Position statement June 2024

Religious discrimination reform

The right to freedom of religion protects both the freedom to have or adopt a religion or belief and the freedom to manifest that belief, but also the right not to hold a religious belief and the right not to engage in religious activities. In a country committed to universal health care, a fair, moral and ethical balance must be struck between the right to freedom of religion and the right to health.

BACKGROUND

This position statement was first developed in response to federal religious discrimination legislation introduced in 2017. Ultimately the legislation did not become law, but the introduction of another proposed bill is currently under consideration by the Australian Government.

The legislation introduced in 2017 had the potential to adversely impact the ability of governments to provide health services effectively and equitably to Australians, and the health of a person when access to health services is denied, delayed or compromised.

Guided by Australia's commitment to international agreements recognising the right to health, the *Australian Charter of Healthcare Rights* describes key rights of patients and health consumers who seek or receive services: access, safety, respect, communication, participation, privacy and comment.

Measures to protect the right to freedom of religion must also mitigate the potential impact on healthcare rights, recognising that:

1. Denying or delaying access to health services can cause harm to a person's health.
2. The Commonwealth, state and territory and local governments share responsibility for the health system, including for its regulation, operation, management and funding. Rigorous, evidence-based processes exist to assure the safety and quality of health care options offered to and funded for Australians, but there are disparities in access that continue and are emerging.
3. Health professionals are granted a monopoly on the provision of many services that lie within the scope of their profession. A patient's healthcare rights are compromised when a health professional conscientiously objects to the provision of a service that would otherwise be expected of that profession.
4. Rural and remote regions struggle with health workforce shortages and distribution inequities and are often dependent on single practitioners providing general practice and primary health care services.

AHHA POSITION

- AHHA supports legal protection of the right to freedom of thought, conscience, religion or belief. People of faith should have legal protection from discrimination on the basis of their religion, and all people should be free from having the religious beliefs and expectations of others imposed upon them.
- AHHA supports the provision of a diverse healthcare workforce that celebrates individuals from all cultures and backgrounds, facilitating access for Australia's diverse population.
- Any reform to discrimination law should improve protection across the community. It should not involve creating new forms of discrimination against any sector of society or any other unintended consequence.
- The conscientious objection of individual health professionals or service providers must never be allowed to override the provision of services in an emergency situation.
- Exceptions in the proposed Religious Discrimination Bill 2022 which provide that certain conduct does not amount to unlawful discrimination must allow health system stewards to protect the healthcare rights of patients and health consumers, particularly in terms of access (the right to health care) and communication (the right to be informed about services, treatment, options and costs in a clear and open way). This includes through employment practices, education, registration and accreditation, conditions on the use of public funds, and commissioning processes to address local needs.
- The conscientious objection of individual health professionals should be accommodated by the publicly-funded health system only where these have a limited impact on practicing the scope of the profession and role they have chosen to enter.
- Where an individual health professional conscientiously objects to the provision of a service they must ensure continuity of care through the timely referral of the patient to another provider.
- Where a health service provider (individual or organisation) opts not to provide a service that would be considered in scope for that provider (e.g. through MBS funding or scope of practice), then a referral must be provided to the patient to access an alternative service. Patients should have access to their state or territory's Patient Transport Subsidy Scheme if required.

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