

2020

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Social Inclusion and Equality
and Minister for Justice, Consumer Affairs and Road Safety)

Sexuality and Gender Identity Conversion Practices Bill 2020

Contents

	Page
Part 1	
Preliminary	
1 Name of Act	2
2 Commencement	2
3 Dictionary	2
4 Notes	2
5 Offences against Act—application of Criminal Code etc	3
6 Objects of Act	3

		Page
Part 2	Sexuality and gender identity conversion practices	
7	Meaning of <i>sexuality or gender identity conversion practice</i>	4
8	Offence—performing conversion practice on protected person	5
9	Offence—removing protected person from ACT for conversion practice	5
Part 3	Review of Act	
10	Review of Act	7
Part 4	Consequential amendments	
11	Legislation amended—sch 1	8
Schedule 1	Human Rights Commission Act 2005— Consequential amendments	9
Dictionary		17

2020

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Social Inclusion and Equality
and Minister for Justice, Consumer Affairs and Road Safety)

Sexuality and Gender Identity Conversion Practices Bill 2020

A Bill for

An Act about conversion practices relating to sexuality and gender identity, and
for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2019-1496

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Sexuality and Gender Identity Conversion Practices*
4 *Act 2020*.

5 **2 Commencement**

6 This Act commences 6 months after its notification day.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see [Legislation Act](#), s 75 (1)).

9 **3 Dictionary**

10 The dictionary at the end of this Act is part of this Act.

11 *Note 1* The dictionary at the end of this Act defines certain terms used in this
12 Act, and includes references (*signpost definitions*) to other terms defined
13 elsewhere in this Act.

14 For example, the signpost definition ‘*gender identity*—see the
15 [Discrimination Act 1991](#), dictionary.’ means that the term ‘gender
16 identity’ is defined in that dictionary and the definition applies to this Act.

17 *Note 2* A definition in the dictionary (including a signpost definition) applies to
18 the entire Act unless the definition, or another provision of the Act,
19 provides otherwise or the contrary intention otherwise appears (see
20 [Legislation Act](#), s 155 and s 156 (1)).

21 **4 Notes**

22 A note included in this Act is explanatory and is not part of this Act.

23 *Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

1 **5 Offences against Act—application of Criminal Code etc**

2 Other legislation applies in relation to offences against this Act.

3 *Note 1 Criminal Code*

4 The [Criminal Code](#), ch 2 applies to all offences against this Act (see
5 Code, pt 2.1).

6 The chapter sets out the general principles of criminal responsibility
7 (including burdens of proof and general defences), and defines terms used
8 for offences to which the Code applies (eg *conduct*, *intention*,
9 *recklessness* and *strict liability*).

10 *Note 2 Penalty units*

11 The [Legislation Act](#), s 133 deals with the meaning of offence penalties
12 that are expressed in penalty units.

13 **6 Objects of Act**

14 The objects of this Act are—

15 (a) to affirm that—

16 (i) all people have characteristics of sexuality and gender
17 identity; and

18 (ii) no combination of those characteristics constitutes a
19 disorder, disease, illness, deficiency, disability or
20 shortcoming; and

21 (b) to recognise and prevent the harm caused by sexuality and
22 gender identity conversion practices.

23 *Note* A person may make a complaint to the human rights commission about
24 sexuality and gender identity conversion practices (see [Human Rights](#)
25 [Commission Act 2005](#), s 43 and div 4.2D).

1 **Part 2** **Sexuality and gender identity**
2 **conversion practices**

3 **7** **Meaning of *sexuality or gender identity conversion***
4 ***practice***

5 (1) In this Act:

6 *sexuality or gender identity conversion practice* means a treatment
7 or other practice the purpose, or purported purpose, of which is to
8 change a person's sexuality or gender identity.

9 (2) However, *sexuality or gender identity conversion practice* does not
10 include a practice the purpose of which is to—

11 (a) assist a person who is undergoing a gender transition; or

12 (b) assist a person who is considering undergoing a gender
13 transition; or

14 (c) assist a person to express their gender identity; or

15 (d) provide acceptance, support or understanding of a person; or

16 (e) facilitate a person's coping skills, social support or identity
17 exploration and development.

18 **Examples—s (2)**

- 19 • diagnosis and assessment of a person with gender dysphoria or gender non-
20 conforming behaviour or identity
- 21 • support for a person with social adjustments related to gender dysphoria
- 22 • gender-affirming hormone treatment
- 23 • other gender transition services, for example, speech pathology services for a
24 transgender or gender-diverse person who wishes to alter their voice and
25 communication to better align with their gender identity

- 1 (3) Also, *sexuality or gender identity conversion practice* does not
2 include a practice by a health service provider that, in the provider's
3 reasonable professional judgment, is necessary to—
- 4 (a) provide a health service in a manner that is safe and appropriate;
5 or
6 (b) comply with the provider's legal or professional obligations.

