

# Submission to the Attorney-General's Department: Religious Discrimination Bill 2019

## The Australian Medical Students' Association and Level Medicine

2nd October 2019

### About AMSA and Level Medicine

The Australian Medical Students' Association (AMSA) is the peak representative body of Australia's 17,000 medical students. Founded in 1960, the student-run organisation informs and connects medical students across Australia (1). AMSA represents the perspectives of future medical professionals who have a duty of care to advocate and provide protection for the health and wellbeing of the community.

Level Medicine is an organisation of junior doctors and medical students who seek to address gender disparity and improve, advocate for and inspire gender equity within the medical profession and in healthcare across Australia with education, advocacy and research (2).

Advocacy for the wellbeing of our patients is inherent to the role of both AMSA and Level Medicine's membership in providing medical care for the community. We make this submission on the proposed Religious Discrimination Bill because we are concerned that it threatens the health outcomes of Australians.

### Position Statement

AMSA and Level Medicine recognise the definition of discrimination as the different treatment of an individual or group a due to their background or characteristics. Discrimination based on the premise of age, disability, race, sex, gender identity, sexuality or relationship status is unlawful according to Australian law (3).

As future and current doctors, AMSA and Level Medicine appreciate the role that religious beliefs and practices have in many patients and clinicians' lives and their health and wellbeing (4). Inappropriately asserted, however, the expression of religious beliefs in healthcare settings can result in discomfort, discrimination or adverse health outcomes.

Government policy must consider the currently inequitable health outcomes for women, LGBTQIA+, gender diverse, Indigenous, culturally diverse and differently abled communities, and provide greater protection against discrimination in institutional settings (5). We are concerned that the proposed Religious Discrimination Bill will expose vulnerable communities to worse health outcomes and more discrimination.

AMSA and Level Medicine oppose the Religious Discrimination Bill for two key reasons:

First, the Religious Discrimination Bill excuses the discrimination of individuals by religious organisations in situations where discrimination would otherwise be unlawful; and

Second, the Religious Discrimination Bill, as Federal legislation, overrides existing safeguards afforded in State legislation mandating a practitioner duty of care to patients seeking access to safe termination of pregnancy, voluntary assisted dying, sexual health services and other essential medical care. Discrimination is an important determinant of health and wellbeing, and undermines important protections for vulnerable people with worse health outcomes.

Specific concerns relate to the potential for the Religious Discrimination Bill to

- Limit access to important reproductive healthcare services such as termination of pregnancy and contraception
- Enable medical practitioners to refuse treatment to individuals based on gender, sexuality and choices made regarding and individuals health
- Enable institutions to select a medical and healthcare workforce that represents a demographic reflective of the ideals of those institutions, rather than the diversity of our communities and the individual patient.

There are Australian communities whose health and wellbeing suffers from a myriad of inequities relating to institutional, cultural and interpersonal discrimination. Discrimination against women, LGBTQIA+, gender diverse, differently abled and ethnically diverse groups requires proactive challenging at multiple levels, including, as a bare minimum, maintenance of existing legislation that prohibits discrimination on the basis of religious beliefs.

## Background

### Medical Professional Expertise

As medical professionals in training, AMSA's student members are educated in the sociocultural factors impacting health. As such, we recognise the health inequalities created by direct and indirect discrimination caused by race, gender, and sexuality and disability status or those that may be singled out by certain religious beliefs or practices such as with marital status. Discrimination against these groups, particularly members of the LGBTQIA+ community, contributes to poor mental and physical health outcomes and may lead to direct refusal of medical treatment (6,7). AMSA and Level Medicine's members recognise their duty of care to individuals within these communities to protect their human rights and to improve individual health outcomes. Currently, it is against the law to justify discrimination as an expression of a perpetrator's religious beliefs. AMSA and Level Medicine have significant concerns that the Religious Discrimination Bill could facilitate faith-based discrimination against vulnerable communities and contribute to worsened health outcomes for the individuals in these communities.

