

Submission on the Conversion Practices Prohibition Bill 2026

Consultation draft — Tasmanian Greens

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Submitting as: an organisation

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1. About the submitter and the scope of this submission

1. This submission is made by Active Watchful Waiting Inc. (AWW Inc.), an Australian organisation that conducts systematic regulatory compliance audits of private gender clinics and clinical guidelines against Australian Consumer Law, health-advertising law, and informed-consent standards. Its method is that of a compliance auditor and context-driven test analyst: it asks, of a claim made to a patient or embedded in a guideline or a statute, whether that claim can be verified against something external to itself.
2. This submission is not a contribution to the debate about identity, and it should not be read as one. It does not address the single-sex services, sport, birth-certificate, or anti-discrimination questions that other submitters may cover, and it takes no position on them. It is confined to one structural feature of the Bill: the testability of the term on which its central prohibition depends, and the consequences of that untestability when the term is carried from anti-discrimination law into criminal law and clinical practice.
3. AWW Inc. supports the prohibition of the conduct at which the criminal offences in Part 2, Division 1 are properly directed: deliberate, coercive attempts to change or suppress a person through force, threat, shame, or sustained pressure. That conduct is real and harmful, and a law that reaches it is worth having. The concern set out below is not with that objective. It is with the definitional foundation the Bill uses to pursue it, and with a narrow but serious class of cases, involving minors, at the margin of that definition.

2. Summary position

4. AWW Inc.'s position is twofold.
5. **Primary.** The sexual-orientation limb of the offence is coherent and defensible. Sexual orientation is defined by reference to an external, verifiable category (the sex of the persons to whom one is attracted). A prohibition on coercive practices directed at that category therefore has a stable object. The gender-identity limb does not. As defined in the Anti-Discrimination Act 1998 and imported by clause 4, gender identity is self-referential and supplies no external referent. The verbs “change”, “suppress” or “eradicate” therefore have nothing stable to act upon. The offence has no coherent object. For that reason the gender-

identity limb should be removed from the criminal offences in Part 2 and from the civil-response scheme so far as it applies to gender identity.

6. **Fallback.** If gender identity is retained, then the Bill's exemptions and interpretive principles must be clarified so that non-directive, exploratory clinical and parental responses are protected as clearly as affirmation already is. Without that clarification the definitional instability identified above produces a structural asymmetry that is most acute for children under clause 10.

3. The term at the centre of the Bill cannot be tested

7. Clause 5 makes conduct a "conversion practice" where it is directed at a person on the basis of their gender identity and carried out for the purpose of changing, suppressing or eradicating that gender identity, or inducing the person to do so. Everything the Bill goes on to prohibit depends on that phrase, and therefore on the meaning of "gender identity".
8. Clause 4 supplies that meaning by reference to the Anti-Discrimination Act 1998. Under that Act, gender identity is defined as a person's gender-related identity, appearance, mannerisms or other gender-related characteristics, with or without regard to the person's designated sex at birth. The definition is self-referential: it defines "gender identity" partly in terms of "gender-related identity". It supplies no external referent, no criterion by which an observer could determine whether the definition applies in a given case, and no boundary at which it stops.
9. This is not, in itself, a criticism of the Anti-Discrimination Act. In anti-discrimination law a self-referential definition is administrable, because the operative question is factual and external: was the person treated less favourably because of the attribute they claimed? The definition functions as a shield, and the decision-maker never has to determine whether the claimed identity is "correct".
10. Clause 5 asks the definition to do something it was not built to do. It makes the construct the hinge of a criminal offence, where the operative question is no longer "was this person treated adversely because of a claimed identity?" but "was this conduct carried out for the purpose of suppressing or changing that identity?" To answer that, a decision-maker must be able to say what would count as suppressing or changing the identity — which requires the identity to have some content against which conduct can be measured. A construct defined only by self-report does not supply that content. Clause 5(2) confirms the difficulty: it makes it irrelevant whether the conduct rested on an incorrect assumption about the person's gender identity, fixing the self-report as the operative fact and removing any question of whether the identity, as claimed, corresponds to anything external.
11. In audit terms, this is an untestable requirement: it has no verifiable input, no defined boundary, and no way to determine whether it is met independently of the subject's own assertion. An untestable requirement can be lived with in a protective anti-discrimination provision. Carried into the criminal law, it means the line between lawful and unlawful conduct is drawn around a term that cannot, in principle, be checked.

