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

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the Religious Discrimination Act 2019.
Part 1 Preliminary

Section 2

2 Commencement

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

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Objects of this Act

(1) The objects of this Act are:

(a) to eliminate, so far as is possible, discrimination against persons on the ground of religious belief or activity in a range of areas of public life; and

(b) to ensure, as far as practicable, that everyone has the same rights to equality before the law, regardless of religious belief or activity; and

(c) to ensure that people can, consistently with Australia’s obligations with respect to freedom of religion and freedom of expression, and subject to specified limits, make statements of belief.
(2) In giving effect to the objects of this Act, regard is to be had to:
(a) the indivisibility and universality of human rights, and their equal status in international law; and
(b) the principle that every person is free and equal in dignity and rights.

4 Simplified outline of this Act

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

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

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

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

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

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

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

This Act has effect subject to certain geographical and constitutional limitations (see Part 8).
Part 1 Preliminary

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

5 Definitions

(1) In this Act:

accommodation includes residential and business accommodation.

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

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

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

Commission means the Australian Human Rights Commission.

Commissioner means the Freedom of Religion Commissioner appointed under section 46.

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

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

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

de facto partner of a person has the meaning given by the Acts Interpretation Act 1901.
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:
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(a) that is imposed, or proposed to be imposed, by a person on a health practitioner; and
(b) that relates to the provision of or participation in a particular kind of health service by the health practitioner; and
(c) that would have the effect of restricting or preventing the health practitioner from conscientiously objecting to providing or participating in that kind of health service.

_health service_ means a service provided in the practice of any of the following health professions:
(a) medical;
(b) midwifery;
(c) nursing;
(d) pharmacy;
(e) psychology.

_local by-law_ means a law made by a body established for the purposes of local government by or under a law of a State or Territory.

_near relative_, in relation to a person, means:
(a) a parent, step-parent, grandparent or step-grandparent of the person; or
(b) a child, step-child, grandchild or step-grandchild of the person; or
(c) a brother, sister, step-brother or step-sister of the person; or
(d) the spouse or de facto partner of the person; or
(e) another person who has any of the relationships specified in paragraph (a), (b) or (c) to the person’s spouse or de facto partner.

_paid work_ means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

_parent_: without limiting who is a parent of a person for the purposes of this Act, someone is the _parent_ of a person if the person is his or her child because of the definition of _child_ in this subsection.
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
Part 1  Preliminary

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

religious belief or activity means:
(a) holding a religious belief; or
(b) engaging in lawful religious activity; or
(c) not holding a religious belief; or
(d) not engaging in, or refusing to engage in, lawful religious
activity.

religious body: see subsection 11(5).

serious offence: see subsection 28(2).

services means services of any kind, including (for example) the
following:
(a) services relating to banking, insurance, superannuation and
the provision of grants, loans, credit or finance;
(b) services relating to entertainment, recreation or refreshment;
(c) services relating to transport or travel;
(d) services relating to telecommunications;
(e) services of the kind provided by the members of any
profession or trade;
(f) services of the kind provided by a government, a government
authority or a body established for the purposes of local
government by or under a law of a State or Territory.

statement of belief: a statement is a statement of belief if:
(a) the statement:
   (i) is of a religious belief held by a person (the first
   person); and
   (ii) is made, in good faith, by written or spoken words by
the first person; and
   (iii) is of a belief that a person of the same religion as the
first person could reasonably consider to be in
accordance with the doctrines, tenets, beliefs or
   teachings of that religion; or
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(b) the statement:
   (i) is of a belief held by a person who does not hold a religious belief; and
   (ii) is made, in good faith, by written or spoken words by the person; and
   (iii) is of a belief that a person who does not hold a religious belief could reasonably consider to relate to the fact of not holding a religious belief.

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

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

this Act includes the regulations.

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

voluntary body means an association or other body (whether incorporated or unincorporated), the activities of which are not engaged in for the purpose of making a profit, but does not include:
   (a) a club; or
   (b) a body established by a law of the Commonwealth, a State or a Territory; or
   (c) an association that provides grants, loans, credit or finance to its members.

