion.

- 5.3 **A solution in search of a problem.** Legislation on aversion therapy is unnecessary. There is no evidence that Canberra’s LGBT community is vulnerable to any form of aversion therapy or that any person has been subjected to this treatment or that any organisations practice aversion therapy. This is a confected problem that will lead to laws that prohibit the exercise of fundamental human rights under the *Human Rights Act 2004* (HRA).
- 5.4 **People will be stripped of their fundamental rights and choices.** Legislation broad enough to ban body-affirming counselling will deny many Australians rights of freedom of expression (s16 HRA), freedom of thought, conscience, religion and belief (s14 HRA), freedom of the family (s11 HRA) and equality before the law (s8 HRA). The only choice the proposed legislation will allow those questioning their sexuality will be the choice of assistance to adopt an LGBT identity only. The only choice legislation will allow those experiencing gender confusion will be to adopt a transgender identity only. A poorly drafted conversion therapy law will legislate a contested ideology and will breach the fundamental freedoms of Australians.
- 5.5 **Any Law must be precise and narrow.** If legislation is developed, the ACT government should only move to ban coercive and aversive therapies. The definition should clearly exclude body-affirming counselling and should be balanced against other rights under the HRA.

ACT GOVERNMENT QUESTIONS

6. **Does the proposed definition of conversion practices cover the right range of actions and activities?**

- 6.1 **No.** The government’s proposed definition of conversion therapy is *any practice or treatment by any person that seeks to change, suppress and/or eliminate a person’s sexual orientation, gender identity and/or gender expressions*. The proposed prohibited treatment is aversion therapy and body-affirming counselling. The definition should in fact target sex change treatments and aversion therapy (see diagram below).



¹ Taken from <https://arpaCanada.ca/wp-content/uploads/2019/11/ARPA-PolicyReport-ConvTherapy-CIT-PR-hyperlinked.pdf>

- 6.2 The current definition will be a breach of current fundamental rights under the HRA as set out above.
- 6.3 The HRLA does not endorse coercive and aversive therapies intended to force a person to change their sexual desires. As of 2020, there is no apparent evidence to suggest that this kind of behaviour is systematised anywhere in the ACT or in broader Australia. The HRLA submits that criminal and civil laws already in place, including the existing right not to be tortured (s10 HRA), are sufficient to deal with coercive and aversion therapies should they occur.
- 6.4 Body-affirming treatment is often used by clinical psychologists, psychiatrists, licensed counsellors, or (though in a different form) religious leaders.² It can be defined as behavioural, psychological, or religious counselling that is voluntarily sought and received. Body-affirming counselling is thus distinct from conversion therapy.
- 6.5 The definition is also too broad in that it appears to include basic forms of mainstream Christian practices such as prayer, scripture reading, spiritual guidance and preaching. These services are provided every day by religious organisations throughout Australia.
- 6.6 A person seeking advice about their sexuality would find it difficult to access resources as organisations and individuals will be prohibited from giving advice based on their beliefs under the proposed ban. Most churches and other religious organisations are welcoming to all who seek spiritual guidance, regardless of their sexual orientation.
- 6.7 Evidence suggests that sexual orientation and gender identity naturally vary during one's life. Researchers Diamond and Rosky have found that sexual attraction changes over time, especially for young people.³
- 6.8 In a study by Savin-Williams and Ream in 2007, over 80% of teens who originally reported same-sex attraction and sexual activity reported exclusively heterosexual attraction and sexual activity within six years.⁴
- 6.9 A study by Jones and Yarhouse has found that 23% of their participants changed their sexual orientation in the course of their lifetime.⁵
- 6.10 The proposed ban would prevent those who have unwanted sexual desires from getting the help they want and need. A person should not be prevented or punished for seeking advice about their sexual desires. This kind of prohibition would more actively steer people down the path of invasive, harmful, and often irreversible medical interventions.

² James E. Phelan, Neil Whitehead, and Philip M. Sutton, "What Research Shows: NARTH's Response to the APA Claims on Homosexuality: A Report of the Scientific Advisory Committee of the National Association for Research and Therapy of Homosexuality," *Journal of Human Sexuality* 1 (2009).

³ Lisa M. Diamond and Clifford J. Rosky, "Scrutinizing Immutability: Research on Sexual Orientation and U.S. Legal Advocacy for Sexual Minorities," *Journal of Sex Research* 53, no. 4–5 (June 2016), 363–91.

⁴ Ritch C. Savin-Williams and Geoffrey L. Ream, "Prevalence and Stability of Sexual Orientation Components During Adolescence and Young Adulthood," *Archives of Sexual Behavior* 36, no. 3 (June 4, 2007), 385–94.

⁵ Stanton L. Jones and Mark A. Yarhouse, "A Longitudinal Study of Attempted Religiously Mediated Sexual Orientation Change," *Journal of Sex & Marital Therapy* 37, no. 5 (October 2011): 404–27.

7. What penalties do you think are appropriate to support enforcement of the ban on conversion practices?

There should be no penalties for those who engage in body-affirming counselling and religious instruction about sexuality and gender confusion.

8. What penalties should apply to professionals, given their greater responsibilities and authority?

There should be no penalties for those who engage in body-affirming counselling and religious instruction about sexuality.

