Australian Nursing and Midwifery Federation Submission to the

ATTORNEY-GENERAL'S DEPARTMENT RELIGIOUS FREEDOM BILLS - SECOND EXPOSURE DRAFTS

31 JANUARY 2020

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1. The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 280,000 nurses, midwives and carers across the country.

2. Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.

3. Our strong and growing membership and integrated role as both a trade union and professional organisation provides us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.

4. Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

5. The ANMF thanks the Attorney-General's Department for providing this opportunity to comment on the second exposure drafts of the 'Religious Freedom Bills' (the **RF Bills**)[1] and in particular the *Religious Discrimination Bill 2019* (the **RD Bill**).

6. The ANMF ask the Committee to read our submission in conjunction with that of our peak body, the Australian Council of Trade Unions (ACTU). The ANMF supports the submissions of the ACTU with respect to the matters not addressed in this submission. The ANMF submission discusses:

    A. Religious conscientious objections and health practitioner conduct (indirect discrimination);

    B. Conduct in direct compliance with other legislation and potential contradictions;

    C. Private hospitals and aged care providers being able to discriminate on religious grounds;

    D. Interference in the independence of qualifying bodies (indirect discrimination); and

    E. ANMF position on the RF Bills

A. Religious conscientious objections and health practitioner conduct (indirect discrimination)

7. The Australian Human Rights Commission defines 'indirect discrimination' as occurring when "there is an unreasonable rule or policy that is the same for everyone but has an unfair effect on people who share a particular attribute"[2]. The RD Bill encompasses indirect discrimination generally at clauses 8(1) and (2), providing:

> **Discrimination on the ground of religious belief or activity—indirect discrimination**
>
> *Indirect discrimination*
>
> (1) A person ***discriminates*** against another person on the ground of the other person's religious belief or activity if:
>
> (a) the person imposes, or proposes to impose, a condition, requirement or practice; and
>
> (b) the condition, requirement or practice has, or is likely to have, the effect of disadvantaging persons who have or engage in the same religious belief or activity as the other person; and
>
> (c) the condition, requirement or practice is not reasonable.
>
> *Considerations relating to reasonableness*
>
> (2) Subject to subsections (3), (5) and (6), whether a condition, requirement or practice is reasonable depends on all the relevant circumstances of the case, including the following:
>
> (a) the nature and extent of the disadvantage resulting from the imposition, or proposed imposition, of the condition, requirement or practice;
>
> (b) the feasibility of overcoming or mitigating the disadvantage;
>
> (c) whether the disadvantage is proportionate to the result sought by the person who imposes, or proposes to impose, the condition, requirement or practice;
>
> (d) if the condition, requirement or practice is an employer conduct rule—the extent to which the rule would limit the ability of an employee of the employer to have or engage in the employee's religious belief or activity.

8. The RD Bill then goes further than other Commonwealth discrimination laws by providing for extra grounds that are to be considered 'indirect discrimination'. This includes 'statements of belief' in employment contexts covered in clause 8(3) of the RD Bill. The ANMF will not address this clause in much detail. We refer to the detailed submissions of the ACTU and the Human Rights Law Centre in this respect.

9. The RD Bill also goes further than other Commonwealth indirect discrimination laws by providing for the additional ground of 'conscientious objections by health practitioners' as being a potential ground for indirect discrimination as provided in clauses 8(6) and (7):

Conditions that are not reasonable relating to conscientious objections by health practitioners

(6) For the purposes of paragraph (1)(c), if a law of a State or Territory allows a health practitioner to conscientiously object to providing a health service because of a religious belief or activity held or engaged in by the health practitioner, a health practitioner conduct rule that is not consistent with that law is not reasonable.

Note 1: A requirement to comply with a health practitioner conduct rule that is not reasonable under this subsection is also not an inherent requirement relating to work (see subsection 32(7)).

Note 2: The effect of this provision is that a health practitioner conduct rule that prevents a health practitioner from lawfully conscientiously objecting to providing or participating in a particular kind of health service pursuant to a State or Territory law that provides for such an exercise of conscientious objection (for example, the ability to conscientiously object to providing or participating in an assisted dying process under a State or Territory law) because of the health practitioner's religious belief or activity may constitute discrimination under this Act. However, this provision does not have the effect of allowing a health practitioner to decline to provide a particular kind of health service, or health services generally, to particular people or groups of people. For example, refusal to prescribe contraception to single women may constitute discrimination under the Sex Discrimination Act 1984.

