

The NSW Government is consulting on laws to ban LGBTQ+ conversion practices

The NSW Government is committed to banning LGBTQ+ conversion practices. We are consulting with victim-survivors and other stakeholders to develop a legislative model that is right for NSW.

'LGBTQ+ conversion practices' refers to harmful practices that seek to:

- change or suppress a person's sexual orientation to conform with heterosexuality and/or
- change or suppress a person's gender identity to match the sex they are assigned at birth.

A joint working group led by the Department of Communities and Justice and the NSW Ministry of Health is leading development of the laws. You will have received a consultation paper from the group.

This paper seeks views from key stakeholders on proposals that will help draft the laws and actions needed to support any laws, such as training, education and support for impacted people.

This factsheet provides a summary of the proposals being considered.

A legislative definition of 'conversion practices'

A legislative ban requires a clear description of LGBTQ+ conversion practices. This description will define the practices that are banned by the new law.

The consultation paper proposes that conversion practice be defined as a practice (or collection of practices) directed to a person:

- *on the basis of their sexual orientation or gender identity; and*
- *with the purpose of changing or suppressing that person's sexual orientation, or gender identity*

Practices that will not be banned

The consultation paper also proposes that the definition would **not cover** practices that:

Help people who are exploring their identity:

- *practices that support or affirm sexual orientation or gender identity, such as services supporting gender exploration, transition and expression*
- *practices that support the development and exploration of sexual orientation or gender identity*

Provide necessary health and medical care:

- *practices necessary in the reasonable professional judgement of a health practitioner or service provider or required to comply with their legal or professional obligations*

Express belief or religious principles:

- *expression of a belief or delivery of a religious practice, unless they have a primary purpose of changing or suppressing a person's sexual orientation or gender identity*

The above exceptions make clear the legitimate practices that will not be banned, such as prayer that doesn't have the primary purpose of changing or suppressing a person's sexual orientation or gender identity.

For more on the definition of 'conversion practices' see [Section 3](#) of the consultation paper.

Building a criminal offence

Australia's legal system comprises of two broad and separate areas of law: criminal law and civil law. Criminal law deals with offences which prohibit conduct that has been deemed socially harmful and unacceptable. Criminal law generally deals with serious conduct, and where an offence is proven, the person who committed the offence can face serious penalties such as imprisonment. The paper is proposing a criminal offence for providing or delivering conversion practices.

Generally, a criminal offence comprises of two elements:

*The conduct (the **physical element**, also known as actus reus)*

*The person's state of mind (the **mental element**, also known as mens rea)*

For example, stealing is a criminal offence in NSW with these two elements – to be proven, it must be shown that the person stole an item or object (physical element) and knew that they were stealing from another person (mental element).

Complex criminal offences

Not all criminal offences are that simple. When dealing with complex interpersonal behaviours, additional elements may be needed to make sure that the offence captures only serious behaviour. For example, additional elements might include whether:

- the conduct is defined
- the conduct caused some form of injury or impact on the victim
- the conduct violates community standards (often described as considering behaviour from the view of the '**reasonable person**')
- there are defences to allow a person to justify their behaviour in certain circumstances

An offence for LGBTQ+ conversion practices is likely to cover complex interpersonal behaviour.

The consultation paper proposes an offence with the following elements:

- *the person provides or delivers a conversion practice (the physical element). 'Conversion practices' will be defined, and certain conduct excluded*
- *the person delivering the practice intends to change or suppress the sexual orientation or gender identity of the other person (the mental element)*
- *a reasonable person would consider the conversion practice would be likely to cause harm to the other person (a reasonable person test)*

An offence for removing a person from NSW for conversion practices is also proposed.

The working group is seeking the views of your organisation and others on whether the proposed offence meets the Government commitment and any views on the elements. The paper also proposes related offences for removing a person from NSW for the purposes of conversion practices.

For detailed analysis of criminal law proposals, see [Section 4](#) of the consultation paper.

Civil complaint and resolution pathways

Civil law deals with disputes between persons and organisations. In some cases, this might involve litigation seeking compensation. In other cases, this might be a legal framework to make complaints about prohibited conduct, and to have disputes mediated or resolved. The paper considers potential civil law responses to conversion practices.

Expanding the role of Anti-Discrimination NSW

In NSW, the *Anti-Discrimination Act 1977* prohibits discrimination in certain areas of public life, on a range of grounds, including homosexuality and transgender status. In NSW, the body that handles discrimination complaints is Anti-Discrimination NSW, the agency that supports the President of the Anti-Discrimination Board.

Under existing processes, the President considers and attempts to conciliate a complaint. If a complaint is conciliated, the process does not involve a determination about whether or not prohibited conduct has occurred. Instead, the focus of conciliation is to seek to resolve complaints by agreement.

The President may also refer certain complaints to the NSW Civil and Administrative Tribunal (NCAT), which enables complaints to be determined if a conciliated outcome cannot be reached. NCAT is able to make a range of orders that provide a direct remedy to the complainant if the complaint is substantiated, including orders for payment of damages, to prevent a person from continuing or repeating unlawful conduct and for an apology.

The consultation paper proposes that these existing processes be expanded to specifically include complaints of conversion practices.

Additionally, the paper seeks views as to whether other powers may be needed, such as investigative or compliance powers.

For detailed analysis of civil complaints proposals, see [Section 5](#) of the consultation paper.

Regulation of health professionals

Health practitioners and health service providers in NSW are already subject to regulation, including under the *Health Practitioner National Law (NSW)*, the *Public Health Act 2010*, and the *Health Care Complaints Act 1993*, which are considered sufficiently broad to cover conversion practices.

Registered health practitioners in NSW, such as medical practitioners and psychologists, are subject to codes and guidelines set by the relevant National Health Practitioner Board and are required to conduct their practice in a safe and ethical manner. Complaints can be made and disciplinary action can be taken against a registered health practitioner who breaches these codes or guidelines or who otherwise act in an unethical manner.

Non-registered health practitioners, such as counsellors, in NSW must comply with the Code of Conduct for non-registered health practitioners set out in Schedule 3 of the *Public Health Regulation 2022*. Under the *Health Care Complaints Act 1993*, any person may make a complaint to the Health Care Complaints Commission about a breach of the Code of Conduct for such practitioners.

Given these existing mechanisms, the consultation paper proposes that existing regulatory frameworks are sufficient.

For detailed analysis of health sector regulation proposals, see [Section 6](#) of the consultation paper.
