AMA Submission to the Parliamentary Joint Committee on Human Rights' Inquiry into the *Religious Discrimination Bill 2021*

Thank you for providing the Australian Medical Association (AMA) with the opportunity to make a submission on the *Religious Discrimination Bill 2021.* The AMA is a medico-political organisation representing Australia's doctors (medical practitioners) and medical students. While the AMA exists to promote and protect the professional interests of doctors, we also advocate for the health care needs of patients and communities.

The AMA has provided submissions on both the first[1] and second[2] exposure drafts of the *Religious Discrimination Bill.* In our submission on the *Second Exposure Draft Religious Discrimination Bill 2019* (the most recent Exposure Draft), we raised a series of concerns on the potential for the legislation to undermine medical professional standards, compromise medical education, training and career development, and adversely impact on patient health and well-being and patient access to care.

While the AMA welcomes the removal of provisions in relation to one of our major concerns being conscientious objection, other concerns have not been addressed in the *Religious Discrimination Bill 2021,* meaning the legislation maintains the potential to impact adversely on the medical profession and patient care. Our submission will focus on this issue.

Interaction with Other Anti-Discrimination Laws

In its submission on the *Second Exposure Draft of the Religious Discrimination Bill 2019*, the AMA raised concerns about the relationship between the religious discrimination legislation and existing anti-discrimination legislation.

In this regard, it is essential that the provisions in any *Religious Discrimination Bill* maintain the level of protection offered by existing State and Territory anti-discrimination laws; otherwise, there is potential to further marginalise particular groups of individuals that may already face stigma and uncertainty when trying to access health care or particular health services (for example, LGBTQIA+ people,

[1] AMA submission on the *Exposure Draft Religious Discrimination Bill 2019*.
https://www.ama.com.au/submission/ama-submission-religious-discrimination-bill-2019
[2] AMA submission on the *Second Exposure Draft Religious Discrimination Bill 2019*.
https://www.ama.com.au/submission/ama-submission-second-exposure-draft-religious-discrimination-bill-2019

individuals from culturally and linguistically diverse backgrounds, asylum seekers and refugees, women, young people, individuals with mental health issues).

Implications for Medical Workforce in Relation to Faith-Based Employment Decisions

Section 9 - Areas of public life in which the conduct of religious hospitals, aged care facilities, accommodation providers and disability service providers is not discrimination

In its submission on the *Second Exposure Draft of the Religious Discrimination Bill 2019*, the AMA made the following recommendations (in relation to subclauses 32(8-12) of the Draft Bill), either:

- remove religious hospitals and aged care facilities from this section; or,
- if including religious hospitals and aged care facilities, revise this section in consultation with the medical profession to ensure they do not inadvertently lead to a negative impact on the education, training and career development opportunities for doctors as well as limit patients' access to health care, particularly in rural areas.

We reiterate these recommendations, noting that Section 9 of the Bill continues to include reference to religious hospitals and aged care facilities; however, it is not clear if this section has been updated in consultation with the broader medical profession.

The Bill continues to make it not unlawful under the Act to make faith-based decisions in relation to employment, allowing religious hospitals and aged care facilities to give preference to persons of the same religion as them.

We recognise this section has undergone some minor revision, now clarifying that a religious hospital or religious aged care facility does not discriminate against a person under the Act by engaging in conduct in the context of employment and partnerships where:

- the conduct is engaged in by the hospital or aged care facility in good faith; and
- a person of the same religion could reasonably consider the conduct to be in accordance with the doctrines, tenets, beliefs or teachings of that religion; and
- the conduct is in accordance with a publicly available policy. Where relevant, the policy must comply with any requirements determined by the Minister.

We retain our concerns, however, that these provisions could have a negative impact on the medical workforce and patients' access to health care; for example, if a doctor were:

- refused employment, promotion or career development opportunities because they do not adhere to the same religion affiliated with the hospital or aged care facility; or
- terminated because they act on their clinical/vocational responsibility to provide a health service to a patient that is inconsistent with the religious beliefs of the hospital or aged care facility (i.e. an inherent requirement of the position).

