



14 February 2018

The Expert Panel on Religious Freedom
c/o Department of the Prime Minister and Cabinet
PO Box 6500
Canberra ACT 2600
By email: religiousfreedom@pmc.gov.au

Dear Sir/Madam,

Religious Freedom Review

Thank you for the opportunity to contribute to the Religious Freedom Review.

This submission is from Catholic Health Australia (CHA). CHA is Australia's largest non-government grouping of health, community, and aged care services accounting for around 10% of hospital based healthcare in Australia. Our members also provide around 30% of private hospital care, 5% of public hospital care, 12% of aged care facilities, and 20% of home care and support for the elderly. Approximately 80,000 people work in the Catholic health and aged care sector.

CHA is the '*credible, ethical and influential voice of Catholic health, aged care and community care services in Australia*', and as such advocates on behalf of our members – the Catholic hospital and aged care services providers.

Faith-based organisations

Catholic health and aged care services are equal opportunity employers and serve all people without discrimination, although there are some services not provided because they are not compatible with our beliefs.

Abortion

It is recommended that section 8 of the *Abortion Law Reform Act 2008* (Vic) be amended to provide for freedom of conscience. This Act compels a registered health practitioner with a conscientious objection to abortion to tell a patient of their objection and to refer the patient to another registered health practitioner who does not have the same objection. It also compels a medical practitioner or assisting registered nurse, despite their conscientious objections, to perform an abortion in an emergency.

Laws that force doctors to refer for abortion are an example of an imposition on the religious freedom of those who object on the basis of their faith.

The Australian Medical Association's position as stated in their 12 August 2013 Media Release titled *Abortion Law must Respect Dictates of Conscience* is "*Respect for a conscientious objection is a*

fundamental principle in our democratic country, and medical practitioners expect that their rights in this regard will be respected, as for any other citizen.”

Reference: <https://ama.com.au/ausmed/abortion-law-must-respect-dictates-conscience>

Accordingly, with respect to conscientious objection and any current or proposed laws that allow or facilitate abortion, CHA submits that conscientious objection is a fundamental human right. It is a necessary and integral part of the right of freedom of thought, conscience, religion and belief. Section 8 is overly narrow in its practical application and restrictive on the right of conscientious objection of medical practitioners and assisting nurses.

CHA recommends that Australian laws be modelled on section 4 of the *Abortion Act 1967* (UK) which reads:

“No person shall be under any duty, whether legal or contractual, to perform or participate in any act authorised by this Act to which the person has a conscientious objection.”

For further details about CHA’s objection to the sub-clauses of section 8 of the *Abortion Law Reform Act 2008* (Vic) refer to **Attachment A**.

Finally, CHA members submit that the right to conscientiously object should also be specifically stated to vest in the hospital, health service or other institutional or corporate body as the provision of abortion procedures is in contradiction to The Code of Ethical Standards for Catholic Health and Aged Care Services in Australia (<https://cha.org.au/code-of-ethical-standards>).

Voluntary Assisted Dying

The recently passed *Voluntary Assisted Dying Act 2017* (Vic) provides in section 7 for conscientious objection of registered health practitioners by reference to the actions that a practitioner may refuse to do. CHA notes the list of actions includes that they may refuse *“to participate in the request and assessment process”* which, on ordinary meaning, would include that the health practitioner may refuse to refer the person to another service/practitioner that will provide voluntary assisted dying. We submit that any amendment which seeks to require referral, such as in the Victorian *Abortion Law Reform Act 2008*, not be supported or permitted. For those people who object to euthanasia, particularly grounded in their own faith beliefs, to refer someone to a voluntary assisted dying service is tantamount to facilitating the procedure and so is as objectionable as performing the service.

Further, similarly to the abortion legislation, no provision exists for conscientious objection to be made on behalf of a hospital, health service or other institutional or corporate body. Many who work in a Catholic hospital and many who come to be cared for in a Catholic hospital do so due to the beliefs of the service provider. Health care is integral to the mission of the Church, and Catholic providers of health and care services are committed to developing a culture which affirms life and healing. Voluntary assisted dying is not what is considered quality end-of-life care in accordance with The Code of Ethical Standards for Catholic Health and Aged Care Services in Australia.

Conclusion

This Review process is an important opportunity to improve the recognition of religious freedom in Australian law and I commend these recommendations to the Expert Panel.

Please do not hesitate to contact me if I can be of any further assistance.

Yours sincerely,



Suzanne Greenwood LLM LLB FAIM MAICD MCHSM
Chief Executive Officer

Attachment A

Catholic Health Australia's objection to the sub-clauses of section 8 of the *Abortion Law Reform Act 2008* (Vic)

CHA objects to section 8(1)(a) of the Victorian Act which requires a practitioner with a conscientious objection to tell a patient of the objection, as infringing article 18(1) and (2) of the International Covenant on Civil and Political Rights (ICCPR).

Article 18(1) reads: *"Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."*

Article 18(2) reads: *"No one shall be subject to coercion which shall impair his freedom to have or adopt a religion of his belief or choice."*

Article 19, paragraph 1, further states that *"Everyone shall have the right to hold opinions without interference."*

The United Nations Human Rights Committee has determined, in General Comment No.22, (1993) (<http://hrlibrary.umn.edu/gencomm/hrcom22.htm>) that:

General Comment 22, paragraph 1:

"The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others."

General Comment 22, paragraph 3:

"Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference ... no one can be compelled to reveal his thoughts or adherence to a religion or belief."

Further, CHA submits that section 8(1)(b) of the Victorian Act, which requires a practitioner with a conscientious objection to refer a patient to another practitioner, infringes articles 18(1) and (2) of the ICCPR. The objector is being coerced in a way that limits his or her rights; it does so by requiring the health practitioner to provide a referral for purposes to which he or she conscientiously objects on religious or moral grounds.

The requirements in section 8(3) and (4) are also a limitation on the freedom of thought, conscience, religion and belief as these sections compel a medical practitioner or registered nurse, despite their conscientious objections, to perform an abortion in an emergency. They are thus compelled to undertake a course of action in which they would not voluntarily engage and which is contrary to their conscience and religious beliefs.