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To Whom It May Concern,

**RE: Religious Freedom Bills – Second Exposure Drafts**

The Australian Psychological Society (APS) welcomes the opportunity to make a second submission in relation to the religious freedom bills, specifically in relation to the second exposure drafts.

The APS is the premier professional association for psychologists in Australia, representing more than 24,000 members. A key goal of the APS is to actively contribute psychological knowledge for the promotion and enhancement of community wellbeing. The APS is committed to promoting social cohesion and confronting discrimination in all its forms, reflecting the core ethical principle of respect for the dignity of all persons.

The APS considers that the fundamental premise of the Bills is sound – to protect people against discrimination on the grounds of religious activity and beliefs, and to align such protection with existing legal protections on the grounds of race, sex, disability and age. However, the APS is concerned that the Bill in its current form would provide protection of religious belief or activity at the expense of other rights, ultimately leading to adverse health outcomes.

In this regard the Bill in its current form enshrines religious activity and beliefs to the detriment of other legally protected discrimination rights. The Bill achieves this outcome by creating a “sword rather than a shield” for discrimination protection based on religious activity and beliefs. The practical outcome of the Bill permits and empowers actions and statements to be made on religious grounds to the exclusion of other currently protected discrimination rights.

Therefore the APS considers that the Bill permits and emboldens the taking of certain discriminatory actions and statements on the ground of religious beliefs rather than simply providing protection from discrimination on religious grounds. In so doing the Bill elevates religious beliefs and activity above other protected rights.

Many of the concerns raised in our first submission are still relevant to this Inquiry and have not been addressed in the second exposure drafts (see attached). In alignment with our first submission in response to this legislative package, we continue to urge the Australian Government not to support laws that privilege religious interests over the interests of other Australians, such as LGBTQI+ people, women, and people with disability.

The Religious Discrimination Bill privileges religious expression over discrimination protections, entrenches double standards in law, and prioritises religious views over people's health needs. The Bill strengthens the ability of health professionals to refuse treatment to patients on religious grounds and to express views which may impact detrimentally on people's health and wellbeing. This Bill may make it harder, for example, for health sector employers to require health professionals to treat all patients, regardless of a health professional's personal religious views. The Bill also removes discrimination protections for women, people with disabilities, LGBTQI+ people and others, in instances when health professionals make certain religious statements which are discriminatory. While we understand that statements which are malicious, or which are likely to harass, threaten, seriously intimidate, incite hatred or violence against people or which encourage serious offences will not be protected, it is not clear where the line will be drawn between statements that are allowed and those that are not.

Accordingly the Bill, by defining religious activity and beliefs in a broad way, elevates the protection for religious activity and beliefs above other protection rights, thereby detrimentally impacting on the delivery of health services.

The Bill impacts on qualifying bodies and potentially the APS Code of Ethics. It also impacts on psychologists and their clients in the delivery and receipt of treatment as the definitions of conscientious objection and religious activity are very broad, resulting in potential conflicts and poor delivery of psychological services. In this regard we will comment on the impacts on both clients and psychologists operating under the proposed scheme. We have concerns about operating under conflicting discrimination obligations whilst maintaining the ethics of doing no harm.

Psychological evidence highlights the detrimental impact of discrimination on mental health and wellbeing. People from LGBTQI+ communities, for example, already experience much higher levels of mental health problems and suicide than the general community. This Bill will pave the way for even more discrimination, particularly against LGBTQI+ people in the education (students and teachers), aged care and health care (patients and staff) systems.

We provide more details about our concerns below.

### **Conflicts with existing professional standards**

The APS is concerned about several areas of potential conflict between the proposed Religious Freedoms Bills and our professional Code of Ethics. The APS Code of Ethics has been adopted by the Psychology Board of Australia, and is supported by the Australian Health Practitioner Regulation Agency (AHPRA). This means that all psychologists practising in Australia must adhere to this Code of Ethics. Principles A.1 and B of our Code state that:

#### **A.1. Justice**

*A.1.1. Psychologists avoid discriminating unfairly against people on the basis of age, religion, sexuality, ethnicity, gender, disability, or any other basis proscribed by law.*

*A.1.2. Psychologists demonstrate an understanding of the consequences for people of unfair discrimination and stereotyping related to their age, religion, sexuality, ethnicity, gender, or disability.*

*A.1.3. Psychologists assist their clients to address unfair discrimination or prejudice that is directed against the clients.*

#### **B: Propriety**

*Psychologists ensure that they are competent to deliver the psychological services they provide. They provide psychological services to benefit, and not to harm. Psychologists seek to protect the interests of the people and peoples with whom they work. The welfare of clients and the public, and the standing of the profession, take precedence over a psychologist's self-interest.*

Should a psychologist choose to conscientiously object to providing services, they may not be meeting their ethical obligations under the Code of Ethics. There is the potential for confusion due to conflicts between professional standards and the legislation, which could ultimately lead to adverse client outcomes.

