

Departmental Disclosure Statement

Conversion Practices Prohibition Legislation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

23 June 2021

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Part One: General Policy Statement

Introduction

The Conversion Practices Prohibition Legislation Bill (the **Bill**) is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The policy implemented by the Bill is the prohibition of conversion practices in New Zealand.

Conversion practices encompass a broad range of practices that seek to change or suppress a person's sexual orientation, gender identity, or gender expression. Research emphasises that conversion practices do not work and can contribute to issues such as low self-esteem, depression, anxiety, and suicidal thoughts and attempts.

The Government's objectives in prohibiting conversion practices are to:

- affirm the dignity of all people and that no sexual orientation or gender identity is broken and in need of fixing
- prevent the harm conversion practices cause in New Zealand and provide an avenue for redress
- uphold the human rights of all New Zealanders, including of rainbow New Zealanders, to live free from discrimination and harm.

Defining conversion practices

The Bill defines conversion practice as a practice that is:

- directed towards a person because of their sexual orientation, gender identity, or gender expression, and
- performed with the intention of changing or suppressing their sexual orientation, gender identity, or gender expression.

It is important to ensure that health practitioners and others are not discouraged from offering legitimate support or therapy for fear of incurring liability under the prohibition. As such, the definition explicitly excludes practices by health practitioners acting within their scope of practice, and other practices such as assisting a person who is undergoing a gender transition, or facilitating a person's coping skills, development, or identity exploration. The definition clarifies that it does not capture the expression only of a religious principle or belief that is not intended to change or suppress a person's sexual orientation, gender identity, or gender expression.

New criminal offences

To deter the performance of conversion practices, the Bill creates 2 new criminal offences where there is a heightened risk of harm (as in the case of children or people with impaired decision-making capacity) or where serious harm is caused.

It will be an offence for any person to perform conversion practices on a person who:

- is under the age of 18 years, or
- lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to their health or welfare.

The maximum penalty for this offence is a term of imprisonment not exceeding 3 years.

It will also be an offence for any person to perform conversion practices on any other person where the practices cause serious harm. The maximum penalty for this offence is a term of imprisonment not exceeding 5 years.

Civil redress scheme

The Bill utilises the Human Rights Commission's (the Commission) existing functions and complaints system to provide a civil redress scheme for conversion practices. This provides another pathway of redress for survivors of conversion practices, with a focus on remedying harm and preventing it from happening again. The Commission will also play an important role in providing education about conversion practices and the prohibition, and in making survivors aware of how to access the support that they may need.

The Bill amends Part 2 of the Human Rights Act 1993 to provide that performing or arranging for the performance of conversion practices is unlawful. This will allow the Commission to receive and deal with complaints about the performance of conversion practices. The existing section 67 of the Human Rights Act 1993 will also allow the Commission to receive and deal with complaints about advertisements that indicate, or could reasonably be understood as indicating, an intention to perform conversion practices.

Where complaints about conversion practices cannot be resolved through the Commission's process, parties will be able to take their case to the Human Rights Review Tribunal (the Tribunal). The Tribunal will be able to grant a range of remedies pursuant to the existing section 92I of the Human Rights Act 1993.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Prohibiting Conversion Practices: Regulatory impact statement, prepared by the Ministry of Justice. To be published once the Bill is introduced at: http://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements/ and http://www.treasury.govt.nz/publications/informationreleases/ris .	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
As agreed in consultation with the Treasury, the regulatory impact summary was assessed internally by the Ministry's Regulatory Quality Assurance Panel and determined to partially meet the quality assurance criteria.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
The Bill utilises the existing functions and complaints system of the Human Rights Commission to create a civil redress scheme for conversion practices performed on any person. Options 3 and 4 in the regulatory impact statement linked under question 2.3 analysed the creation of a civil redress scheme for conversion practices performed on adults only.	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Analysis of the costs and benefits of the proposals given effect by the Bill is set out in the regulatory impact summary linked under question 2.3.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Ministry has considered New Zealand's commitments under a variety of international instruments to which New Zealand is a signatory during the development of the Bill. The prohibition will recognise New Zealand's international human rights obligations relating to the rights of children, to prevent torture or other inhuman treatment or punishment, and the social and cultural rights to take part in societal life, including enjoyment of the highest standard of physical and mental health.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Justice did not identify any inconsistency with the principles of the Treaty of Waitangi during the development of the Bill and its policy. Takatāpui Māori, and particularly rangatahi takatāpui, may face discrimination based on their sexuality, gender identity, and gender expression. The Crown has a Treaty obligation to take positive action to reduce the disparities experienced by takatāpui Māori. Prohibiting conversion practices in New Zealand will better protect takatāpui Māori from discrimination based on their sexuality, gender identity, or gender expression and provide avenues for redress.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General by Crown Law, or a Bill of Rights Act 1990 section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon a Bill's introduction at: http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>The Bill creates the following offence provisions:</p> <ul style="list-style-type: none"> • Section 8: Offence to perform conversion practice on person under age of 18 years or lacking decision-making capacity • Section 9: Offence to perform conversion practice that causes serious harm. <p>The Bill also amends the Human Rights Act 1993 to provide it is unlawful for a person to perform a conversion practice on any other person or to arrange for a conversion practice to be performed on any other person. This will allow the Human Rights Commission and the Human Rights Review Tribunal to receive and deal with complaints about conversion practices.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice has led the policy development of the Bill. Offence provisions were checked and approved internally through the standard process by which all offences and penalties are vetted. This process includes consideration of consistency with existing criminal offences.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Between February and June 2021, the Ministry of Justice undertook targeted discussions with a range of key stakeholders on specific issues so that the prohibition works as intended and avoids unintended consequences. These stakeholders included survivors of conversion practices, members of rainbow communities, Māori, Pacific communities, ethnic communities, faith groups, health professionals, and academics. The Human Rights Commission was also consulted.</p> <p>Feedback was generally supportive of a prohibition of conversion practices. Survivors of conversion practices emphasised the harm that the practices can cause and the sometimes subtle nature of the practices in modern New Zealand. There were differing views over what should be considered as a conversion practice for the purposes of a prohibition and whether the statutory definition should be limited to coercive or forced practices, or also include more general negative statements about sexual orientation and gender identity. There were also some concerns expressed, particularly from faith groups, that a prohibition may limit religious freedoms.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The provisions in this Bill have been tested with other agencies, including Police, Crown Law Office, the Ministry of Health, and the Human Rights Commission.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
Section 12 provides that no prosecution under sections 8 and 9 shall be instituted without the consent of the Attorney-General. This requirement is intended to act as a safeguard against prosecutions that do not come within the intended scope of the prohibition on conversion practices.	