Prohibition of 'conversion therapy':

What is 'conversion therapy' and what does the prohibition mean?

KEY DEFINITIONS

Sexual orientation: a person's capacity for emotional, affectional, and sexual attraction to, and intimate and sexual relations with, persons of a different gender, the same gender or more than one gender.

Gender identity and expression: a person's internal and individual experience of gender, whether or not it corresponds with the sex assigned at birth. Gender identity includes:

- the person's personal sense of the body;
- if freely chosen, modification of the person's bodily appearance or functions by medical, surgical or other means; and
- other expressions of gender, including name, dress, speech and behaviour.

PURPOSE

Under chapter 5B of the *Public Health Act 2005* (Public Health Act) a health practitioner in Queensland is prohibited from performing 'conversion therapy'. Conversion practices performed under the guise of therapy are particularly nuanced as they are almost always grounded in disproven and dangerous ideology that may be difficult to recognise. For this reason and for ease of communication 'conversion therapy' will be referred to as conversion practices. The purpose of this document is to help recognise the ideology behind conversion practices and provide answers to questions about what this prohibition means in Queensland.

WHAT ARE CONVERSION PRACTICES?

To assist in identifying whether a practice is prohibited, it is helpful to remember that lesbian, gay, bisexual, transgender, queer and asexual (LGBTQA+) conversion practices can be recognised and distinguished from other practices using ideology as a reference point.

Conversion practices refer to practices that seek to change or suppress a person's sexual orientation and, or gender identity and expression.

These practices are based on the disproven and dangerous ideology that being LGBTQA+ is a disorder or involves deviant behaviour that requires correction or suppression.

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The ideology makes false and misleading claims that are not grounded in factual, psychological, or scientific evidence. These claims are widely refuted by medical, psychological and secular bodies as being damaging and unfounded. Non-evidence-based claims made under this ideology include:

- That it is possible to change a person's same-gender or multi-gender sexual, romantic and emotional attractions so that the person becomes exclusively heterosexual.
- That it is possible to change a person's trans or gender diverse identity so that the person fully identifies with their sex assigned at birth.
- That development has been halted or stunted in people who are same-sex attracted, trans or gender diverse. It is asserted that this is due to one or several factors: abuse, neglect, inappropriate parenting, family dynamics and social influence.
- Same-sex or multi-sex attracted, trans and gender diverse people should live celibate lives.
- Same-sex or multi-sex attracted, trans and gender diverse people require psychological care to address their 'brokenness'.
- Same-sex or multi-sex attracted, trans and gender diverse people and their behaviours that express their sexuality or gender are wicked, bad, immoral or sinful.
- There is benefit from suppressing or changing sexuality or gender identity and expression.

The most common examples of conversion practices include counselling to:

- suggest that a legitimate aim of therapy might be to change or suppress sexual orientation or gender identity and expression;
- encourage a person to abstain from sex or relationships;
- encourage a person to 'de-transition' or not affirm their orientation, attraction or gender identity and expression;
- dehumanise and shame a person because of their sexual orientation or gender identity or expression;
- coerce gender-conforming behaviours;
- attempt to create a causal relationship in a person's mind between early childhood experiences and their sexual orientation or gender identity and expression.

The less common, but more publicised examples include:

- 'ex-gay camps'; and
- programs and courses offered in person or online, designed with the goal of suppressing or changing a person's sexual orientation or gender identity and expression.

Psychological research has demonstrated that conversion practices cannot change a person's sexual orientation or gender identity and expression. An increasing body of literature has documented the damaging and enduring impacts of the practices. There is no justification for health practitioners, including medical, psychological, allied health or alternative health practitioners to use practices that are harmful.

WHAT ARE NOT 'CONVERSION' PRACTICES?

When thinking about the services health practitioners provide, it is important to understand that the prohibited conversion practices **do not include practices that seek to affirm or provide support or understanding to a person dealing with their sexual orientation and gender identity and expression.**

All Queensland health practitioners, whether registered or not, are bound by the *National Code of Conduct for Health Care Workers (Queensland)* to:

- Provide services in a safe and ethical manner.
- Obtain consent from their clients.

- Display appropriate conduct when giving treatment advice.
- Report concerns about treatment or care provided by other health care workers.
- Take appropriate action in response to adverse events.
- Not make claims to cure certain serious illnesses.
- Not misinform their clients.

Based on these obligations, a conversion practice would not be able to be provided by the health practitioner under the Code and consumers will be able to make a complaint to the Health Ombudsman.

WHY ARE CONVERSION PRACTICES PROHIBITED?

Put simply, conversion practices cause serious harm. There is no evidence of any benefits from conversion practices, nor that sexual orientation or gender identity and expression can be changed through therapeutic or other interventions. In fact, there is overwhelming evidence that conversion practices cause serious psychological damage and are correlated with higher rates of suicidality, self-harm and other adverse health outcomes.

People who have been subjected to conversion practices commonly experience post-traumatic stress disorder. Many studies have found that these people experience:

- self-harm and suicidal ideation;
- drug and alcohol use;
- homelessness;
- poor mental health;
- poor economic participation;
- ongoing problems with relationships, sexuality, sexual function;
- a mistrust of health professionals;
- grief at the loss of relationships with family, friends, and communities; and
- delayed or impaired education, employment and civic participation.

For these reasons, many professional and expert bodies, including the Australian Psychological Association, the Royal Australian and New Zealand College of Psychiatrists and the World Health Organization, have formally opposed the use of conversion practices and publicly acknowledge that these practices are harmful and unethical.