We continue to stress that these provisions may limit the education, training and career development opportunities for many doctors should they be discriminated against by religious hospitals and aged care facilities for not adhering to a particular faith.

Such legislation may cause distress to those already employed at such facilities who may fear dismissal based on their faith (or lack thereof) rather than their abilities. Further, many doctors may choose not to seek employment at all in these hospitals or facilities due to fears of being overlooked for employment, dismissed in the future and/or not being given opportunities for career development.

Any negative impacts on the medical workforce would then limit patients' access to health care, particularly in rural areas, should these provisions result in limiting the number of doctors seeking, or actually selected, to work at a particular hospital or facility. Not only can these provisions potentially affect the number of doctors working at a particular hospital or facility but the diversity and quality of doctors as well, particularly in terms of gender, qualifications and work experience as well as cultural and linguistic backgrounds.

Interaction with Professional Standards

Section 15 – Discrimination on the ground of religious belief or activity – qualifying body conduct rules

The AMA continues to have concerns in how the Bill intends to protect statements of belief as they relate to qualifying body conduct rules, such as those which regulate the medical profession. The Explanatory Memorandum clarify that qualifying bodies include those which certify or register professionals such as health practitioners as well as universities to the extent that they are empowered to grant authorisations or qualifications (such as those conferring medical degrees).

The Bill details that a qualifying body discriminates against a person on the ground of the person's religious belief or activity if the body imposes, or proposes to impose, a conduct rule that has, or is likely to have, the effect of restricting or preventing the

person from making a statement of belief other than in the course of practicing the relevant profession (for example, as a medical practitioner).

The AMA acknowledges that the Bill no longer contains a section on conscientious objection by health care practitioners. This was a recommendation by the AMA in its submission on the second exposure draft.

We continue to have concerns, however, in relation to statements of belief (as described in Section 12), where the Bill will lawfully enable statements (asserted to be based on religious belief) to offend, humiliate, insult or intimidate people or groups such as women, LGBTQIA+ people or persons with disabilities. The prohibition is only waived where a 'reasonable person' would consider the statement of belief would threaten, intimidate, harass or vilify a person or group.

The only real change from the Second Exposure Draft Bill is a slight reduction in the threshold for 'intimidate' which has shifted from 'seriously intimidate' to 'intimidate'. Nonetheless, this threshold leaves extensive scope for bullying, harassment and intimidation of people or groups of people such as women, LGBTQIA+ people and persons with disabilities (to name a few) - that can lead to serious risk of harm to their health and well-being. This particular provision of the Bill may conflict with professional standards and guidance for doctors set by Australia's medical regulators.

In Australia, doctors must adhere to a wide range of medical professional standards, codes and guidelines produced by professional regulatory authorities such as the Australian Health Practitioner Regulation Agency (Ahpra) and the Medical Board of Australia. Ahpra supports the Medical Board, which is responsible for regulating the medical profession, in protecting the public (Ahpra also supports the Boards of the other registered health practitioners).

As outlined in our previous submission, the Medical Board of Australia's Code of Conduct[3] sets out the professional values and qualities of doctors expected by the community. It articulates that while individual doctors have their own personal beliefs and values, there are certain professional values on which all doctors are expected to base their practice, most importantly that:

> *Doctors have a duty to make the care of patients their first concern and to practise medicine safely and effectively. They must be honest, ethical and trustworthy.*

The Code emphasises that patients trust their doctors because they believe that, in addition to being competent, their doctor will not take advantage of them and will display qualities such as integrity, truthfulness, dependability and compassion.

[3] Medical Board of Australia. *Good Medical Practice. A Code of Conduct for Doctors in Australia*. October 2020.

It is important to recognise that there is a potential power imbalance in the doctor-patient relationship. While doctors have the highly specialised knowledge and skills patients require to obtain good quality health care, patients may feel vulnerable or are potentially vulnerable and exposed due to the very personal and physical nature of the doctor-patient relationship.

It is therefore essential that the public have a high level of trust and confidence in the medical profession. If people do not trust doctors, they will seek care elsewhere, or not seek care at all, either of which may prove detrimental to the health and well-being of individuals as well as the wider public health.

