

31 January 2020

Human Rights Unit, Integrity Law Branch
Integrity and Security Division
Freedom of Religion Consultations
Attorney-General's Department
3-5 National Circuit, Barton ACT 2600

By email: FoRConsultation@ag.gov.au

Dear Freedom of Religion Consultation,

Australian Society of Anaesthetists (ASA) - Second Exposure Draft Religious Discrimination Bill 2019

The Australian Society of Anaesthetists (ASA) would like to thank you for the opportunity to provide a submission to the *Second Exposure Draft Religious Discrimination Bill 2019*. The ASA is the peak body and leading representative of the professional and economic interests of Australian anaesthetists. The ASA was established in 1934, and represents Australian anaesthetists ensuring the high standards of the profession.

The ASA Professional Issues Advisory Committee (PIAC) reviewed the Bill and would like to express the following comments in relation to the adverse effect this Bill would have on medical practice around Australia should it be implemented in its current form.

The following elements of the proposed Bill needs to be addressed, reviewed and developed further:

Right to protect or discriminate

The aim of any medical organisation such as the ASA is to ensure that all patients have appropriate access to medical care when required. Our concern applies to the section of the Second Exposure draft of the legislature which specifies that religious organisations, including hospitals, aged care facilities and accommodation providers would be able to take faith into account when making staffing decisions. This includes giving preference to employees of the same religion as the relevant facility (even if that facility receives public funding). In an anaesthesia environment, the effect of this section would have the potential to significantly impact the ability of some anaesthetists to find or retain work.

As a multicultural nation, Australia should seek to bring medical practitioners of different backgrounds and beliefs into its hospitals, regardless of the religious affiliation of those hospitals. In any profession what matters is the practitioner's medical skills in healthcare, not their faith. Provided a healthcare professional primarily practices based on the Medical Board of Australia's 'Good Medical Practice' guidelines and is respectful of the organization's culture and behaviours that matter, the individual health practitioner's personal beliefs may be considered irrelevant.

In Australia, non-metropolitan medical facilities operate in different fashions, with some having chronic difficulties in providing anaesthesia services. In a local working hospital environment, for example in Hobart, where there are only two private hospitals - one of which is Catholic private hospital - this would create the possibility for a hospital to reject a non-Christian individual for employment with the required skills for the role based on faith alone. The hospital would be in a position to legally make a decision to terminate an individual because they are not a Christian. The delineation may not be the original intent of the legislation, but it may lead to positive discrimination based on the religious grounds. This could ultimately impact patient care adversely.

This further exacerbates the Australian rural healthcare workforce problem. Any shortage or maldistribution of anaesthetists in non-metropolitan areas would be impacted. The Bill may limit the pool of potential candidates based on religious beliefs.

Conscientious Objection

In 2008, the Victorian Government reformed legislation based on conscientious objection to abortion. The Government introduced a clause within the legislation requiring doctors to refer women to another provider. This clause was a mechanism to protect woman's' right to abortion, rather than a mechanism to protect doctors' rights. Unfortunately, negative experiences arose because doctors had directly contravened the law by not referring; attempting to make women feel guilty; attempting to delay women's access; or claimed an objection for reasons other than conscience. Use or misuse of conscientious objection by Government telephone staff, pharmacists, institutions and political groups was also reported. This highlights the dangers of such regulations where conscientious objection has been implemented in legislation.

Access to healthcare

All patients have a right to timely access to the appropriate treatment. This Bill potentially threatens patients access to quality care particularly after hours and in regional and rural settings where the options to a timely referral may be limited.

Summary - Ineffective changes

We support our medical counterpart the Australian Medical Association (AMA) and their submission to the Bill First Exposure Draft, specifically relating to the Medical Board of Australia (MBA) Code of Conduct requirements. In its current form, section 8 (6) and (7) are entirely ambiguous on the validity of the requirements of the MBA, as the MBA is not a part of State or Territory law, but is a condition of employment, and would therefore may be overruled by the provisions of the Religious Discrimination Bill 2019 should this Bill be passed into legislation.

The new changes do not address this and neither do they clarify the concerns raised by the AMA and the ASA.

The impact of this change should have minimum negative impact when prioritising your rights to healthcare. The ASA recognises the current limitation to exercise religious freedom and respects its importance, however, as a medical organisation we believe the right to health care should not be compromised. The final legislation should ensure a reasonable balance between the right to healthcare and religious freedom.

If you require any further information or would like to discuss further, please do not hesitate to contact Ms Jacintha Victor John, Policy Manager on (02) 8556 9720. Alternatively, you can email jvictorjohn@asa.org.au in the first instance should you require additional information.

Yours sincerely,



Dr Suzi Nou
President
Australian Society of Anaesthetists