

Government documentation on the Conversion Practices Prohibition Bill

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This paper summarises and provides commentary on the Conversion Practices Prohibition Bill and the Crown Law commentary on the compliance of the Bill with the Bill of Rights Act

The Conversion Practices Prohibition Legislation Bill

Public submissions are now being called for Conversion Practices Prohibition Legislation Bill. The closing date for submissions is Wednesday, 08 September 2021 and you can make a submission directly from the link at [the bottom of this page](#) or you can email the Select Committee directly. The email address is ju@parliament.govt.nz and you can phone them for advice on : 0064 4 817 9520

Resources to support submissions

The draft bill is an omnibus bill to prohibit conversion practices that seek to change or suppress a person's sexual orientation, gender identity, or gender expression.

https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_113397/conversion-practices-prohibition-legislation-bill

Hansard debate on the first reading of the Bill

https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20210805_20210805_30

The digest notes that *the Bill causes a significant limitation on freedom of expression*, but that in their opinion this is warranted.

<https://www.parliament.nz/en/pb/bills-and-laws/bills-digests/document/53PLLaw26531/conversion-practices-prohibition-legislation-bill-2021>

Regulatory Impact assessment

<https://www.justice.govt.nz/assets/Documents/Publications/RIA-Prohibition-of-Conversion-Practices.pdf>

Crown Law analysis

<https://www.justice.govt.nz/assets/Documents/Publications/6352184-BORA-vet-Briefing-to-Attorney-General-Conversion-Practice-Prohibition-Legislation-Bill.pdf>

Regulatory Impact Assessment Purpose

The Regulatory Impact Assessment (RIA) is supposed to examine how the bill will impact. It is a document prepared by the responsible department and reviewed by staff in the NZ Treasury to make legislators aware of unintended consequences and covers things like where the costs will fall, extra workload, what budget will need to be assigned and where any operational roles related to the legislation will sit in government. Sadly in this RIA there seems to have been little of the good practice that [they are intended to contain](#)

The following material identifies material of interest in the RIA relevant to making submissions. They are observations, quotations in no specific order that may assist in writing a submission to the Select Committee

The Bill's RIA

Missing from consideration of the Bill

Comments on the purpose of the Bill. - I have seen there seems to be little evidence of:

- Consultation having taken place except with hand-picked 'stakeholders'
- Attention to possible unintended consequences
- Inter-relationships between different pieces of legislation and anticipated legislation
- Changing societal norms that will impact the way the law is used.
- Inter-relationships with existing government policies
- There are no references to overseas research.
- There is no specific commentary on or consideration of children who may not have the ability to consent to what is proposed for them if they suggest that they 'have another gender'.

The RIA ignores important advice from elsewhere in government. The Ministry of Health [advised against legislating saying](#)

- *Due to the current protections that are in place, and the need to balance the rights of people with preventing harm it is not*

recommended that a legislative ban of conversion therapy would be the most effective way to reduce the harm it causes.

- *Promoting the protections that are already in place, educating people on the ineffectiveness of the practice, and where to seek help if harm has been caused can be undertaken immediately.*

and the [advice of a previous select committee](#) to make special arrangements for children with gender dysphoria because all the research shows that most desist in adolescence. A letter written by [Speak Up For Women](#) argued that:

- There are no studies of conversion therapy for gender identity, let alone a scientific consensus.
- There is no consensus on treatment approaches for children and adolescents with gender dysphoria, there were different arrangements for children.

This was reported in the Select Committee report which said:

It is important that anyone with questions about their sexuality or gender identity feels comfortable seeking advice. This may be from a professional counsellor, family and friends, or within their religious community. A ban on conversion therapy should not prevent anyone from seeking or providing such advice. This could be managed by clearly defining “conversion therapy” and “counselling”.

This issue was raised in correspondence we received from Speak Up for Women, dated 29 June 2019. The organisation expressed concern about including therapy for gender dysphoria within any ban on conversion therapy, particularly for children.

