

EXPOSURE DRAFT

2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Religious Discrimination Bill 2019

No. , 2019

(Attorney-General)

**A Bill for an Act relating to discrimination on the
ground of religious belief or activity, and for
related purposes**

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
3 Objects of this Act	2
4 Simplified outline of this Act	3
5 Definitions	4
6 Extended meaning of <i>ground</i>	10
Part 2—Concept of discrimination on the ground of religious belief or activity	11
7 Discrimination on the ground of religious belief or activity— direct discrimination	11
8 Discrimination on the ground of religious belief or activity— indirect discrimination	11
9 Discrimination extends to persons associated with individuals who hold or engage in a religious belief or activity	15
10 Conduct engaged in for 2 or more reasons	15
11 Religious bodies may act in accordance with their faith etc.	15
12 Conduct that is not <i>discrimination</i> —reasonable conduct intended to meet a need or reduce a disadvantage	16
Part 3—Unlawful discrimination	18
Division 1—Introduction	18
13 Introduction	18
Division 2—Discrimination in work	19
14 Employment	19
15 Partnerships	19
16 Qualifying bodies	20
17 Registered organisations	21
18 Employment agencies	22
Division 3—Discrimination in other areas	23
19 Education	23
20 Access to premises	23
21 Goods, services and facilities	24
22 Accommodation	24
23 Land	25
24 Sport	25

EXPOSURE DRAFT

25	Clubs	25
26	Requesting or requiring information.....	26
27	Commonwealth laws and programs.....	26
Division 4—Exceptions and exemptions		27
Subdivision A—General exceptions		27
28	Counselling, promoting etc. a serious offence.....	27
29	Conferring charitable benefits	27
30	Conduct in direct compliance with certain legislation etc.	28
31	Orders, determinations and industrial instruments	29
Subdivision B—Specific exceptions relating to particular areas of public life		30
32	Exceptions relating to work.....	30
33	Exceptions relating to accommodation.....	32
34	Exception for disposal of land	34
35	Exception relating to clubs	34
36	Exception relating to voluntary bodies	34
Subdivision C—Exemptions granted by the Commission		35
37	Commission may grant exemptions.....	35
38	Applying for an exemption.....	35
39	Effect of exemptions.....	35
40	Variation and revocation of exemptions.....	36
41	Review by Administrative Appeals Tribunal.....	36
Part 4—Statements of belief do not constitute discrimination etc.		37
42	Statements of belief do not constitute discrimination etc.	37
Part 5—Offences		38
43	Unlawful conduct is not an offence unless expressly provided.....	38
44	Victimisation	38
45	Advertisements	40
Part 6—Freedom of Religion Commissioner		41
46	Freedom of Religion Commissioner.....	41
47	Term of appointment	41
48	Remuneration of Commissioner	41
49	Leave of absence	42
50	Outside employment.....	42
51	Other terms and conditions of appointment.....	42

EXPOSURE DRAFT

52	Resignation.....	42
53	Termination	43
54	Acting Commissioner.....	44
Part 7—Functions of the Australian Human Rights Commission		45
55	Functions of the Commission	45
Part 8—Application and constitutional provisions		47
56	This Act binds the Crown.....	47
57	Geographical application of this Act	47
58	Constitutional basis of this Act.....	47
59	Additional operation of this Act	48
60	Limited application provisions	51
61	Compensation for acquisition of property	51
62	Relationship with State and Territory laws.....	52
Part 9—Other matters		53
63	Delegation	53
64	Liability of persons involved in unlawful conduct	53
65	Conduct by representatives.....	54
66	Protection from civil actions.....	55
67	No right of action unless expressly provided.....	55
68	Non-disclosure of protected information	56
69	Commissioner to give information to the Commission	57
70	Regulations.....	57

EXPOSURE DRAFT

1 **A Bill for an Act relating to discrimination on the**
2 **ground of religious belief or activity, and for**
3 **related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act is the *Religious Discrimination Act 2019*.

EXPOSURE DRAFT

Part 1 Preliminary

Section 2

1 **2 Commencement**

- 2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.

6

Commencement information

Column 1**Column 2****Column 3****Provisions****Commencement****Date/Details**

1. The whole of
this Act

A single day to be fixed by Proclamation.
However, if the provisions do not commence
within the period of 6 months beginning on
the day this Act receives the Royal Assent,
they commence on the day after the end of
that period.

- 7 Note: This table relates only to the provisions of this Act as originally
8 enacted. It will not be amended to deal with any later amendments of
9 this Act.

- 10 (2) Any information in column 3 of the table is not part of this Act.
11 Information may be inserted in this column, or information in it
12 may be edited, in any published version of this Act.

13 **3 Objects of this Act**

- 14 (1) The objects of this Act are:
15 (a) to eliminate, so far as is possible, discrimination against
16 persons on the ground of religious belief or activity in a range
17 of areas of public life; and
18 (b) to ensure, as far as practicable, that everyone has the same
19 rights to equality before the law, regardless of religious belief
20 or activity; and
21 (c) to ensure that people can, consistently with Australia's
22 obligations with respect to freedom of religion and freedom
23 of expression, and subject to specified limits, make
24 statements of belief.

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

6 **4 Simplified outline of this Act**

7 This Act makes it unlawful to discriminate on the ground of
8 religious belief or activity in a range of areas of public life.

9 It is unlawful to discriminate on the ground of religious belief or
10 activity in relation to work, in certain other areas such as
11 education, and in providing goods and services (see Divisions 2
12 and 3 of Part 3).

13 However, it is not unlawful to discriminate on the ground of
14 religious belief or activity if a particular exception or exemption
15 applies (see Division 4 of Part 3).

16 Certain statements of belief do not constitute discrimination (see
17 Part 4).

18 Certain conduct involving advertisements and victimisation is an
19 offence (see Part 5).

20 Conduct that is unlawful or an offence under this Act is unlawful
21 discrimination for the purposes of the *Australian Human Rights
22 Commission Act 1986*. Complaints can be made under that Act to
23 the Australian Human Rights Commission about such conduct.

24 The office of the Freedom of Religion Commissioner is established
25 by this Act (see Part 6). The Australian Human Rights Commission
26 has a number of functions in relation to this Act (see Part 7).

27 This Act has effect subject to certain geographical and
28 constitutional limitations (see Part 8).

EXPOSURE DRAFT

Part 1 Preliminary

Section 5

1 Provision is made for miscellaneous matters such as delegation and
2 protection from civil actions (see Part 9).

5 Definitions

4 (1) In this Act:

5 **accommodation** includes residential and business accommodation.

6 **Australia**, when used in a geographical sense, includes all the
7 external Territories.

8 **child**: without limiting who is a child of a person for the purposes
9 of this Act, someone is the child of a person if he or she is a child
10 of the person within the meaning of the *Family Law Act 1975*.

11 **club** means an association (whether incorporated or
12 unincorporated) of persons associated together for social, literary,
13 cultural, political, sporting, athletic or other lawful purposes that
14 provides and maintains its facilities, in whole or in part, from the
15 funds of the association.

16 **Commission** means the Australian Human Rights Commission.

17 **Commissioner** means the Freedom of Religion Commissioner
18 appointed under section 46.

19 **conscientiously object**: a health practitioner **conscientiously**
20 **objects** to providing or participating in a particular kind of health
21 service if:

22 (a) the health practitioner refuses to provide, or participate in,
23 that kind of health service on the ground of his or her
24 religious belief or activity; and

25 (b) a person of the same religion as the health practitioner could
26 reasonably consider the refusal to provide, or participate in,
27 that kind of health service as being in accordance with the
28 doctrines, tenets, beliefs or teachings of that religion.

29 **de facto partner** of a person has the meaning given by the *Acts*
30 *Interpretation Act 1901*.

EXPOSURE DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

discriminate: see sections 7, 8, 11 and 12.

Note 1: Section 9 extends the concept of discrimination to persons who are associated with individuals who hold or engage in a religious belief or activity.

Note 2: Certain statements of belief do not constitute discrimination for the purposes of specified legislation, including this Act (see section 42).

educational institution means a school, college, university or other institution at which education or training is provided.

employer includes a person acting or purporting to act on behalf of an employer.

employer conduct rule means a condition, requirement or practice:

- (a) that is imposed, or proposed to be imposed, by an employer on its employees or prospective employees; and
- (b) that relates to standards of dress, appearance or behaviour of those employees.

employment means:

- (a) work under a contract of employment (within its ordinary meaning); or
- (b) work that a person is otherwise appointed or engaged to perform;

whether the work is on a full-time, part-time, temporary or casual basis, or whether it is paid or unpaid.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

ground has a meaning affected by section 6.

health practitioner means an individual who, under a law of a State or Territory, is registered or licensed to provide a health service.

health practitioner conduct rule means a condition, requirement or practice:

EXPOSURE DRAFT

Part 1 Preliminary

Section 5

- 1 (a) that is imposed, or proposed to be imposed, by a person on a
2 health practitioner; and
3 (b) that relates to the provision of or participation in a particular
4 kind of health service by the health practitioner; and
5 (c) that would have the effect of restricting or preventing the
6 health practitioner from conscientiously objecting to
7 providing or participating in that kind of health service.

8 **health service** means a service provided in the practice of any of
9 the following health professions:

- 10 (a) medical;
11 (b) midwifery;
12 (c) nursing;
13 (d) pharmacy;
14 (e) psychology.

