



New South Wales

Conversion Practices Ban Bill 2024

Explanatory note

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

Overview of Bill

The objects of this Bill are—

- (a) to make it an offence to engage in conversion practices with the intention of changing or suppressing an individual's sexual orientation or gender identity, and
- (b) to establish a civil complaints scheme to provide avenues and processes for redress for individuals and representative bodies if they have a complaint under this Bill.

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.

Part 2 Interpretation

Clause 3 provides a definition of a *conversion practice* as a practice, treatment or sustained effort, that is directed to an individual on the basis of their sexual orientation or gender identity with the intention of changing or suppressing that sexual orientation or gender identity.

Clause 4 provides for the dictionary in the proposed Act, Schedule 2 to define certain words and expressions used in the proposed Act.

Part 3 Offences in relation to conversion practices

Clause 5 makes it an offence for a person, other than an individual under the age of 18 years, to engage in conversion practices that cause mental or physical harm to an individual. Clause 5 makes clear that it is an offence whether the practice is provided or delivered in New South Wales or partly in New South Wales and partly outside New South Wales.

Clause 6 makes it an offence for a person, other than an individual under the age of 18 years, to take an individual from New South Wales or engage a person outside New South Wales for the purposes of delivering or providing a conversion practice.

Clauses 5 and 6 apply whether the individual, or the parent, guardian or other person who has decision-making authority for the individual, consents to the conversion practice or not.

Part 4 Civil complaints scheme

Division 1 Preliminary

Clause 7 provides for certain definitions used in proposed Part 4, including definitions of *complainant*, *representative body* and *respondent*.

Division 2 General prohibition

Clause 8 sets out a general prohibition on entities providing or delivering conversion practices.

Division 3 Complaints

Subdivision 1 Lodgement of complaints

Clause 9 sets out the persons who can make complaints including one or more individuals, both on their own behalf or on behalf of another individual, a parent or guardian of certain individuals, a representative body on behalf of a named individual or an Australian legal practitioner for an individual.

Clause 10 makes further provision for complaints made on behalf of others under clause 9(1)(a) or (b).

Clause 11 makes further provision for complaints made by representative bodies.

Clause 12 allows the President of the Board (the *President*), as defined by the *Anti-Discrimination Act 1977*, to assist an individual to make a complaint.

Clause 13 provides for the withdrawal of consent by individuals who have had complaints made on their behalf, previously with their consent.

Subdivision 2 Making of complaints

Clause 14 sets out that a complaint must be made in writing, be lodged with the President and be lodged by post or email or in another way prescribed by the regulations.

Clause 15 sets out the decisions the President must make in relation to a complaint and the requirements for notification of the decision.

Subdivision 3 Investigation and conciliation of complaints

Clause 16 requires the President to investigate each complaint accepted under clause 15. Clause 16 also allows the President to conduct a joint investigation into more than 1 complaint and requires the President to notify the parties if a joint investigation is undertaken.

Clause 17 allows the President to require certain information and documents from complainants or entities, and prescribes how the request is to be made. The clause also makes it a requirement for complainants or entities to supply the information or documents to the President, or provide notice to the President if unable to supply the information and documents. The clause sets out

penalties for complainants or entities that fail to provide the information, documents or notice of excuse, and allows the President to refer the complainant to the Civil and Administrative Tribunal (the *Tribunal*).

Clause 18 requires the President to provide progress reports to the parties of the complaint, including the steps taken for the investigation of the complaint. Notice of the progress must be provided as frequently as reasonably convenient and at periods not exceeding 90 days.

Clause 19 allows the President to resolve a complaint by conciliation at any stage after the acceptance of the complaint under clause 15. The clause makes certain provisions, including setting out a penalty for entities that fail to comply with a notice to appear before the President to resolve a complaint by conciliation and clarifying that any evidence in conciliation proceedings is not admissible in any subsequent proceedings relating to the complaint. Clause 19 also provides for a written record to be prepared of any agreement reached, following conciliation, if requested by any party and authorises a party to apply to have the agreement registered with the Tribunal if, within 6 months after the date of the agreement, the party is of the opinion that another party has not complied with the terms of the agreement. The provisions of an agreement that are registered in accordance with clause 19 are taken to be an order of the Tribunal and are enforceable as an order of the Tribunal.

Clause 20 makes clear that a complainant or respondent in a conciliation proceeding cannot be represented by another entity unless leave is granted by the President.

Clause 21 provides that, if after the time the complaint is made but before for the complaint is declined, terminated or otherwise resolved by the President or referred to the Tribunal, a complaint can be amended if an entity making a complaint seeks to amend the complaint or the President becomes aware of information that could conveniently be dealt with as part of the complaint.

Subdivision 4 Declining of complaints during investigation

Clause 22 sets out the circumstances where the President can decline a complaint, or part of a complaint, and requires the President to provide the complainant written notice of the decision to decline the complaint.

Subdivision 5 Termination of complaints

Clause 23 provides for the President to terminate a complaint, or part of a complaint, if the President is satisfied that the complaint has been settled or resolved by agreement between the parties. If the President terminates a complaint under clause 23, the complainant has no right to refer the matter to the Tribunal.

Clause 24 allows for complainants to withdraw the complaint at any time by written notice lodged with the President. Clause 24 also provides for complaints to be withdrawn by a notice signed by or on behalf of the complainant or all complainants if there is more than 1 complainant. If there is more than 1 complainant and a notice is received to withdraw which is signed by some but not all complainants, the President must treat the notice as an amendment and remove the names of the complainants requesting the withdrawal. Clause 24 also sets out certain requirements of the President in relation to the withdrawal or amendment of the complaint under the clause.

