



Chief Minister, Treasury and Economic Development Directorate

“Consultation” on the Prohibition of Conversion Practices in the ACT

Joint Submission by

Christian Schools Australia (CSA)

Adventist Schools Australia (ASA)

Australian Association of Christian Schools (AACS)

Islamic School of Canberra (ISC)

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Introduction

Christian Schools Australia (CSA), Adventist Schools Australia (ASA), and the Australian Association of Christian Schools (AACS) are national bodies that support and represent schools for whom religious formation is an integral part of the education process. The Islamic School of Canberra (ISC) seeks to educate the next generation of Muslims in partnership with the Islamic community of Canberra.

In combination, CSA, ASA, and AACS schools educate more than 120,000 students across more than 300 locations nationally. Within the ACT member schools of these groups and the Islamic School of Canberra educate around 3,000 students. Globally, CSA is part of the Association of Christian Schools International (ACSI). There are 24,000 schools educating in excess of 5.5 million students in over 108 countries around the world within this network. ASA schools are part of the wider Adventist Church, which educates around 2 million students globally.

Member schools of CSA, ACS and AACS operate as independent, locally governed, religious organisations. Some are closely aligned with one or more Christian churches in their communities, while others have their heritage in a group of parents coming together to start a school. ASA schools operate on a systemic basis, with small systems established in line with wider Adventist Church governance arrangements. The Islamic School of Canberra is locally governed on behalf of the Islamic community. There are more than 30 Muslim schools nationwide in Australia.

The “Consultation” Process

The organisations represented in this submission first became aware of the “consultation” process being undertaken by the Chief Minister, Treasury and Economic Development Directorate on 17 June, 10 working days into an 18 working day “consultation” process. The process has not been publicly advertised and the extensive inquiries made by those involved in this submission have uncovered little awareness of the process. The Directorate have indicated that *“Due to the ongoing impact of COVID-19 on public engagements, in this instance we have directly engaged a cross section of stakeholders from across the education, disability, religious, health, LGBTIQ+ and legal sectors to seek their views on the proposed prohibition, in lieu of the standard public consultation process.”*

Respectfully, this approach is simply not acceptable. The COVID-19 pandemic has not stopped “pop-ups” being conducted for the [Spire Project](#), nor a virtual information session being conducted in relation to [Public Housing Renewal in Greenway](#). There has simply been insufficient time and transparency for the process adopted for the Prohibition of Conversion Practices in the ACT to have any legitimacy.

The scant, 776 word, ‘Factsheet’ provided to those invited to make a response is also totally inadequate. According to this document the Government is considering –

- allowing complaints through the Human Rights Commission’s complaints jurisdiction,
- the creation of criminal offences,
- regulating health practitioners, and
- treating conversion practices as a form of abuse or neglect of children

Noting that the “best solution will likely involve a combination of approaches”- it is not a simple pathway forward. Yet less than 1,000 words is given to providing any information about this complex issue and the equally complex potential responses.

The short timeframe, the selective nature of the engagement and lack of transparency, and the inadequacy of the information provided demand that **the current process be abandoned and a full, transparent, public inquiry into these important issues be undertaken.**

Against this background the responses below can only be considered preliminary in nature and not encompassing of the full range of concerns and evidence to support those concerns.

Abhorrent ‘therapeutic’ practices cannot be supported

It is important to be clear that the abhorrent practices of the mid-20th century cannot, and are not, in any way supported by this group. The use of lobotomies, chemical castration with hormonal treatment, aversive treatments including the application of electric shock to the hands and/or genitals as part of the treatment regimens once promoted by prominent mainstream medical and psychiatric practitioners is rightly condemned, more so if undertaken coercively.

Whether there is a need for new legislation to address these practices is, however, questionable as there is **no evidence that they remain in use** within Australia. Indeed, during a Public Briefing held on 9 December 2019 in relation to a proposed ban in Queensland the representatives from Queensland Health were, **unable to provide any evidence** of these or other ‘conversion therapy’ practices occurring within Queensland.¹ Even if evidence emerges to suggest that such practices are ongoing, existing regulation of medical and health services would seem to provide an appropriate mechanism to deal with these practices if they are occurring and not subject to existing criminal law. **What evidence can the ACT Government provide that these out-dated and abhorrent practices are occurring in the ACT?**

‘Conversion Practices’ must be more clearly defined

The Factsheet suggests that the ‘likely’ scope of any ban would cover –

“any practice or treatment by any person that seeks to change, suppress and/or eliminate a person’s sexual orientation, gender identity and/or gender expressions.”