While the APS believes that the majority of psychologists would continue to work with clients according to the Code of Ethics without allowing personal beliefs to impact their practice, the proposed legislation would make it possible for psychologists to refuse to work with particular clients or other discriminatory practices, resulting in the erosion and undermining of nationally accepted standards across the psychology profession. This could damage the reputation and integrity of our profession, and undermine the duty of care that is inherent in our Code of Ethics, as well as hinder clients' rights to access care. The APS considers that existing professional standards and legislation currently strike a fair and reasonable balance between the right of a client to seek treatment without discrimination and the psychologist's right to refuse to treat clients. The APS is concerned that the proposed legislation will disrupt this balance.

### **Impact on qualifying bodies**

In addition to the conflict with our Code of Ethics, and even more problematic, is that the Bill may require the burden of proof to lie with the regulator to prove why certain codes of ethics are required that may be in conflict with religious beliefs. If this is likely to be the case, the APS recommends further consultation between the Committee, the APS, and the Psychology Board of Australia (PsyBA).

The APS is also concerned that the Bill would prevent professional registration bodies (in psychology's case, the PsyBA) from being able to implement social media policies that might be seen to infringe on the freedom of expression of religious beliefs. Again, we believe existing policies provide the right balance between psychologists' right to express their religious beliefs and the potential harm that expression of beliefs may inflict on the community and on clients.

Under the existing legislation, there are several examples of cases whereby disciplinary decisions were made against psychologists (e.g. for gross professional negligence and misconduct<sup>1</sup> and unethical and improper conduct<sup>2</sup>) who allowed their religious views to interfere with their client's healthcare. In one case, the client died by suicide. However, if the Religious Discrimination Bill were in effect at the time of these decisions, the health employers and professional bodies could have been subject to a claim of religious discrimination or restriction of religious freedom.

### **Conversion practices**

The APS is committed to evidence-based practice, and the research evidence shows that conversion practices are harmful to **all** people subjected to them, in addition to the lack of efficacy of such practices. Psychological evidence also demonstrates the [significant mental health benefits of gender affirming responses for transgender people](#).

The APS strongly opposes any form of mental health practice that seeks to change a person's sexual orientation or gender identity (also known as conversion practices). We refer the Committee to the [APS Position Statement on Psychological Practices that Attempt to Change Sexual Orientation](#) and [APS Information Sheet on Mental Health Practices that Affirm Transgender People's Experiences](#) for more detailed information. Any psychologist attempting to use conversion practices is likely to be in breach of the APS Code of Ethics.

Existing laws against programs promoting conversion practices would be overridden under the Bill. Under section 42 of the Religious Discrimination Bill 2019, "statements of belief" are protected from anti-discrimination law.

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<sup>1</sup> See [Case 7 \(2005\) SAPSB 1](#)

<sup>2</sup> See

Statements of belief therefore could give licence to harmful and offensive statements and speech, as well as used as tools in conversion practice ideology.

Conversion practices in Australia primarily (though not solely) occur in the context of religious organisations. What must be weighed up, then, are the rights of religious organisations to their beliefs, and the rights of individuals to psychological safety and wellbeing, and to freedom from discrimination and coercion. The APS considers that a unilateral ban on conversion practices is warranted, and should not be mitigated by recourse to claims to religious freedom.

### **Conscientious objection**

The APS believes that client health needs should take precedence over psychologists' self-interest or religious beliefs, in alignment with our Code of Ethics. If health professionals conscientiously object to providing services (such as abortions, voluntary assisted dying, or affirmative therapeutic approaches), the APS recommends that health professionals be obligated to tell their clients about their objection and refer their clients on to a practitioner who does not hold such an objection.<sup>3</sup>

In the case of a small community, it may be difficult for health professionals who have a conscientious objection to find a suitable referral. Section 8(6) of the Bill prevents health sector employers and professional bodies from imposing additional requirements on health professionals which go beyond State or Territory laws allowing conscientious objection in healthcare. As such, this may mean health sector employers will only be able to restrict or prevent a health professional from refusing treatment to a client if it causes an "unjustifiable adverse impact" on the service or the health of the patient (s 8(7)). However, it is not clear when an adverse impact will be justified, and therefore whether professional standards that obligate practitioners to refer on, or treat when there is no appropriate practitioner available, will be unlawful.