15 **local by-law** means a law made by a body established for the
16 purposes of local government by or under a law of a State or
17 Territory.

18 **near relative**, in relation to a person, means:

- 19 (a) a parent, step-parent, grandparent or step-grandparent of the
20 person; or
21 (b) a child, step-child, grandchild or step-grandchild of the
22 person; or
23 (c) a brother, sister, step-brother or step-sister of the person; or
24 (d) the spouse or de facto partner of the person; or
25 (e) another person who has any of the relationships specified in
26 paragraph (a), (b) or (c) to the person's spouse or de facto
27 partner.

28 **paid work** means work for financial gain or reward (whether as an
29 employee, a self-employed person or otherwise).

30 **parent**: without limiting who is a parent of a person for the
31 purposes of this Act, someone is the **parent** of a person if the
32 person is his or her child because of the definition of **child** in this
33 subsection.

EXPOSURE DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

premises includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises of a kind mentioned in paragraph (a) or (b)).

qualifying body means 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, the carrying on of a trade or the engaging in of an occupation.

qualifying body conduct rule means a condition, requirement or practice:

- (a) that is imposed, or proposed to be imposed, by a qualifying body on persons seeking or holding an authorisation or qualification from the qualifying body; and
- (b) that relates to standards of behaviour of those persons.

registered charity means an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act.

registered public benevolent institution means an institution that is:

- (a) a registered charity; and
- (b) registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the subtype of entity mentioned in column 2 of item 14 of the table in subsection 25-5(5) of that Act.

relevant employer: an employer is a **relevant employer** at a particular time in a financial year if:

- (a) the employer has or had revenue for the current or previous financial year of at least \$50 million; and

EXPOSURE DRAFT

Part 1 Preliminary

Section 5

1 (b) the employer is not the Commonwealth, a State or a Territory
2 or a body established for a public purpose by or under a law
3 of the Commonwealth, a State or a Territory.

4 **religious belief or activity** means:

- 5 (a) holding a religious belief; or
6 (b) engaging in lawful religious activity; or
7 (c) not holding a religious belief; or
8 (d) not engaging in, or refusing to engage in, lawful religious
9 activity.

10 **religious body**: see subsection 11(5).

11 **serious offence**: see subsection 28(2).

12 **services** means services of any kind, including (for example) the
13 following:

- 14 (a) services relating to banking, insurance, superannuation and
15 the provision of grants, loans, credit or finance;
16 (b) services relating to entertainment, recreation or refreshment;
17 (c) services relating to transport or travel;
18 (d) services relating to telecommunications;
19 (e) services of the kind provided by the members of any
20 profession or trade;
21 (f) services of the kind provided by a government, a government
22 authority or a body established for the purposes of local
23 government by or under a law of a State or Territory.

24 **statement of belief**: a statement is a **statement of belief** if:

- 25 (a) the statement:
26 (i) is of a religious belief held by a person (the **first**
27 **person**); and
28 (ii) is made, in good faith, by written or spoken words by
29 the first person; and
30 (iii) is of a belief that a person of the same religion as the
31 first person could reasonably consider to be in
32 accordance with the doctrines, tenets, beliefs or
33 teachings of that religion; or

EXPOSURE DRAFT

- 1 (b) the statement:
2 (i) is of a belief held by a person who does not hold a
3 religious belief; and
4 (ii) is made, in good faith, by written or spoken words by
5 the person; and
6 (iii) is of a belief that a person who does not hold a religious
7 belief could reasonably consider to relate to the fact of
8 not holding a religious belief.

9 **step-child:** without limiting who is a step-child of a person for the
10 purposes of this Act, someone who is a child of a de facto partner
11 of the person is the **step-child** of the person if he or she would be
12 the person's step-child except that the person is not legally married
13 to the partner.

14 **step-parent:** without limiting who is a step-parent of a person for
15 the purposes of this Act, someone who is a de facto partner of a
16 parent of the person is the **step-parent** of the person if he or she
17 would be the person's step-parent except that he or she is not
18 legally married to the person's parent.

19 **this Act** includes the regulations.

20 **vilify**, in relation to a person or group of persons, means incite
21 hatred or violence towards the person or group.

22 **voluntary body** means an association or other body (whether
23 incorporated or unincorporated), the activities of which are not
24 engaged in for the purpose of making a profit, but does not include:

- 25 (a) a club; or
26 (b) a body established by a law of the Commonwealth, a State or
27 a Territory; or
28 (c) an association that provides grants, loans, credit or finance to
29 its members.

30 (2) For the purposes of paragraphs (b) and (d) of the definition of
31 **religious belief or activity** in subsection (1), an activity is not
32 unlawful merely because a local by-law prohibits the activity.

EXPOSURE DRAFT

Part 1 Preliminary

Section 6

- 1 (3) For the purposes of this Act, if one person is the child of another
2 person because of the definition of *child* in subsection (1),
3 relationships traced to or through that person are to be determined
4 on the basis that the person is the child of the other person.

5 **6 Extended meaning of *ground***

6 Discrimination on the *ground* of a person's religious belief or
7 activity includes discrimination:

- 8 (a) on the ground of a characteristic that people who hold or
9 engage in the religious belief or activity generally have; and
10 (b) on the ground of a characteristic that people who hold or
11 engage in the religious belief or activity are generally
12 presumed to have; and
13 (c) on the ground of the religious belief or activity that a person
14 holds or engages in; and
15 (d) on the ground of the religious belief or activity that a person
16 has held or engaged in in the past, whether or not the person
17 still holds or engages in the religious belief or activity; and
18 (e) on the ground of the religious belief or activity that a person
19 is thought to hold or engage in, whether or not the person
20 holds or engages in the religious belief or activity; and
21 (f) on the ground of the religious belief or activity that a person
22 is thought to have held or engaged in in the past, whether or
23 not the person has held or engaged in the religious belief or
24 activity in the past.

EXPOSURE DRAFT

Concept of discrimination on the ground of religious belief or activity **Part 2**

Section 7

1 **Part 2—Concept of discrimination on the ground of**
2 **religious belief or activity**
3

4 **7 Discrimination on the ground of religious belief or activity—direct**
5 **discrimination**

6 A person *discriminates* against another person on the ground of the
7 other person’s religious belief or activity if:

- 8 (a) the person treats, or proposes to treat, the other person less
9 favourably than the person treats, or would treat, another
10 person who does not have or engage in the religious belief or
11 activity in circumstances that are not materially different; and
12 (b) the reason for the less favourable treatment is the other
13 person’s religious belief or activity.

14 **8 Discrimination on the ground of religious belief or activity—**
15 **indirect discrimination**

16 *Indirect discrimination*

- 17 (1) A person *discriminates* against another person on the ground of the
18 other person’s religious belief or activity if:
19 (a) the person imposes, or proposes to impose, a condition,
20 requirement or practice; and
21 (b) the condition, requirement or practice has, or is likely to
22 have, the effect of disadvantaging persons who hold or
23 engage in the same religious belief or activity as the other
24 person; and
25 (c) the condition, requirement or practice is not reasonable.

26 *Considerations relating to reasonableness*

- 27 (2) Subject to subsections (3), (4), (6) and (7), whether a condition,
28 requirement or practice is reasonable depends on all the relevant
29 circumstances of the case, including the following:

EXPOSURE DRAFT

Part 2 Concept of discrimination on the ground of religious belief or activity

Section 8

- 1 (a) the nature and extent of the disadvantage resulting from the
2 imposition, or proposed imposition, of the condition,
3 requirement or practice;
4 (b) the feasibility of overcoming or mitigating the disadvantage;
5 (c) whether the disadvantage is proportionate to the result sought
6 by the person who imposes, or proposes to impose, the
7 condition, requirement or practice;
8 (d) if the condition, requirement or practice is an employer
9 conduct rule—the extent to which the rule would limit the
10 ability of an employee to hold or engage in the employee’s
11 religious belief or activity;
12 (e) if the condition, requirement or practice is a qualifying body
13 conduct rule—the extent to which the rule would limit the
14 ability of a person to hold or engage in the person’s religious
15 belief or activity.

16 *Conditions that are not reasonable relating to statements of belief*

- 17 (3) For the purposes of paragraph (1)(c), an employer conduct rule
18 that:
19 (a) is imposed, or proposed to be imposed, by a relevant
20 employer; and
21 (b) would have the effect of restricting or preventing an
22 employee of the employer from making a statement of belief
23 other than in the course of the employee’s employment;
24 is not reasonable unless compliance with the rule by employees is
25 necessary to avoid unjustifiable financial hardship to the employer.

26 Note: A requirement to comply with an employer conduct rule that is not
27 reasonable under this subsection is also not an inherent requirement of
28 employment (see subsection 32(6)).

- 29 (4) For the purposes of paragraph (1)(c), a qualifying body conduct
30 rule that would have the effect of restricting or preventing a person
31 from making a statement of belief other than in the course of the
32 person practising in the relevant profession, carrying on the
33 relevant trade or engaging in the relevant occupation is not
34 reasonable unless compliance with the rule by the person is an
35 essential requirement of the profession, trade or occupation.

EXPOSURE DRAFT

- 1 (5) Subsections (3) and (4) do not apply in relation to a statement of
2 belief:
3 (a) that is malicious; or
4 (b) that would, or is likely to, harass, threaten, seriously
5 intimidate or vilify another person or group of persons; or
6 (c) that is covered by paragraph 28(1)(b).