This definition is breathtaking in its scope and frightening in its ambiguity.

To appreciate the potential scope, it is helpful to consider the document referred to in the Factsheet, *Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia* (HRLC Report) written by the Human Rights Law Centre, La Trobe University and Gay & Lesbian Health Victoria. The HRLC Report goes well beyond merely looking at the discredited practices outlined above and includes discussion of “Sexual Identity Therapy”. Sexual Identity therapy is described as allowing people to “acknowledge same-sex attraction or gender diversity” while “prioritising religious values in their sense of self and identity formation”.² “Prioritising religious values [beliefs]” over personal desires or needs, across a wide range of issues, is at the heart of orthodox Christian teaching and Islamic teaching.

¹Queensland Parliament, Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Public Briefing—Inquiry Into The Health Legislation Amendment Bill 2019*, Transcript Of Proceedings Monday, 9 December 2019, page 7.

² Jones, T, Brown, A, Carnie, L, Fletcher, G, & Leonard, W. *Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia*, (Melbourne: GLHV@ARCSHS and the Human Rights Law Centre), 2018, page 17.

In simplistic terms, there are many calls within the Bible for Christians to deny or put off ‘the old self’ and to seek a new life in Christ – it is at the heart of the Gospel message. This applies across all areas of life – **is the proposed ban seeking to make this fundamental tenet of Christian faith unlawful?**

The Islamic faith similarly has clear teachings around sexual practices and acceptable conduct for the faithful – **is the ACT Government wanting to outlaw these traditional Islamic teachings?**

The HRLC Report goes on to suggest that a “similarly insidious development” is “the ‘welcoming but not affirming’ pastoral posture” it attributes to many “conservative religious communities”.³ These conclusions are largely drawn in the HRLC Report from cited research by Mark Jennings. Yet this research consists of interviews with a mere 20 people ‘who were encouraged by peers to contact the author’,⁴ out of a total population where the largest denomination alone is reported by the author to have more than 280,000 members.⁵ With a sample size of a mere 0.007% of a single denomination and the clear bias in the sampling, it is no surprise that the author indicates that the study “makes no claims to being representative of all LGBTIQ experiences”.⁶

Despite this, it is abundantly clear from the HRLC Report that any responses less than fully affirming of the sexual orientation or gender identity of LGBT individuals, regardless of the teachings of a religious body, are considered to be harmful ‘conversion practices’. **Is the ACT Government proposing to criminalise the activities of churches, mosques and other faith communities who do not fully affirm LGBT individual’s sexual expression?**

Within the context of Christian school environment, allegations were made in a Senate Committee hearing late last year of “what amounted to conversion therapy” in relation to a child of a witness.⁷ These claims were subsequently comprehensively debunked.⁸ The HRLC Report authors also indicates that they “are concerned that staff at schools, particularly religious schools, may refer children to conversion practices” without providing any evidence either of this occurring or any clear indication

A bill whereby the government mandates a school counsellor’s response to a particular student, regardless of their clinical opinion and under the guise of banning vaguely defined ‘conversion practices’ - is dangerous and unjustified.

³ Ibid, page 17.

⁴ Mark Jennings, ‘Impossible Subjects: LGBTI Experiences in Australian Pentecostal-Charismatic Churches’, *Religions* 2018, 9(53): 1-15 (2).

⁵ Mark Jennings, ‘A Silence Like Thunder: Pastoral and Theological Responses of Australian Pentecostal-Charismatic Churches to LGBTQ Individuals’ in Michael Wilkinson and Peter Althouse (eds), *Annual Review of the Sociology of Religion Volume 8: Pentecostals and the Body* (Leiden: Brill, 2017), 215-238 (218).

⁶ Above n1 at footnote 5

⁷ Australian Senate, Legal and Constitutional Affairs References Committee, *Legislative exemptions that allow faith based educational institutions to discriminate against students, teachers and staff*, Monday, 19 November 2018 (9).

⁸ Ibid (32).

of what is meant by ‘conversion practices’. **Is the intention to ban any discussion of issues related to sexuality or identity by psychologists, counsellors, chaplains or other staff in schools?**

The proposed definition of ‘conversion practices’ is **dangerously imprecise for potential legislation involving criminal sanctions**. It risks, in effect, directly impacting Christian and Islamic schools and their wellbeing and pastoral care programs.

No sensible consideration of the proposed ban can take place without firstly clarifying what conduct is intended to be prohibited and under what circumstances. This must be a first step to allowed informed and considered responses.