If faith-based clinical services are being offered and the service is clearly advertised as such then it might be reasonable to frame the service within that belief system, providing it does not result in harm to the client, as is demonstrably the case with conversion therapy. What is not reasonable is if a psychologist, who also happens to hold religious beliefs, has grounds to activate the right to discriminate against certain clients. In other words, if a psychologist advertises their services and holds themselves available to all people, then they should be expected to act accordingly.

Our Code of Ethics states that if a psychologist is confronted with evidence of a problem or situation with which they are not competent to deal, then they must provide clients with an explanation for the need to terminate a service, take

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<sup>3</sup>

steps to safeguard a client's ongoing welfare and offer to help locate alternative assistance. In the same way, if information comes to light whereby a psychologist believes that it may impact on their ability to provide a service to a client, then the same actions may be required.

We recommend that unless psychologists and health practitioners advertise themselves as having a particular religious affiliation (and outline what that means in terms of the services they offer), then potential clients should have the right to the full range of client services which the practitioner is qualified to offer. The APS believes the onus should be on service providers who wish to limit services on religious belief grounds to have that disclosed up front, rather than people being denied services ad hoc or be subjected to discrimination during the delivery of services. For example, the following provision appears untenable: "that a person cannot be found to have discriminated against a person under any anti-discrimination law for merely expressing their genuinely held religious beliefs in good faith". This could include merely stating a biblical view of marriage or an atheist view on prayer. Furthermore, if a client accesses a service that makes no mention of religious views, and after four sessions the clinician makes a prejudiced statement, the client has no recourse. That is not acting in good faith, and it is unlikely to result in a good health outcome for the client.

The distinction between health care professionals being able to discriminate against a procedure but not a person is also problematic. This was a key change introduced after the first exposure draft. If gender affirming approaches are classed as a procedure/modality, then refusing to adopt this approach is in effect discriminating against the person. The APS requests further clarification and comment related to this point.

### **Religious hospitals, aged care and education providers**

It is an ongoing challenge to attract and retain good staff particularly in the aged care and education sectors. Ultimately the APS believes that staff should be selected on the basis of their qualifications, skills and experience and not on the basis of their religion. It is unlawful for an organisation to discriminate against an individual based on their religious preference. The new legislation however would make it possible for religious bodies to use religion to take faith into account in staffing decisions and, for example, to unfairly discriminate against and dismiss staff on the basis of personal characteristics or beliefs unrelated to their job description and task requirements. The APS understands the desire for religious bodies to maintain a faith-based identity but this should not be to the detriment of the health and wellbeing of workers and the broader community. A balance must be found between the competing objectives of providing access and maintaining a faith-based identity.

The exposure drafts of the Religious Discrimination Bill 2019 will make it easier for personal religious views to interfere with the provision of quality healthcare and education. Current laws mean that health practitioners who use

inappropriate and/or ineffective treatment methods related to personal religious beliefs which have adverse outcomes (e.g. expressing and incorporating religious views as part of treatment sessions with vulnerable clients, which ultimately contribute to suicide) can be appropriately dealt with. However, the proposed legislation could mean that this behaviour and treatment provided to a client would be subject to the protections provided under the Bill, as being based on religious beliefs or activity. Such an outcome impacts on the provision of healthcare and in turn client safety and the community's confidence in the delivery of healthcare.

### **Summary and recommendations**

In summary, the APS supports the introduction of protection against discrimination on the grounds of religious activity and beliefs in line with protections on the grounds of race, sex, disability and age. However, the second exposure drafts have not addressed the privileging of religious expression. The APS is concerned that the Bill in its current form would provide protection to religious belief or activity at the expense of other rights, and furthermore would lead to adverse health outcomes.

The APS recommends that the Attorney-General should:

- Remove unprecedented provisions which will undermine existing protections from discrimination against other groups and result in major uncertainty for practitioners and their clients. Specifically, clauses 8(6) and 8(7), dealing with rules about conscientious objections by health practitioners, from the Religious Discrimination Bill 2019 (Cth).
- Remove clause 42 dealing with discriminatory statements of belief, from the Religious Discrimination Bill 2019 (Cth) as it destabilises Australia's existing anti-discrimination framework.

Yours sincerely,



Frances Mirabelli  
Chief Executive Officer

### **References available upon request**

**Attachment: APS Submission to the Religious Freedom Bills – First Exposure Drafts**