



# Prohibition of Conversion Practices:

Guidance for health service providers.

## 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

This document provides guidance and answers to questions that health service providers may have about the recent amendments to the *Public Health Act 2005* (Public Health Act) to prohibit 'conversion therapy' in the context of health services delivered in Queensland.

## SHORT ANSWERS

*This guidance paper uses the term 'practices' where possible, instead of 'therapy', which is used in the legislation, as Queensland Health does not wish to give the impression that the practices have any therapeutic value.*

### What is 'conversion therapy'?

'Conversion therapy' refers to any practice that attempts to change or suppress a person's sexual orientation, gender identity or gender expression. These practices are based on the disproven and dangerous ideology that being lesbian, gay, bisexual, transgender, queer or asexual (LGBTQA+), or questioning your gender identity or sexuality is a disorder or involves deviant behaviour that requires correction or suppression. The ideology makes false and misleading claims that are not grounded in factual, psychological, or scientific evidence. Claims supporting the practice of 'conversion therapy' are widely refuted by medical, psychological, human rights and secular bodies as being damaging and unfounded. For ease of communication 'conversion therapy' will be referred to as conversion practices.

### Who does the prohibition on conversion practices apply to?

The prohibition applies to health service providers, as defined in the *Health Ombudsman Act 2013*.



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## SHORT ANSWERS [contd.]

This includes registered health practitioners, such as a doctors, nurses or psychologists, and unregistered health professionals such as counsellors, naturopaths and social workers. The prohibition applies equally to conversion practices that have been requested by, or have the consent of, the person seeking services from the health practitioner.

The prohibition also applies to businesses, non-profit organisations and other entities that offer services that are, or purport to be, for the purpose of maintaining, improving, restoring or managing people's health and wellbeing.

### **How does the prohibition affect my clinical/healthcare practice?**

It will only affect you if you engage in conversion practices that are based on an ideology that being LGBTQA+ is a disorder or involves deviant behaviour, and which aims to change or suppress a person's sexual orientation, gender identity or gender expression.

It is important to note that the legislation allows you to use your reasonable professional judgement to provide services that:

- are necessary to comply with your legal or professional obligations;
- are part of the clinically appropriate assessment, diagnosis or treatment of a person, or clinically appropriate support for a person; or
- enable or facilitate the provision of a health service for a person in a manner that is safe and appropriate.

You 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 your 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 your clients.

The provision of conversion practices is contrary to the National Code of Conduct for Health Care Workers and is expressly prohibited under the Public Health Act. These practices can be investigated by the Office of the Health Ombudsman and may also be reported to the Queensland Police Service for a criminal investigation.

### **Does it set new clinical standards?**

No. The prohibition does not set clinical standards or require providers to provide any particular treatment or course of care. Nor does it promote any one clinical approach over another.

### **Does it affect diagnoses or treatment decisions for recognised medical conditions, including gender dysphoria?**

No. Clinically appropriate diagnosis, assessment and treatment of a person experiencing gender dysphoria, falls under a reasonable professional judgment exclusion and as such is not a conversion practice.

### **What are the legal implications?**

Health service providers who perform conversion practices will commit an offence under the Public Health Act punishable by fines of up to \$21,562 and/or 18 months' imprisonment. This penalty amount is at July 2022, with the amount increasing each year. Health practitioners may also be subject to disciplinary proceedings or professional sanctions.

## BACKGROUND

On 20 August 2020, the Public Health Act was amended to prohibit conversion practices in the context of health services delivered in Queensland.

The Act defines conversion practices (which it refers to as 'conversion therapy') as **any practice that attempts to change or suppress a person's sexual orientation or gender identity or expression**. Examples include:

- 'ex-gay camps';
- shame or coercion tactics to create aversion to same-sex attractions or to encourage gender conforming behaviours; and
- other techniques or interventions that are based on ideology that being LGBTQA+ is a defect or disorder that needs 'fixing'.

It **does not** include:

- practices that affirm or provide support or understanding to persons dealing with issues related to sexual orientation or gender identity and expression; or
- evidence-based and other reasonable clinical practices, even if these practices do not proactively affirm or support a person's sexual orientation or gender identity and expression, including 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.

The prohibition applies to 'health service providers', which are defined under the *Health Ombudsman Act 2013* to include:

- registered health practitioners, such as doctors, psychiatrists and psychologists;
- unregistered health practitioners, such as counsellors, naturopaths and social workers; and
- businesses and other entities that provide health services.

