

Daniel Andrew's conversion therapy bill threatens journalists, a free media and Australia's democracy

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Recommendations:

A cross-media campaign is needed to oppose this Bill.

If the Bill passes in Victoria, the Federal government must implement overriding federal legislation to protect our freedoms and democracy.

As it stands, the Victorian government's anti-conversion therapy bill is a totalitarian threat to every Australian journalist and media organization's freedom of speech. It is far worse and far more draconian than section 18C of the *Racial Discrimination Act*. Is like 18C on steroids.

Victoria's 45-page *Change or Suppression (Conversion) Practices Prohibition Bill 2020*¹ has passed Victoria's lower house and currently stands to pass unopposed by the Liberals and Nationals in the upper house in early February 2021.

The Bill can best be explained by illustrating what it can do to myself and leading Sydney pediatrician Professor Dr John Whitehall, who has repeatedly criticised the experimental use of puberty blockers to gender questioning young people by gender clinics. We wrote a book, *Transgender: One Shade of Grey – the legal consequences for man & woman, schools, sports, politics, democracy* in 2018. It is a 450-page textbook and commentary on the political ideology of transgenderism.

The Victorian conversion therapy Bill stands to criminalise our book. It stands to criminalise any commentary or discussion that would question the gender fluid world view that says human sexuality is fluid and can be changed at will, or commentary that would support the biological world view that human sexuality is binary, that genetically, hormonally and according to our reproductive functions, humans are binary male or female.

The Bill aims to make it a criminal act to counsel a person not to change their sex or gender identity. It is vital to understand that "a change or suppression practice" extends to merely "inducing" a person "to change or suppress" their self-chosen gender identity [clause 5(1)(b)(ii)].

1 <https://www.legislation.vic.gov.au/bills/change-or-suppression-conversion-practices-prohibition-bill-2020>

Transgender theory says a person's gender identity can mean:

- identifying as the opposite of your birth sex (being trans male-to-female or trans female-to-male) or:
- being at a point on a spectrum between 100 per cent male and 100 per cent female (say, 30 per cent female and 70 per cent male); or
- identifying as non-binary, using a term like gender queer, pangender, androgynous, etc.; or
- identifying as genderless, i.e. having no sex or gender.

Our book could be declared as causing a criminal "injury" or "serious injury" if, for example, a person said that reading the book caused them suppress one of these self-chosen gender identities because it questioned what the term "gender identity" really means, because the book contained warnings about known and unknown dangers of puberty blockers to physical and mental health, because it said that the sex-based rights of biological women should be legally protected over the newly created rights of those who have chosen a gender identity other than their birth sex.

Even more concerning, injury can be caused not only by our book, but by comment from media people supporting the book and, indeed, by any journalism along the lines of our book.

Moreover, the Bill's scope of prosecution extends not just to journalism in Victoria, but to any media conduct "remotely (including online)" [clause 5(4)] that causes injury in Victoria, even if the media comment is "outside, or partly outside, Victoria" [clause 8(1)(a)]. Indeed, the Bill adds two more clauses to emphasise that it operates in relation to all media "conduct as if it has been engaged in wholly within Victoria". [clause 8(2), (3)]

Clause 8 provides that the Bill's punitive, draconian provisions apply across the whole of Australia when injury is caused in the state of Victoria.

Hence, not only could *Transgender: One Shade of Grey* be declared a criminal conversion therapy practice, but comment by any journalist, commentator or blogger in newspapers, online, social media, videos, podcasts and television that could lead to a person in Victoria saying that they were "induced" by that commentary to suppress or change their gender identity could lead to a criminal prosecution.

Further, a journalist in Queensland or NSW could be hauled before a Victorian tribunal to face criminal prosecution, particularly if they had repeatedly outspoken on the transgender issue. Their commentaries can be considered as "a group" of comments to have "cause(ed) injury". [clauses 10(2)(b); 11(2)(b)]

Prison and fines for injuries

What constitutes "injury" is very broad.

The Bill says that the definition of "injury" is found in Victoria's *Crimes Act 1958*.² Injury can be "physical injury" or "harm to mental health" [S 15], which is wide open to interpretation. A person needs only to have a health practitioner sign a form saying that this person has suffered stress, anxiety or could become depressed as a result of media commentary, claim injury and instigate draconian prosecution.

Under the Bill, a journalist or commentator could then face up to five years in prison or a maximum fine of \$99,132,³ or both. But if the media corporate organisation employing the journalist

² http://classic.austlii.edu.au/au/legis/vic/consol_act/ca195882/

³ 600 Penalty Units at \$165.22 per unit.

was considered to be campaigning on the issue, and thereby causing injury, it could be fined \$495,660. [clause 11(2)(c)]⁴

Should the person claiming injury say they that the media commentary has caused them to have suicide ideation, then this would be grounds for finding the journalist guilty of “serious injury”, meaning “endangering life” under the *Crimes Act* [S 15]. In which case, the journalist or commentator could face up to 10 years in prison and/or a fine of up to \$198,264.⁵ If the media corporate was found to be supporting the journalist and campaigning on the issue, it could be fined \$991,320. [clause 10(2)(c)]⁶

Claims for such injuries would not be surprising.