Note 3: Nothing in this subsection affects the operation of a law of a State or Territory that allows a health practitioner to exercise a conscientious objection in relation to a particular kind of health service.

(7) For the purposes of paragraph (1)(c), if subsection (6) does not apply, a health practitioner conduct rule is not reasonable unless compliance with the rule is necessary to avoid an unjustifiable adverse impact on:

(a) the ability of the person imposing, or proposing to impose, the rule to provide the health service; or

(b) the health of any person who would otherwise be provided with the health service by the health practitioner.

Note 1: A requirement to comply with a health practitioner conduct rule that is not reasonable under this subsection is also not an inherent requirement relating to work (see subsection 32(7)).

Note 2: This subsection applies in the absence of a State or Territory law that allows a health practitioner to conscientiously object to providing or participating in a particular kind of health service. In these cases, the effect of this provision is that a health practitioner conduct rule that prevents a health practitioner from conscientiously objecting to providing or participating in a particular kind of health service (for example, voluntary assisted dying, if a State or Territory law were silent or did not specifically provide for a conscientious objection process) may not be reasonable in certain circumstances. However, this provision does not have the effect of allowing a health practitioner to decline to provide a particular kind of health service, or health services generally, to particular people or groups of people. For example, refusal to prescribe contraception to single women may constitute discrimination under the Sex Discrimination Act 1984.

10. Health practitioner conduct rules' are defined at clause 5 of the RD Bill. In the definition 'person' includes a body corporate, such as an employer:

> **health practitioner conduct rule** means a condition, requirement or practice:
>
> (a) that is imposed, or proposed to be imposed, by a person on a health practitioner; and
>
> (b) that relates to the provision of or participation in a particular kind of health service by the health practitioner; and
>
> (c) that would have the effect of restricting or preventing the health practitioner from conscientiously objecting to providing or participating in that kind of health service

11. The ANMF notes that the definition of "health service" has been narrowed since the first draft of the RD Bill, which has the effect of narrowing which professions the "health practitioner conduct rules" apply to. This is a positive move however the list still covers nurses and midwives at clause 4.

12. In the Explanatory notes of the RD Bill, examples are provided of what would and would not constitute 'unjustifiable adverse impact' for the purpose of a 'health practitioner conduct rule':

> 185. ...if non-compliance with a health practitioner conduct rule could result in the death or serious injury of the person seeking the health service, this would clearly amount to an unjustifiable adverse impact...
>
> 186. ...non-compliance with a policy that required the sole medical practitioner in a small rural community to prescribe contraception in appropriate cases may amount to an unjustifiable adverse impact on the ability of that medical practice to provide medical services to that community, and may also have an unjustifiable adverse impact on the health of women seeking contraception (for example, women seeking the Pill for non-contraceptive use, such as in order to treat endometriosis or polycystic ovary syndrome), as they may be unable to access alternative healthcare promptly without significant travel and cost.

13. The RD Bill effectively provides that the default position of all 'health practitioner conduct rules' is that they are not reasonable unless the person implementing such a rule demonstrates an unjustifiable adverse impact on a health service. It is unclear what an 'unjustifiable adverse impact' is in the health service environment.

14. The bar appears to be set high for health services to demonstrate that a 'health practitioner conduct rule' was reasonable, when the exemptions in clauses 8(5) and 8(6) are taken into consideration. The Bill appears to impose a higher legal bar than 'reasonableness' tests used in other indirect discrimination laws, of which the 'health practitioner conduct rule' is a part.

15. For example, the *Racial Discrimination Act 1975* (Cth) (**RDA**) defines 'reasonableness' at s. 9(1A) in the context of "having regard to the circumstances of the case". Section 7B of the *Sex Discrimination Act 1984* (Cth) (**SDA**) defines 'reasonableness' in the context of whether "the condition, requirement or

practice is reasonable in the circumstances". The *Disability Discrimination Act 1992* (Cth) (**DDA**) at s. 6(3) states that a "requirement or condition is reasonable, having regard to the circumstances of the case". The RD Bill has a similar definition of 'reasonableness' at clause 8(2) but as demonstrated goes much further in subsequent clauses.

