

CHANGE OR SUPPRESSION (CONVERSION) PRACTICES PROHIBITION ACT 2021

GUIDANCE FOR CHURCHES – December 2021

INTRODUCTION

The Change or Suppression (Conversion) Practices Prohibition Act 2021 addresses how people relate to others regarding sexual orientation and gender identity. The Act will come into operation in the State of Victoria on February 17, 2022. A copy of the Act is available here: <https://www.legislation.vic.gov.au/as-made/acts/change-or-suppression-conversion-practices-prohibition-act-2021>.

The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) will oversee the Civil Response Scheme under the Act. VEOHRC information on the Act, including some fact sheets in various languages, can be found here: <https://www.humanrights.vic.gov.au/legal-and-policy/victorias-human-rights-laws/change-or-suppression-conversion-practices-prohibition-act-2021/about/>.

Please note that the information in this paper is based on what we understand at the present time. The VEOHRC is still in the process of preparing for the implementation of the Act and some matters are still under development and subject to consultation. The Baptist Union of Victoria initiated an information forum with the VEOHRC in September and has expressed willingness to continue to be engaged in consultation. The BUV will keep churches informed of any developments in this.

The following statement from the VEOHRC reflects the lack of clarity or certainty regarding some aspects of the implementation of the Act:

As the Act has not yet commenced, there is no history and no legal precedent to allow us to provide answers for every question we receive regarding specific scenarios. Even once the Act has commenced, our role will be to educate about the Act and respond to reports of practices – but we are not positioned to provide legal advice to individuals and organisations. We are however, developing tools and resources that will enable you to better understand the Act and its definitions. If you have specific questions and scenarios you need answering, we ask you to look at the definition of change and suppression practices, and if you need specificity, you may consider getting legal advice.

The Act was developed to outlaw abusive practices employed in psychiatric, religious or other contexts in order to change or suppress people's sexual orientation or expression. Such practices have caused significant suffering and trauma. The BUV supports the prohibition of abusive practices. So, the BUV Code of Ethics for Pastoral Leaders includes:

2 Pastoral Leaders must treat those to whom they minister and all with whom they come into contact, with respect, honesty and compassion...

2.2 Pastoral Leaders should respect the dignity of others regardless of race, religion, gender, political beliefs, ability or sexual orientation....

4.1 Pastoral Leaders must not spiritually, emotionally, verbally, physically or sexually abuse anyone.

However, in addition to banning abusive practices, the Act makes illegal all conduct (including some family conversations, support groups and prayer) that seeks to suppress or change a person's sexual orientation or gender identity, even if the person consented to it or reports benefiting from it. This reflects the Parliament's stated intention to affirm that:

- a person's sexual orientation or gender identity is not broken and in need of fixing;
- no sexual orientation or gender identity constitutes a disorder, disease, illness, deficiency or shortcoming; and
- change or suppression practices are deceptive and harmful both to the person subject to the change or suppression practices and to the community as a whole.

The BUV is aware that some of these affirmations and the broad scope of the Act will be considered controversial in some churches. An appropriate expression of this would be advocacy with Members of Parliament. This paper focusses on ministry practice under the Act, rather than critique of the Act

WHAT IS A CHANGE OR SUPPRESSION PRACTICE?

Section 5 of the Act defines a "change or suppressive practice" as "a practice or conduct directed towards a person, whether with or without the person's consent – (a) on the basis of the person's sexual orientation or gender identity; and (b) for the purpose of: (i) changing or suppressing the sexual orientation or gender identity of the person; or (ii) inducing the person to change or suppress their sexual orientation or gender identity."

Note that the practice or conduct may be directed towards a person online or in-person. The Act applies to conduct outside of Victoria where there is a real and substantial link to Victoria. It also makes it unlawful to advertise a change or suppression practice.

So, in determining if a practice or conduct is unlawful under the Act, the following criteria must be met:

- **WHO** is the action directed at? It needs to be a specific person or group rather than people in general.
- **WHAT** is it about that person or group that makes them the subject of the action? It must be because of their gender identity or sexual orientation.
- **WHY** is the action being carried out? The intention must be to change or induce the person to change or suppress their gender identity or sexual orientation. Intention can be inferred from the circumstances.

In the light of this definition, the following practices would **not** be unlawful under the Act:

- **Preaching or teaching** on religious beliefs about sexuality, gender, marriage or other relationships, so long as it is not directed at an individual or group because of their gender identity or sexual orientation.

- Teaching about **celibacy outside of marriage** or including this in a Code of Conduct, so long as it is not directed at specific persons, particularly those with a particular sexual orientation.
- Discussing and sharing religious beliefs about sexuality in **conversations with persons**, so long as there is not an intention to change or induce the person to change.

So, for example, if a person goes to a religious leader seeking advice on their feelings of same-sex attraction:

- it **would be a change or suppression practice** if the religious leader tells them, for the purpose of changing or suppressing their same-sex attraction, that they are broken and should live a celibate life.
- However, if the religious leader informed this person that the Bible considers same-sex practices to be sinful but does so only to convey their understanding of the Bible's teachings and not to change or suppress the person's sexual orientation or gender identity, then this conversation **would likely not be a change or suppression practice** under the Act.