12. The difficulty is not merely that the construct is externally unverifiable. It is that the construct, as defined, supplies no independent object for the verbs in clause 5(1) to act upon. Sexual orientation is anchored one step removed: it is a disposition toward a category (sex) that is itself externally verifiable. Gender identity, by design, points only back at itself. A prohibition on “conversion” therefore has a coherent object in one limb of the offence and none in the other. The distinction is one of referent, not of fixity. It does not depend on either attribute being stable over a life: a person's orientation may shift, but it still points at an externally verifiable category, whereas a self-defined gender identity points only back at itself. The objection that orientation, too, can change therefore leaves the asymmetry untouched.

4. How the untestable term operates: affirmation and exploration

13. Sections 4 to 6 address the position if the gender-identity limb is retained. The drafters have anticipated part of this problem by providing exemptions in clause 5(3): for healthcare provided by a registered health practitioner (5(3)(a)); for genuinely facilitating a person's coping skills, development or identity exploration (5(3)(b)); and for parental discussion and religious expression (5(3)(c)). AWW Inc. acknowledges that these exemptions are more developed than those in some comparable Bills, and that clause 5(3)(b) in particular is intended to protect exploratory work.
14. The difficulty is that each exemption is defined by contrast with the prohibited purpose in clause 5(1) — “changing, suppressing or eradicating” — and that contrast is only as determinable as the underlying construct. Where a child presents with distress about their gender, a clinician or parent who does not immediately affirm the child's self-description, but instead holds the question open while other explanations are considered, is engaged in conduct that can be characterised in two opposite ways. On one description it is genuinely facilitating identity exploration, and exempt. On another it is conduct directed at changing or suppressing the child's stated identity, and an offence. Nothing in the definition determines which description is correct. The characterisation decides the case, and the definition offers no way to test the characterisation.
15. Clause 8(c) then places a thumb on the scale. It directs that, in the operation, administration and enforcement of the Act, a person's gender identity is “not broken and does not require fixing, changing or suppression”. As applied to sexual orientation, that principle is unobjectionable. As applied to a child's early, and possibly transient, self-description of gender, it frames the self-report as a settled attribute to be preserved — and therefore frames the exploratory response, which declines to treat it as settled, as the very “changing” the principle condemns. The principle does not distinguish a stable identity from an unsettled one; it protects both alike, and in doing so narrows the exploration exemption precisely where exploration matters most.
16. The health-services exemption carries the same instability. Clause 5(3)(a) exempts a service only where the practitioner assesses it as clinically appropriate in their reasonable professional judgement and where it complies with all relevant legal, professional and ethical requirements. That keys the exemption to the prevailing professional standard. Where that

standard is to affirm, affirmation is exempt by definition, and the practitioner who departs from it in order to explore first is the one whose reasonable professional judgement is open to challenge. The exemption is therefore not neutral between affirmation and exploration; it is only as protective of exploration as the prevailing model allows — and that model is now the subject of significant international divergence, following the Independent Review of Gender Identity Services for Children and Young People (the Cass Review, 2024) and the evidence reviews that followed it.

17. The consequence is a structural asymmetry that the Bill's text does not state but its architecture produces. Affirmation of a self-reported identity is protected as clinically appropriate care and as support. The exploratory alternative — declining to fix the question while a child is still developing — is left on the wrong side of a line the definition cannot draw and that clause 8(c) draws against it. AWW Inc. does not contend that the Bill mandates affirmation. It contends that the Bill cannot reliably distinguish exploration from suppression, and that its interpretive provisions resolve the resulting uncertainty in one direction only.

