

**Submission
No 60**

ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND EQUALITY) BILL 2020

Organisation: Royal Australian and New Zealand College of Obstetricians and
Gynaecologists (RANZCOG)

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Submission

Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (NSW)

Thank you for inviting the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) to make a submission to the Inquiry into the proposed *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (NSW)*.

RANZCOG is the lead standards body in women's health in Australia and New Zealand, with responsibility for postgraduate education, accreditation, recertification and the continuing professional development of practitioners in women's health, including both specialist obstetricians and gynaecologists, and GP obstetricians.

RANZCOG has a broad and diverse membership covering the full spectrum of religious beliefs. As a College, we are committed to inclusion and non-discrimination, and therefore support in principle the introduction of protection against discrimination on the basis of religious beliefs or activity. However, we have grave concerns about the Bill in its current form, which we consider privileges religious beliefs over other rights and values to an inappropriate degree. If passed, it will have serious consequences for fair and equitable access to health services in NSW.

RANZCOG therefore urges NSW Parliament not to pass the Bill in its current form.

In analysing the Bill, we have focused on how it will affect the provision of health care in NSW. In this respect, RANZCOG's concerns about the Bill can be summarised as follows:

1. The Bill provides greater protection for religious beliefs than for other protected attributes

If passed, the Bill would add religious beliefs and activity as a protected ground of discrimination under the *Anti-Discrimination Act* alongside the existing grounds, which include age, sex, disability, homosexuality etc. However, instead of adopting the same drafting that is used for the other protected grounds, the Bill extends greater protection to religious beliefs and activity, for example in relation to the scope of applicable exemptions and the provisions covering "religious ethos organisations". There is no principled basis for favouring the protection of religious beliefs and activity in this way; the protection given should mirror that given to other protected attributes.

In the context of reproductive health, there is a particular concern that certain vulnerable groups, including young people, transgender and people of diverse sexuality, may find it more difficult to access health services. It is not appropriate that the legal protection against discrimination given to these groups should be any less than that given to people who hold particular religious beliefs.

2. The Bill cuts across existing professional standards relating to conscientious objection by health practitioners

There are well-developed and widely-accepted professional and ethical standards that currently govern clinical practice around a health practitioner's right, in some circumstances, not to provide medical treatment that is in conflict with the health practitioner's own religious beliefs. RANZCOG

supports a health practitioner's right of conscientious objection, and believes that health practitioners should not be compelled to provide treatment in conflict with their religious beliefs except in emergency situations. However, in order to ensure that patients still receive the health care they need, it is critically important that a health practitioner exercising a right of conscientious objection also has a duty to ensure that the patient is referred to another health practitioner or health service able to provide the treatment.

This approach is reflected in existing professional standards¹ and was recently adopted by NSW Parliament in the *Abortion Law Reform Act 2019 (NSW)*.

RANZCOG is extremely concerned that the proposed Bill would establish a parallel system of legal regulation that would apply to conscientious objection by health practitioners, as well as to the circumstances in which a hospital or health care facility operated by a religious organisation may adopt policies that mean certain health services are not provided or are less accessible. This would both confuse and weaken the existing professional and ethical standards that are so important in this area. For example:

- Public hospital employees may be able to argue that they cannot be compelled by the hospital to provide medical treatment in conflict with their religious beliefs even in an emergency situation, since the Bill does not require them to do so;
- Employed health practitioners who wish to exercise their right of conscientious objection to performing certain medical procedures could argue that they can no longer be required by their employer to refer the patient to another health practitioner because even the act of referring the patient for this procedure is contrary to their religious beliefs;
- To the extent the provisions of the Bill are inconsistent with the conscientious objection provisions in the *Abortion Law Reform Act 2019 (NSW)*, it is unclear how this inconsistency would be resolved.

RANZCOG believes that the existing framework of law and professional standards around conscientious objection is appropriate and represents a fair and ethical balance between respecting a health practitioner's religious beliefs and ensuring all patients receive the health care they need. NSW Parliament should not permit amendments to the *Anti-Discrimination Act 1977 (NSW)* to interfere with this framework. RANZCOG urges the NSW Parliament to amend the Bill to ensure that the existing law and ethical standards around conscientious objection by a health practitioner are preserved.

3. The provisions covering religious ethos organisations will jeopardise access to necessary health services

RANZCOG is concerned that the protections under the Bill will extend to "religious ethos organisations". These are defined to include any organisation that is conducted in accordance with the beliefs or teachings of a particular religion regardless of the role and functions of the organisation. In the health care context, it would include a large number of hospitals and health facilities operated by religious organisations. These hospitals and health facilities receive substantial public funding and many play a central role in providing essential health services to their community. It is critically important that they do so in a non-discriminatory way that ensures access to health care for all those who need it.

Given this, RANZCOG is deeply concerned that the Bill would substantially weaken the obligation of hospitals and health facilities operated by religious organisations to provide health care in a non-

¹ Medical Board of Australia, *Good Medical Practice: A Code of Conduct for Doctors in Australia*, March 2014, para 2.4.

discriminatory and non-judgmental way. Examples of conduct that could be permitted should the Bill become law include:

- The hospital or health facility may be permitted to employ only people who hold certain religious beliefs that are hostile to particular groups, such as same sex couples or transgenders, or to the provision of particular health services, such as contraception;
- The hospital or health facility may be permitted to employ a disproportionately high number of people who wish to exercise a conscientious objection to providing certain services, such as contraception or abortion, thereby making it more difficult to access these services;
- The hospital or health facility may be able to challenge government funding conditions which require it to provide services to people of diverse sexuality on the ground that this is contrary to their religious beliefs or teachings.

It is RANZCOG's view that the "religious ethos organisation" provisions in the Bill are inappropriately broad, and will allow religious organisations engaged in important service provision to discriminate to an unreasonable degree. The definition of "religious ethos organisation" should be limited to organisations whose primary function is to propagate religion, as opposed to other functions such as the provision of health care or education services. This would be consistent with the existing approach in section 56 of the Act.

4. The Bill will interfere with the enforcement of professional standards in health care

The implications of section 22S of the Bill for the enforcement of professional standards by health regulatory bodies are very worrying. Section 22S makes it unlawful for a professional regulatory body to withdraw a person's professional "authorisation" or vary the terms or conditions on which it is held based on the person's religious beliefs or activity. Since the Bill does not recognise the primacy of existing professional standards in health care, it is possible that the enforcement of these standards by a disciplinary body (e.g. for refusing to provide contraceptive advice or refusing to perform an abortion to save the life of the mother) could be challenged as amounting to unlawful discrimination against the health practitioner on the grounds of his or her religious beliefs.

RANZCOG wishes to highlight the risk that section 22S of the Bill could be relied upon to obstruct the upholding of proper professional and ethical standards in health care. This would be an alarming outcome that would clearly not be consistent with the provision of high-quality health services in NSW.

The concerns set out above serve to highlight the undesirable – and possibly unintended – consequences of the Bill for the provision of health care in NSW. It appears that the damaging impact of the Bill on access to health care in NSW may not have been fully appreciated at the time the Bill was drafted. RANZCOG urges the Inquiry to recommend appropriate amendments to the Bill to remedy the problems identified in this submission.

Yours sincerely,



Dr Vijay Roach
President