



New South Wales

Conversion Practices Prohibition Bill 2023

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Equality Legislation Amendment (LGBTIQ+) Bill 2023*.

Overview of Bill

The object of this Bill is to—

- (a) prohibit change or suppression practices, and
- (b) establish a civil response scheme, and
- (c) ensure that all people, regardless of sexual orientation, gender identity or gender expression feel welcome and valued in New South Wales and are able to live authentically and with pride.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 sets out the objects of the proposed Act.

Clause 4 provides that the objects of the proposed Act are to be primarily achieved by eliminating the occurrence of change or suppression practices in New South Wales by prohibiting engaging in change or suppression practices.

Clause 5 provides for the proposed Act to bind the Crown in the right of New South Wales and, so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

Clause 6 provides that contravention of the proposed Act does not create civil or criminal liability beyond what is expressly provided by the proposed Act.

Clause 7 provides that if a person engages in conduct outside, or partly outside New South Wales, the proposed Act has effect in relation to the conduct as if it had been engaged in wholly within New South Wales.

Clause 8 provides for the Dictionary in the proposed Act, Schedule 1 to define certain terms used in the proposed Act.

Clause 9 defines a *change or suppression practice* for the proposed Act.

Part 2 Prohibition on change or suppression practices

Clause 10 provides that a person or organisation that engages in change or suppression practices contravenes the proposed Act.

Clause 11 makes it an offence for a person to intentionally engage in change or suppression practices that negligently cause serious injury to an individual. The maximum penalty for an individual is imprisonment for 10 years or 1,200 penalty units, or both, or, otherwise, 6,000 penalty units. It is not a defence to a charge under clause 11 that the individual consented to the change or suppression practice.

Clause 12 makes it an offence for a person to intentionally engage in change or suppression practices that negligently cause injury to an individual. The maximum penalty for an individual is imprisonment for 5 years or 600 penalty units, or both, or, otherwise, 3,000 penalty units. It is not a defence to a charge under clause 12 that the individual consented to the change or suppression practice.

Clause 13 makes it an offence for a person to take an individual or arrange for an individual to be taken outside of New South Wales to engage the individual in change or suppression practices that negligently cause injury to the individual. The maximum penalty for an individual is imprisonment for 2 years or 240 penalty units, or both, or, otherwise, 1,200 penalty units. It is not a defence to a charge under clause 13 that the individual consented to being taken from New South Wales for the change or suppression practice.

Clause 14 makes it an offence to advertise change or suppression practices, other than for warning of the harm caused by change or suppression practices, with a maximum penalty for an individual of 60 penalty units, or, otherwise, 300 penalty units. **Clause 15** provides that the President of the Anti-Discrimination Board under the *Anti-Discrimination Act 1977* may, by written notice, require a person to produce documents specified in the notice for proceedings under clause 14.

Clause 16 provides that for a proceeding against a body corporate for an offence under clauses 11–14, certain particulars must be attributed to the body corporate and the conduct of an officer of a body corporate is taken to be the actions of the body corporate. It is a defence to a charge under the proposed Act, Part 2, Division 3 for the body corporate to prove the body corporate exercised due diligence to prevent the conduct of the officer.

Part 3 Civil response scheme

Division 1 provides that the Anti-Discrimination Board (the *Board*) and the President of the Board (the *President*) have all the powers necessary to enable the Board and President to perform their functions. The functions of—

- (a) the Board include—
 - (i) developing and offering education about change or suppression practices, and
 - (ii) researching matters the Board considers would advance the objects of the proposed Act, and
- (b) the President include—

- (i) receiving reports from the Board or other persons about change or suppression practices, and
- (ii) determining appropriate responses to reports, and
- (iii) ensuring persons affected by change or suppression practices receive support by directing the persons to appropriate support services, and
- (iv) supporting a person who is, or may be, the victim of an offence under the proposed Act to voluntarily report the offence to the NSW Police Force, and
- (v) prosecuting offences under the proposed Act.

Division 2 provides that a person or organisation may make a report to the President about an alleged change or suppression practice and the President may ask certain persons for further information if the President considers it necessary in determining the President's response to a report.