5. The acute case: offences directed at children (clause 10)

18. The asymmetry has its gravest effect in clause 10. Clause 9 (conversion practices causing injury) at least requires injury, or recklessness as to injury, before the offence is complete. Clause 10 removes that requirement: a conversion practice directed at a child is an indictable offence, and clause 10(2) provides that it is not necessary to prove that the conversion practice caused injury to the child.
19. For a child, therefore, the offence reduces to its definitional core: intentional conduct directed at the child for the purpose of changing, suppressing or eradicating gender identity. If — as section 4 sets out — an exploratory or non-affirming response can be characterised as conduct directed at changing or suppressing a child's stated identity, then that characterisation is, by itself, sufficient for an indictable offence. There is no injury element to supply a further, testable threshold, and clause 8(c) directs the characterisation.
20. Why this matters for children specifically is a point on which AWW Inc. claims only what can be sustained. It does not assert, and does not need to assert, any figure for how often a child's gender-related distress resolves in one direction or another. It relies only on the more modest proposition, which the Cass Review and the clinical literature it examined support, that a child's self-understanding in this area is frequently unsettled, that social transition is not a neutral act, and that some children's distress reflects matters — including same-sex attraction, trauma, or neurodevelopmental difference — that exploration is designed to bring into view and premature affirmation is apt to close off. Where the law attaches indictable liability to the act of exploring rather than affirming, and removes the injury threshold when the subject is a child, it discourages the one response whose purpose is to keep a child's options open while those matters are considered.
21. This is a narrow and precise concern, and AWW Inc. is at pains to distinguish it from the broader claim, made by others in this consultation, that the Bill would criminalise "ordinary parenting". It makes no such claim. Its concern is confined to the drafting margin identified

above: that the parental exemption in clause 5(3)(c)(v) protects only parental “discussing” of these matters, and only where that discussion is not engaged in as part of a conversion practice, so that a parent who does more than discuss — who declines to facilitate a social transition, or seeks a further clinical opinion before one proceeds — is not clearly within the exemption, while clause 10 attaches liability without any need to show harm. The remedy is not to weaken the Bill, but to define its central term more precisely.

22. These features combine into a defect that matters most in the criminal law. The offence and the exemption on which a defendant must rely are defined by contrast with one another across the same untestable term, so that the same conduct can answer both descriptions at once: the crime and the defence cannot be applied in harmony. An offence in that state does not give the fair warning the criminal law requires — a person cannot know in advance on which side of the line their conduct falls. Ordinarily, ambiguity in a penal provision is resolved in favour of the accused. Clause 8(c), however, directs that the Act be administered and enforced on the footing that a gender identity is not to be changed or suppressed — an interpretive command that pushes resolution the other way, against the party who explored rather than affirmed, and so risks displacing the protection the accused would otherwise have. AWW Inc. records the conflict plainly: **a criminal offence should not be enacted in terms whose central boundary must be settled by later litigation, still less on a footing that tilts that litigation against the person acting in good faith.**

6. Informed consent and the health-services exemption

23. This section develops a point implicit in clause 5(3)(a). It can be read independently of the preceding argument.
24. Clause 5(3)(a) exempts a health service only where it complies with all relevant legal, professional and ethical requirements. Valid informed consent is such a requirement. In Australian law the content of that requirement is set by *Rogers v Whitaker* (1992) 175 CLR 479: a practitioner must disclose information that a reasonable person in the patient’s position, or the particular patient, would be likely to attach significance to in deciding whether to undergo a proposed course of action. The High Court in *Rogers* rejected the proposition that professional consensus sets the standard of disclosure.
25. This bears directly on the exemption. Where a clinical pathway for a minor proceeds on the premise that the child “has a gender identity” that should be affirmed, the contested and untestable status of that premise — that it rests on self-report, has no diagnostic test or agreed boundary, and is the subject of the international evidentiary divergence noted above — is itself information a reasonable parent may attach significance to. It goes not to the side-effects of a particular intervention but to the foundation of the pathway. Where it is not disclosed, consent may not be valid; and where consent is not valid, the service does not cleanly satisfy the “complies with all relevant ... requirements” condition on which the exemption depends.
26. The point for present purposes is not to resolve any individual case. It is that the health-services exemption already incorporates the informed-consent standard, and that the same

untestability which makes “gender identity” a fragile criminal element also makes the contested status of the clinical premise a matter a rigorous consent process would disclose. A Bill that protects affirming care under clause 5(3)(a) should not be read as relieving that care of the disclosure the exemption’s own terms require.