(2) For the purposes of paragraphs (b) and (d) of the definition of religious belief or activity in subsection (1), an activity is not unlawful merely because a local by-law prohibits the activity.
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(3) For the purposes of this Act, if one person is the child of another person because of the definition of child in subsection (1), relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

6 Extended meaning of ground

Discrimination on the ground of a person’s religious belief or activity includes discrimination:

(a) on the ground of a characteristic that people who hold or engage in the religious belief or activity generally have; and

(b) on the ground of a characteristic that people who hold or engage in the religious belief or activity are generally presumed to have; and

(c) on the ground of the religious belief or activity that a person holds or engages in; and

(d) on the ground of the religious belief or activity that a person has held or engaged in in the past, whether or not the person still holds or engages in the religious belief or activity; and

(e) on the ground of the religious belief or activity that a person is thought to hold or engage in, whether or not the person holds or engages in the religious belief or activity; and

(f) on the ground of the religious belief or activity that a person is thought to have held or engaged in in the past, whether or not the person has held or engaged in the religious belief or activity in the past.
Part 2—Concept of discrimination on the ground of religious belief or activity

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

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

(a) the person treats, or proposes to treat, the other person less favourably than the person treats, or would treat, another person who does not have or engage in the religious belief or activity in circumstances that are not materially different; and

(b) the reason for the less favourable treatment is the other person’s religious belief or activity.

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

Indirect discrimination

(1) A person discriminates against another person on the ground of the other person’s religious belief or activity if:

(a) the person imposes, or proposes to impose, a condition, requirement or practice; and

(b) the condition, requirement or practice has, or is likely to have, the effect of disadvantaging persons who hold or engage in the same religious belief or activity as the other person; and

(c) the condition, requirement or practice is not reasonable.

Considerations relating to reasonableness

(2) Subject to subsections (3), (4), (6) and (7), whether a condition, requirement or practice is reasonable depends on all the relevant circumstances of the case, including the following:
Part 2 Concept of discrimination on the ground of religious belief or activity

Section 8

(a) the nature and extent of the disadvantage resulting from the imposition, or proposed imposition, of the condition, requirement or practice;

(b) the feasibility of overcoming or mitigating the disadvantage;

(c) whether the disadvantage is proportionate to the result sought by the person who imposes, or proposes to impose, the condition, requirement or practice;

(d) if the condition, requirement or practice is an employer conduct rule—the extent to which the rule would limit the ability of an employee to hold or engage in the employee’s religious belief or activity;

(e) if the condition, requirement or practice is a qualifying body conduct rule—the extent to which the rule would limit the ability of a person to hold or engage in the person’s religious belief or activity.

Conditions that are not reasonable relating to statements of belief

(3) For the purposes of paragraph (1)(c), an employer conduct rule that:

(a) is imposed, or proposed to be imposed, by a relevant employer; and

(b) would have the effect of restricting or preventing an employee of the employer from making a statement of belief other than in the course of the employee’s employment;

is not reasonable unless compliance with the rule by employees is necessary to avoid unjustifiable financial hardship to the employer.

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

(4) For the purposes of paragraph (1)(c), a qualifying body conduct rule that would have the effect of restricting or preventing a person from making a statement of belief other than in the course of the person practising in the relevant profession, carrying on the relevant trade or engaging in the relevant occupation is not reasonable unless compliance with the rule by the person is an essential requirement of the profession, trade or occupation.
Section 8

(5) Subsections (3) and (4) do not apply in relation to a statement of belief:

(a) that is malicious; or

(b) that would, or is likely to, harass, threaten, seriously intimidate or vilify another person or group of persons; or

(c) that is covered by paragraph 28(1)(b).

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

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

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

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

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

Note 3: Nothing in this subsection affects the operation of a law of a State or Territory that allows a health practitioner to exercise a conscientious objection in relation to a particular kind of health service.
Part 2 Concept of discrimination on the ground of religious belief or activity

Section 8

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

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

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

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

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

Burden of proof

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

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

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

(b) an essential requirement as referred to in subsection (4).
Employee includes prospective employee

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

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

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

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

10 Conduct engaged in for 2 or more reasons

If:
   (a) conduct is engaged in for 2 or more reasons; and
   (b) one of the reasons is a person’s religious belief or activity (whether or not it is the dominant or a substantial reason for the conduct);
then, for the purposes of this Act, the conduct is taken to be engaged in for that reason.

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

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

Note: This subsection does not permit conduct that is otherwise unlawful under any other law of the Commonwealth, including the Sex Discrimination Act 1984.
Part 2  Concept of discrimination on the ground of religious belief or activity

Section 12

(2) Without limiting subsection (1), conduct mentioned in that subsection includes giving preference to persons of the same religion as the religious body.

(3) A religious body does not discriminate against a person under this Act by engaging, in good faith, in conduct to avoid injury to the religious susceptibilities of adherents of the same religion as the religious body.

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

(4) Without limiting subsection (3), conduct mentioned in that subsection includes giving preference to persons of the same religion as the religious body.

(5) Religious body means:

(a) an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion; or

(b) a registered public benevolent institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion; or

(c) any other body that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion (other than a body that engages solely or primarily in commercial activities);

but does not include an institution that is a hospital or aged care facility, or that solely or primarily provides accommodation.