Many of the references in the RIA that relate to advocacy for banning conversion therapy only address the issues for lesbian and gay people not transgender people. For example a cited paper on parental attempts to change children concerns lesbian and gay kids only. The few that address the specific situation of children and gender identity are all from organisations that are captured and ideological eg Counting Ourselves in NZ, Outright International. There are no resources cited from the increasing number of evidence based scientific organisations that are researching gender identity and gender medicine.

The purpose of the bill

*(the preferred option) is to:

- create a criminal offence and penalties for any person performing conversion practices on children under the age of 18 or people with impaired decision-making capacity
- provide a civil redress process through the Human Rights Commission (the Commission) for adults who have experienced conversion practices

- create a criminal offence and penalties for a person who performs conversion practices on any person (child or adult) where the practices cause serious harm and is reckless as to whether serious harm would be caused.

Definitions

Conversion practices defined as are attempts to change or suppress sexual orientation, gender identity or gender expression. Conversion practices are defined as practices that:

- are directed towards another person
- based on that person's sexual orientation, gender identity, or gender expression, and
- are performed with the intention, or purported intention, of changing or suppressing the person's sexual orientation, gender identity, or gender expression.

Harm and serious harm. Not defined. This is important though. SUFW holding meetings was sufficiently challenging that the likelihood of harm (in the industrial health and safety sense) meant that Massey's legal advice was that they cancel the meeting.

Counselling. Not defined

Evidence base

The report says that the evidence base of the harms of conversion practices is robust. But this is not the case. Many surveys including NZ's "Counting Ourselves" are self selecting and don't necessarily reflect the community from which they are drawn. There is a robust rebuttal of a 2020 paper. In other surveys attempts at gender identity or sexual orientation changes is measured at 4% or 66% based on how the question is asked.

The paper says that evidence that sexual orientation and gender identity cannot be changed is robust and scientific. But the evidence of desistance for children could not be clearer. Upwards of 80% desist spontaneously.

This document [summarising the impact of the bill](#) makes clear that:

Reviewer Comments and Recommendations:

A more extensive consultation process may have resulted in a better-informed understanding of the nature and scale of the problem. It would also have better informed the development and analysis of the options. Too right!!!

Assumes that not many people will be imprisoned. With no rationale. Only downside of multiple imprisonments is cost!!!!!!

The report says that 'RIS has been prepared in a limited timeframe and with limited data. Those constraints have impacted on the analysis possible.' But the possibility that analysis is incomplete has not been considered. It is not clear that there is a problem.

No budget assigned for delivering education and proposed HRC mediation

Not give sufficient weight to the impact of non-regulatory interventions such as education and information on changing behaviour and attitudes.

Limits on consultation advised in the paper

Reviewer suggests that the approach could have developed a rights based protocol as is intended with sex characteristics

There has been no public consultation because of pressure to pass the bill quickly. Increasing public demand to ban conversion practices as soon as possible resulted in the Government committing to enacting legislation by the end of 2021.

Formal consultation on policy proposals could not be undertaken within this timeframe. The proposals have been informed by, and tested through, targeted discussions with conversion practice survivors, faith community leaders, health professional bodies and academics. But not with parents, (de) transitioners, lesbians and gay men.

A more extensive consultation process may have resulted in a better-informed understanding of the nature and scale of the problem. It would also have better informed the development and analysis of the options. The only opportunity for public input would be during the select committee process.

Observations

- The RIA says that the size of the problem is unknown.
- The report says that there is no data on overseas laws in preventing conversion practices from occurring.
- That there has been no public consultation and urgency has limited the amount of investigation that has taken place.
- Amongst those listed as being consulted with neither parents of children who are transitioning let alone parents who are sceptical about transitioning have been consulted

The definition of conversion practices ie that they commonly take the form of unpaid purported talk-therapy and individual, group and online counselling would seem to allow that even providing the information that many young people desist could be regarded as criminal.

The RIA treats sexual orientation and gender identity as equivalent parts of the Rainbow community but they are not.

The RIA assumes that objections to gender identity are always religious not that they are based on strong evidence-base from overseas!!!

The paper does not mention that there would be any political risks to imprisoning parents.

