The Royal Australian and New Zealand College of Psychiatrists (RANZCP) welcomes the opportunity to contribute to the Attorney-General’s Department’s consultation in relation to the exposure draft of the Religious Discrimination Bill 2019.

The RANZCP is the principal organisation representing the medical speciality of psychiatry in Australia and New Zealand and is responsible for training, educating and representing psychiatrists on policy issues. The College has more than 6600 members, including more than 4900 qualified psychiatrists and over 1500 associate (trainee) members. The RANZCP is guided on policy matters by a range of expert committees, such as the Committee for Professional Practice, which are well-placed to provide advice in relation to the effect that this Bill would have on equality of access to healthcare.

This submission will focus exclusively on clause 8 of the Religious Discrimination Bill 2019 (the Bill) and its implications for health practitioners (HPs) and patients.

**CLAUSE 8**

The RANZCP understands that clause 8 operates to prohibit indirect discrimination on the basis of a person’s religious beliefs or activities. It sets out that a person discriminates against another on the basis of religion if they impose a condition, requirement or practice which is not reasonable and which disadvantages or is likely to disadvantage persons who engage with certain religious beliefs or activities. Clauses 8(5) and 8(6) set out when a condition, requirement or practice is ‘not reasonable’ in the context of the health professions.

While the RANZCP endorses measures which aim to reduce discrimination, we are concerned that clause 8 of the Bill may not appropriately balance the doctor’s right to freedom of religion with a patient’s right to health. Although we believe that most medical professionals will continue to treat patients without allowing their personal beliefs to impact their practice, it is possible that clause 8 and the absence of certain conduct rules could result in doctors refusing to treat patients on the basis of their inherent characteristics, such as sexual orientation and gender identity, resulting in possible discrimination against patients and derogation of patient rights, as well as the erosion of accepted standards of the medical profession.

**PROFESSIONAL STANDARDS AND ETHICS**

The RANZCP understands that clause 8 will effectively disallow employers of health practitioners (HPs) from implementing rules which mandate that HPs treat every patient, regardless of any conflict with their personal or religious beliefs. As a result, and in the absence of such rules, HPs may have greater scope to refuse to treat patients if treating them would conflict with their religious beliefs. While acknowledging that the majority of doctors would continue to treat patients in
accordance with professional obligations and without discrimination, the RANZCP believes that clause 8 may dilute well-established and widely-recognized professional standards.

Professional standards currently recognise that medical practitioners have the ability to refuse to treat a patient or conscientiously object to performing a treatment, subject to anti-discrimination safeguards [1]. To that end, a variety of professional medical associations recognise that medical practitioners should not discriminate against patients or allow their personal views to inhibit the proper treatment of patients. The RANZCP Code of Ethics sets out that psychiatrists must not discriminate against patients, nor ‘attempt to impose their own values on patients and patients’ families’ [2]. Other peak medical bodies, such as the Royal Australian and New Zealand College of Radiologists, the Royal Australian and New Zealand College of Ophthalmologists and the Australian Medical Association, make equivalent statements in their codes of ethics or codes of conduct [3], [4], [5]. The Medical Board of Australia (MBA) also recognises that medical practitioners should ensure that their personal views do not adversely affect their patients or result in the denial of medical care [1]. The MBA has also indicated that medical practitioners have a duty to not discriminate against their patients on medically irrelevant grounds [1]. These standards indicate that it is unacceptable for medical practitioners to discriminate against their patients, or allow their personal views to interfere with their practice.

Beyond the traditionally thought-of examples of abortion and euthanasia, these professional standards are also applicable in circumstances where a LGBTIQ+ patient is seeking mental health or psychiatric treatment for gender-related issues or where a single person or couple are seeking fertility treatment, for example. They ensure that the patient receives treatment without discrimination, whether that involves a relegation of the HP’s personal beliefs or a referral to a HP who does not have an objection to providing the relevant treatment. The RANZCP is therefore concerned that the implementation of clause 8 may dilute these standards, making it easier for HPs to refuse to treat patients on discriminatory grounds, and that this would impact patients who are already particularly vulnerable.

Professional standards currently balance the right of the patient to seek treatment without discrimination and the doctor’s right to refuse to treat patients. The RANZCP is concerned that clause 8 will disrupt this balance. Additionally, it is unclear the effect that clause 8, if enacted, would have on the implementation of ethical standards by professional associations and regulatory bodies, including the RANZCP. This may not only affect the reputation and integrity of the health professions, but also patients’ rights to access health care.

ACCESS TO HEALTH CARE

The RANZCP acknowledges that there are circumstances in which medical practitioners can refuse to treat a patient, but that, in those circumstances, the patient’s right to access health care should not be unduly compromised or interfered with. Medical practitioners can refuse to treat a patient and that this may be appropriate where treating the patient would be contrary to the best interests of the patient (for example, where there is a conflict of interest or the practitioner’s expertise does not extend to the treatment required). However, RANZCP does not endorse refusal to treat a patient where that refusal is based on discrimination against patients, for example because of their sexual orientation or gender identity or where the refusal prevents the patient from accessing the health care they need (for example refusing to provide a referral to another medical practitioner), believing that this is unethical and could deny the patient their right to ‘enjoy the highest attainable standard of physical and mental health’ [6].

Every person has the right to freedom of religion [7], which the Bill aims to protect. This right may be subject to limitations which are necessary to protect health [8]. Clause 8 creates a tension between those two human rights - the HP’s right to freedom of religion and the patient’s right to health. Although the RANZCP believes that it is important to protect HPs from being discriminated against on the basis of their religion, the patient’s right to access healthcare must be appropriately safeguarded to ensure that medical care continues to be provided in an uncompromised way.

The RANZCP does not believe that clause 8(6) protects the patient’s right to health adequately. Although clause 8 does recognise that a health practitioner conduct rule will be reasonable if it is necessary to avoid an unjustifiable adverse impact on the health of the patient, and this may provide some protection to patients, the threshold for ‘unjustifiable’ is very high and lacks clarity. Therefore, it does not provide a strong safeguard for patient rights whose rights may be unacceptably compromised.

The RANZCP recommends that the Bill be amended to better protect the patient’s right to health. An example of safeguards
which protect the patient’s right to health are those contained in the conscientious objection provisions of certain state and territory abortion laws, which require doctors to refer the patient to another doctor who does not have a conscientious objection and mandating that doctors with conscientious objections perform abortions in emergency situations [9], [10], [11], [12]. These safeguards are also consistent with accepted professional standards.

The RANZCP stresses the importance of reconsidering whether the ‘unjustifiable adverse impact’ threshold adequately protects the rights of patients to obtain health care and urges the Australian Government to consider how the clause 8 reforms may disproportionately affect those who are already marginalised and discriminated against by health care services, such as members of the LGBTIQ+ community.

CONCLUSION
The RANZCP broadly supports the objectives of all anti-discrimination efforts and legislation. However, we believe that the current drafting of clause 8, while offering doctors protection from religious discrimination in their workplaces, does not adequately balance this against the protection of patient rights and may conflict with current professional and ethical standards for medical practitioners.

The RANZCP would be very willing to provide further information to the Consultation as it progresses.

RESOURCES

9. Abortion Reform Act 2008 (Vic)
10. Termination of Pregnancy Act 2018 (Qld)
11. Reproductive Health (Access to terminations) Act 2013 (Tas)
12. Criminal Law Consolidation Act 1935 (S.A.)