

STANDARD BRIEFING NOTE 6

CONVERSION PRACTICE – HUMAN RIGHTS & LAW IN SOUTH AUSTRALIA

This Briefing Note contains key points, key terms, background information and examples of practical application. It does not contain legal advice and should be used as a starting point for further research rather than an authoritative source. Feedback on its contents is welcome.

Current as of 2 May 2024– prepared by Dr Sarah Moulds, UniSA with assistance from SA Rainbow Advocacy Alliance (SARAA) and contributions from Nathan Despott (SOGICE Survivors and La Trobe University)

Key Points

Australia has made a commitment at the international level to protect and promote the rights of lesbian, gay, bisexual, transexual, gender diverse, queer, asexual and intersex people including through signing international human rights conventions and committing to internationally recognised rights principles like the *Yogyakarta Principles*¹ and the *Yogyakarta Principles plus 10*.² These Principles provide States with guidance as to how to implement their human rights obligations under international law and begin with the following statement:

All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible and interrelated. Sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse.

They go on to require State Parties to:

Recognise that forced, coercive and otherwise involuntary modification of a person's sex characteristics may amount to torture, or other cruel, inhuman or degrading treatment; and

Prohibit any practice, and repeal any laws and policies, allowing intrusive and irreversible treatments on the basis of sexual orientation, gender identity, gender expression or sex characteristics, including forced genital-normalising surgery, involuntary sterilisation, unethical experimentation, medical display, "reparative" or "conversion" therapies, when enforced or administered without the free, prior, and informed consent of the person concerned.³

¹ International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, available at <<https://www.refworld.org/legal/resolution/icjurists/2007/en/58135>> (Yogyakarta Principles).

² *Yogyakarta Principles plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles (YP+10)*, 10 November 2017, accessed at: <<https://yogyakartaprinciples.org/principles-en/yp10/>>.

³ YP+10 Principle 10.

It is also important to note that these obligations extend to conversion practices that involve 'misinformed consent' obtained as a result of false and misleading claims, shame, family pressures, or a combination of these.⁴

Some of these obligations have been given legal force through anti-discrimination law at the State and Federal level, including provisions that prohibit discrimination on the grounds of sex, sexual orientation, gender identity and intersex status. In South Australia, these obligations also extend to prohibiting direct or indirect discrimination on the basis of sex, sexual orientation, gender identity and intersex status in certain areas of public life, such as the provision of housing or health services, but a range of exceptions apply.⁵

However, South Australia has yet to give legal protection for the human rights of LGBTQA+ people in the context of deceptive and harmful conversion practices, including practices that seek to 'fix' a person's sexual orientation or gender identity based on pseudoscientific ideologies or beliefs that underpins conversion practices. These types of conversion practices continue to occur in South Australia with giving rise to serious human rights abrogations for LGBTQA+ people. As Jones et al report:

A national survey found 7% of 3,134 same sex attracted and gender questioning Australians aged 14–21 were exposed to the message 'gay people should become straight' in sex education classes (Jones, 2015). Another survey showed that 4.9% of 2,500 (mainly cisgender and heterosexual) Australian students were exposed to the message 'gay people should become straight' in sex education classes (Jones, 2020). Those exposed were considerably more likely to consider self-harm (81.8%); attempt self-harm (61.8%); consider suicide (83.6%); and attempt suicide (29.1%). Further, a study of the 4% of 6,412 LGBTQA + Australians aged 14–21 years who attended SOGIECE practices and programs found they were also at significantly increased risk of having had a diagnosis for all 10 mental health conditions considered (Jones et al., 2021).⁶ This included being almost three-and-a-half times as likely to have been diagnosed with post-traumatic stress disorder/PTSD, and almost five times as likely to have been diagnosed with schizophrenia.⁷

The SA Rainbow Advocacy Alliance (SARAA), along with other community organisations and advocates, has called upon the South Australian Government to carefully develop and introduce laws to provide protection against conversion practices, in line with public

⁴ For further information see Jones, T., Jones, T. W., Power, J., Pallotta-Chiarolli, M., & Despott, N. (2022). Mis-education of Australian Youth: exposure to LGBTQA+ conversion ideology and practises. *Sex Education*, 22(5), 595–610. <https://doi.org/10.1080/14681811.2021.1978964>.

⁵ *Equal Opportunity Act 1984* (SA) Part 3.

⁶ One of the authors of this study has noted that this 4% only covers participation in conversion practices that might be categorised as 'formal'. Comparable Canadian and UK studies that have found a similar figure for participation in formal practices have also found that as many as 10% may have participated in conversion practices if scope is expanded to include informal practices.