(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

(1) A person does not discriminate against another person under this Act by engaging in conduct that:

(a) is reasonable in the circumstances; and

(b) is consistent with the purposes of this Act; and
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(c) either:

(i) is intended to meet a need arising out of a religious belief or activity of a person or group of persons; or

(ii) is intended to reduce a disadvantage experienced by a person or group of persons on the basis of the person’s or group’s religious beliefs or activities.

(2) This section applies despite anything else in this Act.
Part 3—Unlawful discrimination

Division 1—Introduction

13 Introduction

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

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

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

14 Employment

Discrimination in relation to hiring etc.

(1) It is unlawful for an employer to discriminate against another person on the ground of the other person’s religious belief or activity:
   (a) in the arrangements made for the purpose of determining who should be offered employment; or
   (b) in determining who should be offered employment; or
   (c) in the terms or conditions on which employment is offered.

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

Discrimination in relation to terms and conditions of employment etc.

(2) It is unlawful for an employer to discriminate against an employee on the ground of the employee’s religious belief or activity:
   (a) in the terms or conditions of employment that the employer affords the employee; or
   (b) by denying the employee access, or limiting the employee’s access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
   (c) by dismissing the employee; or
   (d) by subjecting the employee to any other detriment.

15 Partnerships

Discrimination in relation to forming partnerships etc.

(1) It is unlawful for 3 or more persons who are proposing to form themselves into a partnership to discriminate against another
Part 3 Unlawful discrimination
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person on the ground of the other person’s religious belief or activity:
(a) in determining who should be invited to become a partner in the partnership; or
(b) in the terms or conditions on which the other person is invited to become a partner in the partnership.

(2) It is unlawful for any one or more of the partners in a partnership consisting of 3 or more partners to discriminate against another person on the ground of the other person’s religious belief or activity:
(a) in determining who should be invited to become a partner in the partnership; or
(b) in the terms or conditions on which the other person is invited to become a partner in the partnership.

Discrimination against partner

(3) It is unlawful for any one or more of the partners in a partnership consisting of 3 or more partners to discriminate against another partner in the partnership on the ground of the other partner’s religious belief or activity:
(a) by denying the other partner access, or limiting the other partner’s access, to any benefit arising from being a partner in the partnership; or
(b) by expelling the other partner from the partnership; or
(c) by subjecting the other partner to any other detriment.

16 Qualifying bodies

It is unlawful for a qualifying body to discriminate against a person on the ground of the person’s religious belief or activity:
(a) by refusing or failing to confer, renew, extend or vary an authorisation or qualification; or
(b) in the terms or conditions on which the qualifying body is prepared to confer, renew, extend or vary an authorisation or qualification; or
Section 17

17 Registered organisations

Discrimination in relation to applications for membership

(1) It is unlawful for a registered organisation, the committee of management of a registered organisation or a member of the committee of management of a registered organisation to discriminate against another person, on the ground of the person’s religious belief or activity:
   (a) by refusing or failing to accept the person’s application for membership; or
   (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.

Discrimination against members

(2) It is unlawful for a registered organisation, the committee of management of a registered organisation or a member of the committee of management of a registered organisation to discriminate against a person who is a member of the registered organisation, on the ground of the member’s religious belief or activity:
   (a) by denying the member access, or limiting the member’s access, to any benefit provided by the organisation; or
   (b) by depriving the member of membership or varying the terms of the member’s membership; or
   (c) by subjecting the member to any other detriment.

Meaning of registered organisation

(3) In this section:

registered organisation means an organisation registered under the Fair Work (Registered Organisations) Act 2009.
Part 3  Unlawful discrimination
Division 2  Discrimination in work

Section 18

18  Employment agencies

It is unlawful for an employment agency to discriminate against a person on the ground of the person’s religious belief or activity:
(a) by refusing to provide the person with any of its services; or
(b) in the terms or conditions on which it offers to provide the person with any of its services; or
(c) in the manner in which it provides the person with any of its services.
Division 3—Discrimination in other areas

19 Education

(1) It is unlawful for an educational institution to discriminate against a person on the ground of the person’s religious belief or activity:
   (a) by refusing or failing to accept the person’s application for admission as a student; or
   (b) in the terms or conditions on which it is prepared to admit the person as a student.

(2) It is unlawful for an educational institution to discriminate against a student on the ground of the student’s religious belief or activity:
   (a) by denying the student access, or limiting the student’s access, to any benefit provided by the educational institution; or
   (b) by expelling the student; or
   (c) by subjecting the student to any other detriment.

