

Banning LGBTQ+ Conversion Practices

A SUBMISSION TO THE NSW DEPARTMENT OF
COMMUNITIES AND JUSTICE AND NSW
HEALTH JOINT WORKING GROUP

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Australian Federation
of Islamic Councils

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1. Introduction

The Australian Federation of Islamic Councils is the peak representative body for the Muslim community in Australia. Our organisation is comprised of 9 State & Territory Councils with nearly 150-member organisations across the country. While we are a faith-based body our areas of interest are broad ranging and reflect the significant input that members of the Muslim community have to Australian society generally.

In the lead up to the 2023 State Elections the then opposition indicated an election commitment to ‘ban conversion and suppression practices’ if they were elected to Government. We note that at various time the now Premier, then leader of the opposition, also made various comments as to what may or may not be included in such a ‘ban’. On being elected the now Labor Government has announced its intention to proceed with this proposal and as such appointed a Joint Working Group from the Department of Communities & Justice and NSW Health (the Working Group) to advise it on the form such a proposed legislative Bill should take.

On 31 July 2023 the Working Party issued a consultation paper that outlined its considerations, and a number of proposals, and has sought written submissions in relation to the matters in that paper by 25 August 2023. AFIC has also had the opportunity to contribute to this process through stakeholder roundtable with the Working Group and this substantive submission aligns with the matters raised in that forum.

The Working Group has made it clear that it is not seeking submissions on whether such legislation should proceed or not but as stated in the consultation paper, only on:

- “1.3.1. The definition of ‘conversion practices’*
- 1.3.2. The reach of any criminal offence and the conduct that it should capture*
- 1.3.3. The scope of any civil response to conversion practices”*

AFIC respects the consultation process however we wish to put on the record that it is our view that the current proposal should not proceed at this stage. Based on the contents of the consultation paper, and the matters that were raised in the stakeholder round table, it is our view that there are fundamental issues that cannot be adequately addressed through the current process. These are particularly in relation to:

- The overall balancing of rights to religious freedom
- Parental rights
- The Rights of an individual to make informed choices about the support they are given.

It is our view that these matters require a far greater level of consideration and consultation than the current process has allowed for.

2. General Matters

2.1 Preventing Harm

AFIC accepts and supports the principle that no individual should be subject to physical, psychological or emotional harm and that all people have the right to live their life free from threats of such harm. This principle is a fundamental part of the Islamic faith to the extent that even removing something harmful from the road or path, such as a rock, is considered an act of charity.

For people of faith, however, there is also the notion of spiritual harm and the essence of avoiding spiritual harm is to live your life in a way that is pleasing to your Creator. We accept that this not a position that is necessarily supported by the mainstream of today's society, but our submission and comments are related to how the proposed Bill will impact on Australian Muslims and not the general community. For someone who identifies as a Muslim and accepts the tenets of the faith and all that this entail, then ignoring the notion of that person's spiritual well-being is, we would submit, not keeping them safe.

Each individual has the right to their own beliefs on matters of religion and to manifest those beliefs in ways that are appropriate for them even if mainstream society may take a different view on such matters. We submit that the proposal, in its current form, in fact takes that right away from individuals who may be people of faith trying to navigate their way through complex issues around their sexuality and gender. It does this by, in reality, taking away from them any option to be supported by someone who shares their faith beliefs.

The proposal makes it clear that the only support such an individual could legally access would be from sources that affirm a value framework that is diametrically opposed to what they themselves may believe. A practicing Muslim is unlikely to seek such support so the practical outcome of this regime will be that those individuals will likely remain unsupported. This runs completely counter to the stated purpose of what is being intended.

AFIC respectfully submits that for Muslims the notions of spiritual well-being and harm are as, if not more, important than the temporal ones and an individual has the right to seek support from people who will take this into account. The proposal denies them of this agency and potentially their right to their own religious freedom.

2.2 Minors, Adults & Agency

There does not appear to be any consideration of distinguishing between adults and minors in the proposed legislation and there appears to be a presumption that the individuals this proposal is seeking to protect are unable to make decisions for themselves about what support is or is not appropriate for their own circumstances.