Clause 25 provides for certain circumstances where the President can take the complaint to be abandoned and may be terminated. Complaints terminated under clause 25 may be revived in certain circumstances.

Clause 26 sets out that the death of a complainant or respondent, before the final determination of the complaint, does not terminate the complaint. Clause 26 provides for the complaint to be continued by the complainant's legal representative and any monetary sum ordered to be paid is payable to the estate of the complainant or respondent as appropriate.

Subdivision 6 Referral of complaints to Tribunal

Clause 27 enables complainants to require the President to refer complaints to the Tribunal in certain circumstances.

Clause 28 enables parties to a complaint that has not been declined, terminated or otherwise resolved within 18 months after the complaint was made to request the President to refer the complaint to the Tribunal. Clause 28 also sets out certain requirements the President must meet for a referral to the Tribunal under this clause.

Clause 29 requires the President to refer a complaint to the Tribunal in certain circumstances.

Clause 30 allows the President, if there is more than 1 complainant or respondent to a complaint, to treat the complaint as a number of complaints by or against each complainant or respondent.

Clause 31 makes certain provisions for the form and method a referral to the Tribunal must take.

Subdivision 7 Miscellaneous

Clause 32 makes miscellaneous provisions, including the President's delegation power.

Division 4 Complaints referred to Tribunal

Clause 33 allows the President to refer a complaint to the Tribunal under clause 17, 27, 28 or 29 and allows the Minister administering the proposed Act to refer any matter to the Tribunal as a complaint.

Clause 34 prohibits a complaint referred to the Tribunal under clause 27(1) being the subject of proceedings before the Tribunal without the leave of the Tribunal.

Clause 35 provides that an entity, other than an Australian legal practitioner, is not entitled to demand a fee or reward for representing a party in proceedings before the Tribunal in relation to a complaint.

Clause 36 provides for members of staff of the Board to appear and assist the Tribunal in proceedings.

Clause 37 allows the Tribunal to deal with 2 or more complaints in the same proceedings, if the complaints arise from the same or substantially the same circumstances or subject matter.

Clause 38 sets out certain requirements and prohibitions for the Tribunal in relation to representative complaints.

Clause 39 enables the Tribunal to dismiss a complaint, or part of a complaint, at any stage of the proceedings on a ground on which the President would be able to decline a complaint under certain provisions of clause 22.

Clause 40 allows the Tribunal to amend a complaint, such as the inclusion of additional complaints and anything else that was not included in the complaint when it was investigated by the President.

Clause 41 allows the Tribunal, on application of the President, to make certain interim orders after a complaint is made but before the complaint is declined, terminated or otherwise resolved. Clause 41 also provides for the Tribunal to make an interim order at any time on application from the complainant or respondent.

Clause 42 enables the Tribunal to dismiss the complaint in whole or in part or find the complaint substantiated in whole or in part. Clause 42 also makes certain provisions for the making and effect of orders made by the Tribunal when a complaint is dismissed or substantiated.

Clause 43 allows any damages awarded by the Tribunal to accrue interest.

Clause 44 enables the President to take steps in the public interest to enforce an order of the Tribunal.

Clause 45 provides for the enforcement of non-monetary orders of the Tribunal.

Clause 46 sets out the relationship between proposed Division 4 and the provisions of the *Administrative Decisions Review Act 1997* and the *Civil and Administrative Tribunal Act 2013* and clarifies that proposed Division 4 prevails to the extent of any inconsistency.

Division 5 Additional functions of Board

Clause 47 sets out additional functions of the Board, including that they can decide, by resolution, to hold public inquiries. Clause 47 also requires the President to implement a resolution of the Board relating to certain matters.

Clause 48 allows the Minister to refer to the Board any matter relating to conflicts, or may give rise to a conflict, between the proposed Act or the regulations and a law or proposed law or practice, alleged practice or proposed practice of a person or a class of persons. Clause 48 also requires the Board to conduct an examination of the matter and report about its findings and conclusion to the Minister.

Division 6 Confidentiality

Clause 49 defines certain terms used in the proposed division, including a definition of *protected information* as information about the affairs of an individual or other entity obtained in the course of exercising functions or another person exercising functions under the proposed Act.

Clause 50 makes provisions in relation to protected information, including its inadmissibility in court proceedings and communication of protected information to the Minister if in the public interest. The clause makes it an offence to make a record, disclose or otherwise communicate protected information except in certain circumstances.

Division 7 Miscellaneous

Clause 51 sets out that the President or the Board cannot exercise any functions under the proposed Act in a way that would prejudice criminal proceedings or a criminal investigation. The clause enables the President or Board to consult with the Director of Public Prosecutions or the Commissioner of Police.

Clause 52 provides that an entity must not obstruct, hinder or resist, without reasonable excuse, the exercise of the President's, a member of the President's staff or a member of the Board's functions under the proposed Act.

Clause 53 makes certain provisions in relation to the liability of principals and employers for certain acts.

Part 5 Miscellaneous

Clause 54 provides for the review of the proposed Act.

Clause 55 enables the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Dictionary

Schedule 2 contains the dictionary that defines certain words and expressions used in the proposed Act.

Schedule 3 Amendment of Acts

Schedule 3 makes consequential amendments to the Acts specified in the schedule.