There is no reference at all to the medical situation overseas that has developed over two years that is a withdrawal from medicine for kids and strong evidence that sex change has few benefits. There is no sense that many parents are incredibly unhappy with this because they have informed themselves of the evidence. Or that anyone except the extreme right and fundamentalist religions are concerned. It's as if it's been written by a fifth former with an agenda.

The idea behind the punitive laws is that behaviour changes as a result of legal threat.

There is no baseline data on the prevalence of conversion practices. No-one knows whether they happen or are common. Only media reports and public discussion indicates that they occur.

The case against Conversion Practices is expressed as banalities “*Legislative intervention is necessary to clearly affirm that no sexual orientation, gender identity or gender expression is wrong, broken or in need of fixing.* The words are straight from the TRA playbook.

The report says that the way practices are described may become more subtle, for example through references to exploring sexuality rather than changing it. But conversion therapy and diagnostic determination are quite different. Implying that exploring sexuality or gender identity and what has brought it about is in itself problematic. The [article by D'Angelo](#) has some good rebuttals to this.

The bill appears to mandate that gender identity exists which is problematic. Transgender people exist -but this does not require a belief in a gender identity.

With a legal remedy in place it sets the scene for using other punitive remedies for instances that don't meet the requirements eg a parents support group. A campaign group that uses overseas evidence to advocate against puberty blockers.

There is no assessment about the instances where parents have been charged and imprisoned overseas. Or that children have been removed from their parents overseas. There is a concern that the presences of the law would mean that Oranga Tamariki would feel pressured to move in and remove children if parents were reluctant to support social transition or medication.

There is no information about what would happen to non-compliant parents. Would the existence of a punitive law be used to make the case that children should be rescued from parents who are not sufficiently supportive.

Non-regulatory options were considered and the criteria were:

- effectiveness
- equity
- simplicity
- timeliness.

Crown Law analysis of Bill of Rights Act compliance

David Parker the current attorney general seeks reports on Bill of Rights Act compliance. He is seeking to pass a law that will provide a remedy when government legislates to remove rights as the National Party did with stopping prisoners from voting. Crown Law acknowledges that there will be serious incursionsbut advises that they are warranted.

See: <https://www.justice.govt.nz/assets/Documents/Publications/6352184-BORA-vet-Briefing-to-Attorney-General-Conversion-Practice-Prohibition-Legislation-Bill.pdf>

It has advised the Attorney-General that (among other things):*We have assessed this Bill for its consistency with the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act). **The Bill causes a significant limitation on freedom of expression, and a***

lesser limitation on manifestation of religion, but in our opinion, the limitations are justified, and the Bill is consistent with the Bill of Rights Act. (emphasis added).

*There is no doubt that as expressed the **prohibition will extend to activities and communications that occur within families and within religious groupings.***

Cited recent case law in NZ saying that: Court of Appeal restated that freedom of expression is recognised as one of the essential foundations of a democratic society.

1 It has also been recognised that the freedom is worth little if it excludes the expression of ideas that are offensive or controversial.

2 The constitutional protection that should be given to the expression involved in the conversion practices themselves is capable of justified limitation, but the broad definition of those practices creates the risk that it could extend further, to the exchange of thoughts or opinions about sexuality and gender that occur within the family/whānau or religious groups that do warrant protection and where the limitation could not easily be justified.

The belief that diverse sexual orientation or gender identity or expression is deviant, abnormal or sinful or that it is capable of conversion or suppression. It is only the conversion practice that is to be criminalised.

*The Bill is clearly expressed to ban only practices that are intended to change or suppress **rather than merely confront or reject the individual's sexual orientation, gender identity or gender expression. (emphasis added)***

But this differentiation may be theoretical since confronting or rejecting an individual's gender identity is destined to become an issue covered under the hate speech legislation.

The advice then goes on to say:

One of the purposes of the Bill is expressed to be the promotion of respectful and open discussions regarding sexuality and gender.

The Crown Law opinion neither references the Ministry of Health's advice against legislating nor the considerations advised by the Select Committee. Neither does it investigate the emerging situation overseas where gender medicine is being withdrawn because it causes harm.