16. The Voluntary Assisted Dying Act 2017 (Vic) (VAD Act) is an example of a law that provides for conscientious objections for the purposes of clause 8(6) of the RD Bill. At s.7 of the VAD Act a conscientious objection definition is spelled out very clearly:

> **Conscientious objection of registered health practitioners**
>
> A registered health practitioner who has a conscientious objection to voluntary assisted dying has the right to refuse to do any of the following—
>
> (a) to provide information about voluntary assisted dying;
>
> (b) to participate in the request and assessment process;
>
> (c) to apply for a voluntary assisted dying permit;
>
> (d) to supply, prescribe or administer a voluntary assisted dying substance;
>
> (e) to be present at the time of administration of a voluntary assisted dying substance;
>
> (f) to dispense a prescription for a voluntary assisted dying substance.

17. This level of clarity in the VAD Act is not provided in the RD Bill. This could lead to confusion for both health practitioners and health services in the delivery of health care. Under State and Territory laws, the right to conscientiously object is largely limited to certain types of health services (such as abortion and voluntary assisted dying) and is often conditional, such as requiring assistance where necessary to preserve life or provided a referral is organised for the patient. For example, conscientious objection to assist in abortion is subject to a duty to refer and to assist when necessary to preserve life or in an emergency is contained in the Abortion Law Reform Act 2008 (Vic) at section 8 and the *Termination of Pregnancy Act 2018* (Qld) at section 8.

18. Australia is a party to the International Covenant on Civil and Political Rights (ICCPR). The ICCPR recognises the right to freedom of thought, conscience and religion in article 18. Article 18 is the primary international legal provision protecting freedom of religion or belief. It stipulates, in part:

> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.[3]

19. The second draft of the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019* provides for making identical amendments to the Age Discrimination Act 2004 (Cth) (**ADA**), DDA, RDA and the SDA with respect to the objects of those Acts, which would provide:

> (2) In giving effect to the objects of this Act, regard is to be had to:
>
> (a) the indivisibility and universality of human rights, and their equal status in international law; and
>
> (b) the principle that every person is free and equal in dignity and rights.[4]

20. Despite the inclusion of these new objects in the ADA, DDA, RDA and SDA, the RF Bills do not appear to implement this balancing aspect of the ICCPR at Article 18. They do not ensure that the fundamental rights and freedoms of everyone are protected. By allowing a health practitioner who claims a conscientious objection a broad discretion in accordance with the doctrines, tenets, beliefs or teachings of their religion, the right to have healthcare delivered in a non-discriminatory manner can be undermined.

21. For example, the ANMF is very concerned that the wording in the Bill will allow for discrimination against the LGBTIQ+ community. Despite what is stated in the notes to the RD Bill, it is not clear from the wording in clause 8(7) of the RD Bill whether a pharmacist could refuse to provide hormones to a transgender patient, on the grounds of conscientious objection. Honorary Associate Professor Ruth Mcnair notes that even now with current laws in place that there is substantial discrimination where some health professionals have told LGBTIQ+ Australians: "I don't treat people like you".[5] If the RF Bills become law then matters will undoubtedly get worse.

B. Conduct in direct compliance with other legislation and potential contradictions

22. Clause 30 of the RD Bill states that it is not unlawful for a person to discriminate against another person, on the ground of the other person's religious belief or activity, if the conduct constituting the discrimination is in direct compliance with a provision of a law of a State or a Territory or in compliance with a law of the Commonwealth or an instrument made under law of the Commonwealth. In addition, the law or instrument must not be prescribed by the regulations.

23. The Health Practitioner Regulation National Law (the National Law) is a series of state Acts of Parliament[6]. A mandatory or voluntary notification made under the National Law could be conduct in compliance with legislation of a state or territory. A notification is a complaint or concern about a registered practitioner lodged with the Australian Health Practitioner Regulation Agency (AHPRA) or a National Board such as the Nursing and Midwifery Board of Australia (NMBA).

24. The example given in the explanatory notes refer to state police exercising their powers but from a plain reading of the RD Bill, compliance with a law is broader than this. Employers may make more notifications to AHPRA instead of dealing with an issue “in house” arguing that such notifications were conduct done in compliance with the National Law, to attempt to not conflict with the discrimination provisions in the RD Bill.