Informed public consultation is essential

The Factsheet indicates that the Government is considering the creation of a new criminal offence “to conduct conversion practices on a child or an adult unable to give their own consent, or to take them outside the ACT to conduct conversion practices”. As outlined above, however, the fundamental definition of the conduct involved is woefully inadequate.

It is effectively impossible to properly consider a proposal that may involve criminal sanction without knowing precisely the activities that may result in criminal charges and to whom the sanctions may apply. Sensible and informed, as opposed to ideologically driven, discussion must be undertaken within an understanding of what is at stake. This public discussion must occur prior to any legislative response being considered by the Assembly. **Criminal laws based on ‘soundbites’, ill-informed unsubstantiated claims by activists and in turn, misplaced government narratives accompanying them are a fundamental injustice.**

Health practitioners, and others, must be able to advance the best interests of their patients in any given situation and with all the information necessary to make proper decisions without the spectre of criminal sanctions.

The ACT Government must firstly clarify what activities it is proposing to be outlawed by the ban and to whom it will apply and then undertake proper, informed, public consultation around this issue. Without this process **any legislation is premature**.

Legislative proposals must be evidence based

The discussion above has already provided some examples of where the “research” on which the ban is based are inadequate. These anecdotes simply **do not provide a sufficient, nor a robust evidence base for legislation**, particularly criminal legislation.

The three organisations which published the HRLC Report have a **long history of activism** in support of LGBT issues. The report itself consists largely of a selective literature review and interviews with a **mere 15 people** “recruited through social media, LGBTI media reportage of the project, and through

various LGBTI, queer and ex-gay survivor networks”.⁹ Of great concern is that the 15 are a partially self-selecting sub-set of an initial 50 respondents, with experiences no later than 2016 and some as far back as 1986 – more than three decades ago!¹⁰ **Apart from the very small and highly skewed sample size, the currency and relevance of these experiences, especially in relation to childhood experiences is highly questionable.**

A throwaway line in a Factsheet that claims “[e]vidence suggests that some Canberrans are still being subjected to harmful practices”. Such extreme claims must be supported by rigorous research. The ACT Government must firstly properly define what is being considered under the rubric of ‘conversion practices’ and then undertake a comprehensive, evidence-based, review of the full implications of any such, almost unprecedented, ban. **The current, inadequate, “consultation” process is simply not enough.** An extensive public inquiry will help to inform the public consultation process and ensure a more robust evidence base for any legislation.

Genuine questioning must be allowed

Late last year a New Zealand Parliamentary Committee considered petitions to ban ‘conversion therapy’.¹¹ The Committee recognised “the inherent difficulty in designing rules to outlaw conversion therapy”,¹² and that it would “be a challenge to determine which practices should be defined as conversion therapy and which should be legitimate activities for religious and other groups”.¹³ The Committee ultimately did not recommend a ban, indicating that more consideration was needed.

Significantly, the Committee recognised the vital need to allow questioning and advice (emphasis added)–

‘It is important that anyone with questions about their sexuality or gender identity feels comfortable seeking advice. This may be from a professional counsellor, family and friends, or within their religious community.

A ban on conversion therapy should not prevent anyone from seeking or providing such advice.’

For schools, as they walk with emerging adults as they establish their own identity and developing personhood, this is essential. As educators who care for the wellbeing of our students, we know that childhood and adolescence can be a time of confusion and exploration. For generations young people have sought the advice of teachers and other staff in matters far beyond the subject matter of a classroom. Schools of all types, including faith-based schools, must be able to continue to have open and honest conversations with students in their care.

⁹ HRLC Report [2.3.1]

¹⁰ Ibid [2.3.1]

¹¹New Zealand House of Representatives, Report of the Justice Committee: *Petition of Max Tweedie for Young Labour and the Young Greens: Ban Gay Conversion Therapy, Petition of Amanda Ashley: Ban Conversion Therapy in New Zealand*, October 2019

¹² Ibid, p3.

¹³ Ibid, p4.

All jurisdictions across Australia, including the ACT, are signatories to the Alice Springs (Mparntwe) Declaration,¹⁴ which asserts in its Preamble:

“Education plays a vital role in promoting the intellectual, physical, social, emotional, moral, spiritual and aesthetic development and wellbeing of young Australians, and in ensuring the nation’s ongoing economic prosperity and social cohesion.”

We agree strongly that the education of the whole child is not complete unless it includes spiritual, moral, emotional and aesthetic development alongside the more commonly stated domains of intellectual, physical and social. This also includes areas of sexuality and identity. **Students must be able to seek advice from school staff about their sexuality or gender identity and school staff must be able to respond to those questions.** This is an essential component of all schools, including those within CSA, ASA, and AACS and the Islamic School of Canberra.

