

2020

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

Sexuality and Gender Identity Conversion Practices Bill 2020

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
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Sexuality and Gender Identity Conversion Practices Bill 2020

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The Sexuality and Gender Identity Conversion Practices Bill 2020 (the Bill) prohibits certain practices aimed at changing a person's sexuality or gender identity ('conversion practices').

The Bill makes it a criminal offence to conduct such practices on a protected person, or to remove a protected person from the jurisdiction for the purpose of conducting such practices. A protected person means a child or a person who has impaired decision-making ability in relation to a matter relating to the person's health or welfare.

It also provides a civil mechanism through the ACT Human Rights Commission (the Commission) for people who are harmed by conversion practices to make a conversion practice complaint which, if not successfully conciliated, can then be referred to the ACT Civil and Administrative Tribunal (ACAT)

The Bill does not prohibit a person providing support and affirmation of an individual's identity and choices. Conversion practices do not include practices that assist a person undergoing or considering undergoing a gender transition, assist a person to express their gender identity, provide acceptance, support or understanding of a person, or facilitate a person's coping skills, social support or identity exploration and development.

The Bill also does not prohibit practices in line with professional medical standards. Conversion practices do not include a practice by a health service provider that, in the provider's reasonable professional judgment, is necessary to provide a health service in a manner that is safe and appropriate or comply with the provider's legal or professional obligations.

Conversion practices are based in an ideology that LGBTQ people are 'broken' or 'unnatural' and encompass a wide range of practices that seek to 'fix' people to become or express a heterosexual or cisgender identity.

Conversion practices cause harm. Evidence from survivors of conversion practices in the ACT and Australia reveal the extent and long-term impact of this harm. These practices are reported to cause depression, suicidality, anxiety, decreased sexual function, poor self-esteem, social isolation, and decreased capacity for intimacy.¹ Conversely, there is no evidence to suggest any benefits nor that sexuality or gender

¹ La Trobe University, Gay & Lesbian Health Victorians & the Human Rights Law Centre, [Preventing Harm, Promoting Justice: Responding to LGBT conversion therapy in Australia](#) (2018) pp 27, 31-36.

identity can be changed by undertaking conversion practices. These practices have been condemned by peak national medical bodies.²

In the first Action Plan made under our Capital of Equality Strategy, the ACT Government committed to banning conversion practices by the end of 2020.

Recognising that conversion practices often occur outside of formal health settings, this Bill provides for a civil complaints mechanism in relation to any person who performs a conversion practice, and this is not limited to health providers.

The Bill provides the Commission with jurisdiction to handle complaints about conversion practices, allowing the Commission to have the capacity to deal with complaints from individuals made against individuals and/or organisations providing these services in the ACT. The Commission will also have the power to conduct Commission-initiated considerations or systemic reviews into conversion practices.

The Bill further provides that, where a matter dealt with by the Commission has not been resolved through conciliation, the matter can be referred to the ACAT. The ACAT would then make a binding determination as to whether a conversion practice had occurred and could make a range of orders to remedy the situation, including cease and desist orders in relation to the practice. The ACAT must consider whether the person complained about engaged in a harmful practice before granting a remedy.

The function of the Commission is to provide an educative and conciliatory role in finding resolution between parties. People who undertake conversion practices and people who are the subject of them often live and practice their faith in the same communities. This approach recognises the need to educate and bring individuals forward together in a supportive, rights-based and inclusive way.

The Bill also provides for criminal penalties where a child or a person who has impaired decision-making ability in relation to a matter relating to the person's health or welfare is the subject of conversion practices or is removed from the ACT in order for the conversion practice to be performed. These criminal penalties apply in recognition of the serious harm that can be caused by conversion practices and the particular vulnerability of people who aren't able to consent to exposure to harm. They also signal to the community that the ACT Government does not condone these practices in or outside the Territory.

The prohibition and penalties in the Bill are designed to strike an appropriate balance between the right of individuals and communities to practice their faith and the prevention of harm caused by practices aimed at changing sexuality or gender

² Australian Medical Association (2002) *AMA Position Statement: Sexual Diversity and Gender Identity*, [6.10]; Australian Psychological Society (2015) *APS Position Statement on Psychological Practices that attempt to change Sexual Orientation*; Psychology and Counselling Federation of Australia (2018) *Scope of Practice for Registered Counsellors*, p20; Royal Australian and New Zealand College of Psychiatrists (2019) *Sexual orientation change efforts: Position Statement 60*; Royal Australian and New Zealand College of Psychiatrists Victoria Branch, *Submission – Legislative options to implement a ban of conversion practices* (November 2019) <https://www.ranzcp.org/files/resources/submissions/departement-of-justice-and-community-safety-legisl.aspx>

identity. These practices are based on misleading claims and have been shown to be ineffective and harmful.