⁷ Jones, Tiffany, Jennifer Power, Timothy Willem Jones, Maria Pallotta-Chiarolli, and Nathan Despott. "Supporting LGBTQA+ Peoples' Recovery from Sexual Orientation and Gender Identity and Expression Change Efforts." *Australian Psychologist* 57, no. 6 (2022): 359–72. doi:10.1080/00050067.2022.2093623. See also Jones, T. (2015). *Policy and gay, lesbian, transgender, intersex and queer students*. Springer. <https://doi.org/10.1007/978-3-319-11991-5>; Jones, T., Power, J., Hill, A. O., Despott, N., Carmen, M., Jones, T. W., Anderson, J., & Bourne, A. (2021). *Religious conversion practices and LGBTQA+*. Youth.

commitments made during the 2022 Election.⁸ SARAA has called for the South Australian Government to consult broadly with the South Australian community – in particular those with relevant lived experience – to design robust protections against conversion practices that align with international best practice and respond to local needs. In pursuit of this end, SARAA has been collecting signatures for a parliamentary petition calling for the South Australian Government to bring an end to conversion practices in South Australia in 2024, with formal public consultation to be undertaken prior to the development of proposed legislation.

When engaging in this co-design process, consideration could be given to the key features of the *Change and Suppression (Conversion) Practices Prohibition Act 2021 (Vic)* that align with human rights principles. This law includes a general prohibition of conversion practices as well as attaching criminal penalties to certain conduct. This includes a prohibition on conduct directed towards a person, whether with or without the person's consent on the basis of the person's sexual orientation or gender identity and for the purpose of changing or suppressing the sexual orientation or gender identity of the person. In Victoria, it is now a crime to:

- engage in such practice (or practices) directed towards another person where harm is caused
- take another person from Victoria (or arrange to) with the intention these practices occur and harm is caused
- publish, display or authorise advertisements or notices encouraging these practices. This includes the advertising of paid *and* unpaid practices or services.

There are also laws prohibiting conversion practices in the Australian Capital Territory.⁹ In the ACT it is also a criminal offence to deliver a conversion practice to a minor or someone with impaired decision-making ability - regardless of whether injury has been caused. This goes beyond the scope of similar laws in Victoria and NSW laws. It remains to be seen what the flow-on impacts may arise from the scope of the ACT laws, particularly in family contexts. Survivors advocates in Victoria expressed preference for legislation that gave strong powers and resourcing to Victorian Equal Opportunity and Human Rights Commission (VEOHRC), banned advertising, and mandated proactive education.

The United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity has explained that rights compliant conversion practices legislation must clearly define the prohibited practices and ensure public funds are not used to support them.¹⁰ Such laws must also establish punishments for non-compliance, investigate respective claims and create mechanisms to provide access to all forms of reparation to victims, including the right to rehabilitation.

Other key features of a rights-oriented law prohibiting conversion practices include:

- A strong affirmation of the psychological equality of LGBTQA+ people and the inherent deceptive and harmful nature of conversion practices.

⁸ Anisha Pillarisetty, 'Gay conversion ban advocates call for SA government to create laws to outlaw 'harmful' practice' *ABC Online*, 2 April 2024.

⁹ See *Sexuality and Gender Identity Conversion Practices Act 2020 (ACT)*

¹⁰ United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity, *Conversion Therapy Report, 2020*, Accessed at <<https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/ConversionTherapyReport.pdf>>.

- An acknowledgement of the pseudoscientific, indefensible ideology that underpins conversion practices.
- A clear prohibition for any:
 - change and suppression practices performed by anyone to anyone, in any context, paid or unpaid, regardless of age of recipient
 - advertising paid or unpaid change and suppression practices
 - referrals from one practitioner to another practitioner for the purpose of facilitating change and suppression practices.
 - Processes or practices that remove a person from the jurisdiction for conversion practices
- A focus on ensuring informed consent in all health services provided to or for trans people
- Appropriate and proportionate criminal penalties that recognise the discriminatory and harmful impact of conversion and suppression practices, and acknowledge the particular responsibilities of professional health service providers to ensure human rights compliance in their practice.