7 Note: Paragraph 28(1)(b) covers expressions of religious belief that a
8 reasonable person, having regard to all the circumstances, would
9 conclude counsel, promote, encourage or urge conduct that would
10 constitute a serious offence.

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

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

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

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

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

EXPOSURE DRAFT

Part 2 Concept of discrimination on the ground of religious belief or activity

Section 8

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

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

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

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

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

26 *Burden of proof*

27 (8) For the purposes of subsection (1), the person who imposes, or
28 proposes to impose, the condition, requirement or practice has the
29 burden of proving that the condition, requirement or practice is
30 reasonable.

31 Note: As a result of this subsection, the person who imposes, or proposes to
32 impose, the condition, requirement or practice also has the burden of
33 proving that compliance with the rule is:

34 (a) necessary as referred to in subsection (3) or (7); or

35 (b) an essential requirement as referred to in subsection (4).

EXPOSURE DRAFT

1 *Employee includes prospective employee*

2 (9) In this section, a reference to an employee includes a reference to a
3 prospective employee.

4 **9 Discrimination extends to persons associated with individuals who**
5 **hold or engage in a religious belief or activity**

6 This Act applies to a person who has an association (whether as a
7 near relative or otherwise) with an individual who holds or engages
8 in a religious belief or activity in the same way as it applies to a
9 person who holds or engages in a religious belief or activity.

10 Example: It is unlawful, under section 14, for an employer to discriminate
11 against an employee on the ground of a religious belief or activity of
12 the employee's spouse.

13 **10 Conduct engaged in for 2 or more reasons**

14 If:

- 15 (a) conduct is engaged in for 2 or more reasons; and
16 (b) one of the reasons is a person's religious belief or activity
17 (whether or not it is the dominant or a substantial reason for
18 the conduct);

19 then, for the purposes of this Act, the conduct is taken to be
20 engaged in for that reason.

21 **11 Religious bodies may act in accordance with their faith etc.**

22 (1) A religious body does not *discriminate* against a person under this
23 Act by engaging, in good faith, in conduct that a person of the
24 same religion as the religious body could reasonably consider to be
25 in accordance with the doctrines, tenets, beliefs or teachings of that
26 religion.

27 Note: This subsection does not permit conduct that is otherwise unlawful
28 under any other law of the Commonwealth, including the *Sex*
29 *Discrimination Act 1984*.

EXPOSURE DRAFT

Part 2 Concept of discrimination on the ground of religious belief or activity

Section 12

- 1 (2) Without limiting subsection (1), conduct mentioned in that
2 subsection includes giving preference to persons of the same
3 religion as the religious body.
- 4 (3) A religious body does not *discriminate* against a person under this
5 Act by engaging, in good faith, in conduct to avoid injury to the
6 religious susceptibilities of adherents of the same religion as the
7 religious body.
- 8 Note: This subsection does not permit conduct that is otherwise unlawful
9 under any other law of the Commonwealth, including the *Sex*
10 *Discrimination Act 1984*.
- 11 (4) Without limiting subsection (3), conduct mentioned in that
12 subsection includes giving preference to persons of the same
13 religion as the religious body.
- 14 (5) **Religious body** means:
15 (a) an educational institution that is conducted in accordance
16 with the doctrines, tenets, beliefs or teachings of a particular
17 religion; or
18 (b) a registered public benevolent institution that is conducted in
19 accordance with the doctrines, tenets, beliefs or teachings of
20 a particular religion; or
21 (c) any other body that is conducted in accordance with the
22 doctrines, tenets, beliefs or teachings of a particular religion
23 (other than a body that engages solely or primarily in
24 commercial activities);
25 but does not include an institution that is a hospital or aged care
26 facility, or that solely or primarily provides accommodation.
- 27 (6) This section applies despite anything else in this Act.

12 Conduct that is not *discrimination*—reasonable conduct intended to meet a need or reduce a disadvantage

- 28 (1) A person does not *discriminate* against another person under this
29 Act by engaging in conduct that:
30 (a) is reasonable in the circumstances; and
31 (b) is consistent with the purposes of this Act; and
32
33
-

EXPOSURE DRAFT

Concept of discrimination on the ground of religious belief or activity **Part 2**

Section 12

- 1 (c) either:
2 (i) is intended to meet a need arising out of a religious
3 belief or activity of a person or group of persons; or
4 (ii) is intended to reduce a disadvantage experienced by a
5 person or group of persons on the basis of the person's
6 or group's religious beliefs or activities.
- 7 (2) This section applies despite anything else in this Act.

EXPOSURE DRAFT

Part 3 Unlawful discrimination

Division 1 Introduction

Section 13

1 **Part 3—Unlawful discrimination**

2 **Division 1—Introduction**

3 **13 Introduction**

4 (1) This Part sets out when discrimination on the ground of a person's
5 religious belief or activity is unlawful.

6 Note: Complaints can be made to the Australian Human Rights Commission
7 about conduct that is unlawful under this Part (see the definition of
8 ***unlawful discrimination*** in subsection 3(1) of the *Australian Human*
9 *Rights Commission Act 1986*, and section 46P of that Act).

10 (2) There are some exceptions to unlawful discrimination. These are
11 set out in Division 4. The Commission may also grant certain
12 exemptions (see Subdivision C of Division 4).

EXPOSURE DRAFT

1 **Division 2—Discrimination in work**

2 **14 Employment**

3 *Discrimination in relation to hiring etc.*

4 (1) It is unlawful for an employer to discriminate against another
5 person on the ground of the other person's religious belief or
6 activity:

- 7 (a) in the arrangements made for the purpose of determining who
8 should be offered employment; or
9 (b) in determining who should be offered employment; or
10 (c) in the terms or conditions on which employment is offered.

11 Note: The word *employment* has an extended meaning in this Act and
12 includes, for example, contract work and work on commission (see
13 subsection 5(1)). The words *employer* and *employee* have similarly
14 extended meanings (see section 18A of the *Acts Interpretation Act*
15 *1901*).

16 *Discrimination in relation to terms and conditions of employment*
17 *etc.*

18 (2) It is unlawful for an employer to discriminate against an employee
19 on the ground of the employee's religious belief or activity:

- 20 (a) in the terms or conditions of employment that the employer
21 affords the employee; or
22 (b) by denying the employee access, or limiting the employee's
23 access, to opportunities for promotion, transfer or training, or
24 to any other benefits associated with employment; or
25 (c) by dismissing the employee; or
26 (d) by subjecting the employee to any other detriment.

27 **15 Partnerships**

28 *Discrimination in relation to forming partnerships etc.*

29 (1) It is unlawful for 3 or more persons who are proposing to form
30 themselves into a partnership to discriminate against another

EXPOSURE DRAFT

Part 3 Unlawful discrimination

Division 2 Discrimination in work

Section 16

- 1 person on the ground of the other person's religious belief or
2 activity:
- 3 (a) in determining who should be invited to become a partner in
4 the partnership; or
- 5 (b) in the terms or conditions on which the other person is
6 invited to become a partner in the partnership.
- 7 (2) It is unlawful for any one or more of the partners in a partnership
8 consisting of 3 or more partners to discriminate against another
9 person on the ground of the other person's religious belief or
10 activity:
- 11 (a) in determining who should be invited to become a partner in
12 the partnership; or
- 13 (b) in the terms or conditions on which the other person is
14 invited to become a partner in the partnership.

15 *Discrimination against partner*

- 16 (3) It is unlawful for any one or more of the partners in a partnership
17 consisting of 3 or more partners to discriminate against another
18 partner in the partnership on the ground of the other partner's
19 religious belief or activity:
- 20 (a) by denying the other partner access, or limiting the other
21 partner's access, to any benefit arising from being a partner
22 in the partnership; or
- 23 (b) by expelling the other partner from the partnership; or
24 (c) by subjecting the other partner to any other detriment.

25 **16 Qualifying bodies**

- 26 It is unlawful for a qualifying body to discriminate against a person
27 on the ground of the person's religious belief or activity:
- 28 (a) by refusing or failing to confer, renew, extend or vary an
29 authorisation or qualification; or
- 30 (b) in the terms or conditions on which the qualifying body is
31 prepared to confer, renew, extend or vary an authorisation or
32 qualification; or

EXPOSURE DRAFT

- 1 (c) by revoking, varying or withdrawing an authorisation or
2 qualification.

3 **17 Registered organisations**

4 *Discrimination in relation to applications for membership*

- 5 (1) It is unlawful for a registered organisation, the committee of
6 management of a registered organisation or a member of the
7 committee of management of a registered organisation to
8 discriminate against another person, on the ground of the person's
9 religious belief or activity:
- 10 (a) by refusing or failing to accept the person's application for
11 membership; or
 - 12 (b) in the terms or conditions on which the organisation is
13 prepared to admit the person to membership.

14 *Discrimination against members*

- 15 (2) It is unlawful for a registered organisation, the committee of
16 management of a registered organisation or a member of the
17 committee of management of a registered organisation to
18 discriminate against a person who is a member of the registered
19 organisation, on the ground of the member's religious belief or
20 activity:
- 21 (a) by denying the member access, or limiting the member's
22 access, to any benefit provided by the organisation; or
 - 23 (b) by depriving the member of membership or varying the terms
24 of the member's membership; or
 - 25 (c) by subjecting the member to any other detriment.

26 *Meaning of **registered organisation***

- 27 (3) In this section:

28 **registered organisation** means an organisation registered under the
29 *Fair Work (Registered Organisations) Act 2009*.