The ACT Government is committed to the prevention of harm and supporting equality, diversity and inclusion within the Territory. The ACT Government recognises that people's faith can be an important part of their lives and seeks to create a community where LGBTQ people can practice their own faith in a way that includes and supports them in a safe way.

CONSULTATION ON THE PROPOSED APPROACH

There has been ongoing community engagement on the Bill since the ACT Government announced plans to legislate to prohibit conversion practices in May 2018. Stakeholders who have provided input include an inter-directorate group, LGBTIQ+ groups, survivor groups of conversion practices, faith groups, education peak bodies, medical peak bodies and health organisations, and concerned individuals.

Views from consultation have informed the development of the Bill. Consultation has highlighted the ongoing nature and harm of conversion practices, the forms in which conversion practices can take, and the need to provide for different civil and criminal liabilities and enforcement options for a more effective response.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

The Bill engages a number of human rights in the *Human Rights Act 2004* (HRA).

The Bill promotes the right to equality and non-discrimination (section 8) and the right of children to protection (section 11(2)).

The Bill limits the right to freedom of thought, conscience, religion and belief protected (section 14), freedom of expression (section 16), the right to freedom of movement (section 13), the right of parents to ensure the religious and moral education of a child in conformity with their convictions (section 27A), and the right to privacy (section 12). As discussed in more detail below, these limitations are reasonable and proportionate in accordance with section 28 of the HRA.

Rights Promoted

The Bill promotes the right to equality and non-discrimination by prohibiting conversion practices. Conversion practices are focused on changing a person's sexuality or gender identity and the outcome of prohibiting these practices is to remove discrimination experienced on the basis of those attributes, and to ensure individuals with those attributes have the equal protection of the law against harmful practices targeted at them.

The prohibition of conversion practices promotes the right of children to protection. Evidence from survivor groups and research into conversion practices show the extensive and long-term harm caused by conversion practices. The prohibition of conversion practices and prohibition on removing children from the ACT to undertake these practices ensure the protection of the child without discrimination because of their sexuality or gender identity.

Right to freedom of thought, conscience, religion and belief (section 14) and the right to freedom of expression (section 16)

Nature of the right and the limitation (s28(a) and (c))

The right to freedom of thought, conscience, religion and belief in section 14 of the HRA is drawn from Article 18 of the International Covenant on Civil and Political Rights (ICCPR). The UN Human Rights Committee has confirmed that the right to freedom of thought, conscience and religion “is far-reaching and profound; it encompasses freedom of thoughts on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others.”

The right to have or adopt a religion or belief is a matter of individual thought and conscience, considered to be absolute and unqualified in international law, and no limitation of this aspect of the right would be considered reasonable. However, the right to ‘manifest’ or ‘demonstrate’ religion or belief, which would include undertaking conversion practices, impacts others and may thus be subject to reasonable limitation.³ This aspect of the right will not extend to every act or omission which is in some way inspired, motivated or influenced by religious belief but must be intimately linked to the religion or belief.⁴

The right to freedom of expression encompasses the right to hold opinions without interference (section 16(1)). The right to freedom of expression further includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her (section 16(2)).

The right to freedom of thought, conscience, religion and belief and the right to freedom of expression are engaged by prohibiting conversion practices, as this measure does not permit the manifestation or demonstration of religious belief, or the expression of information or ideas, that seek to change a person’s sexuality or gender identity.

Legitimate purpose (s28(b))

³ *Eweida and ors v United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, ECHR 15 January 2013, 30.

⁴ *Ibid.*

The Bill seeks to achieve the important and legitimate objective of preventing serious harms towards LGBTQ individuals and protecting the right to be free from discrimination on the basis of sexuality or gender identity.