25. There is significant potential for contradictory outcomes in the RD Bill and its operation. One potential conflict is between the individual being able to exercise a conscientious objection as opposed to an employer or another party being able to make reports under law to AHPRA for unprofessional conduct.

26. A registered nurse who had a genuine conscientious objection which was found to be not ‘unjustifiable’ in accordance with clause 8(7) of the RD Bill could still potentially have a notification with AHPRA brought against them for unprofessional conduct, which may not be discrimination since it could be conduct in direct compliance with state or territory legislation. This is because the nurse must conduct themselves in accordance with the ‘Code of conduct for nurses’[7], which is made under the National Law. The code provides:

> To prevent conflicts of interest from compromising care, nurses must:
>
> a. act with integrity and in the best interests of people when making referrals, and when providing or arranging treatment or care
>
> b. responsibly use their right to not provide, or participate directly in, treatments to which they have a conscientious objection. In such a situation, nurses must respectfully inform the person, their employer and other relevant colleagues, of their objection and ensure the person has alternative care options

This leads to a hypothetically contradictory outcome where:

i. a registered nurse invokes their conscientious objection to not perform a procedure for a patient; which does not have an “unjustifiable adverse impact” on a patient or the health service. The employer is restrained from taking action because of the “health practitioner conduct rule” in s.8(7) of the RD Bill;

but at the same time

ii. the registered nurse could potentially be reported to AHPRA if their objection was not done in compliance with the Code of Conduct for Nurses or the employer thought their behaviour was not in the best interests of people. AHPRA has a range of powers under the National Law, including suspension and deregistration. This is because clause 30 of the RD Bill provides that there is no discrimination if someone is acting in direct compliance with a provision of a law of a State or a Territory, which reporting a person to AHPRA could be.

27. Nurses and midwives are required under the NMBA Code of Conduct to ensure delivery of safe and quality care. The confusing and contradictory nature of the RF Bills will make patient safety and welfare more difficult for health practitioners, and the health services they work in, to deliver. This is because health services and the health practitioners who work within them are supposed to wade through competing legal interests that do not appear to have been considered by the Commonwealth Government.

C. Aged care and private hospitals being able to discriminate on religious grounds

28. According to clause 32 of the RD Bill religious hospitals, aged care facilities and accommodation providers can take religion into account with respect to staffing decisions concerning their employees. This includes giving preference to employees of the same religion as the relevant facility. The government argues that this "…will ensure these bodies can preserve their ethos through staffing decisions."[8]

29. The relevant clauses are as follows:

Exception—religious hospitals, aged care facilities and accommodation providers may act in accordance with their faith etc.

(8) Sections 14 (about employment) and 15 (about partnerships) do not make it unlawful for a person (the first person) to discriminate against another person, on the ground of the other person's religious belief or activity, if:

(a) either:

(i) the first person establishes, directs, controls or administers a hospital or aged care facility that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a ..... particular religion; or

(ii) the first person solely or primarily provides accommodation in accordance with the doctrines, tenets, beliefs or teachings of a particular religion; and

(b) the first person engages, in good faith, in conduct that a person of the same religion as the first person could reasonably consider to be in accordance with the doctrines, tenets, beliefs or teachings of that religion.

(9) Without limiting paragraph (8)(b), conduct mentioned in that paragraph includes giving preference to persons of the same religion as the first person.

(10) Sections 14 (about employment) and 15 (about partnerships) do not make it unlawful for a person (the first person) to discriminate against another person, on the ground of the other person's religious belief or activity, if:

(a) either:

(i) the first person establishes, directs, controls or administers a hospital or aged care facility that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion; or

(ii) the first person solely or primarily provides accommodation in accordance with the doctrines, tenets, beliefs or teachings of a particular religion; and

(b) the first person engages, in good faith, in conduct to avoid injury to the religious susceptibilities of adherents of the same religion as the first person.

(11) Without limiting paragraph (10)(b), conduct mentioned in that paragraph includes giving preference to persons of the same religion as the first person.

Employee includes prospective employee

(12) In this section, a reference to an employee includes a reference to a prospective employee.

30. Ironically, these provisions of the RD Bill will *allow* employers to blatantly discriminate on the grounds of a person's religion or lack of religion. For example, a faith based aged care facility would be able to justify refusing to hire or promote a worker of another faith on the grounds of their religious belief under this exemption in the RD Bill. With respect to the employment practices of aged care and private hospital facilities, these provisions are unprecedented.