EXPOSURE DRAFT

Part 3 Unlawful discrimination

Division 2 Discrimination in work

Section 18

1 **18 Employment agencies**

- 2 It is unlawful for an employment agency to discriminate against a
3 person on the ground of the person's religious belief or activity:
- 4 (a) by refusing to provide the person with any of its services; or
 - 5 (b) in the terms or conditions on which it offers to provide the
6 person with any of its services; or
 - 7 (c) in the manner in which it provides the person with any of its
8 services.

EXPOSURE DRAFT

1 **Division 3—Discrimination in other areas**

2 **19 Education**

- 3 (1) It is unlawful for an educational institution to discriminate against
4 a person on the ground of the person's religious belief or activity:
- 5 (a) by refusing or failing to accept the person's application for
6 admission as a student; or
 - 7 (b) in the terms or conditions on which it is prepared to admit the
8 person as a student.
- 9 (2) It is unlawful for an educational institution to discriminate against
10 a student on the ground of the student's religious belief or activity:
- 11 (a) by denying the student access, or limiting the student's
12 access, to any benefit provided by the educational institution;
13 or
 - 14 (b) by expelling the student; or
 - 15 (c) by subjecting the student to any other detriment.

16 **20 Access to premises**

- 17 It is unlawful for a person to discriminate against another person
18 on the ground of the other person's religious belief or activity:
- 19 (a) by refusing to allow the other person access to, or the use of,
20 any premises that the public or a section of the public is
21 entitled or allowed to enter or use (whether for payment or
22 not); or
 - 23 (b) in the terms or conditions on which the person is prepared to
24 allow the other person access to, or the use of, any such
25 premises; or
 - 26 (c) by refusing to allow the other person the use of any facilities
27 in such premises that the public or a section of the public is
28 entitled or allowed to use (whether for payment or not); or
 - 29 (d) in the terms or conditions on which the person is prepared to
30 allow the other person the use of any such facilities; or
 - 31 (e) by requiring the other person to leave such premises or cease
32 to use such facilities.

EXPOSURE DRAFT

Part 3 Unlawful discrimination

Division 3 Discrimination in other areas

Section 21

1 **21 Goods, services and facilities**

2 It is unlawful for a person who, whether for payment or not,
3 provides goods or services, or makes facilities available, to
4 discriminate against another person on the ground of the other
5 person's religious belief or activity:

- 6 (a) by refusing to provide the other person with those goods or
7 services or to make those facilities available to the other
8 person; or
9 (b) in the terms or conditions on which the person provides the
10 other person with those goods or services or makes those
11 facilities available to the other person; or
12 (c) in the manner in which the person provides the other person
13 with those goods or services or makes those facilities
14 available to the other person.

15 **22 Accommodation**

16 (1) It is unlawful for a person, whether as principal or agent, to
17 discriminate against another person on the ground of the other
18 person's religious belief or activity:

- 19 (a) by refusing the other person's application for
20 accommodation; or
21 (b) in the terms or conditions on which the accommodation is
22 offered to the other person; or
23 (c) by deferring the other person's application for
24 accommodation or according to the other person a lower
25 order of precedence in any list of applicants for that
26 accommodation.

27 (2) It is unlawful for a person, whether as principal or agent, to
28 discriminate against another person on the ground of the other
29 person's religious belief or activity:

- 30 (a) by denying the other person access, or limiting the other
31 person's access, to any benefit associated with
32 accommodation occupied by the other person; or
33 (b) by evicting the other person from accommodation occupied
34 by the other person; or
-

EXPOSURE DRAFT

- 1 (c) by subjecting the other person to any other detriment in
2 relation to accommodation occupied by the other person.

3 **23 Land**

4 It is unlawful for a person, whether as principal or agent, to
5 discriminate against another person on the ground of the other
6 person's religious belief or activity:

- 7 (a) by refusing or failing to dispose of an estate or interest in
8 land to the other person; or
9 (b) in the terms or conditions on which an estate or interest in
10 land is offered to the other person.

11 **24 Sport**

12 It is unlawful for a person to discriminate against another person
13 on the ground of the other person's religious belief or activity by
14 excluding that other person from participation in a sporting activity
15 (including umpiring, coaching and administration of sporting
16 activities).

17 **25 Clubs**

- 18 (1) It is unlawful for a club, the committee of management of a club or
19 a member of the committee of management of a club to
20 discriminate against a person who is not a member of the club on
21 the ground of the person's religious belief or activity:
22 (a) by refusing or failing to accept the person's application for
23 membership; or
24 (b) in the terms or conditions on which the club is prepared to
25 admit the person to membership.
- 26 (2) It is unlawful for a club, the committee of management of a club or
27 a member of the committee of management of a club to
28 discriminate against a person who is a member of the club on the
29 ground of the member's religious belief or activity:
30 (a) in the terms or conditions of membership that are afforded to
31 the member; or

EXPOSURE DRAFT

Part 3 Unlawful discrimination

Division 3 Discrimination in other areas

Section 26

- 1 (b) by refusing or failing to accept the member's application for
2 a particular class or type of membership; or
3 (c) by denying the member access, or limiting the member's
4 access to any benefit provided by the club; or
5 (d) by depriving the member of membership or varying the terms
6 of membership; or
7 (e) by subjecting the member to any other detriment.

8 **26 Requesting or requiring information**

9 It is unlawful for a person (the *first person*) to request or require
10 another person to provide information if:

- 11 (a) the first person requests or requires the information for the
12 purpose of engaging in conduct in relation to the other
13 person; and
14 (b) the conduct would be unlawful under another provision of
15 this Part.

16 Example: It is unlawful under section 14 to refuse to employ a person on the
17 ground of the person's religious belief or activity. Under this section,
18 it is therefore also unlawful to ask a person in a job interview if they
19 are religious if the question is asked for the purposes of determining
20 whether to employ the person.

21 **27 Commonwealth laws and programs**

22 It is unlawful for a person who:

- 23 (a) performs any function or exercises any power:
24 (i) under a law of the Commonwealth; or
25 (ii) for the purposes of a program conducted by or on behalf
26 of the Commonwealth; or
27 (b) has any other responsibility for:
28 (i) the administration of a law of the Commonwealth; or
29 (ii) the conduct of a program conducted by or on behalf of
30 the Commonwealth;

31 to discriminate against another person on the ground of the other
32 person's religious belief or activity in performing that function,
33 exercising that power or fulfilling that responsibility.

EXPOSURE DRAFT

1 **Division 4—Exceptions and exemptions**

2 **Subdivision A—General exceptions**

3 **28 Counselling, promoting etc. a serious offence**

4 (1) Divisions 2 and 3 do not make it unlawful to discriminate against a
5 person on the ground of the person's religious belief or activity if:

- 6 (a) the person has expressed a particular religious belief; and
7 (b) a reasonable person, having regard to all the circumstances,
8 would conclude that, in expressing the belief, the person is
9 counselling, promoting, encouraging or urging conduct that
10 would constitute a serious offence; and
11 (c) at the time the discrimination occurs, it is reasonable to
12 assume that the person holds the particular belief.

13 (2) *Serious offence* means an offence involving harm (within the
14 meaning of the *Criminal Code*), or financial detriment, that is
15 punishable by imprisonment for 2 years or more under a law of the
16 Commonwealth, a State or a Territory.

17 **29 Conferring charitable benefits**

- 18 (1) Nothing in Division 2 or 3:
19 (a) affects a provision of the governing rules (within the meaning
20 of the *Australian Charities and Not-for-profits Commission*
21 *Act 2012*) of a registered charity, if the provision:
22 (i) confers charitable benefits; or
23 (ii) enables charitable benefits to be conferred;
24 wholly or in part on persons who hold or engage in a
25 particular religious belief or activity; or
26 (b) makes unlawful any conduct engaged in to give effect to such
27 a provision.
- 28 (2) Nothing in Division 2 or 3:
29 (a) affects a provision of a deed, will or other instrument, if the
30 provision:

EXPOSURE DRAFT

Part 3 Unlawful discrimination

Division 4 Exceptions and exemptions

Section 30

- 1 (i) confers charitable benefits; or
2 (ii) enables charitable benefits to be conferred;
3 wholly or in part on persons who hold or engage in a
4 particular religious belief or activity; or
5 (b) makes unlawful any conduct engaged in to give effect to such
6 a provision.

7 **30 Conduct in direct compliance with certain legislation etc.**

8 *Provisions of Commonwealth Acts etc.*

- 9 (1) Nothing in Division 2 or 3 makes it unlawful for a person to
10 discriminate against another person, on the ground of the other
11 person's religious belief or activity, if:
12 (a) the conduct constituting the discrimination is in direct
13 compliance with a provision of a law of the Commonwealth,
14 or of an instrument made under such a law; and
15 (b) that provision is not prescribed by the regulations for the
16 purposes of this paragraph.

17 *Law enforcement, national security and intelligence functions etc.*

- 18 (2) Nothing in Division 2 or 3 makes it unlawful for a person to
19 discriminate against another person, on the ground of the other
20 person's religious belief or activity, if:
21 (a) the person is performing a function or exercising a power
22 relating to law enforcement, national security or intelligence
23 under a law or program of the Commonwealth; and
24 (b) the conduct constituting the discrimination is reasonably
25 necessary in performing the function or exercising the power.