Conversion practices can have long term negative impacts on the health and wellbeing of LGBTQ individuals. LGBTQ people are already a vulnerable, stigmatised population and as a consequence face a greater risk of poor mental health. The risks to the health and well-being of LGBTQ people in communities where conversion practices are undertaken compounds this risk as they live in community groups which can be unsupportive and discriminatory. Evidence from survivors of conversion practices reveal the ongoing harms caused by these practices long after they have been undertaken.

Rational connection between the limitation and the purpose (s28(d))

By limiting the right to demonstrate, manifest and express religious beliefs by prohibiting conversion practices, this will reduce the harm caused to individuals subject to conversion practices. There is no evidence to suggest any benefit or success in conversion practices.

Proportionality (s28 (e))

Prohibiting conversion practices is a reasonable, necessary and proportionate means to achieve the legitimate objective. The measure does not limit the right to have or adopt particular beliefs or to hold particular opinions and does not limit the right to teach religious tenets, but limits the demonstration or manifestation of those beliefs where they are directed at changing sexuality or gender identity, given the evidenced impacts on the rights of others.

Particular safeguards are in place to ensure that the measure is the least rights restrictive approach. The definition of conversion practice is deliberately targeted and confined to practices the purpose, or purported purpose, of which is to change a person's sexuality or gender identity. This targets the prohibition at practices that are demonstrably harmful and based on unfounded claims as current evidence indicates that it is not possible to achieve such a change in reality. The prohibition does not interfere with religious teachings more broadly. Further, practices are criminalised only where undertaken on a 'protected person' (a child or a person who has impaired decision-making ability in relation to a matter relating to the person's health or welfare) or where a protected person is removed from the Territory for the purpose of undertaking conversion practices.

A complaint may be made to the ACT Human Rights Commission in a wider range of situations, including situations where conversion practices are undertaken within the Territory on adults. The focus of the Human Rights Commission is to conciliate complaints and to seek a resolution between the parties. If matters cannot be resolved through this approach the complainant can seek to have the matter

determined by the ACAT. This structure of liability ensures that the measure is targeted and proportionate to the harms caused.

A complaint about a conversion practices may be made regardless of whether a person agreed or consented to the practice at the time. This is considered to be the least rights restrictive means to achieve the objective, as limiting the prohibition to instances where the practice was non-consensual would not prevent the harm caused by conversion practices. Evidence indicates that conversion practices are undertaken in a range of informal and formal contexts and that consent may be obtained through misleading claims or indoctrination. People who are subject to these practices are generally not made aware of the harm these practices can cause. This measure is the least rights restrictive way to ensure that these practices can be prevented, and that a clear message is sent that such practices are not accepted in the ACT.

Right to freedom of movement

Nature of the right and the limitation (s28(a) and (c))

The right to freedom of movement encompasses the right to move freely within the ACT and includes the right to leave the Territory. This right is engaged and limited as the prohibition on conversion practices extends to removing ‘protected persons’, namely a child or adult who has impaired decision-making ability, from the ACT for the purpose of performing a conversion practice. The right to freedom of movement can be limited in certain circumstances to protect the rights and freedoms of others.

Legitimate purpose (s28(b))

The measure to prohibit the movement of protected persons from the ACT to undertake conversion practices seeks the legitimate objective of preventing harm. As stated above, the harms caused to LGBTQ individuals can be long-term and extensive. Children and adults with impaired capacity are a particularly vulnerable group at risk of conversion practices.

Rational connection between the limitation and the purpose (s28(d))

By prohibiting the removal of protected persons from the ACT in order to undertake conversion practices, this achieves the objective of reducing harm to individuals subject to those conversion practices.

Proportionality (s28 (e))

The criminal offence for the removal of a protected person is necessary and proportionate to achieve the objective of preventing harm.

A safeguard has been included to appropriately target the limitation to freedom of movement to protect persons being removed from the ACT and does not extend to

consenting adults who may themselves wish to leave the Territory to undertake these practices.

Criminal liability rather than civil liability is imposed given the serious nature of the harm that can be caused to a protected person, noting that they are particularly vulnerable to the impacts of conversion practices. The criminal offence imposes a maximum penalty of 150 penalty units (currently \$24,000), imprisonment for 12 months, or both. This is considered to be proportionate to the seriousness of the offence and sends a strong message to the community that these practices are not condoned here or elsewhere.