31. The ANMF questions why these provisions have been inserted into the second draft of the RD Bill. A wide variety of religious organisation have argued for a non-discriminatory policy, including:

    i. St Vincent de Paul Society[9];

    ii. Anglicare;

    iii. Uniting Vic.Tas[10];

    iv. Uniting Church in Australia[11];

    v. Catholic Social Services[12]; and

    vi. McCauley Community Services for Women.[13]

32. The Seventh Day Adventist Church also acknowledges that it does not seek "to discriminate on the basis of faith in the recruitment of staff generally" whilst wanting to retain the "right to ensure that Senior Leadership and the Board are required to be Seventh-day Adventists."[14]

33. Clauses 32(8)-32(12) of the RD Bill are another unfortunate example of how the bill fails to balance competing rights. As Law Council of Australia president, Arthur Moses SC recently stated, "It seems odd that a hospital that receives public funding from all Australians can deny employment to some Australians."[15] The same is equally applicable with respect to aged care providers, which are heavily subsidised by the Commonwealth.

D. Interference in the independence of qualifying bodies making conduct rules (indirect discrimination)

34. According to clause 8(4) of the RD Bill, qualifying bodies will not be able to impose rules that restrict people from making statements of belief in their personal capacity, unless they are an essential requirement of the relevant profession, trade or occupation. The RD Bill regards this as a form of indirect discrimination. Clause 8 of the RD Bill provides:

> *Indirect discrimination*
>
> (1) A person discriminates against another person on the ground of the other person's religious belief or activity if:
>
> (a) the person imposes, or proposes to impose, a condition, requirement or practice; and
>
> (b) the condition, requirement or practice has, or is likely to have, the effect of disadvantaging persons who hold or engage in the same religious belief or activity as the other person; and
>
> (c) the condition, requirement or practice is not reasonable.
>
> …
>
> (4) For the purposes of paragraph (1)(c), a qualifying body conduct rule that would have the effect of restricting or preventing a person from making a statement of belief other than in the course of the person practising in the relevant profession, carrying on the relevant trade or engaging in the relevant occupation is not reasonable unless compliance with the rule by the person is an essential requirement of the profession, trade or occupation.
>
> (5) Subsections (3) and (4) do not apply in relation to a statement of belief:
>
> (a) that is malicious; or
>
> (b) that would, or is likely to, harass, threaten, seriously intimidate or vilify another person or group of persons; or
>
> (c) that is covered by paragraph 28(1)(b).
>
> Note: Paragraph 28(1)(b) covers expressions of religious belief that a reasonable person, having regard to all the circumstances, would conclude counsel, promote, encourage or urge conduct that would constitute a serious offence.

35. "Vilify" is defined in clause 5 of the RD Bill to mean inciting "hatred or violence".

36. According to clause 5 of the RD Bill, a qualifying body is "an authority or body that is empowered to confer, renew, extend, revoke, vary or withdraw an authorisation or qualification that is needed for, or facilitates, the practice of a profession, …or the engaging in of an occupation." Both AHPRA and the NMBA would appear to be qualifying bodies. The NMBA work with AHPRA as the administrator of the National Registration and Accreditation Scheme to register nurses and midwives.

37. Nurses and midwives are required to be registered with the NMBA and meet the NMBA's professional standards in order to practise. Professional standards define the practice and behaviour of nurses and midwives and include:

    i. registration standards,

    ii. codes of conduct, and

    iii. standards for practice.

38. Nurses and midwives have separate registration standards, codes of conduct and standards for practice. These documents are developed and enforced by the NMBA after broad consultation with stakeholders, including the ANMF, the Australian College of Midwives (ACM) and the Australian College of Nursing (ACN) and approval by health ministers.

39. The *Code of Conduct for Nurses* states the following with respect to health advocacy:

    Domain: Promote health and wellbeing

    Principle 7: Health and wellbeing

    Value

    Nurses promote health and wellbeing for people and their families, colleagues, the broader community and themselves and in a way that addresses health inequality.