20 Access to premises

It is unlawful for a person to discriminate against another person on the ground of the other person’s religious belief or activity:
(1) by refusing to allow the other person access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not); or
(2) in the terms or conditions on which the person is prepared to allow the other person access to, or the use of, any such premises; or
(3) by refusing to allow the other person the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not); or
(4) in the terms or conditions on which the person is prepared to allow the other person the use of any such facilities; or
(e) by requiring the other person to leave such premises or cease to use such facilities.
Section 21

21 Goods, services and facilities

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

(a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person; or

(b) in the terms or conditions on which the person provides the other person with those goods or services or makes those facilities available to the other person; or

(c) in the manner in which the person provides the other person with those goods or services or makes those facilities available to the other person.

22 Accommodation

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

(a) by refusing the other person’s application for accommodation; or

(b) in the terms or conditions on which the accommodation is offered to the other person; or

(c) by deferring the other person’s application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.

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

(a) by denying the other person access, or limiting the other person’s access, to any benefit associated with accommodation occupied by the other person; or

(b) by evicting the other person from accommodation occupied by the other person; or
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(c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.

23 Land

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

(a) by refusing or failing to dispose of an estate or interest in land to the other person; or

(b) in the terms or conditions on which an estate or interest in land is offered to the other person.

24 Sport

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

25 Clubs

(1) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is not a member of the club on the ground of the person’s religious belief or activity:

(a) by refusing or failing to accept the person’s application for membership; or

(b) in the terms or conditions on which the club is prepared to admit the person to membership.

(2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is a member of the club on the ground of the member’s religious belief or activity:

(a) in the terms or conditions of membership that are afforded to the member; or
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Division 3 Discrimination in other areas

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(b) by refusing or failing to accept the member’s application for a particular class or type of membership; or
(c) by denying the member access, or limiting the member’s access to any benefit provided by the club; or
(d) by depriving the member of membership or varying the terms of membership; or
(e) by subjecting the member to any other detriment.

26 Requesting or requiring information

It is unlawful for a person (the first person) to request or require another person to provide information if:
(a) the first person requests or requires the information for the purpose of engaging in conduct in relation to the other person; and
(b) the conduct would be unlawful under another provision of this Part.

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

27 Commonwealth laws and programs

It is unlawful for a person who:
(a) performs any function or exercises any power:
(i) under a law of the Commonwealth; or
(ii) for the purposes of a program conducted by or on behalf of the Commonwealth; or
(b) has any other responsibility for:
(i) the administration of a law of the Commonwealth; or
(ii) the conduct of a program conducted by or on behalf of the Commonwealth;

to discriminate against another person on the ground of the other person’s religious belief or activity in performing that function, exercising that power or fulfilling that responsibility.
Division 4—Exceptions and exemptions

Subdivision A—General exceptions

28 Counselling, promoting etc. a serious offence

(1) Divisions 2 and 3 do not make it unlawful to discriminate against a person on the ground of the person’s religious belief or activity if:
   (a) the person has expressed a particular religious belief; and
   (b) a reasonable person, having regard to all the circumstances, would conclude that, in expressing the belief, the person is counselling, promoting, encouraging or urging conduct that would constitute a serious offence; and
   (c) at the time the discrimination occurs, it is reasonable to assume that the person holds the particular belief.

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

29 Conferring charitable benefits

(1) Nothing in Division 2 or 3:
   (a) affects a provision of the governing rules (within the meaning of the Australian Charities and Not-for-profits Commission Act 2012) of a registered charity, if the provision:
      (i) confers charitable benefits; or
      (ii) enables charitable benefits to be conferred;
   (b) makes unlawful any conduct engaged in to give effect to such a provision.

(2) Nothing in Division 2 or 3:
   (a) affects a provision of a deed, will or other instrument, if the provision:
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(i) confers charitable benefits; or
(ii) enables charitable benefits to be conferred;
wholly or in part on persons who hold or engage in a
particular religious belief or activity; or
(b) makes unlawful any conduct engaged in to give effect to such
a provision.

30 Conduct in direct compliance with certain legislation etc.

Provisions of Commonwealth Acts etc.

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

Law enforcement, national security and intelligence functions etc.

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

State and Territory Acts etc.

(3) Nothing in Division 2 or 3 makes it unlawful for a person to
discriminate against another person, on the ground of the other
person’s religious belief or activity, if:
(a) the conduct constituting the discrimination is in direct compliance with a provision of a law of a State or a Territory (other than a local by-law); and  
(b) that provision is not prescribed by the regulations for the purposes of this paragraph.

(4) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of paragraph (3)(b) of this section may prescribe a provision of a law of a State or a Territory as in force at a particular time or as in force from time to time.

**Meaning of national security**

(5) In this section:

*national security* has the meaning given by the *National Security Information (Criminal and Civil Proceedings) Act 2004* and includes granting, revoking or denying Australian Government security clearances (within the meaning of the *Criminal Code*).