There has been an ongoing campaign by the trans lobby to take complains to the Press Council against any mainstream journalist criticising transgenderism or children being medically transitioned, or the push to entrench transgender ideology in federal state and territory laws.

This extended to an attempt in Tasmania to take Senator Claire Chandler to an anti-discrimination tribunal for supporting protests by biological women at natal males who identify as female playing in female sports. Chandler may have called their bluff in Tasmania, but she would be less likely to escape criminal prosecution under Victoria’s planned conversion therapy law.

Further, trans advocates regularly argue that unless minors are allowed to undertake medical transitioning treatments, they will self-harm or suicide. There is little evidence for this claim, yet such claims could easily be made to establish a “serious injury” case under this Bill.

Criminalise advertising

If myself and Dr Whitehall were convicted of causing “injury” or “serious injury” to a person as a result of them reading our book, then all those involved with publishing and advertising the book can also face the charge of “advertising a change or suppression practice”. [clause 13]

The Bill makes it a criminal offence when another person “publishes or displays, or authorises, the publication or display of, an advertisement or notice” of a practice (like reading our book) that “could reasonably be understood as indicating, that the person or any other person intends to engage in one or more change or suppression practices ...” [clause 13(1)(a), (b)]

Hence, the publisher of our book, the printer, any journalist, blogger, commentator, media outlet favourably reviewing the book, any physical bookstore, Amazon or other online bookstore could be held liable for advertising a change or suppression practice. The penalties for a person advertising the book is up to \$9,913.⁷ For a body corporate, like the printer or bookstore, the fine is up to \$49,566. [clause 13(1)(b)]⁸

Far reaching prosecutions of body corporates

Criminalised activity doesn't end with journalists, authors and publishers.

4 3000 Penalty Units at \$165.22 per unit.

5 1200 Penalty Units at \$165.22 per unit.

6 6000 Penalty Units at \$165.22 per unit.

7 60 Penalty Units at \$165.22 per unit.

8 300 Penalty Units at \$165.22 per unit.

Both individuals and body corporates can be found guilty for having in any way caused a person to suppress their gender identity.

The Bill says that “If an officer of a body corporate engages in conduct that constitutes an offence ... the body corporate must be taken to have also engaged in conduct constituting the offence, and may be proceeded against and found guilty of the offence whether or not the officer has been proceeded against or found guilty of that offence”. [clause 15(2)]

Hence, if a media organisation was supporting a journalist questioning the transgender agenda in any way, and whether the journalist is found guilty of “inducing” a person to suppress their gender identity and of engaging in conversion or suppression practices or not, the media organisation could still be found guilty of such an offence.

It appears that this clause applies not only to media organisations, but to every person and organisation that in any way supports the biological world view that humans are biologically male and female, and that in any way supports the sex-based rights of women.

Here are just some examples.

Prosecuting sports women? Around the world, biological women are protesting at natal males who identify as female playing in women’s sports. Liberal Senator Clair Chandler says that she has received hundreds of complaints from women in Australia who are afraid to speak out for fear of being labelled bigots.

If these women were to complain publicly, regardless of what state they are in, under the Daniel Andrews legislation would they be at risk of being convicted and fined for practicing conversion therapy if their complaints were to stop a Victorian male-to-female transgender from identifying as female, let alone discourage the transgender person from seeking to play in female sports?

Prosecuting corporate sporting clubs? If a sporting club in Queensland or WA were to stop such male-to-females playing in female competitions, and cause “injury” to a trans male-to-female in Victoria who was “induced” to suppress their gender identity by not seeking to play in a women’s sporting competition, would the club be hauled before a Victorian tribunal or court and found guilty of corporate criminality? If they repeatedly opposed such participation, could they be “investigated” for “systemic or persisting ... change or suppression practices”? Will sporting clubs in Victoria effectively be banned from even questioning trans male-to-females playing in female competitions? [clause 34(a)]

Criminalising parents: Parents who seek treatment/counselling outside Victoria for their child, other than affirmation of the child’s gender transition, could be found guilty of such an offence and imprisoned or fined. The Bill would make it an offence, punishable by up to 2 years imprisonment and/or a fine of up to nearly \$39,653⁹ to take a person out of Victoria to access what in Victoria would amount to a “change or suppression practice.” In the case of a body corporate, the fine would be up to \$199,464. [clause 12(e)]

Hitting local council swimming pools? Could charges could be brought against a council in NSW or Queensland or Victoria that publicly refused to allow biological males, young or old, who identify as female to use the female showers, change rooms and toilets? Would publicity over their policy be deemed to cause injury to a male-to-female person, or a group of such persons in Victoria, and make even an interstate corporate body subject to Victoria’s draconian conversion therapy law?