Key Terms

The United Nations has described '**conversion practices**' as comprising of

processes engaged in towards desired changes in gender and/or sexuality based in conversion ideology. Conversion practices may include (but are not limited to) counselling, group work, programs or interventions (perhaps therapeutic/corrective prayer, performing celibacy or endorsed sexual relationships, personal or group behavioural suppression, etc.).¹¹

'**Conversion therapy**' is sometimes used to describe interventions of a wide-ranging nature, all of which have in common the belief that a person's sexual orientation or gender identity can and should be changed. Such practices aim (or claim to aim) at changing people from gay, lesbian or bisexual to heterosexual and from trans or gender diverse to cisgender. The term 'therapy', when used in other contexts, denotes the idea of 'healing'. However, practices described as 'conversion therapy' are harmful interventions that rely on the medically false idea that LGBTQA+ and other gender diverse persons are unwell, or in need of 'fixing'. As a result these practices can result in long-lasting psychological and physical damage, and constitute a violation of human dignity and human rights.

Related to this concept is the term '**conversion ideology**', which can be used to refer to overt spoken beliefs or teachings, and/or the underlying culture of a particular community of people that sees LGBTQA+ as somehow 'broken' or 'sinful', and in need of change or suppression to achieve, for example, heterosexual reproduction and/or alignment with a binary sex/ gender model that is consistent with the sex marker assigned at birth.¹²

An alternative way to describe these practices is to use the term '**change or suppression practices**' which is the terminology used in the Victorian law. Under section 5 of the *Change and Suppression (Conversion) Practices Prohibition Act 2021* (Vic):

a practice or conduct directed towards a person, whether with or without the person's consent— (a) on the basis of the person's sexual orientation or gender identity; and (b) for the purpose of— (i) changing or suppressing the sexual orientation or gender identity of the person; or (ii) inducing the person to change or suppress their sexual orientation or gender identity.

....

Examples are provided in the Victorian Act, and include 'providing a psychiatry or psychotherapy consultation, treatment or therapy', 'carrying out a religious practice, including but not limited to, a prayer based practice, a deliverance practice or an exorcism' or 'giving a

¹¹ United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity, Conversion Therapy Report, 2020, Accessed at <<https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/ConversionTherapyReport.pdf>>.

¹² *SOGICE Survivor Statement, Calling for action on: The LGBTQA+ conversion movement*, V4 July 2020 available at <<https://www.sogicesurvivors.com.au/wp-content/uploads/2020/12/Survivor-Statement-A4-Doc-v1-2-Digital.pdf>>. Jones, Tiffany, Jennifer Power, Timothy Willem Jones, Maria Pallotta-Chiarolli, and Nathan Despott. "Supporting LGBTQA+ Peoples' Recovery from Sexual Orientation and Gender Identity and Expression Change Efforts." *Australian Psychologist* 57, no. 6 (2022): 359–72. doi:10.1080/00050067.2022.2093623.

person a referral for the purposes of a change or suppression practice being directed towards the person'.¹³

The following insights have also been described as relevant to understanding what conversion practices are, and their human rights impacts:¹⁴

Conversion practices can be likened to other forms of complex abuse involving coercive control involving domestic / familial violence. CPs can in fact be more complex because of the agency conversion practices survivors exercise in their abuse, leading to forms of moral injury - a specific category of injury complicating the already severe complex PTSD (or CPTSD) commonly experienced by survivors. This means some survivors feel culpable or complicit in their harm and do not recognise the external processes, systems, and intentions that led to their participation. People who have experienced conversion practices are some of the least able to reach out to seek support for recovery and justice, let alone make a report themselves. Conversion survivors are rarely able to initiate processes relating to justice, much less while they are still participating in them.

It is also important to note that conversion practices do not ever 'work'. Harms include deep ongoing shame, depression, anxiety, inhibited development of self-concept, poor educational and employment outcomes, suicidality, problems maintaining relationships, sexual functioning issues, and complex trauma – appearing anytime from shortly after exposure to decades later. Recovery can take years or decades. It can be costly and requires well informed support from a range of sources.

In many cases, the practices themselves are not as harmful as the messaging and ideas that are absorbed before and during the practices, while substantial harm caused by community and family rejection that can result when people choose to cease participation in the practices can be equally severe. Some practices, however, are delivered in ways that cause immediate shame and/or distress. It is not possible to determine the harm experienced by a conversion participant/survivor based solely on how outwardly dramatic (or mundane) the practices in which they participated are/were, or on the context or location of the practices. For example, a person who participates in a formal, paid conversion program run by a religious organisation may not necessarily experience more severe harms than a person who has engaged in infrequent and informal pastoral care conversations with a trusted faith leader or mentor.

¹³ *Change or Suppression (Conversion) Practices Prohibition Act 2021 (Vic) s5(3).*

¹⁴ These key concepts have been generously shared by SOGICE Survivors. See also the extensive work undertaken by SOGICE Survivors at <https://www.sogicesurvivors.com.au/>; see also Jones, Tiffany & Jones, Timothy & Anderson, Joel & Despott, Nathan & csabs, chris & Pallotta-Chiarolli, Maria & Power, Jennifer. (2023). No Bad-Faith Exemptions. A Submission to the NSW Government on Banning LGBTQ+ Conversion Practices.