### 31 Orders, determinations and industrial instruments

Nothing in Division 2 or 3 makes it unlawful for a person to discriminate against another person, on the ground of the other person’s religious belief or activity, if the conduct constituting the discrimination is in direct compliance with any of the following:

(a) an order of a court or tribunal;

(b) without limiting paragraph (a)—an order, determination or award of a court or tribunal that has power to fix minimum wages or other terms and conditions of employment;

(c) an instrument that is:

(i) a fair work instrument (within the meaning of the *Fair Work Act 2009*); or

(ii) a transitional instrument or Division 2B State instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).
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Subdivision B—Specific exceptions relating to particular areas of public life

32 Exceptions relating to work

   Exception—domestic duties

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

   Exception— inherent requirements

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

   (a) the discrimination is in connection with a position as an employee or partner; and

   (b) because of the other person’s religious belief or activity, the other person is unable to carry out the inherent requirements of the employment or partnership.

   (3) Subsection (2) does not apply in relation to discrimination referred to in paragraph 14(2)(b) or (d) or 15(3)(a) or (c), other than discrimination in determining who should be offered promotion or transfer.

   (4) Section 16 (about qualifying bodies) does not make it unlawful for a qualifying body to discriminate against a person, on the ground of the person’s religious belief or activity, if the person is unable to carry out the inherent requirements of the relevant profession, trade or occupation because of the person’s religious belief or activity.

   (5) Section 18 (about employment agencies) does not make it unlawful for an employment agency to discriminate against a person, on the
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The ground of the person’s religious belief or activity, if the person is unable to carry out the inherent requirements of the work sought because of the person’s religious belief or activity.

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

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

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

(8) Sections 14 (about employment) and 15 (about partnerships) do not make it unlawful for a person (the first person) to discriminate against another person, on the ground of the other person’s religious belief or activity, if:
(a) either:
(i) the first person establishes, directs, controls or administers a hospital or aged care facility that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion; or
(ii) the first person solely or primarily provides accommodation in accordance with the doctrines, tenets, beliefs or teachings of a particular religion; and
(b) the first person engages, in good faith, in conduct that a person of the same religion as the first person could...
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reasonably consider to be in accordance with the doctrines, tenets, beliefs or teachings of that religion.

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

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

(a) either:

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

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

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

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

Employee includes prospective employee

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

33 Exceptions relating to accommodation

Exception—accommodation provider who is resident etc.

(1) Section 22 (about accommodation) does not apply to or in respect of the provision of accommodation in premises if:
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(a) the person who provides, or proposes to provide, the accommodation or a near relative of that person resides, and intends to continue to reside on those premises; and

(b) the accommodation provided in those premises is for no more than 3 persons, other than a person mentioned in paragraph (a) or near relatives of such a person.

Exception—religious camps and conference sites

(2) Section 22 (about accommodation) does not make it unlawful for a person (the _first person_) to discriminate against another person, on the ground of the other person’s religious belief or activity, if:

(a) the first person establishes, directs, controls or administers a camp or conference site that:

(i) provides accommodation; and

(ii) is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion; and

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

(c) the conduct is in accordance with a publicly available policy issued by the person.

(3) Without limiting paragraph (2)(b), conduct mentioned in that paragraph includes giving preference to persons of the same religion as the first person.

(4) Section 22 (about accommodation) does not make it unlawful for a person (the _first person_) to discriminate against another person, on the ground of the other person’s religious belief or activity, if:

(a) the first person establishes, directs, controls or administers a camp or conference site that:

(i) provides accommodation; and

(ii) is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion; and
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(b) the first person engages, in good faith, in conduct to avoid
injury to the religious susceptibilities of adherents of the
same religion as the first person; and
(c) the conduct is in accordance with a publicly available policy
issued by the person.

(5) Without limiting paragraph (4)(b), conduct mentioned in that
paragraph includes giving preference to persons of the same
religion as the first person.

34 Exception for disposal of land

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

35 Exception relating to clubs

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

36 Exception relating to voluntary bodies

(1) This section applies to voluntary bodies whose membership
(however described) is restricted to persons who hold or engage in
a particular religious belief or activity.

(2) Divisions 2 and 3 do not make it unlawful for a voluntary body to
discriminate against a person, on the ground of the person’s
religious belief or activity, in connection with:
(a) the admission of persons as members of the body; or
(b) the provision of benefits, facilities or services to members of
the body.
Subdivision C—Exemptions granted by the Commission

37 Commission may grant exemptions

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

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

(3) The exemption may:
   (a) be granted subject to such terms and conditions as are specified in the instrument of exemption; and
   (b) be expressed to apply only in such circumstances, or in relation to such activities, as are specified in the instrument of exemption.

38 Applying for an exemption

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

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

39 Effect of exemptions

This Part does not make it unlawful for:
   (a) a person or body that is covered by an exemption granted under section 37; or
   (b) a person employed by, or under the direction or control of, a person or body that is covered by an exemption granted under section 37;
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to engage in conduct in accordance with the exemption.