Religious teaching must be respected

On behalf of the parents who choose such a faith-based education, and the church/mosque and faith communities that deliver it, schools represented in this submission are overt and particular about the beliefs and values that underpin curriculum, culture and practice. This includes orthodox Christian and Islamic teaching on personhood, identity and sexuality.

The clearest expression of the protections afforded religious freedom is undoubtedly Article 18 of the International Covenant on Civil and Political Rights (ICCPR).¹⁵ The United National Human Rights Committee has provided additional interpretative guidance on Article 18 in its General Comment 22.¹⁶ As noted in the recent Andrews Committee interim report,¹⁷ looking at religious freedom in Australia, this General Comment gives the freedom a ‘broad scope’ and reinforces the ‘fundamental’ nature of the right.

Importantly, both Article 18 itself and the General Comment recognise the right to ‘manifest’ religion in ‘worship, observance, practice and teaching’ including ‘in community with others’.¹⁸ In a complex contemporary society this is often done ‘in community with others’ through a variety of means, including corporate structures. Christian, Adventist and Islamic schools, for example, are required to be incorporated by funding legislation,¹⁹ but are no less a communal expression of faith. The importance of the community element of the protections have been recognised by the European

¹⁴ Education Council, *Alice Springs (Mparntwe) Education Declaration* (December 2019) Education Council < [http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/Publications/Alice%20Springs%20Declaration/Alice%20Springs%20\(Mparntwe\)%20Education%20Declaration%20\(accessible\).pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/Publications/Alice%20Springs%20Declaration/Alice%20Springs%20(Mparntwe)%20Education%20Declaration%20(accessible).pdf) >.

¹⁵ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, UNTS171 (entered into force 23 March 1976) (*‘the ICCPR’*).

¹⁶ UN Human Rights Committee, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Article 18)*, 48th sess, UN Doc CCPR/C/21/Rev.1/Add.4 (27 September 1993) (*‘General Comment 22’*).

¹⁷ Joint Standing Committee on Foreign Affairs, Defence and Trade, *Interim Report, Legal Foundations of Religious Freedom in Australia* (2017) (*‘Andrews Committee interim report’*)

¹⁸ ICCPR Article 18(1)

¹⁹ See, e.g., *Australian Education Act 2013* (Cth) s75(2).

Court of Human Rights commenting that they lay ‘at the very heart of the protection’ of religious freedom.²⁰

A number of other international instruments explicitly include recognition of the right to establish faith based schools.²¹ This builds on the rights of parents recognised in the ICCPR to ‘ensure the religious and moral education of their children in conformity with their own convictions’.²² Similar rights are also recognised in the *Convention on the Rights of the Child* (CROC) to which Australia is also a signatory.²³

Within the Territory, the *Human Rights Act 2004* (ACT) recognises the right to freedom of religion in section 14. More specifically in section 27A(3)(b) it recognises a right –

“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.”

It would be a grave infringement of these fundamental rights if any ban of ‘conversion practices’ had the result, directly or indirectly, of impacting what is taught within a Christian, Islamic or other faith-based school. **The ACT Government must guarantee that faith-based schools can continue to teach a sexual ethic and morality in accordance with their beliefs, and a biologically and medically accurate view of sexuality.**

Summary of Recommendations

Christian, Adventist and Islamic schools represented by this submission consider the decision to ban vaguely defined ‘conversion practices’ as premature and unjustified. We recommend that -

1. Before a proper decision can be made, or even discussion commence, the term ‘conversion practices’ must be more clearly and precisely defined.
2. Informed, transparent and public consultation must precede any proposal for legislation, including clarity as to whom, and when, criminal penalties apply.
3. Legislative responses to ‘conversion practices’ must themselves be based on sound evidence and research.
4. Genuine questioning, support and advice on matters relating to a person’s gender and sexuality, by health professionals, educators, religious bodies and parents must be safeguarded under any proposal.
5. Guarantees must be provided about ongoing rights of religious organisations and parents to continue teaching in accordance with their beliefs about gender and sexuality.

²⁰ *Hasan and Chaush v Bulgaria*, App No 30985/96, (2002) 34 EHRR 55, [62] quoted in Andrews Committee interim report [3.31].

²¹ See, e.g., *Declaration on the Elimination of all Forms of Intolerance and Discrimination based on Religion or Belief* Article 5, *Convention against Discrimination in Education* Article 5(b) in Appendix One.

²² ICCPR Article 18(4).

²³ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). Australia ratified the Convention on 17 December 1990.