26 *State and Territory Acts etc.*

- 27 (3) Nothing in Division 2 or 3 makes it unlawful for a person to
28 discriminate against another person, on the ground of the other
29 person's religious belief or activity, if:

EXPOSURE DRAFT

- 1 (a) the conduct constituting the discrimination is in direct
2 compliance with a provision of a law of a State or a Territory
3 (other than a local by-law); and
4 (b) that provision is not prescribed by the regulations for the
5 purposes of this paragraph.
- 6 (4) Despite subsection 14(2) of the *Legislation Act 2003*, regulations
7 made for the purposes of paragraph (3)(b) of this section may
8 prescribe a provision of a law of a State or a Territory as in force at
9 a particular time or as in force from time to time.

10 *Meaning of national security*

- 11 (5) In this section:
- 12 *national security* has the meaning given by the *National Security*
13 *Information (Criminal and Civil Proceedings) Act 2004* and
14 includes granting, revoking or denying Australian Government
15 security clearances (within the meaning of the *Criminal Code*).

16 **31 Orders, determinations and industrial instruments**

- 17 Nothing in Division 2 or 3 makes it unlawful for a person to
18 discriminate against another person, on the ground of the other
19 person's religious belief or activity, if the conduct constituting the
20 discrimination is in direct compliance with any of the following:
- 21 (a) an order of a court or tribunal;
22 (b) without limiting paragraph (a)—an order, determination or
23 award of a court or tribunal that has power to fix minimum
24 wages or other terms and conditions of employment;
25 (c) an instrument that is:
26 (i) a fair work instrument (within the meaning of the *Fair*
27 *Work Act 2009*); or
28 (ii) a transitional instrument or Division 2B State
29 instrument (within the meaning of the *Fair Work*
30 *(Transitional Provisions and Consequential*
31 *Amendments) Act 2009*).

EXPOSURE DRAFT

Part 3 Unlawful discrimination

Division 4 Exceptions and exemptions

Section 32

1 **Subdivision B—Specific exceptions relating to particular areas**
2 **of public life**

3 **32 Exceptions relating to work**

4 *Exception—domestic duties*

- 5 (1) Paragraphs 14(1)(a) and (b) (about offering employment) do not
6 make it unlawful for a person (the *first person*) to discriminate
7 against another person, on the ground of the other person’s
8 religious belief or activity, in connection with employment to
9 perform domestic duties on the premises on which the first person
10 resides.

11 *Exception—inherent requirements*

- 12 (2) Sections 14 (about employment) and 15 (about partnerships) do not
13 make it unlawful for a person (the *first person*) to discriminate
14 against another person, on the ground of the other person’s
15 religious belief or activity, if:
16 (a) the discrimination is in connection with a position as an
17 employee or partner; and
18 (b) because of the other person’s religious belief or activity, the
19 other person is unable to carry out the inherent requirements
20 of the employment or partnership.
- 21 (3) Subsection (2) does not apply in relation to discrimination referred
22 to in paragraph 14(2)(b) or (d) or 15(3)(a) or (c), other than
23 discrimination in determining who should be offered promotion or
24 transfer.
- 25 (4) Section 16 (about qualifying bodies) does not make it unlawful for
26 a qualifying body to discriminate against a person, on the ground
27 of the person’s religious belief or activity, if the person is unable to
28 carry out the inherent requirements of the relevant profession, trade
29 or occupation because of the person’s religious belief or activity.
- 30 (5) Section 18 (about employment agencies) does not make it unlawful
31 for an employment agency to discriminate against a person, on the

EXPOSURE DRAFT

1 ground of the person's religious belief or activity, if the person is
2 unable to carry out the inherent requirements of the work sought
3 because of the person's religious belief or activity.

4 (6) If an employer conduct rule:
5 (a) is imposed, or proposed to be imposed, by a relevant
6 employer; and
7 (b) would have the effect of restricting or preventing an
8 employee of the employer from making a statement of belief
9 other than in the course of the employee's employment; and
10 (c) is not reasonable for the purposes of section 8;
11 a requirement to comply with the rule is not an inherent
12 requirement of employment for the purposes of subsection (2) of
13 this section.

14 (7) A requirement to comply with a health practitioner conduct rule
15 that is not reasonable for the purposes of section 8 is not an
16 inherent requirement for the purposes of subsection (2), (4) or (5)
17 of this section.

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

21 (8) Sections 14 (about employment) and 15 (about partnerships) do not
22 make it unlawful for a person (the **first person**) to discriminate
23 against another person, on the ground of the other person's
24 religious belief or activity, if:
25 (a) either:
26 (i) the first person establishes, directs, controls or
27 administers a hospital or aged care facility that is
28 conducted in accordance with the doctrines, tenets,
29 beliefs or teachings of a particular religion; or
30 (ii) the first person solely or primarily provides
31 accommodation in accordance with the doctrines, tenets,
32 beliefs or teachings of a particular religion; and
33 (b) the first person engages, in good faith, in conduct that a
34 person of the same religion as the first person could

EXPOSURE DRAFT

- 1 (a) the person who provides, or proposes to provide, the
2 accommodation or a near relative of that person resides, and
3 intends to continue to reside on those premises; and
4 (b) the accommodation provided in those premises is for no more
5 than 3 persons, other than a person mentioned in
6 paragraph (a) or near relatives of such a person.

7 *Exception—religious camps and conference sites*

- 8 (2) Section 22 (about accommodation) does not make it unlawful for a
9 person (the **first person**) to discriminate against another person, on
10 the ground of the other person's religious belief or activity, if:
11 (a) the first person establishes, directs, controls or administers a
12 camp or conference site that:
13 (i) provides accommodation; and
14 (ii) is conducted in accordance with the doctrines, tenets,
15 beliefs or teachings of a particular religion; and
16 (b) the first person engages, in good faith, in conduct that a
17 person of the same religion as the first person could
18 reasonably consider to be in accordance with the doctrines,
19 tenets, beliefs or teachings of that religion; and
20 (c) the conduct is in accordance with a publicly available policy
21 issued by the person.
- 22 (3) Without limiting paragraph (2)(b), conduct mentioned in that
23 paragraph includes giving preference to persons of the same
24 religion as the first person.
- 25 (4) Section 22 (about accommodation) does not make it unlawful for a
26 person (the **first person**) to discriminate against another person, on
27 the ground of the other person's religious belief or activity, if:
28 (a) the first person establishes, directs, controls or administers a
29 camp or conference site that:
30 (i) provides accommodation; and
31 (ii) is conducted in accordance with the doctrines, tenets,
32 beliefs or teachings of a particular religion; and

EXPOSURE DRAFT

Part 3 Unlawful discrimination

Division 4 Exceptions and exemptions

Section 34

- 1 (b) the first person engages, in good faith, in conduct to avoid
2 injury to the religious susceptibilities of adherents of the
3 same religion as the first person; and
4 (c) the conduct is in accordance with a publicly available policy
5 issued by the person.
- 6 (5) Without limiting paragraph (4)(b), conduct mentioned in that
7 paragraph includes giving preference to persons of the same
8 religion as the first person.

9 **34 Exception for disposal of land**

10 Section 23 (about land) does not apply in relation to a disposal of
11 an estate or interest in land by will or by way of gift.

12 **35 Exception relating to clubs**

13 Section 25 (about clubs) does not make it unlawful to discriminate
14 against a person, on the ground of the person's religious belief or
15 activity, if membership (however described) of the club is
16 restricted to persons who hold or engage in a particular religious
17 belief or activity and the person does not hold or engage in that
18 religious belief or activity.

19 **36 Exception relating to voluntary bodies**

- 20 (1) This section applies to voluntary bodies whose membership
21 (however described) is restricted to persons who hold or engage in
22 a particular religious belief or activity.
- 23 (2) Divisions 2 and 3 do not make it unlawful for a voluntary body to
24 discriminate against a person, on the ground of the person's
25 religious belief or activity, in connection with:
26 (a) the admission of persons as members of the body; or
27 (b) the provision of benefits, facilities or services to members of
28 the body.

EXPOSURE DRAFT

1 **Subdivision C—Exemptions granted by the Commission**

2 **37 Commission may grant exemptions**

3 (1) The Commission may, by notifiable instrument, grant to a person
4 or body an exemption from the operation of a provision of
5 Division 2 or 3.

6 (2) The exemption must:

- 7 (a) specify the persons or bodies covered by the exemption; and
8 (b) specify the provision or provisions to which the exemption
9 applies; and
10 (c) be granted for a specified period (which must not exceed 5
11 years, starting from when the exemption takes effect).

12 (3) The exemption may:

- 13 (a) be granted subject to such terms and conditions as are
14 specified in the instrument of exemption; and
15 (b) be expressed to apply only in such circumstances, or in
16 relation to such activities, as are specified in the instrument
17 of exemption.

18 **38 Applying for an exemption**

19 (1) One or more persons or bodies may apply to the Commission for
20 the granting of an exemption under section 37.

21 (2) The application must be in a form approved, in writing, by the
22 Commission.

23 **39 Effect of exemptions**

24 This Part does not make it unlawful for:

- 25 (a) a person or body that is covered by an exemption granted
26 under section 37; or
27 (b) a person employed by, or under the direction or control of, a
28 person or body that is covered by an exemption granted
29 under section 37;

EXPOSURE DRAFT

Part 3 Unlawful discrimination

Division 4 Exceptions and exemptions

Section 40

1 to engage in conduct in accordance with the exemption.

2 **40 Variation and revocation of exemptions**

3 (1) The Commission or the Minister may, by notifiable instrument,
4 vary or revoke an exemption granted under section 37.