Right to education

Nature of the right and the limitation (s28(a) and (c))

Section 27A (3)(b) provides that:

To ensure the religious and moral education of a child in conformity with the convictions of the child's parent or guardian, the parent or guardian may choose schooling for the child (other than schooling provided by the government) that conforms to the minimum educational standards required under law.

The right to education is drawn from Article 13 of the International Covenant on the Economic Social and Cultural Rights. The UN Committee on Economic Social and Cultural rights note in General Comment No. 13, that the right to freedom of religious education is constrained by minimum standards which must be consistent with the educational objectives set out in Article 13(1). These objectives include that education be directed to the human personality's "sense of dignity", it shall "enable all persons to participate effectively in a free society", and it shall promote understanding among all "ethnic" groups, as well as nations and racial and religious groups.

Article 29 of the Convention on the Rights of the Child further requires that the education of the child shall be directed to:

the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations', and 'the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.

Legitimate purpose (s28(b))

As stated above, any limitation on the rights of parents to choose education in conformity with religious conviction is intended to serve an important purpose of preventing harm caused by conversion practices and protecting the right to equality and non-discrimination of LGBTQ individuals.

Rational connection between the limitation and the purpose (s28(d))

The measure is rationally connected to preventing harm to LGBTQ individuals.

Proportionality (s28 (e))

The criminal prohibition in the Bill is a prohibition on undertaking conversion practices on children and people with impaired capacity. Where these practices align with particular religious teachings, then the right of parents to choose education for their children is limited to the extent that the teachings can be defined as ‘conversion practices’.

Any resulting limitation is proportionate to the objective sought, as the measure supports LGBTQ individuals to be safe and practice their faith in environments that support and include them.

This measure will not prevent religious schools from teaching the tenets of their faith, including teachings on homosexuality or gender identity. It is aimed only at practices that actively seek to change the sexuality or gender identity of a person.

Right to privacy

Nature of the right and the limitation (s28(a) and (c))

The right to privacy includes the right not to have one’s privacy, family, home or correspondence interfered with unlawfully or arbitrarily (section 12(a)). This right is derived from Article 17 of the ICCPR. The UN Human Rights Committee has commented that privacy should be understood as including freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

The right to privacy is limited where conversion practices occur within the home and/or family units or where an individual chooses to seek out these practices (for religious or other personal reasons). The right to privacy may be subject to permissible limitations which are prescribed by law and are not arbitrary.

Legitimate purpose (s28(b))

As discussed above, the Bill is intended to achieve the important and legitimate objective of preventing serious harms towards LGBTQ individuals and protecting the right to be free from discrimination on the basis of sexuality or gender identity.

Rational connection between the limitation and the purpose (s28(d))

As stated above, the measure is rationally connected to achieving the objective.

Proportionality (s28 (e))

The measure is the least rights restrictive way to prevent harm. The criminal prohibition is appropriately confined to conversion practices on protected persons.

Although the civil prohibition may to some extent constrain the ability of an adult with capacity to seek out conversion practices in the ACT (as practitioners may be less likely to offer such services), an individual who has chosen to be subject to conversion practice can make their own choice as to whether to make a complaint about the practice.

The ACT Human Rights Commission can also initiate Commission-initiated considerations where they are aware of particular issues or practices being undertaken, however there will be no systemic regulation of practices. Rather than criminalising practices in relation to adults with decision making capacity, this avenue allows for an educative and conciliatory approach. The prohibition brings in criminal penalties only for practices undertaken on protected persons or the removal of protected persons from the ACT for the purpose of performing a conversion practice.

The Bill further provides the Minister must review the operation of the Act, and the amendments of other territory laws made by the Act, and present a report of the review to the Legislative Assembly as soon as practicable after the end of its 2nd year of operation. This will provide transparency and enable further consideration of the effectiveness of the legislation in addressing harm.

Sexuality and Gender Identity Conversion Practices Bill 2020

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Sexuality and Gender Identity Conversion Practices Bill 2020**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause is a formal provision setting out the name of the Act as the *Sexuality and Gender Identity Conversion Practices Act 2020* (the Act).

Clause 2 Commencement

This clause provides for commencement of the Act 6 months after its notification day.

Clause 3 Dictionary

This clause is a formal provision clarifying that the dictionary at the end of the Act is part of the Act.

Clause 4 Notes

This clause is a formal provision clarifying that notes included in the Act are not part of the Act.