With respect to adults, we make the following observations:

- While we accept that there have, and likely continue to be, cases where an individual is coerced, to one extent or another, to participate in some process against their will this is not the majority of cases. Further, we are unable to find any reliable research on this issue within the Muslim community.

Our research indicates that, even based on data from anti-conversion and suppression practitioners, the figure is that somewhere between 10-15%¹ of LGBTQI individuals have reported being subjected to such practices. The majority of this seems to occur to youth and people under 18 years of age which is logical given the power dynamics at play.

If the problem being sought to be addressed is one that predominantly impacts young people, why is there no recognition of this within the proposal?

Why are mature adults, of sound mind, not able to make their own decisions about the nature of the support and care they receive?

Why should adults be denied access to support based on values that they believe in?

How does such a regime accord with the human rights of the individual? Or are Human rights only worthy of being upheld if they align with the beliefs of the majority?

- While it is not explicitly stated in the consultation paper there is an implicit assumption that individuals within these environments, i.e., religious or cultural, are unable to resist pressures to participate in such practices against their will. From the perspective of the Muslim community this is not new – it is the same bias, whether conscious or unconscious, that is brought to the debate about women’s dress, the hijab and the niqab.

The Muslim community, and Muslim women in particular, are continually spoken down to and patronised on the basis that such practices, we would say beliefs as well, are so oppressive that the women involved are no longer able to make proper judgements about what is or is not in their best interest and so they need to be ‘saved’ from not just an oppressive religion but even from, and despite, themselves.

¹ <https://psychcentral.com/news/conversion-therapy-for-lgbt-kids-linked-to-higher-risks-of-depression-suicide#what-is-it>

Time and time again this argument has been shown to be a fallacy and grounded in racism.

This issue of sexuality and gender is no different. It is racist, and Islamophobic, to suggest that a practicing Muslim who accepts the tenets of their faith knowingly and willingly is unable to make decisions about how they will resolve a conflict between their faith and their desires, inclinations and emotions. Such individuals do not need saving, not from themselves nor their community. They need to be supported by people who they believe will guide them in the best way for their own physical and spiritual wellbeing. That is not a decision that any government should force on them.

There would certainly still be cases where individuals are forcibly made to participate in such practices against their will, but we would submit that there are plenty of examples within the law which can be used as a guide to legislate against such actions without denying an individual of their own agency in these matters,

In relation to the issue of minors we note the following:

- The situation of minors, or adults with an acknowledged impaired ability to make their own judgments, are in a different category and should be dealt with differently to adults generally.
- We acknowledge that the problems, and harms, associated with these practices arise more often than not in younger people who have less ability to exert their own agency and express their will and desire. As such a level of protection is warranted for minors that is not warranted for adults.
- Having said that, this level of protection cannot, and should not, extend so far or be couched in such language that it in effect removes the parent-child relationship. The Preamble to the Convention on the Rights of the Child ², which Australia has adopted, states:

“Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,”

And Article 18 of that Convention states:

“1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.”

It is a point that should not but clearly needs to be emphasised – the development and upbringing of a child is the primary responsibility of the parents. The Government’s role is to provide systems and processes that support that function and not usurp it.

This current proposal clearly does that – it places the Government itself as the arbiter of what is in the best interest of children at the absolute expense of the parents. Not only does it do this, but it does it in an area where it is almost impossible to make general directions on what constitutes as being in the ‘best interest’ of any single child let alone all children.

Each child is different- their physical and mental circumstances are all unique. They do not exist in isolation to their immediate environment which includes familial, cultural, social and religious factors. The reality is that parents, who are cognisant of all these, are the only ones who are in fact suited to make such a determination. To remove them from this scenario or prohibit them from providing a channel of support that offers an alternative view to what the Government advocates, is oppressive and not in the interest of the child.

- There is no question that there are, and will continue to be, some parents who ‘cross the line’ into abuse of the child in these cases. But we submit, this is no different to existing areas of safety and well-being of children from physical, emotional and sexual abuse through to neglect and maltreatment. There are established principles and concepts used in all these areas to test whether or not a parent has ‘abused’ or ‘failed’ their child in some way. There is no reason why a similar approach cannot be taken in these matters.