5 (2) The variation or revocation takes effect on the day specified in the
6 notifiable instrument.

7 **41 Review by Administrative Appeals Tribunal**

8 Applications may be made to the Administrative Appeals Tribunal
9 for review of the following decisions:

- 10 (a) decisions of the Commission under section 37;
11 (b) decisions of the Commission under section 40;
12 (c) decisions of the Minister under section 40.

EXPOSURE DRAFT

Statements of belief do not constitute discrimination etc. **Part 4**

Section 42

1 **Part 4—Statements of belief do not constitute**
2 **discrimination etc.**
3

4 **42 Statements of belief do not constitute discrimination etc.**

5 (1) A statement of belief, in and of itself, does not:

- 6 (a) constitute discrimination for the purposes of any
7 anti-discrimination law (within the meaning of the *Fair Work*
8 *Act 2009*); or
9 (b) contravene subsection 17(1) of the *Anti-Discrimination Act*
10 *1998* (Tas.); or
11 (c) contravene a provision of a law prescribed by the regulations
12 for the purposes of this paragraph.

13 (2) Subsection (1) does not apply to a statement of belief:

- 14 (a) that is malicious; or
15 (b) that would, or is likely to, harass, threaten, seriously
16 intimidate or vilify another person or group of persons; or
17 (c) that is covered by paragraph 28(1)(b).

18 Note: Paragraph 28(1)(b) covers expressions of religious belief that a
19 reasonable person, having regard to all the circumstances, would
20 conclude counsel, promote, encourage or urge conduct that would
21 constitute a serious offence.

EXPOSURE DRAFT

Part 5 Offences

Section 43

1 **Part 5—Offences**

2

3 **43 Unlawful conduct is not an offence unless expressly provided**

4 Except as expressly provided by this Part, nothing in this Act
5 makes it an offence to engage in conduct that is unlawful because
6 of a provision of Part 3.

7 **44 Victimization**

8 *Victimization—actual detriment*

9 (1) A person (the *first person*) commits an offence if:

- 10 (a) the first person engages in conduct; and
- 11 (b) the first person's conduct causes detriment to another person
12 (the *second person*); and
- 13 (c) the first person intends that his or her conduct cause
14 detriment to the second person; and
- 15 (d) the first person engages in his or her conduct because he or
16 she believes that:
- 17 (i) the second person has made, or proposes to make, a
18 complaint under the *Australian Human Rights*
19 *Commission Act 1986*; or
- 20 (ii) the second person has brought, or proposes to bring,
21 proceedings under the *Australian Human Rights*
22 *Commission Act 1986* against any person; or
- 23 (iii) the second person has given, or proposes to give, any
24 information, or has produced, or proposes to produce,
25 any documents to a person exercising or performing any
26 power or function under this Act or the *Australian*
27 *Human Rights Commission Act 1986*; or
- 28 (iv) the second person has attended, or proposes to attend, a
29 conference held under the *Australian Human Rights*
30 *Commission Act 1986*; or

- 1 (v) the second person has appeared, or proposes to appear,
2 as a witness in a proceeding under this Act or the
3 *Australian Human Rights Commission Act 1986*; or
4 (vi) the second person has reasonably asserted, or proposes
5 to assert, any rights of the second person, or of any
6 other person, under this Act or the *Australian Human*
7 *Rights Commission Act 1986*; or
8 (vii) the second person has made an allegation that a person
9 has engaged in conduct that is unlawful by reason of a
10 provision of Part 3 of this Act.

11 Note: Complaints can be made to the Commission about conduct that is an
12 offence under this subsection (see the definition of ***unlawful***
13 ***discrimination*** in subsection 3(1) of the *Australian Human Rights*
14 *Commission Act 1986*, and section 46P of that Act).

15 Penalty: Imprisonment for 6 months or 30 penalty units, or both.

16 *Victimisation—threat of detriment*

- 17 (2) A person (the ***first person***) commits an offence if:
18 (a) the first person makes to another person (the ***second person***)
19 a threat to cause detriment to the second person or to any
20 other person; and
21 (b) the first person:
22 (i) intends the second person to fear that the threat will be
23 carried out; or
24 (ii) is reckless as to causing the second person to fear that
25 the threat will be carried out; and
26 (c) the first person makes the threat because he or she believes a
27 matter mentioned in paragraph (1)(d).

28 Note: Complaints can be made to the Commission about conduct that is an
29 offence under this subsection (see the definition of ***unlawful***
30 ***discrimination*** in subsection 3(1) of the *Australian Human Rights*
31 *Commission Act 1986*, and section 46P of that Act).

32 Penalty: Imprisonment for 6 months or 30 penalty units, or both.

- 33 (3) For the purposes of subsection (2), a ***threat*** may be:
34 (a) express or implied; or
-

EXPOSURE DRAFT

Part 5 Offences

Section 45

1 (b) conditional or unconditional.

2 (4) In a prosecution for an offence against subsection (2), it is not
3 necessary to prove that the person threatened actually feared that
4 the threat would be carried out.

5 **45 Advertisements**

6 A person commits an offence if:

7 (a) the person publishes or displays an advertisement or notice,
8 or causes or permits an advertisement or notice to be
9 published or displayed; and

10 (b) the advertisement or notice indicates, or could reasonably be
11 understood to indicate, an intention to engage in conduct that
12 would be unlawful under Part 3.

13 Note: Complaints can be made to the Commission about conduct that is an
14 offence under this section (see the definition of *unlawful*
15 *discrimination* in subsection 3(1) of the *Australian Human Rights*
16 *Commission Act 1986*, and section 46P of that Act).

17 Penalty: 10 penalty units.

1 **Part 6—Freedom of Religion Commissioner**
2

3 **46 Freedom of Religion Commissioner**

4 (1) There is to be a Freedom of Religion Commissioner.

5 (2) The Commissioner is to be appointed by the Governor-General by
6 written instrument.

7 Note: The Commissioner may be reappointed: see section 33AA of the *Acts*
8 *Interpretation Act 1901*.

9 (3) The Commissioner may be appointed on either a full-time or
10 part-time basis.

11 (4) A person is not qualified to be appointed as the Commissioner
12 unless the Minister is satisfied that the person has appropriate
13 qualifications, knowledge or experience.

14 **47 Term of appointment**

15 The Commissioner holds office for the period specified in the
16 instrument of appointment. The period must not exceed 7 years.

17 **48 Remuneration of Commissioner**

18 (1) The Commissioner is to be paid the remuneration that is
19 determined by the Remuneration Tribunal. If no determination of
20 that remuneration by the Tribunal is in operation, the
21 Commissioner is to be paid the remuneration that is prescribed by
22 the regulations.

23 (2) The Commissioner is to be paid the allowances that are prescribed
24 by the regulations.

25 (3) This section has effect subject to the *Remuneration Tribunal Act*
26 *1973*.

EXPOSURE DRAFT

Part 6 Freedom of Religion Commissioner

Section 49

1 **49 Leave of absence**

- 2 (1) If the Commissioner is appointed on a full-time basis:
- 3 (a) the Commissioner has the recreation leave entitlements that
- 4 are determined by the Remuneration Tribunal; and
- 5 (b) the Minister may grant the Commissioner leave of absence,
- 6 other than recreation leave, on the terms and conditions as to
- 7 remuneration or otherwise that the Minister determines.
- 8 (2) If the Commissioner is appointed on a part-time basis, the Minister
- 9 may grant leave of absence to the Commissioner on the terms and
- 10 conditions that the Minister determines.

11 **50 Outside employment**

- 12 (1) If the Commissioner is appointed on a full-time basis, the
- 13 Commissioner must not engage in paid work outside the duties of
- 14 the Commissioner's office without the Minister's approval.
- 15 (2) If the Commissioner is appointed on a part-time basis, the
- 16 Commissioner must not engage in any paid work that, in the
- 17 Minister's opinion, conflicts, or could conflict, with the proper
- 18 performance of the Commissioner's duties.

19 **51 Other terms and conditions of appointment**

20 The Commissioner holds office on the terms and conditions (if

21 any), in relation to matters not covered by this Act, that are

22 determined by the Governor-General.

23 **52 Resignation**

- 24 (1) The Commissioner may resign the Commissioner's appointment
- 25 by giving the Governor-General a written resignation.
- 26 (2) The resignation takes effect on the day it is received by the
- 27 Governor-General or, if a later day is specified in the written
- 28 resignation, on that later day.

1 **53 Termination**

- 2 (1) The Governor-General may terminate the appointment of the
3 Commissioner:
4 (a) for misbehaviour; or
5 (b) if the Commissioner is unable to perform the duties of the
6 Commissioner's office because of physical or mental
7 incapacity.
- 8 (2) The Governor-General must terminate the appointment of the
9 Commissioner:
10 (a) if the Commissioner:
11 (i) becomes bankrupt; or
12 (ii) takes steps to take the benefit of any law for the relief of
13 bankrupt or insolvent debtors; or
14 (iii) compounds with one or more of the Commissioner's
15 creditors; or
16 (iv) makes an assignment of the Commissioner's
17 remuneration for the benefit of one or more of the
18 Commissioner's creditors; or
19 (b) if the Commissioner is appointed on a full-time basis—if the
20 Commissioner is absent from duty, except on leave of
21 absence, for 14 consecutive days or for 28 days in any period
22 of 12 months; or
23 (c) if the Commissioner is appointed on a full-time basis—if the
24 Commissioner engages in paid work outside the duties of the
25 Commissioner's office without the Minister's approval; or
26 (d) if the Commissioner is appointed on a part-time basis—if the
27 Commissioner is absent, except on leave of absence, for 3
28 consecutive meetings of the Commission; or
29 (e) if the Commissioner is appointed on a part-time basis—if the
30 Commissioner engages in paid work outside the duties of the
31 office of Commissioner that, in the Minister's opinion,
32 conflicts, or could conflict, with the proper performance of
33 the Commissioner's duties.