40 Variation and revocation of exemptions

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

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

41 Review by Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for review of the following decisions:
(a) decisions of the Commission under section 37;
(b) decisions of the Commission under section 40;
(c) decisions of the Minister under section 40.
Part 4—Statements of belief do not constitute discrimination etc.

42 Statements of belief do not constitute discrimination etc.

(1) A statement of belief, in and of itself, does not:
   (a) constitute discrimination for the purposes of any anti-discrimination law (within the meaning of the Fair Work Act 2009); or
   (b) contravene subsection 17(1) of the Anti-Discrimination Act 1998 (Tas.); or
   (c) contravene a provision of a law prescribed by the regulations for the purposes of this paragraph.

(2) Subsection (1) does not apply to a statement of belief:
   (a) that is malicious; or
   (b) that would, or is likely to, harass, threaten, seriously intimidate or vilify another person or group of persons; or
   (c) that is covered by paragraph 28(1)(b).

Note: Paragraph 28(1)(b) covers expressions of religious belief that a reasonable person, having regard to all the circumstances, would conclude counsel, promote, encourage or urge conduct that would constitute a serious offence.
Part 5—Offences

Section 43

43 Unlawful conduct is not an offence unless expressly provided

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

44 Victimisation

Victimisation—actual detriment

(1) A person (the first person) commits an offence if:
(a) the first person engages in conduct; and
(b) the first person’s conduct causes detriment to another person (the second person); and
(c) the first person intends that his or her conduct cause detriment to the second person; and
(d) the first person engages in his or her conduct because he or she believes that:
   (i) the second person has made, or proposes to make, a complaint under the Australian Human Rights Commission Act 1986; or
   (ii) the second person has brought, or proposes to bring, proceedings under the Australian Human Rights Commission Act 1986 against any person; or
   (iii) the second person has given, or proposes to give, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act or the Australian Human Rights Commission Act 1986; or
   (iv) the second person has attended, or proposes to attend, a conference held under the Australian Human Rights Commission Act 1986; or
(v) the second person has appeared, or proposes to appear, as a witness in a proceeding under this Act or the Australian Human Rights Commission Act 1986; or
(vi) the second person has reasonably asserted, or proposes to assert, any rights of the second person, or of any other person, under this Act or the Australian Human Rights Commission Act 1986; or
(vii) the second person has made an allegation that a person has engaged in conduct that is unlawful by reason of a provision of Part 3 of this Act.

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

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

Victimisation—threat of detriment

(2) A person (the first person) commits an offence if:

(a) the first person makes to another person (the second person) a threat to cause detriment to the second person or to any other person; and

(b) the first person:
(i) intends the second person to fear that the threat will be carried out; or
(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(c) the first person makes the threat because he or she believes a matter mentioned in paragraph (1)(d).

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

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

(3) For the purposes of subsection (2), a threat may be:

(a) express or implied; or
Part 5 Offences

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(b) conditional or unconditional.

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

45 Advertisements

A person commits an offence if:

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

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

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

Penalty: 10 penalty units.
Part 6—Freedom of Religion Commissioner

46 Freedom of Religion Commissioner

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

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

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

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

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

47 Term of appointment

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

48 Remuneration of Commissioner

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

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

(3) This section has effect subject to the Remuneration Tribunal Act 1973.
Part 6 Freedom of Religion Commissioner

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49 Leave of absence

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

(2) If the Commissioner is appointed on a part-time basis, the Minister may grant leave of absence to the Commissioner on the terms and conditions that the Minister determines.

50 Outside employment

(1) If the Commissioner is appointed on a full-time basis, the Commissioner must not engage in paid work outside the duties of the Commissioner’s office without the Minister’s approval.

(2) If the Commissioner is appointed on a part-time basis, the Commissioner must not engage in any paid work that, in the Minister’s opinion, conflicts, or could conflict, with the proper performance of the Commissioner’s duties.

51 Other terms and conditions of appointment

The Commissioner holds office on the terms and conditions (if any), in relation to matters not covered by this Act, that are determined by the Governor-General.

52 Resignation

(1) The Commissioner may resign the Commissioner’s appointment by giving the Governor-General a written resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the written resignation, on that later day.
53 Termination

(1) The Governor-General may terminate the appointment of the Commissioner:
   (a) for misbehaviour; or
   (b) if the Commissioner is unable to perform the duties of the Commissioner’s office because of physical or mental incapacity.