- 7 (4) In this section:

8 *health service*—see the [Health Act 1993](#), section 5.

9 *health service provider*—see the [Health Act 1993](#), section 7.

10 **8 Offence—performing conversion practice on protected**
11 **person**

- 12 (1) A person commits an offence if—
- 13 (a) the person performs a sexuality or gender identity conversion
14 practice on another person (the *recipient*); and
15 (b) the recipient is a protected person.

16 Maximum penalty: 150 penalty units, imprisonment for 12 months
17 or both.

- 18 (2) A person commits an offence against subsection (1) whether or not
19 the recipient, or a parent or guardian of the recipient, consented to the
20 practice.

21 **9 Offence—removing protected person from ACT for**
22 **conversion practice**

23 A person commits an offence if—

- 24 (a) the person removes another person (the *recipient*) from the
25 ACT; and
26 (b) the recipient is a protected person; and

Part 2 Sexuality and gender identity conversion practices

Section 9

1 (c) the removal is for the purpose of a sexuality or gender identity
2 conversion practice being performed on the recipient.

3 Maximum penalty: 150 penalty units, imprisonment for 12 months
4 or both.

1 **Part 3** **Review of Act**

2 **10** **Review of Act**

3 (1) The Minister must review the operation of this Act, and the
4 amendments of other territory laws made by this Act, and present a
5 report of the review to the Legislative Assembly as soon as
6 practicable after the end of its 2nd year of operation.

7 *Note* A reference to an Act includes a reference to the statutory instruments
8 made or in force under the Act, including any regulation (see [Legislation](#)
9 [Act](#), s 104).

10 (2) This part expires 3 years after the day it commences.

1 **Part 4 Consequential amendments**

2 **11 Legislation amended—sch 1**

3 This Act amends the legislation mentioned in schedule 1.

[1.4] New division 4.2D*insert***Division 4.2D Conversion practice complaints to ACAT****53Z Meaning of *person complained about*—div 4.2D**

In this division:

person complained about means the provider of a sexuality or gender identity conversion practice.**53ZA Conversion practice complaints—referral**

(1) This section applies if—

(a) either—

(i) a complainant is given a conversion practice referral statement under section 45 (2) (eb); or

(ii) a statement under section 82C (1) is included in a final report in relation to a complaint; and

(b) within 60 days after the day the statement is given, the complainant requires the commission to refer the complaint to the ACAT.

(2) The commission must—

(a) refer the complaint to the ACAT; and

(b) tell the complainant and the person complained about, in writing, about the referral.

Note The commission must also close the complaint (see s 78 (2) (d)).

-
- 1 **53ZB Conversion practice complaints—late application in**
2 **exceptional circumstances**
- 3 (1) This section applies if—
- 4 (a) a complainant has been given a statement under
5 section 45 (2) (eb) or section 82C (1); and
- 6 (b) the complainant has not required the commission to refer the
7 complaint to the ACAT within 60 days after the day the
8 statement is given to the complainant.
- 9 (2) The complainant may apply to the ACAT for the complaint to be
10 heard by the ACAT.
- 11 (3) The ACAT may grant the application only if satisfied on reasonable
12 grounds that exceptional circumstances prevented the complainant
13 from requiring the complaint to be referred to the ACAT within the
14 60-day period.
- 15 (4) If the ACAT grants the application, the complaint is, for this Act,
16 taken to have been referred to the ACAT.
- 17 **53ZC Conversion practice complaints—parties to ACAT**
18 **proceeding**
- 19 The following are parties to a complaint referred to the ACAT under
20 this division:
- 21 (a) the complainant;
- 22 (b) the person complained about;
- 23 (c) if, on application by the commission, the ACAT joins the
24 commission as a party to the complaint—the commission.

- 1 **53ZD Conversion practice complaints—commission to give**
2 **information etc to ACAT**
- 3 The commission must give the ACAT (if asked by it) any information
4 or copies of documents in relation to a complaint referred to the
5 ACAT under this division, other than—
- 6 (a) a communication or document to which section 66
7 (Admissibility of evidence) applies; or
- 8 (b) information, a document or something else relevant to a
9 consideration in relation to a complaint given to the commission
10 under section 73 (Power to ask for information, documents and
11 other things); or
- 12 (c) information given to the commission under section 74
13 (Requiring attendance etc).
- 14 **53ZE Conversion practice complaints—ACAT orders**
- 15 (1) This section applies if—
- 16 (a) the commission refers a complaint to the ACAT under this
17 division; and
- 18 (b) the ACAT is satisfied that the person complained about engaged
19 in a harmful practice.
- 20 (2) The ACAT may make 1 or more of the following orders:
- 21 (a) that the person complained about not repeat or continue the
22 harmful practice;
- 23 (b) that the person complained about perform a stated reasonable
24 act to redress any loss or damage suffered by a person because
25 of the harmful practice;