Clause 5 Offences against Act—application of Criminal Code etc

This clause is a formal provision that provides that other legislation applies in relation to offences against this Act.

Clause 6 Objects of Act

This clause provides that the objects of the Act are: to affirm that all people have characteristics of sexuality and gender identity, and that no combination of those characteristics constitutes a disorder, disease, illness, deficiency, disability or shortcoming; and to recognise and prevent harm caused by sexuality and gender identity conversion practices.

The Act recognises that individuals are whole and unbroken regardless of their sexuality and gender identity and does not seek to make anyone be a particular way. The Act seeks to prevent the harm caused by practices which aim to change an individual's sexuality or gender identity.

This clause also includes a note to clarify that a person may make a complaint to the human rights commission about sexuality and gender identity conversion practices under section 43 of the *Human Rights Commission Act 2005*.

Part 2 Sexuality and gender identity conversion practices

Clause 7 Meaning of *sexuality or gender identity conversion practice*

This clause defines ‘sexuality or gender identity conversion practice’ to mean ‘a treatment or other practice the purpose, or purported purpose, of which is to change a person’s sexuality or gender identity’.

The clause outlines practices that are not sexuality or gender identity conversion practices. A sexuality or gender identity practice does not include a practice the purpose of which is to: assist a person who is undergoing or considering undergoing, a gender transition; assist a person to express their gender identity; provide acceptance, support or understanding of a person; or facilitate a person’s coping skills, social support or identity exploration and development.

Examples include diagnosis and assessment of a person with gender dysphoria or gender nonconforming behaviour or identity; support for a person with social adjustments related to gender dysphoria; gender-affirming hormone treatment; and other gender transition services, for example, speech pathology services for a transgender or gender-diverse person who wishes to alter their voice and communication to better align with their gender identity.

The clause further provides that a sexuality or gender identity conversion practice does not include a practice by a health service provider that, in the provider’s reasonable professional judgement, is necessary to provide a health service in a manner that is safe and appropriate, or comply with the provider’s legal or professional obligations.

A ‘health service’ and ‘health service provider’ is defined in sections 5 and 7 of the *Health Act 1993* respectively.

The intent of this definition is to cover practices performed in formal and informal environments. The definition provides for targeted exceptions to ensure that practices which operate to affirm and support individuals to make their own choices in a safe way can continue while also ensuring that religious organisations can continue to teach the tenets of their faith.

Clause 8 Offence—performing conversion practice on protected person

This clause provides that a person commits an offence if the person performs a sexuality or gender identity conversion practice on another person (the recipient) and the recipient is a protected person.

A protected person is defined in the dictionary to mean a child, or a person who has impaired decision-making ability in relation to a matter relating to the person’s health or welfare.

It is an offence whether or not the recipient, or a parent or guardian of the recipient, consented to the practice.

The maximum penalty for the offence is 150 penalty units (currently \$24,000), imprisonment for 12 months, or both.

The intent of this provision is to provide for a criminal offence in recognition of the particular vulnerability of protected persons to conversion practices.

Clause 9 Offence—removing protected person from ACT for conversion practice

This clause provides that a person commits an offence if the person removes another person (the recipient) from the ACT, the recipient is a protected person, and the removal is for the purpose of a sexuality or gender identity conversion practice being performed on the recipient.

The maximum penalty for the offence is 150 penalty units (currently \$24,000), imprisonment for 12 months, or both.

The intent of this provision is to provide for a criminal offence in recognition of the particular vulnerability of protected persons being removed from the ACT for conversion practices.

Part 3 Review of Act

Clause 10 Review of Act

This clause provides that the Minister must review the operation of this Act and amendments made to other territory laws under this Act, and present a report of the review to the Legislative Assembly as soon as practicable after the end of the Act's second year of operation.

The intent of this provision is to ensure that the legislation is operating appropriately and there is transparent review.

Part 4 Consequential amendments

Clause 11 Legislation amended—sch 1

This clause provides that the Act amends the legislation mentioned in schedule 1.

Schedule 1 Human Rights Commission Act 2005—Consequential amendments

Amendment [1.1] – New section 21(1)(c)(vi)

This clause inserts new section 21(1)(c)(vi) which includes dealing with 'a conversion practice complaint' within the disability and community services commissioner's functions.