    …in advocating for community and population health, nurses must:

    a.use their expertise and influence to protect and advance the health and wellbeing of individuals as well as communities and populations…[16]

40. The NMBA code obliges a nurse or midwife to promote health and wellbeing for the broader community at all times, including outside of work. A nurse's religion may hold that a section of the broader community are sinners by virtue of their sexuality or something analogous. There is a likelihood that such nurse will not uphold their obligations to promote health and wellbeing to the broader community. For example, they may make statements of belief on their own time on social media that such people were sinners who were going to hell.

41. Currently the NMBA could take action against a nurse making such statements to hold them to account for not meeting their professional obligations. It is not clear if the exemptions found in clause 8(5) of the RD Bill would be applicable in these situations. There is a high bar to show that statements of belief are malicious or would be, or are likely to, harass, threaten, seriously intimidate or vilify (incite hatred or violence) of another person or group of persons.

42. A religion called 'Christian Science' teaches "that disease was unreal"[17] and "many Christian Science parents claim religious exemption from childhood vaccination requirements."[18] In addition, "church members have lobbied governments for religious exemptions from immunization."[19] Jehovah's Witnesses have also previously cited religion as a reason to not be vaccinated.[20] A nurse who was a member of a religion that taught that vaccines were against their faith may be able to use the RD Bill to be able to spread false information about vaccines on social media and elsewhere. The NMBA has a clear position statement on vaccines:

> The NMBA recognises the Australian National Immunisation Handbook 10th edition as providing evidence-based advice to health professionals about the safe and effective use of vaccines and the public health benefits associated with vaccination. The NMBA supports the use of the handbook by registered nurses, enrolled nurses and midwives who are giving vaccines.
>
> …
>
> The NMBA expects all registered nurses, enrolled nurses and midwives to use the best available evidence in making practice decisions. This includes providing information to the public about public health issues.[21]

43. Under the RD Bill, it is unclear what would happen to a nurse or midwife who makes a religious "statement of belief" against the public health benefits associated with vaccination. It is unclear whether compliance with the NMBA rule for nurses and midwives to not promote anti-vaccination statements to the public is an essential requirement of the profession. The mere threat of legal action based on a "statement of belief" may dissuade the NMBA from holding nurses and midwives to account for their behaviour. This is a serious concern of the ANMF.

44. The ANMF holds serious concerns about the consequences if this interference in the operation of qualifying bodies becomes law. It would undermine the integrity and impartiality of numerous professions to be able to set standards for the benefit of the wider community and could lead to a number of other negative unforeseen consequences. The RD Bill potentially undermines the National Law, with one of its primary objectives being to protect the public.[22] The regulatory standards and codes for nurses and midwives are developed and enforced to protect the public.

E. ANMF position on the RF Bills

45. The RF Bills fail to prevent religious discrimination in the same way as existing Commonwealth and state/territory discrimination laws protect discrimination on the grounds of age, disability, sex and race. Instead, the RF Bills prioritise religious belief and activity over other discrimination attributes. One of the many examples of this is that statements of belief cannot constitute discrimination for the purposes of s17(1) of the *Anti-Discrimination Act 1998* of Tasmania. Section 17(1) protects against behaviour that

"offends, humiliates, intimidates, insults or ridicules another person".

46. Instead of a standalone RD Bill that prioritises some rights ahead of others, the ANMF suggests that religious discrimination should be included in a larger and more comprehensive Bill of Rights. Human rights are 'universal, indivisible and interdependent and interrelated'.[23] If religious freedom is to be strengthened, it should go together with an improved system that provides for competing rights to be balanced through a comprehensive legislative Bill of Rights. Such a bill would recognise and safeguard fundamental human rights. It would also strike an appropriate balance where intersections of competing rights arise.

47. The wording in the RD Bill as it currently stands will allow for more discrimination against the LGBTIQ+ community, women and racial minorities. As former Tasmanian anti-discrimination commissioner, Robin Banks noted of the first draft: "Religious speech is so privileged (in the RD Bill) it will allow people to engage in racist, ableist, sexist anti-LGBTI speech."[24] In addition, granting employers the power to hire and promote according to their "ethos" will ironically lead to more religious-based discrimination.

48. A law concerning religious discrimination should be incorporated into a broader Bill of Rights with the standard indirect discrimination tests found in other Commonwealth indirect anti-discrimination laws used. This would mean that indirect discrimination would be found to occur only where there is an unreasonable rule or policy that is the same for everyone but has an unfair effect on people who share a particular religious belief or activity.