The prohibition does not apply to religious or spiritual practices that do not involve the provision of health services. However, it is intended that prohibiting conversion practices in a health context will send a clear signal to all members of all the community, including religious and spiritual communities, that these practices are unacceptable.

## CLINICAL IMPLICATIONS

It is important to remember that the prohibition only applies if a practitioner engages in a practice grounded in the ideology that being LGBTQA+ is a disorder or deviant behaviour that requires correction or suppression and which aims to change or suppress a person's sexual orientation or gender identity and expression.

The prohibition does not apply to treatments or practices that are evidence-based or that have a reasonable clinical justification. To remove any doubt about this, the legislation includes an exception for a health practitioner's reasonable professional judgment that a practice:

- is part of the clinically appropriate assessment, diagnosis, or treatment of a person;
- is part of the clinically appropriate support of a person;
- enables or facilitates safe and appropriate care; or
- is necessary to comply with legal or professional obligations.

For example, the following practices are not prohibited:

- Advising a patient about potential side effects of hormone replacement therapy or the risks of surgical interventions.
- Refusing to pursue a course of treatment, such as prescribing a hormone replacement therapy, that the provider reasonably believes would be unsafe or contra-indicated 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.
- Investigating or interrogating a patient's experience of gender identity and expression as part of the clinical process of assessing the patient's symptoms and reaching an accurate diagnosis of their mental health.
- Delaying or refusing treatment due to legal consent not being obtained or psycho-social factors that may impact on treatment efficacy, safety or recovery.

Finally, the prohibition of conversion practices does not set clinical standards or require practitioners to engage in any particular treatment or course of care. Nor does it promote any one clinical approach over another. This recognises that there are different views within the clinical community about the appropriate treatment of persons with symptoms of gender dysphoria, especially children, and that clinical standards in this area are still evolving.

### Gender dysphoria

Many trans and gender diverse people experience distress related to the incongruence between their gender identity and expression and their sex assigned at birth. This is called gender dysphoria. Gender dysphoria is frequently accompanied by psychological distress. Not all trans or gender diverse people will experience gender dysphoria and it should not be used as a measure for appropriate gender affirming healthcare.

The prohibition on conversion practices does not interfere with diagnoses or treatment decisions for recognised medical conditions, including gender dysphoria. Clinically appropriate diagnosis and assessment of a person experiencing gender dysphoria falls under the reasonable professional judgment exclusion and as such is not a conversion practice.

Likewise, following an evidence-based approach to treatment that is based on relevant clinical considerations such as the patient's age, maturity, clinical history, family situation and environmental factors will not be considered a conversion practice.

As discussed above, the prohibition does not include a practice that a health provider reasonably believes is part of the clinically appropriate assessment, diagnosis, treatment or support for a person; or will enable or facilitate the provision of a health service in a safe and appropriate manner; or is necessary to comply with the provider's legal or professional obligations. In the case of the treatment of children with gender dysphoria, this would include accepted treatment practices including diagnosis of the gender dysphoria and providing advice about the side-effects of drugs.

Practitioners may have different views on the appropriate way to treat a patient. Practitioners may have a preference for one or more of a range of proven and accepted treatments for a variety of reasons. Medical treatments also evolve, particularly in a relatively new area such as the treatment of children with gender dysphoria. Nothing requires a practitioner to perform a particular treatment.

## OFFENCE AND PENALTIES

Health service providers who perform conversion practices commit an indictable offence under the Public Health Act.

The prohibition on conversion practices is limited to health service providers because they have ethical obligations not to engage in practices that are harmful and not based in evidence. It is a violation of the trust that the community places in health service providers to allow these practices to be carried out in the health care system. Prohibiting conversion practices in health settings shows it is not an accepted health service and that being an LGBTQA+ person is not a disorder that requires treatment.

The maximum penalty for the offence will depend on the age and vulnerability of the person who was subjected to the practice. Higher penalties will apply where conversion practices are performed on children and persons with diminished intellectual capacity.

Person	Maximum penalty
Adult	12 months' imprisonment and/or 100 penalty units (\$14,375 as at July 2022)
Minors and other vulnerable persons	18 months' imprisonment and/or 150 penalty units (\$21,562 as at July 2022)