Amendment [1.2] – New section 42(1)(ec)

This clause inserts new section 42(1)(ec) which includes ‘a conversion practice complaint’ within the list of complaints that may be made under the *Human Rights Commission Act 2005*.

Amendment [1.3] – Commission’s obligation to be prompt and efficient

New section 45(2)(eb)

Section 45 of the *Human Rights Commission Act 2005* sets out the Commission’s obligations for dealing with complaints in a prompt and efficient manner.

This new clause 45(2)(eb) provides that if the commission is dealing with a conversion practice complaint and it decides not to refer the complaint for conciliation that it must tell the complaint in writing that the complaint will not be referred for conciliation and include a conversion practice referral statement with the notice.

Amendment [1.4] – New division 4.2D

This clause inserts new division 4.2D (Conversion practice complaints to ACAT).

This includes new sections 53Z (Meaning of *person complained about*), 5ZA (Conversion practices complaints – referral), 53ZB (Conversion practices complaints – late application in exceptional circumstances), 53ZC (Conversion practices complaints – parties to ACAT proceeding), 53ZD (Conversion practices complaints – commission to give information etc to ACAT), 53ZE (Conversion practices complaints – ACAT orders), 53ZF (Conversion practices complaints – no monetary limit on jurisdiction of ACAT).

Section 53Z Meaning of *person complained about*—div 4.2D

This new section 53Z provides that in this division 4.2D that ***person complained about*** means the provider of a sexuality or gender identity conversion practice.

Section 53ZA Conversion practice complaints—referral

This new section 53ZA provides for referral of a conversion practice complaint to the ACAT.

Subsection (1) provides that 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.

Subsection (2) provides that 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.

This new subsection(2) includes a note that the commission must also close the complaint (see s 78 (2) (d)).

Section 53ZB Conversion practice complaints—late application in exceptional circumstances

This new section 53ZB provides for late application to ACAT in respect of conversion practice complaints in exceptional circumstances.

Subsection (1) provides that this section applies if:

- (a) a complainant has been given a statement under section 45(2)(eb) or section 82C(1); and
- (b) the complainant has not required the commission to refer the complaint to the ACAT within 60 days after the day the statement is given to the complainant.

Subsection (2) provides that the complainant may apply to the ACAT for the complaint to be heard by the ACAT.

Subsection (3) provides that the ACAT may grant the application only if satisfied on reasonable grounds that exceptional circumstances prevented the complainant from requiring the complaint to be referred to the ACAT within the 60-day period.

Subsection (4) provides that if the ACAT grants the application, the complaint is, for this Act, taken to have been referred to the ACAT.

Section 53ZC Conversion practice complaints—parties to ACAT proceeding

This new section 53ZC specifies the parties to a complaint referred to the ACAT under this division include (a) the complainant; (b) the person complained about; (c) if, on application by the commission, the ACAT joins the commission as a party to the complaint – the commission.

Section 53ZD Conversion practice complaints—commission to give information etc to ACAT

This new section 53ZD provides that the commission must give the ACAT (if asked by it) any information or copies of documents in relation to a complaint referred to the ACAT under this division, other than –

- (a) a communication or document to which section 66 (Admissibility of evidence) applies; or
- (b) information, a document or something else relevant to a consideration in relation to complaint given to the commission under section 73 (Power to ask for information, documents and other things); or
- (c) information given to the commission under section 74 (Requiring attendance etc).

Section 53ZE Conversion practice complaints—ACAT orders

This new section 53ZE outlines the orders that the ACAT may make in respect of conversion practice complaints and what ACAT is to consider in making such orders.

Subsection (1) provides that this section applies if –

- (a) the commission refers a complaint to the ACAT under this division; and
- (b) the ACAT is satisfied that the person complained about engaged in a harmful practice.

Subsection (2) provides that the ACAT may make 1 or more of the following orders:

- (a) that the person complained about not repeat or continue the harmful practice;
- (b) that the person complaint about perform a stated reasonable act to redress any loss or damage suffered by a person because of the harmful practice;
- (c) unless the complaint has been dealt with as a representative complaint – that the person complained about pay to a person a stated amount by the way of compensation for any loss or damage suffered by the person because of the harmful practice; and
- (d) any other order the ACAT considers appropriate.