Standards of professional behaviour such as the Code of Conduct reflect community expectations of the medical profession. In addition to the regulatory authorities such as Ahpra and the Medical Board, the Australian Medical Association, the Australian medical colleges, relevant government departments of health and agencies and other organisations also develop their own policies, codes and guidelines consistent with medical professional standards.

As raised in our submission on the *Second Exposure Draft Religious Discrimination Bill 2019*, there is scope for this provision in relation to body conduct rules to conflict with professional standards and guidance. For example, Section 2.2 of the Medical Board's Code of Conduct addresses 'Public comment and trust in the profession', stating that:

> *The community trusts the medical profession. Every doctor has a responsibility to behave ethically to justify this trust. While there are professional values that underpin good medical practice, all doctors have a right to have and express their personal views and values. However, the boundary between a doctor's personal and public profile can be blurred. As a doctor, you need to consider the effect of your public comments and your actions outside work, including online, related to medical and clinical issues, and how they reflect on your role as a doctor and on the reputation of the profession.*

In addition, Ahpra's updated social media guidance for health practitioners clarifies that a doctor's social media use, even in a private capacity, could raise concerns about fitness to hold registration as follows:[4]

> *When using social media, just as with all aspects of professional conduct and behaviour, you need to be aware of your professional obligations and other relevant legislation, such as privacy legislation. Where relevant, National Boards*

[4] Australian Health Practitioner Regulation Agency. *Social Media: How to Meet Your Obligations Under the National Law.* November 2019. https://www.ahpra.gov.au/publications/social-media-guidance.aspx

may consider social media use in your private life (even where there is no identifiable link to you as a registered health practitioner) if it raises concerns about your fitness to hold registration. While you may think you are engaging in social media in a private capacity because you do not state you are a registered practitioner, it is relatively easy and simple for anyone to check your status through the register, or make connections using available pieces of information.

As highlighted in our earlier submission, the provisions in the Bill do not necessarily guarantee the application of Ahpra's professional standards were a doctor to speak publicly in a private capacity. A doctor could be subject to a notification under Ahpra should they act in a way inconsistent with standards set by Ahpra and the Medical Board. Currently, such a notification could have potential employment implications for the doctor including possible dismissal; however, under the Bill the doctor would be protected from such dismissal even though they breached their professional standards.

Legislation that conflicts with professional standards may cause serious confusion in the real world where doctors, patients and employers will not know, in their daily work at the coalface, whether professional standards are enforceable, potentially leading to as yet unclear, and possibly adverse, patient outcomes.

While the Bill goes on to state at 15 (2) that a qualifying body does not discriminate against a person if compliance with the rule is an 'essential requirement' of the profession, it is not clear how 'essential requirement' is defined. Paragraph 231 of the Explanatory Memorandum states that an objective assessment of whether a particular rule is an essential requirement for a profession must be determined by reference to the relevant profession. It is imperative that the professions, employers and regulators have clarity on what is an essential requirement of a healthcare profession, and what is not, given these issues are likely to be explored in professional regulatory and disciplinary contexts.

In addition, relevant guidelines would need to be developed in consultation with the medical regulators and wider medical profession to determine how such provisions would operate on the ground.

SUMMARY OF RECOMMENDATIONS

The AMA recommends the following in relation to the *Religious Discrimination Bill 2021*:

- The Bill should maintain the level of protection offered by existing State and Territory anti-discrimination laws.
- Religious hospitals and aged care facilities should be removed from section 9 or, if they are included, the Bill should be revised in consultation with the medical profession to ensure they do not inadvertently lead to a negative impact on the education, training and career development opportunities for

doctors as well as limit patients' access to health care, particularly in rural areas.

- Section 15 should be amended to ensure that qualifying body conduct rules relevant to the medical profession are consistent with, and do not undermine or compromise, medical professional standards. If section 15 is retained, the government should ensure that any guidelines relevant to qualifying body conduct rules for the medical profession are developed in consultation with the medical regulators and wider medical profession to determine how such provisions would operate on the ground.

The AMA strongly advocates that should the Bill proceed, it be further amended to reflect the AMA's recommendations.