EXPOSURE DRAFT

Part 6 Freedom of Religion Commissioner

Section 54

1 **54 Acting Commissioner**

2 (1) The Minister may, by written instrument, appoint a person to act as
3 the Commissioner:

4 (a) during a vacancy in the office of the Commissioner (whether
5 or not an appointment has previously been made to the
6 office); or

7 (b) during any period, or during all periods, when the
8 Commissioner:

9 (i) is absent from duty or from Australia; or

10 (ii) is, for any reason, unable to perform the functions of the
11 office.

12 Note: For rules that apply to acting appointments, see sections 33AB and
13 33A of the *Acts Interpretation Act 1901*.

14 (2) A person is not qualified to be appointed under subsection (1)
15 unless the Minister is satisfied that the person has appropriate
16 qualifications, knowledge or experience.

1 **Part 7—Functions of the Australian Human Rights**
2 **Commission**
3

4 **55 Functions of the Commission**

5 The following functions are conferred on the Commission:

- 6 (a) to exercise the powers conferred on it by section 37 (about
7 granting exemptions);
8 (b) to promote an understanding and acceptance of, and
9 compliance with, this Act;
10 (c) to undertake research and educational programs, and other
11 programs, on behalf of the Commonwealth for the purpose of
12 promoting the objects of this Act;
13 (d) to examine enactments (within the meaning of the *Australian*
14 *Human Rights Commission Act 1986*) to determine whether
15 those enactments are inconsistent with or contrary to the
16 objects of this Act;
17 (e) at the request of the Minister, to examine proposed
18 enactments (within the meaning of the *Australian Human*
19 *Rights Commission Act 1986*) to determine whether those
20 enactments would be inconsistent with or contrary to the
21 objects of this Act;
22 (f) to report to the Minister the result of examinations conducted
23 for the purposes of paragraph (d) or (e);
24 (g) on its own initiative or at the request of the Minister, to report
25 to the Minister as to the laws that should be made by the
26 Parliament, or action that should be taken by the
27 Commonwealth, on matters relating to discrimination on the
28 ground of religious belief or activity;
29 (h) to prepare and publish guidelines for avoiding discrimination
30 on the ground of religious belief or activity;
31 (i) where the Commission considers it appropriate, with the
32 leave of the court conducting the proceedings and subject to
33 any conditions imposed by the court, to intervene in
34 proceedings that involve issues of discrimination on the
35 ground of religious belief or activity;

EXPOSURE DRAFT

Part 7 Functions of the Australian Human Rights Commission

Section 55

1
2

(j) to do anything incidental or conducive to the performance of any of the above functions.

EXPOSURE DRAFT

1 **Part 8—Application and constitutional provisions**
2

3 **56 This Act binds the Crown**

- 4 (1) This Act binds the Crown in each of its capacities.
5 (2) However, this Act does not make the Crown liable to be prosecuted
6 for an offence.

7 **57 Geographical application of this Act**

- 8 (1) This Act applies throughout Australia.
9 (2) This Act applies to conduct engaged in in Australia, even if the
10 conduct involves persons or things, or matters arising, outside
11 Australia.

12 **58 Constitutional basis of this Act**

13 This Act gives effect to Australia’s obligations under one or more
14 of the following international instruments, as amended and in force
15 for Australia from time to time:

- 16 (a) the International Covenant on Civil and Political Rights done
17 at New York on 16 December 1966 ([1980] ATS 23);
18 (b) the International Covenant on Economic, Social and Cultural
19 Rights done at New York on 16 December 1966 ([1976] ATS
20 5);
21 (c) the Convention on the Rights of the Child done at New York
22 on 20 November 1989 ([1991] ATS 4);
23 (d) the International Convention on the Elimination of all Forms
24 of Racial Discrimination done at New York on 21 December
25 1965 ([1975] ATS 40);
26 (e) the ILO Convention (No. 111) concerning Discrimination in
27 respect of Employment and Occupation done at Geneva on
28 25 June 1958 ([1974] ATS 12);

EXPOSURE DRAFT

Part 8 Application and constitutional provisions

Section 59

- 1 (f) the ILO Convention (No. 158) concerning Termination of
2 Employment at the Initiative of the Employer done at Geneva
3 on 22 June 1982 ([1994] ATS 4).

4 Note: The text of a Convention or Covenant could, in 2019, be viewed in the
5 Australian Treaties Library on the AustLII website
6 (<http://www.austlii.edu.au>).

7 **59 Additional operation of this Act**

8 *Act also has effect as provided by this section*

- 9 (1) In addition to section 58, this Act also has effect as provided by
10 this section.

11 *Constitutional corporations*

- 12 (2) This Act also has the effect it would have if each reference in this
13 Act to a person (the *first person*) engaging in conduct in relation to
14 another person were, by express reference, limited so that it applies
15 only if one or more of the following paragraphs applies:

- 16 (a) the first person is a corporation to which paragraph 51(xx) of
17 the Constitution applies;
18 (b) the first person is an officer, employee or agent of a
19 corporation to which paragraph 51(xx) of the Constitution
20 applies, and the conduct is connected with the person's duties
21 as such an officer, employee or agent;
22 (c) the other person is an officer, employee or agent of a
23 corporation to which paragraph 51(xx) of the Constitution
24 applies, and the conduct is connected with the person's duties
25 as such an officer, employee or agent.

26 *Commonwealth and Territory matters*

- 27 (3) This Act also has the effect it would have if each reference in this
28 Act to a person (the *first person*) engaging in conduct in relation to
29 another person were, by express reference, limited so that it applies
30 only if one or more of the following paragraphs applies:

- 31 (a) the first person is the Commonwealth, a Territory, or a body
32 (a *covered authority*) covered by subsection (4);
-

EXPOSURE DRAFT

- 1 (b) the first person is an officer, employee or agent of the
2 Commonwealth, a Territory or a covered authority, and the
3 conduct is connected with the person's duties as such an
4 officer, employee or agent;
- 5 (c) the other person is an officer, employee or agent of the
6 Commonwealth, a Territory or a covered authority, and the
7 conduct is connected with the person's duties as such an
8 officer, employee or agent;
- 9 (d) the conduct occurs in the course of the first person, or the
10 other person, performing a function or exercising a power
11 under a law of the Commonwealth or a law of a Territory;
- 12 (e) the conduct is engaged in within a Territory.
- 13 (4) The following bodies are covered by this subsection:
- 14 (a) a body established for a public purpose by or under a law of
15 the Commonwealth or a Territory;
- 16 (b) an incorporated company over which any of the following is
17 in a position to exercise control:
- 18 (i) the Commonwealth;
- 19 (ii) the Government of a Territory;
- 20 (iii) a body referred to in paragraph (a);
- 21 (c) a person who holds:
- 22 (i) an office or position established by or under a law of the
23 Commonwealth or a Territory; or
- 24 (ii) an appointment made under a law of the
25 Commonwealth or a Territory; or
- 26 (iii) an appointment made by the Governor-General, by a
27 Minister, or by any other person on behalf of the
28 Commonwealth Government; or
- 29 (iv) an appointment made by a Minister of a Territory, or by
30 any other person on behalf of the Government of a
31 Territory; or
- 32 (v) an office or appointment that is prescribed by the
33 regulations for the purpose of this subparagraph.

EXPOSURE DRAFT

Part 8 Application and constitutional provisions

Section 59

1

Trade or commerce

2

(5) This Act also has the effect it would have if each reference in this Act to a person (the *first person*) engaging in conduct in relation to another person were, by express reference, confined to conduct engaged in while the first person, or the other person, is acting in the course of, or in relation to, trade or commerce:

3

4

5

6

7

(a) between Australia and places outside Australia; or

8

(b) among the States; or

9

(c) between a State and a Territory; or

10

(d) between 2 Territories.

11

Banking and insurance

12

(6) This Act also has the effect it would have if each reference in this Act to a person (the *first person*) engaging in conduct in relation to another person were, by express reference, confined to conduct engaged in while the first person, or the other person, is acting in the course of, or in relation to, the carrying on of:

13

14

15

16

17

(a) the business of banking, other than State banking (within the meaning of paragraph 51(xiii) of the Constitution) not extending beyond the limits of the State concerned; or

18

19

20

(b) the business of insurance, other than State insurance (within the meaning of paragraph 51(xiv) of the Constitution) not extending beyond the limits of the State concerned.

21

22

23

Telecommunications

24

(7) This Act also has the effect it would have if each reference in this Act to a person engaging in conduct in relation to another person were, by express reference, confined to conduct engaged in by means of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution.

25

26

27

28

29

Defence

30

(8) This Act also has the effect it would have if each reference in this Act to a person engaging in conduct in relation to another person

31

EXPOSURE DRAFT

1 were, by express reference, confined to conduct engaged in for
2 purposes relating to the defence of Australia.