What is not acceptable however, is for the expression by a parent to their own child that certain conduct or views are counter to their religious beliefs and should not be pursued to be considered causing harm in and of itself which this proposal all but does.

3. Responses to Substantive Questions

3.1 Definition of Conversion Practices

The consultation paper proposes the following:

“that conversion practices be defined as any practices (or a collection of practices) directed to a person:

- *on the basis of their sexual orientation or gender identity; and*
- *with the purpose of changing or suppressing that person's sexual orientation or gender identity.”*

With all due respect this definition is so broad that it risks becoming meaningless. It provides no certainty or clarity for what ‘practices’ are supposedly the cause of the harm as distinct from any other act that engages with an individual on this issue.

There are basic principles that flow from one’s belief in a divine creator and the nature of the relationship we, as creations, have with the Divine. These include, certainly from an Islamic perspective, matters such as:

- God is infallible and does not make ‘mistakes’. Hence, the biological gender we are born with is what God intends for us and should not be changed except in very limited and specific circumstances. This in no way negates what an individual may ‘feel’ or ‘think’ themselves.
- Islamically there is no permissible relationship outside of a valid marriage. This means that there is no intimacy between unmarried individuals regardless of gender. Same-sex marriage is not permissible in Islam. The consequence of this is that an individual who experiences same-sex attraction cannot participate in an intimate relationship.
- We are not judged on what we ‘think’ or ‘feel’ only on our actions. It is possible, therefore, for a practicing Muslim to have certain thoughts or feelings about their gender or sexuality that are inconsistent with the Divine decree, but this is neither sinful in itself nor takes them out of the religion provided they do not act on such matters – in effect suppress these thoughts and emotions.

Any discussion entered into with a Muslim on this issue has to come from the above starting position and so would immediately fall foul of the proposed definition. The effect of this is that Muslims would be denied any opportunity to include questions of their faith as they come to terms with what they are thinking or feeling. This is an absolute denial of their right to practice and manifest their own religion.

Further, in practice it would make any conversation a parent has with a child, minor or adult, in immediate breach of the proposed laws. These interactions are capable of taking place in an environment of safety and respect, without being harmful to the individual, while still allowing all parties involved to be true to their religious beliefs. It is Government's role to enable this to occur not to outlaw it.

Accordingly, AFIC does not support the proposed definition due to its lack of specificity and clarity. Any definition of what constitutes 'practice' should not prevent genuine faith-based interactions even if a consequence of this interaction is the positing of a position that is counter to affirmation.

3.2 Exceptions or Exclusion

The consultation paper lists a number of proposed exceptions or exclusions to the definition. All but one of these are practices which affirm individualism and reject any theological considerations. The outlier to this is the following:

- “• *expression of a belief or delivery of religious practices, such as sermons, unless they have the direct purpose of changing or suppressing and individual's the sexual orientation or gender identity*” [sic]

While the exclusion itself is supported AFIC is of the view that it is insufficient to address many of the issues we have raised and which our community is concerned about. Any exception or exclusion provision needs to cover the following scenarios:

1. Day-to-day religious education in Islam, as with many other faiths, occurs primarily in unstructured environments and often in the home. Parents in a Muslim family have the primary obligation of teaching their children about the faith. The proposed definition and the application of the above exclusion are insufficient to safeguard these interactions. Parents should not be inhibited from expressing normative theological principles in their own home even if the premise of these is to deny an individual's so-called 'freedom' to identify or express their views of gender or sexuality.
2. It is unclear whether a sermon, religious talk or other similar practice would fall outside of the above exclusion if it included advice that individuals should not act on their desires, thoughts and emotions which are counter to the theological doctrine. While it may not be addressed to a specific person the direct purpose of such a practice is for anyone listening to heed the advice and desist from such a course of action.

3. As Islam doesn't have a structured clergy similar to other religions it is often the case that individuals seek the support and advice of learned people they trust. These individuals may or may not hold an official position or title and may not deliver formal practices that would be considered sermons as such. The question remains as to what the status of such an interaction would be – when an individual is asked specifically for their advice and counsel on what the faith says about a particular matter or what a person should do who is challenged by these issues, does such counsel or advice fall under the above exclusion?
4. All of the above also apply to teaching environments in faith schools. Teachers and educationists need to be able to safely express the principles of their faith when engaging on these issues.