Further context on the human rights issues

In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles: a universal guide to human rights which affirm binding international legal standards with which all States must comply.¹⁵

In 2017, additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics were developed to complement the Yogyakarta Principles, described as the YP+10. The YP+ 10 document emerged from the intersection of the developments in international human rights law with the emerging understanding of violations suffered by persons on grounds of sexual orientation and gender identity and the recognition of the distinct and intersectional grounds of gender expression and sex characteristics.

In addition to YP +10 Principle 10 described above that specifically relates to conversion practices, other relevant Principles derived from these sources require States to:

- Take all appropriate action, including programmes of education and training, with a view to achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression.¹⁶
- Ensure that any medical or psychological treatment or counselling does not, explicitly or implicitly, treat sexual orientation and gender identity as medical conditions to be treated, cured or suppressed.¹⁷
- Ensure that the expression, practice and promotion of different opinions, convictions and beliefs with regard to issues of sexual orientation or gender identity is not undertaken in a manner incompatible with human rights.¹⁸
- Establish the necessary legal procedures, including through the revision of legislation and policies, to ensure that victims of human rights violations on the basis of sexual orientation or gender identity have access to full redress through restitution, compensation, rehabilitation, satisfaction, guarantee of non-repetition, and/or any other means as appropriate.¹⁹
- Establish appropriate, accessible and effective criminal, civil, administrative and other procedures, as well as monitoring mechanisms, to ensure the accountability of perpetrators for human rights violations related to sexual orientation or gender identity;²⁰

¹⁵ For further information see < https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf>.

¹⁶ *Yogyakarta Principles*, Principle 2.F.

¹⁷ *Yogyakarta Principles*, Principle 18.F.

¹⁸ *Yogyakarta Principles*, Principle 21.B.

¹⁹ *Yogyakarta Principles*, Principle 28.E.

²⁰ *Yogyakarta Principles*, Principle 29.A.

United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity, Conversion Therapy Report has explained that a rights-compliant approach to prohibiting “conversion therapy” would see States:

clearly defining the prohibited practices; ensuring public funds are not used to support them; banning advertisements; establishing punishments for non-compliance and investigating respective claims; creating mechanisms to provide access to all forms of reparation to victims, including the right to rehabilitation.

He also recommends that States:

Take urgent measures to protect children and young people from practices of “conversion therapy”, Carry out campaigns to raise awareness among parents, families and communities about the invalidity and ineffectiveness of and the damage caused by practices of “conversion therapy”; Adopt and facilitate health-care and other services related to the exploration, free development and/or affirmation of sexual orientation and/or gender identity, Foster dialogue with key stakeholders, including medical and health professional organizations, faith-based organizations, educational institutions and community-based organizations, to raise awareness about the human rights violations connected to practices of “conversion therapy”.

The Report also includes the following information about the promoters and perpetrators of “conversion therapy” practices:

Perpetrators of “conversion therapy” practices include private and public mental health-care providers, faith-based organizations, traditional healers and State agents; promoters additionally include family and community members, political authorities and other agents. Faith-based organizations and religious authorities in particular operate in a space surrounded by blurred lines, advising the family and victim and often promoting or providing the practices alone or in partnership with others. Conversion therapy is a lucrative business for providers around the world. Marketing mechanisms operate to support the business model, and some States actively perpetrate or promote abuse through such practices. Young people are disproportionately subjected to practices of “conversion therapy”.²¹

²¹ United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity, Conversion Therapy Report, 2020, 1.

Change or Suppression (Conversion) Practices Prohibition Act 2021 (Vic)
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Some key features of the Victorian legislation that could be considered include:

- A 'purpose' provision that explains that:
 - The main purposes of this Act are—
 - (a) to denounce and prohibit change or suppression practices; and
 - (b) to establish a civil response scheme within the Victorian Equal Opportunity and Human Rights Commission that will—
 - promote understanding of the prohibition on change or suppression practices under this Act and matters relating generally to change or suppression practices; and
 - consider and resolve reports of change or suppression practices; and
 - investigate serious or systemic change or suppression practices; and
 - (c) to prohibit engaging in change or suppression practices, including through creating offences in relation to engaging in change or suppression practices and certain related activities; and
 - (d) to amend the definitions of sexual orientation and gender identity in the Equal Opportunity Act 2010; and
 - (e) to include sex characteristics as a protected attribute under the Equal Opportunity Act 2010; and (f) to make consequential amendments to certain Acts
- An objects clause that explains that the objects of the Act are:
 - (a) to eliminate so far as possible the occurrence of change or suppression practices in Victoria; and
 - (b) to further promote and protect the rights set out in the Charter of Human Rights and Responsibilities; and
 - (c) to ensure that all people, regardless of sexual orientation or gender identity, feel welcome and valued in Victoria and are able to live authentically and with pride.

