

Guide to Conversion Practices Law

Reading time:

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Date created: 15/02/2022

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Victoria's [Change or Suppression \(Conversion\) Practices Prohibition Bill 2020](#) was passed by the Victorian Legislative Council and received Royal Assent. While it is not currently in force, it is expected to become law in February 2022¹. There are two key aspects to this new legislation; it makes it a criminal offence to engage in change or suppression practices that cause injury or serious injury, as well as establishes a civil response scheme to support survivors and address the harm they have experienced².

Under this civil response scheme, the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) is empowered to receive and respond to reports of change or suppression practices and investigate where there is evidence of serious or systemic change or suppression practices. The VEOHRC is also empowered to refer reports to other bodies including the Health Complaints Commissioner (HCC), the Australian Health Practitioner Regulation Agency (AHPRA), the Ombudsman and Victoria Police.

What are change or suppression practices?

In short, these are practices and conducts aimed at changing or suppressing an individual's sexual orientation or gender identity³.

To satisfy this definition, the practice or conduct must satisfy the following three requirements⁴:

- must be directed towards an individual; and
- must be provided on the basis of the person's sexual orientation or gender identity; and
- must be for the purpose of either changing or suppressing the sexual orientation or gender identity of the person; or inducing the person to change or suppress their sexual orientation or gender identity.

This definition applies whether the practice or conduct is with or without the person's consent. Importantly, change or suppression practices would only attract criminal penalties where⁵:

- the person intentionally engaged in that practice directed towards another person (B); and
- the change or suppression practice caused injury or serious injury (including physical and mental injury) to B; and
- the person was negligent as to whether engaging in the change or suppression practice would cause injury or serious injury to B.

The Bill's Explanatory Memorandum⁶ states that the new legislation:

"is intended to capture a broad range of conduct, including, informal practices, such as conversations with a community leader that encourage change or suppression of sexual orientation or gender identity, and more formal practices, such as behaviour change programs and residential camps."

Change or suppression practices may include, but are not limited to:

- psychiatry, psychotherapy consultations, treatments or therapies (or similar)
- religious practices
- referrals for the purpose of change or suppression practices to be done towards a person.

It is a criminal offence to publish, display, or authorise the publication or display of an advertisement that indicates or could reasonably be understood to indicate, that a person intends to engage in a change or suppression practice⁷. In certain circumstances, it is also a criminal offence to take or arrange for a person to be taken from Victoria for the purpose of a change or suppression practice outside of Victoria⁸.

In certain circumstances, a failure of a health professional to refer a person undergoing gender transition to necessary supportive medical or psychological treatment may be captured by both the criminal offences and civil scheme in this Bill⁹.

What practices and conducts are allowed?

In general terms, any practice or conduct that supports or affirms a person's gender identity or sexual orientation is not a change or suppression practice. This may include but is not limited to¹⁰:

Supportive medical and/or psychological treatment in line with professional standards, including support for a person who is seeking to affirm their gender identity by undergoing gender transition, or

- supportive medical and/or psychological treatment in line with professional standards, including assisting a person who is undergoing or considering undergoing a gender transition; or
- assisting a person to express their gender identity; or
- providing acceptance, support or understanding of a person; or
- facilitating a person's coping skills, social support or identity exploration and development.

Practices or conducts of a health service provider that is, in the health service provider's reasonable professional judgement, necessary:

- to provide a health service; or
- to comply with the legal or professional obligations of the health service provider.

What this means for you?

For individuals and organisations involved in counselling, providing a psychiatry or psychotherapy consultation, treatment or therapy, or any other similar consultation, treatment or therapy, teaching or instruction about sexual orientation and gender identity, this new bill will require careful consideration.

Health practitioners are encouraged to become aware of the constraints under this new legislation and to review their current practice to ensure it complies with the regulatory directives.

To avoid litigation, MIPS recommends:

- Stay abreast of developments and implementation guidelines made available by relevant governmental authorities.
- Clearly assert the type of counselling, treatment, or any other type of psychological or psychiatric care that you or your practice offer to patients.
- If applicable, support your team or practice staff to received education on the topic and to ensure adherence to new requirements.
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¹² Change or Suppression Practices - Legislative Ban

³ Change or Suppression (Conversion) Practices Prohibition Bill 2020 Explanatory Memorandum page 1

⁴ Change or Suppression (Conversion) Practices Prohibition Act 2021 section 5(1)

⁵ Change or Suppression (Conversion) Practices Prohibition Act 2021 sections 10, 11

⁶ Change or Suppression (Conversion) Practices Prohibition Bill 2020 Explanatory Memorandum page 5

⁷ Change or Suppression (Conversion) Practices Prohibition Act 2021 section 13

⁸ Change or Suppression (Conversion) Practices Prohibition Act 2021 section 12

⁹ Hennessy, J. Second Reading Speech for the Change or Suppression (Conversion) Practices Prohibition Bill delivered on 26 November 2020 page 3724

¹⁰ Change or Suppression (Conversion) Practices Prohibition Act 2021 section 5(2)

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