- 1 (c) unless the complaint has been dealt with as a representative
2 complaint—that the person complained about pay to a person a
3 stated amount by way of compensation for any loss or damage
4 suffered by the person because of the harmful practice;
- 5 (d) any other order the ACAT considers appropriate.
- 6 (3) In making an order under subsection (2) (c), the ACAT—
- 7 (a) must consider—
- 8 (i) the inherent dignity of all people and the impact of the
9 sexuality or gender identity conversion practice on the
10 person’s dignity; and
- 11 (ii) the nature of the sexuality or gender identity conversion
12 practice; and
- 13 (iii) any mitigating factors; and
- 14 (b) may consider any other matter the ACAT considers relevant.
- 15 **Examples—par (a) (i)—impact of sexuality or gender identity conversion**
16 **practice**
- 17 distress, humiliation, loss of self-esteem, loss of enjoyment of life
- 18 **Example—par (a) (iii)**
- 19 a public apology
- 20 (4) In this section:
- 21 ***harmful practice*** means a sexuality or gender identity conversion
22 practice that caused, or is likely to cause, harm to a person or
23 otherwise has adversely affected, or is likely to adversely affect, a
24 person’s rights, interests or welfare.
- 25 ***representative complaint*** means a complaint that is dealt with by the
26 commission as a representative complaint under section 71.

1 **53ZF Conversion practice complaints—no monetary limit on**
2 **jurisdiction of ACAT**

3 The ACAT is not, in exercising the jurisdiction conferred on it by this
4 division, limited in the amount of money that it may order to be paid.

5 **[1.5] Section 62 (3) (b)**

6 *omit*

7 or retirement village complaint

8 *substitute*

9 , retirement village complaint or a conversion practice complaint

10 **[1.6] Section 78 (2) (d)**

11 *omit*

12 or retirement village complaint

13 *substitute*

14 , retirement village complaint or a conversion practice complaint

15 **[1.7] New section 82C**

16 *insert*

17 **82C Closing conversion practice complaints**

18 (1) The final report in relation to a conversion practice complaint must
19 include a conversion practice referral statement.

20 *Note Conversion practice referral statement—see s 88C.*

21 (2) However, subsection (1) does not apply if—

22 (a) the parties to the complaint have made a conciliation agreement
23 in relation to the complaint; or

24 (b) the complainant has withdrawn the complaint.

- 1 (3) This section is additional to the other requirements of this Act for a
2 final report.

3 **[1.8] New section 88C**

4 *in part 4, insert*

5 **88C Conversion practice referral statements**

6 *A conversion practice referral statement* is a statement in a notice in
7 relation to a conversion practice complaint to the effect that—

- 8 (a) the commission has closed the complaint; and
9 (b) the complainant may ask the commission to refer the complaint
10 to the ACAT within 60 days after the day the notice is given to
11 the complainant; and
12 (c) after the 60-day period, the complainant may apply to the ACAT
13 under section 53ZB (Conversion practice complaints—late
14 application in exceptional circumstances) for the complaint to
15 be heard.

16 *Note* The commission must refer the complaint to the ACAT if the complainant
17 asks it to refer the complaint within the 60-day period (see s 53ZA).

18 **[1.9] Dictionary, new definitions**

19 *insert*

20 *conversion practice complaint* means a complaint about a sexuality
21 or gender identity conversion practice that may be made, or is made,
22 under section 43.

23 *conversion practice referral statement*—see section 88C.

- 1 **[1.10] Dictionary, definition of *person complained about*, new**
2 **paragraph (c)**
- 3 *insert*
- 4 (c) for division 4.2D (Conversion practice complaints to ACAT)—
5 see section 53Z.
- 6 **[1.11] New definition of *sexuality or gender identity conversion***
7 ***practice***
- 8 *insert*
- 9 *sexuality or gender identity conversion practice*—see the *Sexuality*
10 *and Gender Identity Conversion Practices Act 2020*, section 7.

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACT
- penalty unit (see s 133)
- person (see s 160).

gender identity—see the [Discrimination Act 1991](#), dictionary.

impaired decision-making ability—see the [Guardianship and Management of Property Act 1991](#), section 5.

protected person means—

- (a) a child; or
- (b) a person who has impaired decision-making ability in relation to a matter relating to the person’s health or welfare.

sexuality—see the [Discrimination Act 1991](#), dictionary.

sexuality or gender identity conversion practice—see section 7.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 13 August 2020.

2 Notification

Notified under the [Legislation Act](#) on 2020.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

© Australian Capital Territory 2020