(2) In enacting this Act, it is the intention of the Parliament—

 - (a) to denounce and give statutory recognition to the serious harm caused by change or suppression practices; and
 - (b) to affirm that a person's sexual orientation or gender identity is not broken and in need of fixing; and
 - (c) to affirm that no sexual orientation or gender identity constitutes a disorder, disease, illness, deficiency or shortcoming; and
 - (d) to affirm that change or suppression practices are deceptive and harmful both to the person subject to the change or suppression practices and to the community as a whole.

It is important to note that the purpose and objects clauses have had two key impacts in Victoria:

- It means that the Act represents more than simply a ban on particular activities. It is also a declaration that the state has drawn a line under the historical view that same-sex attraction and trans identity are disorders or symptoms of disorders.
- The purpose and objects clauses are frequently cited in education sessions delivered by VEOHRC.

The Victorian Act also includes:

- a broad definition of change or suppression practices
- civil (non-criminal) options for preventing and responding to change or suppression practices
- four new criminal offences for:
 - practices that cause injury or serious injury whether temporary or permanent
 - taking someone outside Victoria for a change or suppression practice that causes injury
 - advertising a change or suppression practice.
- a civil (non-criminal) response scheme run by the Victorian Equal Opportunity and Human Rights Commission to support survivors and address the harm they have endured.
- new powers for the Victorian Equal Opportunity and Human Rights Commission to:
 - bring proceedings for the offence of advertising a change or suppression practice.
 - consider and respond to reports of change or suppression practices from any person,
 - launch investigations and enforce outcomes where there is evidence of serious or systemic change or suppression practices.²² Enforcement is mediated through the Victorian Civil and Administrative Tribunal.

The Victorian model allows government to take responsibility for reports, meaning that survivors are not obliged to pursue a complaints process in order to attain justice. This is a significant difference between the Victorian and NSW laws.

Further reading

- ❖ SAARA has produced a range of easy-access, easy-read materials on their website as well as a position statement <https://www.saraa.org.au/conversion-practices/>. The SOGICE Survivor Statement website also has a suite of useful materials <https://www.sogicesurvivors.com.au/>.
- ❖ United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity, Conversion Therapy Report, 2020, Accessed at

²² See Victorian Equal Opportunity and Human Rights Commission, *About the Act*, Website, 2024 <<https://www.humanrights.vic.gov.au/change-or-suppression-practices/about-the-csp-act/#What-are-change-or-suppression-practices>>.

<<https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/ConversionTherapyReport.pdf>>.

- ❖ International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, available at <<https://www.refworld.org/legal/resolution/icjurists/2007/en/58135>> (Yogyakarta Principles).
- ❖ *Yogyakarta Principles plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles (YP+10)*, 10 November 2017, accessed at: <<https://yogyakartaprinciples.org/principles-en/yp10/>>.
- ❖ Change or Suppression (Conversion) Practices Prohibition Act 2021 (Vic)
<https://www.legislation.vic.gov.au/as-made/acts/change-or-suppression-conversion-practices-prohibition-act-2021>
- ❖ Reforms needed to address LGBTQA+ conversion practices in Tasmania (2022)
<https://www.utas.edu.au/law-reform/news-and-events/tlri-news/reforms-needed-to-address-lgbtqa-conversion-practices-in-tasmania>
- ❖ Levi, Jennifer, Kevin Barry and Florence Ashley, "'Made To Feel Broken': Ending Conversion Practices And Saving Transgender Lives Banning Transgender Conversion Practices: A Legal And Policy Analysis" (2023) 136(4) *Harvard law review* 1112
- ❖ Salway, Travis et al, "A Systematic Review of the Prevalence of Lifetime Experience with 'Conversion' Practices among Sexual and Gender Minority Populations" (2023) 18(10) *PloS one* e0291768
- ❖ Jones, Tiffany et al, "Religious Conversion Practices and LGBTQA + Youth" (2022) 19(3) *Sexuality research & social policy* 1155
- ❖ Anderson, Joel R et al, "Mental Health Practitioners' Knowledge of LGBTQA+ Conversion Practices and Their Perceptions of Impacts on Survivors" [2024] *Journal of homosexuality* 1

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