(2) The Governor-General must terminate the appointment of the Commissioner:
   (a) if the Commissioner:
      (i) becomes bankrupt; or
      (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
      (iii) compounds with one or more of the Commissioner’s creditors; or
      (iv) makes an assignment of the Commissioner’s remuneration for the benefit of one or more of the Commissioner’s creditors; or
   (b) if the Commissioner is appointed on a full-time basis—if the Commissioner is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or
   (c) if the Commissioner is appointed on a full-time basis—if the Commissioner engages in paid work outside the duties of the Commissioner’s office without the Minister’s approval; or
   (d) if the Commissioner is appointed on a part-time basis—if the Commissioner is absent, except on leave of absence, for 3 consecutive meetings of the Commission; or
   (e) if the Commissioner is appointed on a part-time basis—if the Commissioner engages in paid work outside the duties of the office of Commissioner that, in the Minister’s opinion, conflicts, or could conflict, with the proper performance of the Commissioner’s duties.
54 Acting Commissioner

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

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

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

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

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

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

(2) A person is not qualified to be appointed under subsection (1) unless the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.
Part 7—Functions of the Australian Human Rights Commission

55 Functions of the Commission

The following functions are conferred on the Commission:

(a) to exercise the powers conferred on it by section 37 (about granting exemptions);

(b) to promote an understanding and acceptance of, and compliance with, this Act;

(c) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting the objects of this Act;

(d) to examine enactments (within the meaning of the Australian Human Rights Commission Act 1986) to determine whether those enactments are inconsistent with or contrary to the objects of this Act;

(e) at the request of the Minister, to examine proposed enactments (within the meaning of the Australian Human Rights Commission Act 1986) to determine whether those enactments would be inconsistent with or contrary to the objects of this Act;

(f) to report to the Minister the result of examinations conducted for the purposes of paragraph (d) or (e);

(g) on its own initiative or at the request of the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to discrimination on the ground of religious belief or activity;

(h) to prepare and publish guidelines for avoiding discrimination on the ground of religious belief or activity;

(i) where the Commission considers it appropriate, with the leave of the court conducting the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve issues of discrimination on the ground of religious belief or activity;
(j) to do anything incidental or conducive to the performance of any of the above functions.
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56 This Act binds the Crown

(1) This Act binds the Crown in each of its capacities.

(2) However, this Act does not make the Crown liable to be prosecuted for an offence.

57 Geographical application of this Act

(1) This Act applies throughout Australia.

(2) This Act applies to conduct engaged in in Australia, even if the conduct involves persons or things, or matters arising, outside Australia.

58 Constitutional basis of this Act

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

(a) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23);

(b) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5);

(c) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4);

(d) the International Convention on the Elimination of all Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40);

(e) the ILO Convention (No. 111) concerning Discrimination in respect of Employment and Occupation done at Geneva on 25 June 1958 ([1974] ATS 12);
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Note: The text of a Convention or Covenant could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

59 Additional operation of this Act

Act also has effect as provided by this section

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

Constitutional corporations

(2) 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, limited so that it applies only if one or more of the following paragraphs applies:

(a) the first person is a corporation to which paragraph 51(xx) of the Constitution applies;
(b) the first person is an officer, employee or agent of a corporation to which paragraph 51(xx) of the Constitution applies, and the conduct is connected with the person’s duties as such an officer, employee or agent;
(c) the other person is an officer, employee or agent of a corporation to which paragraph 51(xx) of the Constitution applies, and the conduct is connected with the person’s duties as such an officer, employee or agent.

Commonwealth and Territory matters

(3) 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, limited so that it applies only if one or more of the following paragraphs applies:

(a) the first person is the Commonwealth, a Territory, or a body (a covered authority) covered by subsection (4);
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(b) the first person is an officer, employee or agent of the Commonwealth, a Territory or a covered authority, and the conduct is connected with the person’s duties as such an officer, employee or agent;

(c) the other person is an officer, employee or agent of the Commonwealth, a Territory or a covered authority, and the conduct is connected with the person’s duties as such an officer, employee or agent;

(d) the conduct occurs in the course of the first person, or the other person, performing a function or exercising a power under a law of the Commonwealth or a law of a Territory;

(e) the conduct is engaged in within a Territory.

(4) The following bodies are covered by this subsection:

(a) a body established for a public purpose by or under a law of the Commonwealth or a Territory;

(b) an incorporated company over which any of the following is in a position to exercise control:
   (i) the Commonwealth;
   (ii) the Government of a Territory;
   (iii) a body referred to in paragraph (a);

(c) a person who holds:
   (i) an office or position established by or under a law of the Commonwealth or a Territory; or
   (ii) an appointment made under a law of the Commonwealth or a Territory; or
   (iii) an appointment made by the Governor-General, by a Minister, or by any other person on behalf of the Commonwealth Government; or
   (iv) an appointment made by a Minister of a Territory, or by any other person on behalf of the Government of a Territory; or
   (v) an office or appointment that is prescribed by the regulations for the purpose of this subparagraph.
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Trade or commerce

(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:
   (a) between Australia and places outside Australia; or
   (b) among the States; or
   (c) between a State and a Territory; or
   (d) between 2 Territories.

