The Greens' draft legislation *does not implement* the Tasmanian Law Reform Institute recommendations.

Many of the recommendations from the Tasmanian Law Reform Institute (TLRI) are ignored by the draft, while many of the draft's most significant provisions were never recommended by the TLRI. In several important respects, the draft directly contradicts the approach and reasoning adopted by the TLRI.

The draft uses a much broader definition of "conversion practice" than the TLRI recommended. The TLRI proposed a "course of conduct" that was sustained or occurred on more than one occasion, and envisioned most of the provisions to be directed at "treatment" within the *Mental Health Act*. The Greens' draft instead uses the much broader expression "practice or conduct", allowing a single conversation, prayer or interaction to be captured.

The draft also abandons the TLRI's carefully limited approach to criminal law. The TLRI recommended that criminal sanctions operate only as a "backstop measure of last resort" for conversion practices that actually caused serious harm. The Greens' draft instead permits criminal liability where no injury occurs and creates a separate indictable offence for any conversion practice directed towards a child, expressly providing that no injury needs to be proved.

The following TLRI recommendations are either partially or fully ignored in the draft legislation:

2. The *Mental Health Act* should contain an express provision that a person must not purport to or actually undertake an assessment or treatment of another person's sexual orientation.
3. A provision should be added to the Mental Health Act to clarify that a person is not to be taken to have a mental illness by reason only of that person's gender identity or expression.

   For the avoidance of doubt, this recommendation does not extend to discussions relating to gender identity as part of a legitimate mental health service by an appropriately qualified health professional.
4. Tasmanian health law should prescribe the professionals who may assess and treat mental health conditions relating to gender identity or expression (gender dysphoria/incongruence) and the clinical guidelines which must be adhered to as part of that care. Tasmanian law should prohibit persons who are not qualified professionals from purporting to assess (diagnose) or treat people in relation to their gender identity or expression.

5. Tasmanian health law should be amended to stipulate that a person must not purport to or undertake any assessment or treatment of another person in relation to their sexual orientation* or gender identity unless they are expressly authorised to do so under a Standing Order and they act consistently with Clinical Guidelines under the Mental Health Act.
6. A new provision should be included in Tasmanian health law (preferably the Mental Health Act) to allow public health officers, statutory commissions, welfare and guardianship authorities, judicial officers or police to receive, refer and report on complaints about unauthorised mental health or mental health-like assessment or treatment of SOGI attributes to the Health Complaints Commissioner or Ombudsman.

   The Health Complaints Act and Ombudsman Act should be amended to clarify the Commissioner may investigate any matter referred under the Mental Health Act.

9. The Health Complaints Commissioner should investigate and report all findings of direct SOGI conversion practices to the Chief Civil Psychiatrist.

15. A specific offence should be included in the Criminal Code Act 1924 (Tas) to proscribe SOGI conversion practices that cause (or a person was reckless about causing) serious physical or mental harm.

    This provision should clarify that a person acting in good faith and in accordance with Tasmanian health law is not captured by this offence.

The following features of the draft legislation were not recommended by the TLRI:

- the separate no-harm criminal offence for children – s 10;
- broad criminal liability of employers, contractors and volunteers – s 16;
- the general third-party report system;
- Commissioner-initiated systemic investigations;
- compliance notices and enforceable undertakings under a new conversion-practices regulatory scheme;
- removal of the privilege against self-incrimination – s 40;
- the Commissioner's broad practice-guideline power – s 22;
- the Commissioner being expressly not bound by the rules of evidence – s 62;
- the general advertising offence;
- the interstate-removal offences; and
- the broad extraterritorial “effects” provision. Draft Conversion Bill 2026

Significant differences with the Law Reform recommendations

There are a number of key elements of the TLRI recommendations that are significantly different to the Greens' draft legislation:

Definition of conversion practices as a “course of conduct”

TLRI proposes this legal definition:

> Conversion practice means a course of conduct that attempts to change, suppress or eradicate the sexual orientation or gender identity of another person.
>
> ...a person pursues a course of conduct if the conduct is sustained or the conduct occurs on more than one occasion (pp178-9)

In contrast, the Greens draft abandons this and defines a conversion practice as simply a “practice or conduct”. Its own civil-response provisions expressly contemplate an “isolated incident”. A single conversation or prayer can therefore be captured under the draft in circumstances where the TLRI's proposed criminal definition required sustained or repeated conduct.

