



WOMEN'S ACTION ALLIANCE TASMANIA (WAAT)

Justice Miscellaneous (Conversion Practices) Bill 2024

**Submission from the
Women's Action Alliance Tasmania (WAAT)
A member of the
Affiliation of Australian Women's Action Alliances
(AAWAA)**

16 February 2024



waatas.wordpress.com



womens.action.alliance.tasmania@gmail.com

The Women's Action Alliance Tasmania (WAAT) is a member of the Affiliation of Australian Women's Action Alliances (AAWAA). WAAT and AAWAA are secular, independent, and unaligned with any political party or religious perspective. Our groups include teachers, lawyers, nurses, doctors, scientists, academics, researchers, professionals, public servants, retirees, mothers, and lesbians.

We thank you for the opportunity to comment on the consultation draft for this Bill and we commend the intention of the Bill to provide a safe and inclusive community for all people in Tasmania including those who are same-sex attracted or who identify as transgender or gender-diverse.

We specifically commend the inclusion in the draft of section 28 (2), which explicitly excludes from the definition of 'conversion practices' the practices of health service providers, and in so doing corrects a salient shortcoming in conversion practices legislation in some other jurisdictions.

We also commend the clarification set out in section 28 (4) that practices that amount to an expression of opinion, idea, or belief, including the provision of parental guidance do not amount to a conversion practice. We are concerned, however, that section 28 (3) – which addresses practices by people other than health service providers – carries unacceptable risks both for the recipients and the providers of these practices. This is especially the case with regard to children.

We respectfully urge the Department of Justice to review the necessity of section 28 (3) and recommend that, if it is to be included in the Bill moving forward, it should incorporate additions along the following lines:

- a. No provider of a practice outlined in Section 28 (3) shall proceed without first ensuring that a licensed health service provider has confirmed that, in their professional opinion, the practice is in the best interest of the child's health and well-being.
- b. No provider of a practice outlined in Section 28 (3) shall provide that practice to a child under the age of 16 without obtaining the informed consent of the child's parent(s) or legal guardian, unless a court order provides written consent for the practice.
- c. For a child aged 16 or over, the provider of a practice outlined in section 28 (3) shall before providing the practice, make a reasonable effort to notify the child's parent(s) or legal guardian about the intended practice, its potential benefits and risks, and the child's decision to undergo the practice.

We also recommend the inclusion of a stand-alone section that would establish a requirement for a review of the legislation within 12 months of its commencement and at regular intervals thereafter to:

- Assess the extent to which the legislation has achieved its stated objectives,
- Identify any unintended consequences or limitations of the legislation, and
- Consider the need for amendments or modifications to the legislation to ensure its continued effectiveness and relevance.



waatas.wordpress.com



womens.action.alliance.tasmania@gmail.com

Background

Although we do not ourselves use the umbrella term LGBTQIA+, lesbians are a key constituent of WAAT and AAWAA. As such, we have no issue in supporting a ban on the practice of seeking to change or eradicate a person's sexual orientation. As noted in your fact sheet, and as confirmed by the research we have ourselves looked into, these practices lack efficacy and risk lasting harms. While our members have not themselves encountered these practices, we understand they are exceedingly rare and that our criminal code already addresses them. That said, we understand the impulse to atone symbolically for Tasmania's shamefully belated decriminalisation of homosexuality.

The complexity of gender identity

The needs of people, especially young people, who identify as transgender or gender-diverse are extremely complex.¹ This is because these identities are often transient and those who embrace them are often suffering co-morbidities such as autism or trauma. Many are also gay or lesbian and subsequently come to realise that their transgender identity masked internalised homophobia. Social pressures may also contribute to the decision to embrace these identities, especially in the case of girls.

The unfolding reality of the complexities of transgender and gender-diverse identities dictates that we do not, even with the best of intentions, exacerbate the problems these vulnerable people face.