Prosecuting schools? Could schools could face action for stopping natal males who identify as female from accessing girls’ dormitories, scholarships for girls, let alone sports and safe spaces? At a time when child on child sex abuse is rife, and when a biological boy only has to self-identify as fe-

9 240 Penalty Units at \$165.22 per unit.

male to be granted the same sex-based rights as females, this development is particularly concerning. How does this Bill stand in relation to exemptions for the operation of faith-based schools under both the Victorian *Equal Opportunity Act* and the federal *Sex Discrimination Act*?

Ending affirmative action jobs for Victorian women? Will employers who insist on reserving senior employment positions for biological women be criminalised under this conversion therapy legislation for insisting that these positions are only available to biological women, and in doing so cause injury to male-to-female transgender persons in Victoria?

Ending female only gyms? Will female only gyms in other states, that publicly refuse to allow male-to-female transgenders to join, face prosecution in Victoria if their public protests cause injury to male-to-females in Victoria? Will women only gyms in Victorian face prosecution under this Bill?

Outlawing lesbian organisations? Will a NSW lesbian organisation that publicly refuses to allow natal males who identify as female and lesbian to join their organisation risk prosecution in Victoria if their actions are deemed to cause injury to male-to-female lesbians in Victoria?

Prosecuting misuse of pronouns? Gendered pronouns are complicated. A trans male-to-female may insist on being referred to as “she”. A non-binary person may insist on being called “they” or “them”. Two trans male-to-females may insist on being called lesbians, while a trans male-to-female in a relationship with a biological female may also insist on being called a lesbian.

Will people who publicly oppose, or negligently fail to use, gender neutral pronouns, or to refer to a person by their preferred pronoun based on their gender identity, be prosecuted for causing injury to transgenders?

Stifling medical research? Will those conducting medical research into the effects of puberty blockers, sex change hormones and sex-change surgical procedures be prosecuted if they publicly discuss adverse consequences of these procedures and thereby cause injury to transgenders who become anxious and concerned and suppress their chosen gender identity?

Outlawing the biological world view? Will people who firmly adhere to the male and female, binary world view for biological and/or religious reasons be prosecuted for causing injury to transgenders?

Prosecuting teachers, secular and religious? What will happen to biology teachers, whether secular or religious, when their classes cover both animal and human sexuality? Will teaching that in all species, beings are either biologically male or female according to their chromosomes, hormones and reproductive potential be regarded as a form of conversion therapy practice?

Victoria’s sex-based medical treatment contradiction: Despite the Bill insisting on the absolute legal recognition of a person’s gender identity, when it comes to medical treatments the Bill reverts to natal sex-based medicine. It allows for a health service provider to provide a “practice or conduct ... that is ... necessary to provide a health service”. [clause 5(2)(b)]

This allows for a pregnant female-to-male to be treated for a female pregnancy, or for breast or cervical cancer.

It allows for a male-to-female transgender to be treated as a male for prostate issues or testicular cancer.

It seems that despite draconian punishments, fines and imprisonment for any actions deemed to suppress a person’s gender identity, the Bill recognises the need to treat a person for sex-based medical conditions according their natal sex!

More draconian than Section 18C

The Bill is explicit in its intent. The first line says the aim is to not only to “prohibit change or suppression practices, but “to denounce” such practices. [clause 1(a)]

What we have analysed above is only the first 15 pages of the 45-page bill. The rest of the Bill includes:

- Draconian powers of investigation given the Victorian Human Rights and Equal Opportunity Commission (HREOC);
- Extraordinary civil response powers to issue compliance notices to conform with the legislation;
- Extraordinary civil response powers for HREOC to re-educate offenders, both individuals, corporates and unincorporated bodies.

Not only are Victorians threatened by this legislation, but every Australian who holds and expresses the biological world view that humans are biologically, immutably male and female, and every Australian who defends the sex-based rights of women and men.

The Victorian conversion therapy Bill aims to force the transgender, or gender fluid, world view on all Australians in every state of the Commonwealth, when the opposing view is expressed and deemed to cause injury to a person or persons in Victoria. It is far more comprehensive in its coverage than Section 18C of the federal *Racial Discrimination Act*.

This Bill is a threat to Australia’s most cherished freedom of speech and freedom of the press, which are necessary for a tolerant democracy.

Should the Bill pass in Victoria, the Federal government must implement overriding federal legislation to protect our freedoms and democracy.

If the Bill is not meant to shut down media and public comment on the transgender world view, on threat of criminal sanctions, then Premier Daniel Andrews needs to explicitly exclude media and public comment from the operation of the Bill.