The prohibition of health service providers performing conversion practices aims to protect the Queensland LGBTQA+ community from these harms through preventing the practice and through sending a clear message that being LGBTQA+ is not a disorder that requires treatment.

WHO IS PROHIBITED FROM PERFORMING CONVERSION PRACTICES?

The prohibition of conversion practices applies to health service providers, which includes registered health practitioners, such as a doctors, nurses or psychologists, and unregistered health professionals such as counsellors, naturopaths and social workers. Any individual, business, non-profit or other entity that offers a service that is, or purports to be, for the purpose of maintaining, improving, restoring or managing people's health and wellbeing is a health service provider.

Health service providers have ethical obligations under the *National Code of Conduct for Health Care Workers (Queensland)* not to engage in practices that are harmful and not evidence based. It would be a violation of the trust the community places in health service providers to allow conversion practices to be carried out in the health care system.

DOES THE PROHIBITION OF CONVERSION PRACTICES INTERFERE WITH LEGITIMATE TREATMENT OR SERVICES?

No. Health service providers are able to undertake ethical and clinical practices, even if these practices do not proactively affirm or support a person's sexual orientation or gender identity. This includes any practice that a health service provider reasonably believes will enable or promote the provision of safe and appropriate care, or is necessary to comply with the provider's legal or professional obligations, including abiding by the *National Code of Conduct for Health Care Workers (Queensland)*.

Examples of legitimate treatment or health services include:

- Advising a patient about potential side effects of hormone replacement therapy drugs or the risks of surgical interventions.
- Refusing to pursue a course of treatment, such as prescribing a sex-hormonal drug, that the provider reasonably believes would be unsafe or harmful in the circumstances.
- Refusing to consider treatments to affirm a patient's gender identity and expression until underlying mental health issues or psychosocial factors have been evaluated and addressed.
- Exploring or interrogating a patient's experience of gender identity and expression as part of the clinical process of assessing the patient and reaching an accurate diagnosis of their physical and mental health.
- Delaying or refusing treatment due to legal consent not being obtained, or because psycho-social factors that may impact treatment efficacy, safety or recovery.

In determining legitimate health practices or services, it is important to remember that conversion practices are underpinned by conversion ideology and are practices that have a predetermined aim to suppress or change a person's sexual orientation or gender identity and expression, whereas legitimate practices and services do not.

ARE HEALTH PROVIDERS REQUIRED TO AFFIRM AND PROMOTE GENDER TRANSITION?

No. The prohibition targets practices that aim to change or suppress a person's sexual orientation or gender identity and expression. Refusing to acknowledge or affirm a patient's sexual orientation or gender identity and expression would not, of itself, meet this threshold. However, a practitioner must be careful not to promote a particular sexual orientation or gender identity and expression as correct and proper as this may become a conversion practice.

More broadly, the Public Health Act does not set clinical standards or require providers to engage in any particular treatment or course of care in relation to sexual orientation or gender identity and expression. Nor does the Act promote any one clinical approach over another. This recognises that there are different views within the clinical community about the treatment of persons with symptoms of gender dysphoria.

DOES THE PROHIBITION PREVENT PEOPLE WHO ARE STRUGGLING WITH OR EXPLORING THEIR SEXUAL ORIENTATION OR GENDER IDENTITY AND EXPRESSION FROM SEEKING PROFESSIONAL TREATMENT OR ASSISTANCE?

No. A clinically appropriate practice that facilitates a person's coping skills, social support and identity exploration and development is not a conversion practice. This means health service providers can continue to engage in treatments and other practices that provide support or assistance for people identifying with, or exploring their sexual orientation or gender identity and expression.

A practice may cross the line into conversion practices if the practice attempts to promote a particular sexual orientation or gender identity and expression as correct or proper. However, practices that assist a person in identifying or coming to terms with their sexual orientation or gender identity and expression are not captured by the definition of conversion practices and are expressly excluded under a reasonable professional judgment exception.

ARE RELIGIOUS PRACTICES PROHIBITED?

No. The prohibition only applies to conversion practices performed by a health service provider. In general, this means that conversion practices are only prohibited to the extent that they involve the provision of a health service.

The prohibition of conversion practices does not apply to purely religious or spiritual interventions, such as prayer and religious guidance or teaching, even if these aim to change or suppress a person's sexual orientation or gender identity and expression.

However, there may be situations where persons who are engaged in faith-based conversion practices are also providing a health service. This is prohibited. For example, it may be unlawful for a doctor or counsellor to administer prayer-based therapies to try to 'cure' a patient's gender dysphoria.

Whether a practice is purely religious or spiritual, and is therefore permitted, or involves the provision of a health service, and is therefore prohibited, will depend on the particular facts and circumstances. These may include, for example:

- the setting where the practice was performed (e.g. office, clinic, school, church);
- whether the person performing the practice does so in a professional capacity or, in contrast, is acting strictly in their personal capacity as an advocate of religious or spiritual teachings; and
- whether the person makes health-related claims, such as claiming that the victim has a psychological disorder that requires treatment; and
- whether the practice is within other legislative requirements.

WHAT PENALTIES WILL APPLY TO PERSONS WHO PERFORM CONVERSION PRACTICES?

Under the Public Health Act, it is an offence for a health service provider to perform a conversion practice.

The offence carries a maximum penalty of 100 penalty units ($14,375 as at July 2022), 12 months' imprisonment or both.

If the recipient of the conversion practices is a vulnerable person, such as a child or person with an intellectual impairment, the maximum penalty increases to 150 penalty units ($21,562 as at July 2022), 18 months' imprisonment or both.