



**Australian Medical Association (AMA) Response to Questions on Notice
from the Parliamentary Joint Committee on Human Rights' Inquiry into
the *Religious Discrimination Bill 2021*
Public Hearing, 13 January 2022**

QUESTION – Mr Perret, Page 62, Statements of Belief – The potential to interfere with access to medical services

The AMA was asked if we would be concerned that Clause 12, describing Statements of Belief, could potentially allow doctors to interfere with patients accessing legally available medical services based solely on the doctor's personal, moral (conscientious) objection to the particular treatment or procedure being sought (Mr Perret used the example of voluntary assisted dying as raised by the Council on the Ageing Australia).

The AMA is concerned that provisions protecting Statements of Belief could interfere with medical professional standards and patients' access to care. Such interference by a doctor would be inconsistent with medical professional standards as set out by the Medical Board of Australia's Code of Conduct, *Good Medical Practice*, where doctors have a professional duty to ensure their personal views do not adversely affect patient care including making appropriate referrals (Section 3.2.14 of the Code of Conduct).¹

The Medical Board's Code of Conduct stipulates that patients' access to care must be free from bias and discrimination, where good medical practice involves:

3.4.6 Being aware of your right to not provide or directly participate in treatments to which you conscientiously object, informing your patients and, if relevant, colleagues of your objection, and not using your objection to impede access to treatments that are legal. In some jurisdictions, legislation mandates doctors who do not wish to participate in certain treatments, to refer on the patient.

3.4.7 Not allowing your moral or religious views to deny patients access to medical care, recognising that you are free to decline to personally provide or directly participate in that care.

¹ Medical Board of Australia. *Good Medical Practice. A Code of Conduct for Doctors in Australia*. October 2020.

As such, it would be inappropriate under the Code of Conduct for a doctor to try to persuade a patient not to utilise a particular medical treatment or service (such as voluntary assisted dying, abortion, IVF, surrogacy) based solely on the fact that the doctor has a personal, moral objection to that treatment.

Again, the AMA strongly emphasises that this legislation should not undermine or conflict with the standards and guidelines to which medical professionals must adhere.

QUESTION – Senator McLachlan, Page 67, Statements of Belief - Complaints against doctors in relation to Statements of Belief (conscientious objections)

The AMA was asked if we have formed a view on the number of complaints made against doctors in relation to their statements of belief and whether the AMA looks at those complaints to determine its code of conduct.

As the AMA is not a regulatory authority, we do not receive or investigate complaints against doctors nor do we collect or receive information on the specific nature of complaints such as those made against doctors who refuse to provide or participate in a particular medical service due to a ‘statement of belief’ or conscientious objection. This question is best directed at the appropriate regulator, the Australian Health Practitioner Regulation Agency (Ahpra), which manages complaints and concerns raised about the health, performance and conduct of individual health practitioners, as well as the Medical Board of Australia which is responsible for developing and enforcing the Code of Conduct by which all medical practitioners must abide, *Good Medical Practice*. The Board can best advise on what data and other information sources it uses regarding complaints against doctors when revising the Code of Conduct.

In relation to the AMA, its policies represent the views of its membership on a range of issues. The AMA’s Federal Council is the main policy making body, consisting of representatives of State and Territory AMA offices, geographical areas, craft groups, the Australian Medical Students’ Association and the Australian Indigenous Doctors’ Association. Federal Council is supported by a range of representative councils, committees and working groups to provide expert and considered policy advice. Where appropriate, we consult with other organisations such as the medical defence organisations and relevant medical colleges when developing or updating our policies. Individual AMA members are always welcome to raise issues of concern with the AMA and are strongly encouraged to participate in their State or Territory AMA as well as the Federal AMA.

QUESTION – Senator Pratt, Page 68, Conflicts between professional code of practice and this legislation – What amendments would the AMA like to see?

The AMA would like to see the Bill amended to make it clear that for doctors, professional standards should be the first and foremost consideration. Any provisions of

the Bill that specifically apply to doctors should be discussed with the Medical Board and other key medical organisations to ensure they are consistent with the Board's Code of Conduct and other relevant standards.

In our submission, we specifically stated in relation to Section 15 (qualifying body conduct rules) that this section should be amended to ensure that qualifying body conduct rules relevant to the medical profession are consistent with, and do not undermine or compromise, medical professional standards. If Section 15 is retained, the government should ensure that any guidelines relevant to qualifying body conduct rules for the medical profession are developed in consultation with the medical regulators and wider medical profession to determine how such provisions would operate on the ground.