Subsection (3) provides in making an order under subsection (2)(c), the ACAT –

- (a) must consider –
 - (i) the inherent dignity of all people and the impact of the sexuality or gender identity conversion practice on the person’s dignity; and
 - (ii) the nature of the sexuality or gender identity conversion practice; and
 - (iii) any mitigating factors; and
- (b) may consider any other matter the ACAT considers relevant.

Subsection (3) provides examples for para (a)(i) – impact of sexuality or gender identity conversion practice and para (a)(iii) mitigating factors.

Examples—par (a) (i)—impact of sexuality or gender identity conversion practice

distress, humiliation, loss of self-esteem, loss of enjoyment of life

Examples—par (a) (iii)

a public apology

Subsection (4) provides a definition of ***harmful practice and representative complaint*** in this section.

The definition:

harmful practice means a sexuality or gender identity conversion practice that caused, or is likely to cause, harm to a person or otherwise has adversely affected, or it likely to adversely affect, a person’s rights, interests or welfare.

representative complaint means a complaint that is dealt with by the commission as a representative complaint under section 71.

Section 53ZF Conversion practice complaints—no monetary limit on jurisdiction of ACAT

This new section 53ZF provides that the ACAT is not, in exercising the jurisdiction conferred on it by this division, limited in the amount of money that it may order to be paid.

Amendment [1.5] – Section 62(3)(b)

This clause omits ‘or retirement village complaint’ from section 62(3)(b) and substitutes it with ‘, retirement village complaint or a conversion practice complaint’.

This section will now provide that where a complaint has been resolved by conciliation that the commission must:

- (a) give each party a copy of the conciliation agreement; and
- (b) if the complaint is a discrimination complaint, retirement village complaint or a conversion practice complaint – give the agreement to the ACAT.

Note: The ACAT may make an order in accordance with a conciliation agreement for a complaint (see *ACT Civil and Administrative Tribunal Act 2008*, s 55A).

Amendment [1.6] – Section 78(2)(d)

This clause omits ‘or retirement village complaint’ from section 78(2)(d) and substitutes it with ‘, retirement village complaint or a conversion practice complaint’.

Section 78(2)(d) will now provide that the commission must close a complaint made to it if the complaint is a discrimination complaint, retirement village complaint or a conversion practice complaint that has been referred to the ACAT.

Amendment [1.7] – New section 82C

Section 80 of the Act (How complaints are closed) provides that the commission closes a complaint by giving a written report (the **final report**) to (a) the complainant; and (b) the person complained about; and (c) if the complaint was referred to the commission by (i) a national board established under the Health Practitioner Regulation National Law (ACT), section 31 – the national board; or (ii) the veterinary practitioners board – the board.

This clause inserts new section 82C (Closing conversion practice complaints). Subsection 82C(1) provides that a final report in respect of a conversion practice complaint must include a conversion practice referral statement. However, subsection 82C(2) provides that subsection 82C(1) does not apply if (a) the parties to the complaint have made a conciliation agreement in relation to the complaint; or (b) the complainant has withdrawn the complaint.

Subsection 82C(3) provides that this section 82C is additional to the other requirements of the *Human Right Commission Act 2005* for a final report.

Amendment [1.8] – New section 88C

This clause inserts new section 88C which provides a definition of **conversion practice referral statement**.

New section 88B provides that a **conversion practice referral statement** is a statement in a notice in relation to a conversion practice complaint to the effect that –

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

New section 88B includes a note that the commission must refer the complaint to the ACAT if the complainant asks it to refer the complaint within the 60-day period (see section 53ZA).

Amendment [1.9] – Dictionary, new definitions

This clause inserts definitions for the terms **conversion practices complaint** and **conversion practice referral statement** in the dictionary of the *Human Rights Commission Act 2005*.

The definitions are:

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

conversion practice referral statement—see section 88C.

Amendment [1.10] – Dictionary, definition of *person complained about*, new paragraph (c)

This clause inserts a new paragraph (c) in the definition for **person complained about** for division 4.2D (Conversion practice complaints to ACAT)—see section 53Z.

Amendment [1.11] – New definition of *sexuality or gender identity conversion practice*

This clause inserts a new definition of **sexuality or gender identity conversion practice**—see the *Sexuality and Gender Identity Conversion Practices Act 2020*, section 7.

Dictionary

This clause inserts the dictionary for this Act. The dictionary includes definitions for terms including **gender identity**, **protected person**, **sexuality**, and **sexuality or gender identity conversion practice**.

The definitions include:

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.