7. Extra-territorial application (clause 6)

27. Clause 6 extends the Bill to conduct occurring partly or wholly outside Tasmania where there is a real and substantial link with the State, including where the effects of the conduct are felt in Tasmania. AWW Inc. notes only that this extends the reach of offences built on the untestable definition beyond the jurisdiction, and does so in combination with a civil response scheme under which any person, whether or not affected, may make a report (clause 24) and the Commissioner may investigate serious or systemic practice on their own initiative (clauses 34–35). The certainty concern identified in section 3 is not confined by the State’s borders, and the breadth of who may set the scheme in motion increases the importance of a definition that can be applied consistently. AWW Inc. makes no submission that any particular cross-border activity should or should not be caught; its point is confined to definitional certainty.

8. What this submission is not

28. To avoid any misreading, AWW Inc. records the following. It does not submit that the Bill criminalises statements of fact, ordinary parenting, or robust public debate; the thresholds in the criminal offences are not met by such conduct, and AWW Inc. does not suggest otherwise. It does not oppose the prohibition of the coercive practices at which the Bill is aimed. Its submission is structural: the gender-identity limb of the offence has no coherent object and should be removed. If that limb is retained, the exemptions and the principle in clause 8(c) must be clarified so that non-directive exploration is protected as clearly as affirmation, especially for children under clause 10.
29. AWW Inc. does not submit that gender-affirming care is a conversion practice; it makes a narrower and more telling point. AWW Inc.’s audit work has found that affirming pathways frequently do not meet the informed-consent requirements the exemption presupposes — alternatives are not presented, material risks are not disclosed, and the understanding of the minor or parent is not verified, contrary to the Australian commission on Safety and Quality in Health Care’s (ACSQHC) informed-consent standards. Care of that kind does not satisfy the condition in clause 5(3)(a), and so does not attract the exemption. Once outside it, non-compliant affirming care that, in a given case, redirects a same-sex-attracted child away from a same-sex future can be characterised as conduct “directed at changing a sexual orientation” just as readily as an exploratory clinician who holds the question open can be characterised as “suppressing a gender identity”. Neither characterisation is established, and AWW Inc. asserts neither. The significance is that the same untestable term allows the offence to be pointed in either direction, at either practitioner — which is the clearest demonstration that the term supplies no stable object, and the strongest reason it should not ground a criminal offence at all.

9. Recommendations

30. AWW Inc. recommends:

(a) Primary recommendation

That the references to “gender identity” be removed from the definition of conversion practice in clause 5 and from the criminal offences in Part 2 (and consequentially from the civil-response scheme), so that the prohibition is confined to practices directed at sexual orientation. That confinement would retain a coherent, historically grounded offence while eliminating the definitional instability that arises when the same offence structure is applied to a construct that has no external referent.

(b) Fallback recommendation

If gender identity is retained, then:

(i) an interpretive provision be inserted to make clear that non-directive, exploratory clinical or therapeutic work — which neither affirms nor seeks to change a person’s stated gender identity, but keeps the question open while the person’s development and any co-occurring matters are considered — is genuinely facilitating identity exploration within clause 5(3)(b), and is not conduct for the purpose of changing, suppressing or eradicating gender identity within clause 5(1);

(ii) clause 8(c) be qualified, or the interpretive provision be drafted, so that the principle is not applied to treat a child’s unsettled or developing self-description as a fixed attribute whose exploration constitutes “changing” it; and

(iii) the parental exemption in clause 5(3)(c)(v) be widened from “discussing” to encompass reasonable, non-coercive parental decisions about whether and when to facilitate steps such as social transition, consistent with the parent’s ordinary role in the care of a child.

31. Illustrative drafting for the interpretive provision in recommendation (b)(i) is set out in Annex A. It is offered only as an aid to the drafters.

Annex A — Illustrative interpretive provision

The following is illustrative only. It is intended to show the shape of a provision that would place non-directive exploration unambiguously outside the prohibited purpose, and is not proposed as final drafting.

For the purposes of section 5 —

- (a)** conduct is not carried out for the purpose of changing, suppressing or eradicating a person’s gender identity merely because it involves open, non-directive exploration of the person’s experience, development, and any co-occurring factors, undertaken without a predetermined outcome; and
- (b)** without limiting section 5(3)(b), the provision of such exploration to a child, including by a registered health practitioner or a parent, is taken to be genuinely facilitating the person’s development and identity exploration to meet the person’s needs.