3 **60 Limited application provisions**

- 4 (1) Subsections 11(3) and (4), 32(10) and (11) and 33(4) and (5) apply
5 in relation to any of the following kinds of conduct:
- 6 (a) conduct engaged in by a corporation to which
7 paragraph 51(xx) of the Constitution applies;
 - 8 (b) conduct engaged in by a person acting in the course of, or in
9 relation to, trade or commerce:
 - 10 (i) between Australia and places outside Australia; or
 - 11 (ii) among the States; or
 - 12 (iii) between a State and a Territory; or
 - 13 (iv) between 2 Territories;
 - 14 (c) conduct engaged in by a body corporate that is incorporated
15 in a Territory;
 - 16 (d) conduct engaged in by a body corporate that is taken to be
17 registered in a Territory under section 119A of the
18 *Corporations Act 2001*;
 - 19 (e) conduct engaged in in a Territory;
 - 20 (f) conduct engaged in by means of a postal, telegraphic,
21 telephonic or other like service within the meaning of
22 paragraph 51(v) of the Constitution.
- 23 (2) This section applies despite sections 58 and 59.

24 **61 Compensation for acquisition of property**

- 25 (1) If the operation of this Act would result in an acquisition of
26 property (within the meaning of paragraph 51(xxxi) of the
27 Constitution) from a person otherwise than on just terms (within
28 the meaning of that paragraph), the Commonwealth is liable to pay
29 a reasonable amount of compensation to the person.
- 30 (2) If the Commonwealth and the person do not agree on the amount
31 of the compensation, the person may institute proceedings in the
32 Federal Court of Australia or the Supreme Court of a State or

EXPOSURE DRAFT

Part 8 Application and constitutional provisions

Section 62

1 Territory for the recovery from the Commonwealth of such
2 reasonable amount of compensation as the court determines.

3 **62 Relationship with State and Territory laws**

4 (1) This Act is not intended to exclude or limit the operation of a law
5 of a State or Territory to the extent that the law is capable of
6 operating concurrently with this Act.

7 Note: Nothing in this subsection detracts from the operation of Part 4.

8 (2) If:

9 (a) a law of a State or Territory deals with a matter dealt with by
10 this Act; and

11 (b) a person has made a complaint, instituted a proceeding or
12 taken any other action under that law in respect of conduct
13 engaged in and in respect of which the person would, but for
14 this subsection, have been entitled to make a complaint under
15 the *Australian Human Rights Commission Act 1986* alleging
16 that the conduct is unlawful under a provision of this Act;

17 the person is not entitled to make a complaint or institute a
18 proceeding under the *Australian Human Rights Commission Act*
19 *1986* alleging that the act or omission is unlawful under a provision
20 of this Act.

21 (3) If:

22 (a) a law of a State or Territory deals with a matter dealt with by
23 this Act; and

24 (b) conduct engaged in by a person that constitutes an offence
25 against that law also constitutes an offence against this Act;

26 the person may be prosecuted and convicted either under that law
27 of the State or Territory or under this Act.

28 (4) Nothing in subsection (3) renders a person liable to be punished
29 more than once in respect of the same conduct.

1 **Part 9—Other matters**
2

3 **63 Delegation**

4 *Delegation by the Commission*

- 5 (1) The Commission may, in writing, delegate all or any of its
6 functions or powers under this Act to:
7 (a) the Commissioner or another member of the Commission; or
8 (b) a member of the staff of the Commission; or
9 (c) any other person or body of persons.

10 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
11 provisions relating to delegations.

12 *Delegation by the Commissioner*

- 13 (2) The Commissioner may, in writing, delegate all or any of the
14 Commissioner's functions or powers under this Act to:
15 (a) a member of the staff of the Commission approved by the
16 Commission; or
17 (b) any other person or body of persons approved by the
18 Commission.

19 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
20 provisions relating to delegations.

21 *Delegate must comply with directions of delegator*

- 22 (3) In performing a delegated function or exercising a delegated
23 power, the delegate must comply with any written directions of the
24 delegator.

25 **64 Liability of persons involved in unlawful conduct**

- 26 (1) A person must not do any of the following in relation to conduct
27 that is unlawful under Part 3:
28 (a) attempt to engage in that conduct;
29 (b) aid, abet, counsel or procure that conduct;

EXPOSURE DRAFT

Part 9 Other matters

Section 65

- 1 (c) induce (by threats, promises or otherwise) that conduct;
2 (d) be in any way, directly or indirectly, knowingly concerned in,
3 or party to, that conduct;
4 (e) conspire with others to engage in, or effect, that conduct.
- 5 (2) A person who contravenes subsection (1) in relation to conduct that
6 is unlawful under Part 3 is taken, for the purposes of this Act, to
7 have engaged in the conduct.

8 **65 Conduct by representatives**

- 9 (1) Any conduct engaged in on behalf of a person by a representative
10 of the person within the scope of actual or apparent authority is
11 taken to have been engaged in also by the person, unless the person
12 establishes that the person took reasonable precautions and
13 exercised due diligence to avoid the conduct.
- 14 (2) If it is necessary to establish the state of mind of a person in
15 relation to particular conduct, it is sufficient to show:
16 (a) that the conduct was engaged in by a representative of the
17 person within the scope of actual or apparent authority; and
18 (b) that the representative had that state of mind.
- 19 (3) A reference in subsection (2) to the state of mind of a
20 representative of a person includes a reference to:
21 (a) the representative's knowledge, intention, opinion, belief or
22 purpose; and
23 (b) the representative's reasons for the intention, opinion, belief
24 or purpose.
- 25 (4) In this section:
26 **representative** of a person means:
27 (a) if the person is a body corporate—a director, employee or
28 agent of the body corporate; or
29 (b) if the person is a body politic—an employee or agent of the
30 body politic; or
31 (c) if the person is an individual—an employee or agent of the
32 individual.

- 1 (5) This section does not apply to proceedings for an offence against
2 Part 5.

3 **66 Protection from civil actions**

- 4 (1) Subsection (2) applies to:
5 (a) the Commission; and
6 (b) the Commissioner or another member of the Commission;
7 and
8 (c) a person acting for or on behalf of:
9 (i) the Commission; or
10 (ii) the Commissioner or another member of the
11 Commission.
- 12 (2) A person mentioned in subsection (1) is not liable to an action or
13 other proceeding for damages for or in relation to conduct engaged
14 in in good faith:
15 (a) in the performance, or purported performance, of any
16 function conferred on the Commission by this Act; or
17 (b) in the exercise, or purported exercise, of any power conferred
18 on the Commission by this Act.
- 19 (3) Subsection (4) applies if a submission has been made, or a
20 document, information or evidence has been given, to the
21 Commission or to a person acting for or on behalf of the
22 Commission.
- 23 (4) A person is not liable to an action, suit or proceeding in respect of
24 loss, damage or injury of any kind suffered by another person by
25 reason only that the submission was made or the document,
26 information or evidence was given.
- 27 (5) This section is subject to section 61 (about acquisition of property).

28 **67 No right of action unless expressly provided**

- 29 Except as expressly provided in this Act, nothing in this Act
30 confers any right of action in relation to conduct that:
31 (a) is unlawful under a provision of Part 3; or
-

EXPOSURE DRAFT

Part 9 Other matters

Section 68

1 (b) is an offence against a provision of Part 5.

2 **68 Non-disclosure of protected information**

3 (1) A person commits an offence if the person:

- 4 (a) is, or has been, an entrusted person; and
5 (b) has acquired protected information in the person's capacity
6 as an entrusted person; and
7 (c) discloses the information to another person.

8 Penalty: Imprisonment for 2 years.

9 (2) Subsection (1) does not apply if:

- 10 (a) the conduct is authorised by a law of the Commonwealth or
11 of a State or Territory; or
12 (b) a person engages in the conduct:
13 (i) in the performance of a function under or in connection
14 with this Act; or
15 (ii) in the exercise of a power conferred on the Commission
16 or the Commissioner by this Act; or
17 (iii) in accordance with an arrangement in force under
18 section 16 of the *Australian Human Rights Commission*
19 *Act 1986*.

20 Note: A defendant bears an evidential burden in relation to a matter in this
21 subsection (see subsection 13.3(3) of the *Criminal Code*).

22 (3) A person who is, or has been, an entrusted person must not be
23 required:

- 24 (a) to disclose to a court protected information acquired in the
25 person's capacity as an entrusted person; or
26 (b) to produce in a court a document containing protected
27 information of which that person has custody, or to which
28 that person has access, in that person's capacity as an
29 entrusted person;

30 except where it is necessary to do so for the purposes of this Act.

31 (4) In this section:

1 *court* includes any tribunal, authority or person having power to
2 require the production of documents or the answering of questions.

3 *entrusted person* means:

- 4 (a) the Commissioner or another member of the Commission; or
5 (b) a member of the staff assisting the Commission; or
6 (c) a delegate of the Commission; or
7 (d) a delegate of the Commissioner.

8 *produce* includes permit access to.

9 *protected information* means information:

- 10 (a) that is obtained by an entrusted person under or for the
11 purposes of this Act; and
12 (b) that relates to the affairs of another person.

13 **69 Commissioner to give information to the Commission**

14 The Commissioner must give the Commission such information
15 relating to the operations of the Commissioner as the Commission
16 requires.

17 **70 Regulations**

18 The Governor-General may make regulations prescribing matters:

- 19 (a) required or permitted by this Act to be prescribed by the
20 regulations; or
21 (b) necessary or convenient to be prescribed for carrying out or
22 giving effect to this Act.