9. In your view, are there ways the ban could be refined?

9.1 In the absence of any recent examples of coercive and aversive conversion therapies in the ACT, the ACT government does not need to legislate in relation to conversion practices as proposed.

9.2 In the alternative, the ACT government should only move to ban coercive and aversive therapies (whether consensual or not). The definition should clearly exclude body-affirming counselling and religious instruction about sexuality.

9.3 We note that the partly unsubstantiated report on which this review is based, Preventing Harm, Promoting Justice released in 2018 estimates “up to 10 percent of LGBT Australians are still vulnerable to conversion practices.” It also asserts that “there are at least 10 organisations across Australia and New Zealand that are currently advertising the provision of conversion practices. Evidence suggests that some Canberrans are still being subjected to harmful practices.”

9.4 We note that the report does not disclose their evidence as to how Canberrans are still being subjected to ‘harmful practices.’

9.5 While the report does not name the 10 organisations, our research discloses that two of the largest ‘conversion organisations’ in Australia, Exodus International and Living Waters Australia, wound up in June 2013 and June 2014 respectively.

9.6 In our research, we were unable to locate any organisations that may be deemed as ‘conversion organisations’ in the ACT.

9.7 There is no evidence to suggest that there are any organisations engaging in coercive and aversive practices in the ACT or in the rest of Australia.

9.8 The report also focuses on the negative impacts of religious perspectives on sexuality. One of the major oversights is that the drafters failed to take into consideration those who have benefited from body-affirming counselling and religious instruction about sexuality. There are always two sides to the story and the report has conveyed a partial account.

10. Would this ban change anything about the work of you or your organisation? If so, can you outline the nature of that change.

10.1 The Human Rights Law Alliance anticipates that substantial increase in work in defending fundamental freedoms that would be breached by conversion therapy legislation. We have represented and continue to represent a vast number of people to exercise their rights and

freedoms of autonomy, self-determination, thought, speech and expression and religion in accordance with the law.

- 10.2 HRLA has acted for a number of same-sex attracted and gender confused persons who have experienced discrimination and stigma from the rest of the LGBT community because they have successfully challenged, transformed their desires and/or become comfortable in their natural body. These people face long-term psychological effects and terrible social stigma because they do not conform to a narrow band of fashionable ideology on issues of sexual orientation or gender identity.
- 10.3 The proposed ban will interfere in religious freedom rights, rights of equality before the law and freedoms of the family in respect of Canberrans generally but especially members of the LGBT community who do not subscribe to popular LGBT beliefs and narratives.
- 10.4 The proposed ban will also imperil parents seeking to raise their children in accordance with their fundamental and sincere convictions. Parents should be free to lovingly affirm that biological sex is inextricably linked to sexuality and identity. Most parents love their children, have an intimate knowledge of their unique personality, history and needs, and seek what is best for them. Parents should never be prohibited from helping children manage unwanted sexual desires or understand their sexual identity.
- 10.5 Additionally, the proposed ban will prevent those who have overcome an unwanted same-sex desire from sharing their experiences in public settings (i.e. church or conferences). A person should not face penalties or legal action simply because someone else feels that their life story and authentic experience is disingenuous and is being used to 'coerce them to change a sexual desire.'

11. What support will be useful to help your organisation comply with the prohibition after its introduction?

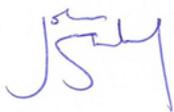
If the ACT government enacts a broad conversion therapy ban, it should provide equal assistance and funding to respondents as well as claimants for the proper administration of justice and the vindication of truth under the new laws.

HRLA RECOMMENDATIONS

12. HRLA makes the following recommendations to address the inherent flaws in the ACT proposal in respect of Conversion Therapy:⁶
 - 12.1 Any law must respect the liberty of individuals to address unwanted sexual feelings or impulses or to resolve gender confusion in a way that affirms biological reality.
 - 12.2 Any law must respect the freedom of enquiry and academic study of churches, organisations and professionals to continue to practice, teach and advocate for their sincere convictions about sexual orientation and gender identity.

⁶ Based on recommendations from <https://arpacanada.ca/wp-content/uploads/2019/11/ARPA-PolicyReport-ConvTherapy-CIT-PR-hyperlinked.pdf>

- 12.3 Any law must tighten the definition of “conversion therapy” to include only coercive and aversive therapies. The ACT Government will be in breach of fundamental human rights if it bans body-affirming counselling or non-coercive therapies.
- 12.4 Any law must ban attempts to change minor’s secondary sex characteristics, including by the use of puberty blockers, cross-sex hormones and the removal, cosmetic alteration or destruction of sex organs.
- 12.5 Any law must ensure the rights and role of parents are respected. Parents should be never be prohibited from helping children manage unwanted desires or understand their biological identity.
- 12.6 Members of the LGBT community who do not wish to pursue or continue with an LGBT identity or to manage unwanted gender confusion should have the freedom to access professional counsellors and spiritual guides to help them with matters of identity and sexuality.
- 12.7 As a pre-requisite to providing sex-change treatments to adults, good conversion therapy laws should require that a patient receives a comprehensive psychological assessment by an independent third party. Such assessment should determine whether comorbid factors – such as psychological conditions, anxiety, depression or past sexual abuse – are contributing to the patient’s gender dysphoria. Such comorbid factors should be addressed and resolved before considering chemical or surgical transition.



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