

Australian Government
Attorney General's Department
Email: FoRConsultation@ag.gov.au.

To Whom It May Concern,

Re: Religious Freedom Bills – Second Exposure Drafts

Thank you for providing the Australian College of Nursing (ACN) with the opportunity to contribute to the secondary exposure drafts of the *Religious Freedom Bills 2019*. We understand that the Bills focus broadly on protecting individuals with specific religious beliefs or activities as they live and work within their communities. We recognise these Bills will complete Australia's anti-discrimination architecture, sitting alongside existing anti-discrimination acts for race, sex, disability and age. ACN also appreciates that the Bills recognise the role that anti-discrimination laws play in restricting freedom of speech for Australians of faith.

ACN acknowledges the right to religious freedom is a complex and sensitive topic for many in contemporary society, and exercising religious freedom has potential consequences for individuals, nurses and others working in health professional roles. ACN's position to endorse the introduction of the *New South Wales Reproductive Health Care Reform Bill 2019*, and the *Victorian Voluntary Assisted Dying Bill 2017*, demonstrates our intention to support the rights of persons to exercise autonomy in matters related to abortion and voluntary assisted dying. ACN however also supports the right to 'conscientious objection',¹ but not the right to deny patients the information they require to address their own autonomous best interests regardless of what the healthcare practitioner deems to be 'best interests' on ethical or religious grounds.

ACN is also aware that within our communities, there are nurses and individuals who may or may not identify with a specific religious group. Australia comprises a large population of individuals from mainstream and minority groups, each with a unique set of religious beliefs and activities. These include individuals from Culturally and Linguistically Diverse (CALD) backgrounds and Aboriginal and Torres Strait Islander (ATSI) peoples. There is also a growing population of people who do not identify with any religious group. The statistics indicate that among people who have arrived in Australia in the last ten years, 34% identify as Christians, 31% with another religion and 30% reported no religious affiliation.² ACN has consistently expressed its desire to promote equality, dignity and respect for all people including nurses, other healthcare professionals and those receiving and accessing care within Australia's health system. Given the religious landscape of

¹ ACN (2019). Voluntary Assisted Dying in Victoria. Accessed at: <https://www.acn.edu.au/wp-content/uploads/2018/10/Voluntary-Assisted-Dying-in-Victoria.pdf>

² Australian Bureau of Statistics (2017) Census of Population and Housing: reflecting Australia – Stories from the Census 2016. Accessed 2 January 2020 at <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Cultural%20Diversity%20Article~60>

Australia's population, ACN would recommend that the Religious Freedom Bills promote ACN's vision and values as a way of ensuring the health and well-being of all Australians.

Given that nurses are at the forefront of health care, it is essential they provide an environment that demonstrates inclusiveness and respect for diverse populations and for care that is accessible and appropriate to both their health needs and their cultural background. As indicated in standard 2.2 of the *Registered Nurse (RN) Standards of Practice*, the Nursing and Midwifery Board of Australia (NMBA) require RNs to communicate effectively in a manner that is respectful of a person's dignity, culture, values, beliefs and rights.³ Similarly, the International Council of Nurses (ICN) Code of Ethics state that nursing care should be "*respectful of and unrestricted by considerations of age, colour, creed, culture, disability or illness, gender, sexual orientation, nationality, politics, race or social status*" (page 1).⁴ With respect to the Bill and the nursing profession, ACN believes that nurses have a professional, ethical and moral obligation to provide care to patients, however should not be sanctioned for holding traditional religious beliefs and exercising their religious beliefs within the limitations of the law and their professional standards and code of conduct.

Within respectful care there is also the requirement that the nurse does not demonstrate intent to cause patient harm, the patient is not compromised, and alternative care is arranged in a considerate and timely approach to ensure the needs and preferences of the patient are met. This can however become problematic for individuals living in rural and remote communities, where there may only be access to one general practitioner or other healthcare professional. Transferring care due to religious objections, may delay vital care, cause undue stress and significantly impact the health and mental well-being of the patient.

ACN would be supportive of contemporary research and models of care which inform a better understanding of how nurses can meet the requirements to practice professionally and ethically within the realms of religious discrimination legislation. While nurses have a strong educational background in health and professional responsibilities, they do not all have expert knowledge in legal terminology and distinctions. ACN recommends all nurses keep up to date with legislation relating to religious freedom and understanding what constitutes misconduct within these legal codes. More so, if these Religious Freedom Bills are passed by Government, it would be essential for Education providers to provide education on this in their curriculum due to the diversity of individuals receiving care and the diversity of nurses themselves who may hold strong religious beliefs.

³ NMBA (2019). "Registered Nurse standards for practice". Accessed at: <https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards/registered-nurse-standards-for-practice.aspx>

⁴ ICN (2012). "The ICN Code of Ethics for Nurses". Accessed at: https://www.icn.ch/sites/default/files/inline-files/2012_ICN_Codeofethicsfornurses_%20eng.pdf

ACN distributed the secondary exposure drafts to its membership. Feedback and concerns raised are listed below:

- There is the risk that employers, particularly in aged care settings, may have increased rights to discriminate individuals including patients and health care providers on faith-based grounds. Patients should be entitled to access care from health professionals who are appropriately skilled and experienced, and not because they hold a religious view.
- Nurses might now be able to object to procedures or providing health services they have been uncomfortable in performing previously (e.g. abortion).
- There is potential for nurses to be caught between religious freedom legislation, legislation that oversees licencing to practice (including codes of conduct and professional standards) and evidence-base practice models.
- The Bill may allow religious bodies and religious health practitioners to discriminate without having to weigh up the dignitary and material harm done to persons resulting from such discrimination. The Bill appears to fail to confront the true threat to religious freedom, and the threat may be enhanced.
- Parts 2, 3, 5, 6, 7, 8 or 9 of the Religious Discrimination Bill 2019 need reviewing. Freedom of religion and freedom of conscience should be protected by expanding and clarifying the exemptions so that they apply to all Australian individuals and organisations of faith or who are engaged in faith-based initiatives.
- Clause 41 of the draft bill should be reviewed, the exclusion of speech which is 'likely to harass, vilify or incite hatred' should be deleted.
- The legislation may incite a conflict of rights: the rights of the patient to autonomous decisions about their own health versus the right of the healthcare provider to not supply a particular health service. This is of concern for cases of abortion and voluntary assisted dying where healthcare professionals cannot be restricted or prevented from conscientiously objecting to providing or participating in those services based on religious belief as cited in the clause.
- The word 'participation' in this clause must be framed to exclude the provision of meaningful information related to the patient's request. The provision of health information sought by a patient of a service provider is not an undue burden on the freedom of religion and is a basic requirement of good clinical practice. This recommended clarification can resolve that conflict of rights.

As the pre-eminent and national leader of the nursing profession and a community of dynamic and passionate nurses, ACN respects the right for individuals to be treated respectfully and fairly within Australia's healthcare system.

If you have further enquiries regarding this matter, please contact Dr Carolyn Stapleton FACN, Manager - Policy and Advocacy, at carolyn.stapleton@acn.edu.au.

Yours sincerely,



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