The proposed division also provides the principles for the President responding to a report and what the President may do in response to a report. If the President is satisfied a person or organisation has engaged in a change or suppression practice, the President must consider the wishes of the person affected by the change or suppression practice and other certain matters that are reasonably available to the President. The President has discretion to offer facilitation of an outcome in relation to matters in a report and if the President certifies a record of agreement of a facilitation, the President must give each party a copy of the signed record of agreement. The President must prepare a record of agreement if requested by a party to the facilitation. The proposed division also provides for the registration of an agreement with the Civil and Administrative Tribunal (NCAT). The President has discretion to decline to respond to, and take no further action in relation to, a report in certain circumstances and must give particular written notice of the decision to the person who made the report.

Division 3 provides that the President may conduct an investigation into any matter relating to the proposed Act if the matter raises an issue that is serious in nature, indicates a possible contravention of the proposed Act, or in other certain circumstances. The President has discretion to require a person to produce a document or information necessary for the conduct of an investigation or attend before the President at a reasonable place and time to answer questions, with a maximum penalty for a failure to comply for an individual of 60 penalty units, or, otherwise, 300 penalty units. The President may give directions prohibiting or limiting the publication of evidence, documentation or information in relation to an investigation if the publication would cause the unreasonable disclosure of personal affairs of an individual, or in other certain circumstances. The President may prohibit the disclosure of the identity of a person who gives evidence, documents or information to the President as part of an investigation. The President may take any action the President considers appropriate after conducting an investigation.

Division 4 provides for remedies in circumstances in which the President, following an investigation, is satisfied a change or suppression practice has occurred, is occurring or will occur. The President may accept a written undertaking from a person in which the person undertakes to take certain actions or refrain from taking certain actions to comply with the proposed Act (an *enforceable undertaking*). The President may give a compliance notice to a person who is wholly or partly responsible for a change or suppression practice. The President may apply to the NCAT for an order requiring a person to comply with an enforceable undertaking or compliance notice. Both individuals and employers may be taken to have engaged in a change or suppression practice for the proposed Act.

Part 4 Miscellaneous

Division 1 provides that certain information about the affairs of a person or other entity obtained by the President, a member of the Board or another person involved with the enforcement of the proposed Act is *protected information* and that protected information must not be recorded or disclosed, except in certain circumstances, with a maximum penalty of 60 penalty units.

Division 2 prohibits the President from exercising the functions of the President under the proposed Act if that would prejudice criminal proceedings, a criminal investigation or an investigation by the Independent Commission Against Corruption (ICAC). The President has discretion to assist or advise a court or tribunal in certain circumstances.

Division 3 provides that for an organisation alleged to have engaged in change or suppression practices, the President may exercise their functions under the proposed Act in relation to the president, secretary or another authorised officer of the organisation.

The President, the Director of Public Prosecutions, a police officer or a person authorised by the President may bring proceedings for an offence under the proposed Act.

The Minister must review the proposed Act within 5 years after the commencement of the proposed Act.

The Governor may make regulations for the proposed Act.

Schedule 1 Dictionary

Schedule 1 defines certain words and expressions used in the proposed Act.

Schedule 2 Amendment of Acts

Schedule 2.1 amends the *Children and Young Persons (Care and Protection) Act 1998* to provide that a child or young person is at risk of significant harm if the child or young person has been, or is at risk of being, affected by change or suppression practices.

Schedule 2.2[1] amends the *Crimes (Domestic and Personal Violence) Act 2007* to provide that a court may make an apprehended domestic violence order if it is satisfied that a person who has had a relationship with another person fears, on reasonable grounds, the other person engaging in or arranging a change or suppression practice directed towards the person.

Schedule 2.2[2] amends the *Crimes (Domestic and Personal Violence) Act 2007* to provide that a court may make an apprehended personal violence order if it is satisfied that a person fears, on reasonable grounds, another person engaging in or arranging a change or suppression practice directed towards the person.

Schedule 2.3[2] amends the *Health Care Complaints Act 1993* to provide that a person may make a complaint under that Act about an alleged engagement in a change or suppression practice.

Schedule 2.3[1] makes a consequential amendment.

Schedule 2.4[1] and [2] amend the *Victims Rights and Support Act 2013* to provide that violent conduct includes a change or suppression practice for that Act.

Schedule 2.4[3] amends the *Victims Rights and Support Act 2013* to provide the circumstances in which a person is not eligible for support under Part 4, Division 3 of that Act if the person engaged in, arranged for or was otherwise involved in a change or suppression practice directed towards certain victims defined in that Act.