AFIC supports the exclusions noted but calls for them to be widened and clarified to ensure that the faith counselling and advice, given in the best interests of the individual, is still permitted when the theological doctrine does not affirm the individual rights to determine gender and sexuality.

3.3 Criminal Law Responses

The first proposal outlined in the consultation paper is:

“that the conduct covered by the criminal offence should be providing or delivering conversion practices, where a reasonable person would consider the practices to be likely to cause harm to the person they are directed towards. Where there are a series of linked or connected practices that occur both in NSW and outside of NSW, the offence will cover all the linked practices.”

To criminalise any behaviour is a significant step that warrants careful consideration. Given the concerns raised in relation to this proposal generally AFIC considers the risks of criminalising these practices to far outweigh the benefits at this stage and without significant revision of the substantive proposal itself would not support such a step.

If criminalisation were to remain, however, AFIC would note the following:

- Counselling and/or advice, whether one off or a continuum, by a parent to a child should not be criminalised.
- Counselling and/ or advice which is sought, and consented to, by the individual themselves should not be criminalised.

- Counselling and/or advice which is consented to, but not instigated, by the individual should only be criminalised where real and objective harm to the individual can be established.
- Criminalisation, in general, should be limited to the most serious of cases in terms of actual harm caused and only in circumstances where there is some formal, structured intervention taking place.
- The application of a ‘reasonable person’ test needs further consideration. In a society that is increasingly anti-religious what form does the ‘reasonable person’ in this context take and how will the religious imperatives be considered. We submit that it is unlikely that the religious elements will be given any real credence or fair and genuine consideration and so it is more likely than not that the ‘reasonable person’ will always determine harm to be greater than the benefits.

Hence, for all the above reasons, AFIC does not support the criminalisation proposal unless the other matters of concern raised in relation to this Bill overall are addressed.

3.4 Civil Law Responses

The consultation paper notes:

“It should be unlawful for a person to provide or deliver conversion practices. Conversion practices should be defined consistently with the definition used for the criminal offence.

The existing complaints mechanism used by Anti- Discrimination NSW should be expanded to include complaints about conversion practices.”

Civil law mechanisms and processes to respond to matters of this nature are always far more preferable than criminalisation at the first instance.

Whatever the final version of this proposal is AFIC would support a civil response to provided there were adequate measures in place to prevent such a process from being used arbitrarily or onerously through repeated or multiple complaints relating to ostensibly the same set of circumstances.

4. Conclusion

In conclusion, the Australian Federation of Islamic Councils (AFIC) has expressed its concerns and reservations regarding the proposed legislative Bill aimed at banning conversion and suppression practices. AFIC acknowledges the importance of preventing harm but argues that the current proposal presents significant challenges and potential infringements on religious freedom, parental rights, and an individual's ability to make informed choices.

AFIC's submission highlights several key points:

- **Balancing Religious Freedom**
AFIC emphasises that individuals have the right to seek support in line with their religious beliefs, especially in matters related to their spiritual well-being. The proposal, in its current form, could potentially deny individuals the right to be supported by people who share their faith beliefs, thereby infringing on religious freedom.
- **Agency and Minors**
The submission highlights that there is a lack of consideration for distinguishing between adults and minors in the proposed legislation. AFIC questions the assumption that individuals within religious or cultural environments lack the agency to resist pressures and make informed decisions for themselves. The submission argues that mature adults should have the right to their own decisions and support based on their values.
- **Definition of Conversion Practices**
AFIC raises concerns about the broadness and lack of clarity in the proposed definition of conversion practices. The organisation argues that genuine faith-based interactions and discussions, even if they involve expressing normative theological principles, should not be criminalised.
- **Civil Law Responses**
While AFIC acknowledges the importance of addressing harmful practices through civil law mechanisms, the organisation suggests that the process must prevent arbitrary or onerous complaints.

Overall, AFIC opposes the current proposal and recommends that the fundamental issues raised in the submission, including religious freedom, parental rights, and an individual's ability to seek support aligned with their faith, should be addressed through more thorough consideration and consultation.

Yours faithfully



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