Conversion bans

WAAT, as an AAWAA member, has long been concerned about the impact of conversion bans that effectively deny transgender and gender-diverse people access to exploratory therapy to understand the nature and possible causes of their identities. We are concerned that an effect of the ban will be the possible criminalisation and/or discouraging of health professionals providing such services, thus preventing transgender and gender-diverse people from accessing different avenues to relieve their distress. Indeed, we firmly believe that creating barriers to these young people accessing the full range of professional services, including exploratory therapy, is unconscionably cruel, especially if the young person is contemplating potentially life-long and irreversible medical interventions.

Furthermore, because such bans disproportionately impact gay and lesbian people as well as those suffering neurological conditions or trauma, they also create indirect discrimination, which we believe is ethically questionable and likely unlawful: all Australians have a right to access appropriate health care in their time of need.

WAAT is relieved that this Bill specifically excludes services provided by health professionals from the definition of 'conversion practices.' We note in this regard that the Bill also seeks to amend the *Health Complaints Act* to list these services as "services that are health services." While the fact sheet does not speak to the rationale for this amendment, we trust the intention is to dispel any suggestion that the services are not legitimate. In this regard, we suggest the government works with the sector to monitor that the fact of listing these services in the Health Complaints Act doesn't serve to discourage health care professionals providing them.

¹ The literature on this subject is vast and growing. We strongly recommend that, if it has not done so already, the Department consults the material collated by the [Society for Evidence Based Medicine](#) as well as [Genspect](#).



Practices of people who are not health service providers

Given the complexities of the challenges that young transgender and gender-diverse people face, we are also concerned about the risks of practices conducted by people who are not professional health care providers. The fact sheet does not specify who the entities responsible for the practices outlined in section 28 (3) are, and we would welcome clarification on this point. For now, we assume they include groups established expressly for the purpose of encouraging or supporting young people to express a transgender identity, as well as teachers, school counsellors, scout and guide leaders, and others.

Our concern in this regard relates to the fact that these organisations support, implicitly and in many instances explicitly, a model of ‘gender affirming care,’ that is, that carers and others must ‘affirm’ a child who states they are transgender – without any assessment by a professional health care provider. Our state education department and many of our public and private schools have also endorsed this approach. In many instances, there is encouragement to affirm a child’s gender identity even without informing the child’s parents.

In parallel with emerging evidence that medical interventions do not help relieve young people of gender dysphoria and may in fact harm them, we are also beginning to see evidence that non-medical interventions may create unintended harms. This is best expressed by Dr Hilary Cass who chaired the independent review of the gender identity services in England and who noted that social affirmation (the practice of child’s names, pronouns, and presentation to align with their gender identity) should be considered a psychological intervention with potentially significant and long lasting effects. She noted the [risks](#) of locking children into a particular identity path making it difficult for the child to explore alternative identities and coping strategies.

WAAT includes teachers, sporting coaches, and others who are committed to acting in the best interests of the children under our responsibility. We are concerned that social affirmation practices might inadvertently pose long-term risks for the children in our care. We also worry about the potential legal repercussions of ‘affirming’ children if we believe that social affirmation may not serve the child’s best interests, particularly considering the emergence of legal challenges faced by teachers and schools overseas.

While we cannot presume to speak on behalf of LGBT+ support organizations, we assume that they too, prioritise acting in the best interests of children and should be mindful of the potential legal risks associated with their actions.

Against this background, we recommend the Department of Justice remove 28 (3) altogether so that the Bill does not provide a carve-out for actions by non-healthcare professionals to affirm a child’s gender identity. We appreciate that this may not be possible given that teachers and others are already being asked to do so.

We hope that the legislation can provide a measure of protection both for the recipients of the actions set out in section 28 (3) and for those who volunteer or are required to provide them. There may be other ways to draft the actual provisions of the Bill but we offer our suggestions above as a starting point.

Thank you for seeking input on this Bill. We trust you can address our concerns. We look forward to seeing the next iteration.



waatas.wordpress.com



womens.action.alliance.tasmania@gmail.com