Limited scope of “Child abuse” designation

The child-abuse concept itself does come from the TLRI. Recommendation 14 proposed adding conversion practices to the institutional child-abuse provisions of the Civil Liability Act, and the report also proposed corresponding changes to the Limitation Act. University of Tasmania

However, the TLRI proposed doing this using its civil-law definition of a conversion practice – a “course of conduct”. The Greens draft instead imports its much broader definition, capable of including an isolated event.

Focus on Mental Health Act and “purported treatment”

The TLRI distinguished direct practices from indirect practices. Direct practices were interventions, procedures or actions aimed at changing or suppressing a person, and the TLRI regulatory response was heavily focused on actual or purported mental-health assessment and treatment.

The Greens draft removes that structural distinction. Its definition applies across ordinary personal, parental and religious settings, whether or not anything is presented as therapy, assessment, treatment or health care.

The TLRI’s recommendations 2–9 are particularly significant. Eight of the sixteen recommendations were directed to health legislation or health authorities. The TLRI envisaged the Mental Health Act, Health Complaints Commissioner and Chief Civil Psychiatrist playing central roles.

The Greens draft instead makes the Anti-Discrimination Commissioner the central regulator, with powers to receive reports, initiate investigations, compel evidence, accept undertakings and issue compliance notices.

Health-professional protection

The TLRI wanted health care regulated through standards established under Tasmanian health law. It envisaged the Chief Civil Psychiatrist prescribing appropriate clinical standards and qualified practitioners acting consistently with them.

Importantly, the TLRI specifically considered the kind of "reasonable professional judgement" exemption now found in the Greens draft and rejected it. It said that formulation may import "too much subjectivity and uncertainty" and preferred an exemption based on good-faith compliance with declared Tasmanian health standards. University of Tasmania

Nevertheless, Greens draft s 5(3)(a) adopts precisely a "reasonable professional judgement" test.

This is a particularly significant departure from the TLRI's reasoning behind their recommendations.

Criminal law a last resort

The TLRI gave significant consideration to the role and limits of criminal provisions. It recommended a very limited role for criminal law, responding only to serious harm committed wilfully or recklessly:

> In the TLRI's view civil remedies for harms caused by SOGI conversion practices should be provided for after a transition period of not more than 24 months from the date of proscription of the practices by law. Furthermore, punitive (criminal) measures should be a backstop measure of last resort for responding to SOGI conversion practices which cause serious harm as a result of wilful or reckless conduct. (p116)

It also noted the "chilling" effect of a Victorian-style regime:

> The scope and application of criminal offences can also have a chilling effect on legitimate conduct. In the Institute's view the perceived harshness of the Victorian legislation — despite the high thresholds and range of exceptions for legitimate medical practices — has resulted in a degree of concern amongst parts of the medical community who work with gender diverse people. (p176)

The TLRI concluded:

> Based on these observations the Institute recommends only using criminal law as a capstone provision to respond to conduct which results in clearly foreseeable and serious harm that is not suitably dealt with under health or anti-discrimination law. The Institute agrees with Tasmania Police that criminal provisions should only be addressed to seriously harmful conduct and not to the ideology or beliefs which drive that conduct. (p177)

The criminal offence proposed by the TLRI required all of the following:

- a course of conduct;
- intentional engagement in the conversion practice;
- knowledge or recklessness about serious physical or mental harm; and
- the course of conduct actually causing serious physical or mental harm.

The Greens draft is substantially broader. Section 9 uses the lower concept of "injury", including temporary injury, and provides an alternative limb where the defendant is merely reckless as to whether injury will occur. Actual injury therefore need not occur under that limb.

More significantly, s10 makes any intentional conversion practice towards a child an indictable offence and expressly says:

> it is not necessary to prove that the conversion practice caused injury to the child.

The TLRI did not recommend this. Its proposed child offence was an aggravated form of its serious-harm offence – the defendant first had to commit the underlying offence requiring actual serious harm.