### Conscientious Objection

AMSA recognises the impact that the Australian State and Federal Government, medical professionals, and advocacy campaigners have had in developing non-discriminatory access to sexual and reproductive health treatments, contraception access, procedures for the termination of pregnancy, voluntary assisted dying and the equal treatment of LGBTQIA+ patients. Victorian state law and the Medical Board of Australia's Code of Conduct currently preserves a medical practitioner's choice to conscientiously object to these treatments, however also recognises the duty of care that these practitioners have in referring the patient to services that can deliver these treatments or by providing life-saving medically indicated treatment (8). The Medical

Board of Australia's Code of Conduct also states that doctors should not allow their own moral and religious views to prevent a patient's access to medical care (8). Despite current legislation, some patients in Australia still struggle to access basic medical services such as contraception (9). By providing exceptions to state safe-guarding legislation, the Religious Discrimination Bill enables a medical practitioner to dismiss their duty of care and legalises behaviour that puts patients' healthcare at risk with no safeguard provision that preserves both the clinicians' beliefs and patients' best interests. AMSA and Level Medicine contend that this exemption in the Religious Discrimination Bill is a significant regression in current standards of medical care, and will further contribute to health inequality.

### **Spirituality in Clinical Practice**

Religion and spirituality are often discussed by patients and health practitioners, particularly in the fields of palliative care and oncology. The Medical Board of Australia's Code of Conduct states that "doctors have a vital role in assisting the community to deal with the reality of death and its consequences" (8), and this includes considering a patient's spiritual wellbeing and being open to discussing their own beliefs around death and dying. However, it is important that such discussions remain professionally appropriate and patient-centred at all times, and contribute to a patient's spiritual wellbeing in a culturally safe manner. We are concerned that these Bills provide a legal framework for those doctors who operate outside of this Code of Practice by inappropriately utilising spiritual beliefs to justify practices that may be culturally unsafe for certain patient groups. This is particularly pertinent to LGBTQIA+ patients who are survivors of 'conversion therapy' practices and hence have traumatic experiences rooted in institutionalised homophobia and transphobia.

### **"Inherent Requirements" and Future Medical Workforce**

In addition to overriding the safe-guarding provisions currently provided under State legislation, the Religious Discrimination Act proposes to exempt religious organisations from conduct which would otherwise be unlawful discrimination in situations in which the victim is unable to carry out the inherent requirements of the work. This provision enables religious organisations to restrict new employment opportunities or terminate existing roles (educational, employment or otherwise), if the organisation considers that the person is unable to carry out the inherent requirements of the work (i.e. by failing to uphold the appropriate religious faith of the organisation). This act of discrimination might exclude persons who are of different faiths or members of communities whose qualities and values may be perceived as existing outside of the cultural and/or religious norms of the relevant institutions. AMSA and Level Medicine proudly recognises the large number of LGBTQIA+ identifying medical students who may be discriminated against should the Religious Discrimination Bill be enacted. Faith-aligned academic institutions, hospitals and health services comprise a significant part of the public health and health education infrastructure. The proposed Bill would compromise the current education of medical students and greatly limit future employment opportunities that should justly and equally be available to all medical professionals. AMSA and Level Medicine maintains that it is unlawful to discriminate against people based on gender, sexuality or intersex status, regardless of whether the discrimination is taking place within a religious organisation.

## Recommendations

### **In summary, AMSA and Level Medicine opposes the Religious Discrimination Bill on the basis that it:**

- a. Provides grounds to discriminate against individuals which would otherwise be unlawful;
- b. Overrides protections that must be afforded to vulnerable patients of Australian community, including the LGBTQIA+ community and those seeking specialised treatments;

- c. Jeopardises the basic human rights of individuals to live free of discrimination which will significantly contribute to worsened health outcomes; and
- d. Poses a threat to equitable access of healthcare services such as sexual and reproductive health treatment including contraception, termination of pregnancy and voluntary assisted dying on the basis of religious discrimination without any safeguard provision to ensure healthcare professionals maintain their duty of care.

### Therefore, AMSA calls upon:

1. The Federal Government:
  - a. To reject the Religious Discrimination Bill in its current form, on the basis that it overrides current anti-discrimination legislation that protects minorities and vulnerable communities; and
  - b. To recognise the basic human right to live free from discrimination; and
  - c. To strengthen existing State legislation and develop Federal legislation that safeguards Australian communities from further discrimination based on race, gender, sexuality, and disability; and
  - d. To develop Federal legislation which enshrines and safeguards the right to access healthcare services, such as sexual and reproductive health treatment including contraception, termination of pregnancy and voluntary assisted dying; and
2. All current registered health professionals:
  - a. To support the diversity of their patients and colleagues by opposing the Religious Discrimination Bill in its current form; and
  - b. To support existing State protections for conscientious objection and to recognise the duty of care that conscientious objectors have to provide their patients with access to specialised health care services.

### References

1. About AMSA: Australian Medical Students' Association; 2019 [Available from: <https://www.amsa.org.au/about-amsa>]
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