QUESTION – Senator O’Neill, Page 69, Access to services – The AMA’s view on concerns raised by the Women’s Health Network in relation to access to services

The AMA was asked to comment on the concerns raised by the Women’s Health Network in relation to health professionals’ interfering with women’s access to care due to the health professional’s own personal views and beliefs (for example, the WHN raised the circumstance of a young pregnant woman being told by a General Practitioner that as a woman she would be sinning if she did not go ahead with her pregnancy).

The AMA has read the Women’s Health Network’s concerns in relation to women’s access to health care, particularly in rural and remote communities, and the potential impact the Bill could have in relation to women’s access to certain medical services such as sexual and reproductive health services. In relation to the medical profession, the AMA agrees that the Bill must not undermine or compromise medical professional standards as set out by medical regulators such as Ahpra and the Medical Board.

The Medical Board’s Code of Conduct stipulates that doctors have a professional duty to ensure their personal views do not adversely affect patient care, where patients’ access to care must be free from bias and discrimination.

As highlighted previously, doctors must treat patients with respect and without prejudice or discrimination. A doctor expressing a statement of belief in relation to a patient’s medical condition could be perceived by the patient (and others) as judging or disparaging that person, undermining the patient’s confidence and trust in the doctor and perhaps the medical profession more widely, compromising their access to care.

As outlined in the AMA’s submission, it is important to recognise that there is a potential power imbalance in the doctor-patient relationship. While doctors have the highly specialised knowledge and skills patients require to obtain good quality health

care, patients may feel vulnerable or are potentially vulnerable and exposed due to the very personal and physical nature of the doctor-patient relationship.

It is therefore essential that the public have a high level of trust and confidence in the medical profession. If people do not trust doctors, they will seek care elsewhere, or not seek care at all, either of which may prove detrimental to the health and well-being of individuals as well as the wider public health.

In addition, it would be inappropriate under the Medical Board's Code of Conduct for a doctor to try to persuade a patient not to utilise a particular medical treatment or service (such as voluntary assisted dying, abortion, IVF, surrogacy) based solely on the fact the doctor has a personal, moral objection to that treatment. Either situation could be considered inconsistent with professional standards and such doctors could be subject to a complaint and investigation by the regulator.

QUESTION – Senator O’Neill, Page 69, Social media use – The interaction between the Bill and professional standards

The AMA was asked if, at this point in time, in relation to social media use could we foresee a situation in which a doctor or another health professional breaches Ahpra's professional standards but it is a breach that cannot be dealt with by Ahpra or the Medical Board because an attempt to do so could constitute discrimination under the *Religious Discrimination Bill*.

While this question is best answered by Ahpra and the Medical Board as the appropriate regulatory authorities who enforce the social media guidelines for health practitioners, the AMA recognises that there can certainly be the potential for conflict between the Bill and professional standards when it comes to doctors (or other health practitioners) publicly making statements of belief, even in a personal capacity.

Section 2.2 of the Medical Board's Code of Conduct addresses 'Public comment and trust in the profession', stating that:

The community trusts the medical profession. Every doctor has a responsibility to behave ethically to justify this trust. While there are professional values that underpin good medical practice, all doctors have a right to have and express their personal views and values. However, the boundary between a doctor's personal and public profile can be blurred. As a doctor, you need to consider the effect of your public comments and your actions outside work, including online, related to medical and clinical issues, and how they reflect on your role as a doctor and on the reputation of the profession.

As raised in our submission, Ahpra's updated social media guidance for health practitioners clarifies that a doctor's social media use, even in a private capacity, could raise concerns about fitness to hold registration as follows:²

When using social media, just as with all aspects of professional conduct and behaviour, you need to be aware of your professional obligations and other relevant legislation, such as privacy legislation. Where relevant, National Boards may consider social media use in your private life (even where there is no identifiable link to you as a registered health practitioner) if it raises concerns about your fitness to hold registration. While you may think you are engaging in social media in a private capacity because you do not state you are a registered practitioner, it is relatively easy and simple for anyone to check your status through the register, or make connections using available pieces of information.

As highlighted in our earlier submission, the provisions in the Bill do not necessarily guarantee the application of Ahpra's professional standards were a doctor to speak publicly in a private capacity. A doctor could be subject to a notification under Ahpra should they act in a way inconsistent with standards set by Ahpra and the Medical Board.

² Australian Health Practitioner Regulation Agency. *Social Media: How to Meet Your Obligations Under the National Law*. November 2019. <https://www.ahpra.gov.au/publications/social-media-guidance.aspx>