It should be noted that the BUV's Code of Ethics for Pastoral Leaders includes:

3. Pastoral Leaders must respect the right of all people to make their own educated decisions and choices in life, and encourage them to move towards maturity in Christ.

3.1 Pastoral Leaders should seek to empower others rather than control or exploit.

3.1.1 Pastoral Leaders may express their own opinions and offer appropriate advice but should avoid making a decision for another person. To take the responsibility for a person's life out of their hands, may represent a form of abuse.

3.2 Pastoral Leaders should recognize diversity of opinion and encourage discussion that is respectful of persons.

Therefore, in talking with people about gender identity, sexual orientation and other matters, care should be taken to ensure that people understand it is for them to make their own choices and responses. It is recommended that where this approach has been adopted, notes should be kept of such conversations, with it being recorded that the person was expressly told it was their decision and no incentives (carrots or sticks) were attached to that decision.

Support groups designed to help people to change or not act on same-sex attraction are unlawful under the Act. However, it is permissible to support or encourage people to seek professional help or guidance from a health service (as defined in the *Health Practitioner Regulation National Law*). Psychology, for example, is one of the recognised specialities under this law. A practice or conduct is not a change or suppression practice if in the health service provider's reasonable professional judgement, it is necessary to provide a health service or to comply with the legal or professional obligations of the health service provider.

There is some uncertainty about the application of the Act to **praying for or with people** regarding their sexual orientation or gender identity. The Act specifically includes "a prayer based practice, a deliverance practice or an exorcism" in the unlawful practices, even if the

person seeks or consents to such prayer. However, the VEOHRC has advised that it is a “grey area” if the person is not present when they are being prayed for. It may be unlawful if the person is aware of such prayer, in that this would be understood to be directed at them with the intention of change or suppression.

In keeping with the earlier note about empowering others to make decisions, it may be prayer could be couched in terms of: “God, we ask that you help this person to discern your will for them in this and to act according to it.” But this is an untested suggestion.

It should be noted that the Act is not limited to the actions of Pastors, leaders or others within faith communities. **Conversations between friends and within families** are also covered. The meaning of emotional or psychological abuse, in the *Family Violence Protection Act*, has been expanded to clarify that suppressing or changing a family member’s sexuality or gender identity in some circumstances could be a form of domestic violence. This will have implications for those seeking to support families that are processing such matters. It is recommended that they seek advice from a Registered Health Professional on this.

ORGANISATIONAL LIABILITY FOR THE ACTIONS OF STAFF AND VOLUNTEERS

Churches and other organisations should note that under Section 47 of the Act, if a person engages in a change or suppression practice in the course of their employment (including as a volunteer) or while acting as an agent, the organisation may be held liable. The organisation will not be taken to have engaged in the practice if, on the balance of probabilities, it took “reasonable precautions” to prevent the person engaging in the practice. The Act does not offer examples of what constitutes “reasonable precautions”, so it is likely to be determined on a case-by-case basis. However, in the BUV forum, the VEOHRC said that “possible actions” include:

- Raising staff and community awareness and understanding;
- Informing Safe Church Officers and people in other roles;
- Adopting policies and procedures, codes of conduct and induction processes for staff and volunteers;
- As part of Duty of Care, review and incorporate responsibilities around change or suppression practices.

This all points to embedding policies and practices reflecting the Act in the organisation’s regular induction and training programmes. It would also be prudent for churches to clarify and formalise their beliefs about sexuality and gender to enable staff and volunteers to refer people to in conversational or teaching situations. A church’s doctrinal statement on gender and sexuality, as well as a policy on engaging with those who identify as transgender, could be given to people wishing to join the church or become clients of church activities, so that no one can claim to have been unaware of the church’s position on these matters.

CONSEQUENCES OF CONTRAVENING THE ACT

Under the Act some contraventions may result in reports to the VEOHRC. These will be dealt with under the civil response scheme. The VEOHRC may investigate the matter and request additional information from the person making the report (who may be a 3rd party) and from the person and/or organisation alleged to have engaged in an unlawful practice. If the

VEOHRC decides the report warrants action, it may offer education, facilitate an agreement between the parties (which can be registered with the Victorian Civil & Administrative Tribunal), or refer the matter to other agencies (including Victoria Police).

Criminal breaches of the Act include persons or organisations engaging in practices that cause serious injury or injury. These also include taking a person from Victoria for a change or suppression practice and also advertising such practices. The penalties for such criminal offences extend to substantial fines and imprisonment.

The BUV recommends that if a church or member of a church is informed by the VEOHRC or Victoria Police that they are the subject of a report of an alleged change or suppression practice or some other breach of this Act, they should obtain legal representation.

Pastors and other church leaders wanting to discuss approaches to ministry in the light of the Act, may contact the BUV's Pastoral Leadership Development & Support or Church Health & Capacity Building Teams.