49. The ANMF is opposed to the RF Bills in their current format. The ANMF submits that the RF Bills should not be become law because their provisions are not in line with other Commonwealth anti-discrimination laws, are poorly drafted, promote discrimination and have the possibility to make patient safety and welfare more difficult to deliver.

REFERENCES

1. The *Religious Discrimination Bill 2019*, the *Religious Discrimination (Consequential Amendments) Bill 2019* and the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019*
2. Australian Human Rights Commission, *Indirect Discrimination*, (date unknown) <https://www.humanrights.gov.au/quick-guide/12049>
3. *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
4. *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019*, clauses 2, 6, 8 and 10
5. Judith Ireland, ''This will drive people back into the closet': LGBTIQ warning on religious discrimination bill', *The Sydney Morning Herald* (online at 10 September 2019) <https://www.theage.com.au/politics/federal/this-will-drive-people-back-into-thecloset-lgbtiq-warning-on-religious-discrimination-bill-20190910-p52ppz.html>
6. Australian Health Practitioner Regulation Agency, *Legislation*, (2019) <https://www.ahpra.gov.au/About-AHPRA/What-We-Do/Legislation.aspx>
7. NMBA, *Code of Conduct for Nurses*, (online at 1 March 2018) cl 4.4 <http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards.aspx>.
8. Attorney-General's Department (Cth), *Summary of amendments to the bills since the first exposure draft (Print version)*, (10 December 2019) <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills-second-draft/summary-of-amendments-to-the-bills-since-the-first-exposure-draft-print.pdf>
9. St Vincent de Paul Society, 'Religious Freedom Legislation' (Media Release, 6 December 2019) <https://www.vinnies.org.au/icms_docs/313010_Religious_Freedom_Legislation.pdf>
10. Uniting Vic.Tas, 'Religious freedom must be balanced against the rights of all people' (Media Release, 12 December 2019) <https://www.vt.uniting.org/4617-2/>
11. Uniting Church in Australia, Submission to Attorney-General's Department, *Religious Freedom Bills – First Exposure Drafts*, (2 October 2019) <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills/submissions/Uniting%20Church%20in%20Australia.pdf>
12. Catholic Social Services Victoria, 'Speaking out on the Religious Discrimination Bill' (Media Release, 18 December 2019) <http://www.css.org.au/Article-View/Article/23267/Speaking-out-on-the-Religious-Discrimination-Bill>
13. McCauley Community Services for Women, 'McAuley speaks out on Religious Discrimination Bill' (Media Release, 13 December 2019) https://www.mcauleycsw.org.au/mcauley-speaks-out-on-religious-discrimination-bill/
14. Seventh-day Adventist Church in Australia, Submission to Attorney-General's Department, *Religious Freedom Bills – First Exposure Drafts*, (2 October 2019) <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills/submissions/Seventh-day Adventist Church in Australia.pdf>
15. Greg Brown, 'New religion bill 'deeply flawed'', The Australian (Canberra, 26 December 2019) 4
16. NMBA, (n 7) cl. 7.2
17. Caroline Fraser, 'Dying the Christian Science way: the horror of my father's last days', *The Guardian* (online 6 August 2019) <https://www.theguardian.com/world/2019/aug/06/christian-science-church-medicine-death-horror-of-my-fathers-last-days>
18. Centre for Disease Control and Prevention, *Morbidity and Mortality Weekly Report*, 1 July 1994, 43(25);463-465 <https://www.cdc.gov/mmwr/preview/mmwrhtml/00031788.htm>
19. John Grabenstein, *Vaccine*; Kidlington Vol. 31, Iss. 16, (12 April 2013): 2011-2023. DOI:10.1016/j.vaccine.2013.02.026
20. John Grabenstein, (n 19)
21. NMBA, *Position statement on nurses, midwives and vaccination* (online October 2016) <https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Position-Statements/vaccination.aspx
22. *Health Practitioner National Law*, s2(a).
23. Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para 5 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>
24. Paul Karp, 'Religious discrimination bill attacked as 'extraordinary foray in the culture wars'', *The Guardian*, (online 30 August 2019) <https://www.theguardian.com/world/2019/aug/30/religious-discrimination-bill-attacked-extraordinary-foray-culture-wars>