Banking and insurance

(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:
   (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
   (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.

Telecommunications

(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.

Defence

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

60 Limited application provisions

(1) Subsections 11(3) and (4), 32(10) and (11) and 33(4) and (5) apply in relation to any of the following kinds of conduct:
(a) conduct engaged in by a corporation to which paragraph 51(xx) of the Constitution applies;
b) conduct engaged in by a person acting in the course of, or in relation to, trade or commerce:
   (i) between Australia and places outside Australia; or
   (ii) among the States; or
   (iii) between a State and a Territory; or
   (iv) between 2 Territories;
(c) conduct engaged in by a body corporate that is incorporated in a Territory;
(d) conduct engaged in by a body corporate that is taken to be registered in a Territory under section 119A of the Corporations Act 2001;
(e) conduct engaged in in a Territory;
(f) conduct engaged in by means of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution.

(2) This section applies despite sections 58 and 59.

61 Compensation for acquisition of property

(1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia or the Supreme Court of a State or
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Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

62 Relationship with State and Territory laws

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

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

(2) If:

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

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

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

(3) If:

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

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

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

(4) Nothing in subsection (3) renders a person liable to be punished more than once in respect of the same conduct.
Part 9—Other matters

63 Delegation

Delegation by the Commission

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

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

Delegation by the Commissioner

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

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

Delegate must comply with directions of delegator

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

64 Liability of persons involved in unlawful conduct

(1) A person must not do any of the following in relation to conduct that is unlawful under Part 3:
   (a) attempt to engage in that conduct;
   (b) aid, abet, counsel or procure that conduct;
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(c) induce (by threats, promises or otherwise) that conduct;
(d) be in any way, directly or indirectly, knowingly concerned in,
or party to, that conduct;
(e) conspire with others to engage in, or effect, that conduct.

(2) A person who contravenes subsection (1) in relation to conduct that
is unlawful under Part 3 is taken, for the purposes of this Act, to
have engaged in the conduct.

65 Conduct by representatives

(1) Any conduct engaged in on behalf of a person by a representative
of the person within the scope of actual or apparent authority is
taken to have been engaged in also by the person, unless the person
establishes that the person took reasonable precautions and
exercised due diligence to avoid the conduct.

(2) If it is necessary to establish the state of mind of a person in
relation to particular conduct, it is sufficient to show:
(a) that the conduct was engaged in by a representative of the
person within the scope of actual or apparent authority; and
(b) that the representative had that state of mind.

(3) A reference in subsection (2) to the state of mind of a
representative of a person includes a reference to:
(a) the representative’s knowledge, intention, opinion, belief or
purpose; and
(b) the representative’s reasons for the intention, opinion, belief
or purpose.

(4) In this section:

representative of a person means:
(a) if the person is a body corporate—a director, employee or
agent of the body corporate; or
(b) if the person is a body politic—an employee or agent of the
body politic; or
(c) if the person is an individual—an employee or agent of the
individual.
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(5) This section does not apply to proceedings for an offence against Part 5.

66 Protection from civil actions

(1) Subsection (2) applies to:

(a) the Commission; and
(b) the Commissioner or another member of the Commission; and
(c) a person acting for or on behalf of:
   (i) the Commission; or
   (ii) the Commissioner or another member of the Commission.

(2) A person mentioned in subsection (1) is not liable to an action or other proceeding for damages for or in relation to conduct engaged in in good faith:

(a) in the performance, or purported performance, of any function conferred on the Commission by this Act; or
(b) in the exercise, or purported exercise, of any power conferred on the Commission by this Act.

(3) Subsection (4) applies if a submission has been made, or a document, information or evidence has been given, to the Commission or to a person acting for or on behalf of the Commission.

(4) A person is not liable to an action, suit or proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that the submission was made or the document, information or evidence was given.

(5) This section is subject to section 61 (about acquisition of property).

67 No right of action unless expressly provided

Except as expressly provided in this Act, nothing in this Act confers any right of action in relation to conduct that:

(a) is unlawful under a provision of Part 3; or
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(b) is an offence against a provision of Part 5.

68 Non-disclosure of protected information

(1) A person commits an offence if the person:
   (a) is, or has been, an entrusted person; and
   (b) has acquired protected information in the person’s capacity
       as an entrusted person; and
   (c) discloses the information to another person.

Penalty: Imprisonment for 2 years.

(2) Subsection (1) does not apply if:
   (a) the conduct is authorised by a law of the Commonwealth or
       of a State or Territory; or
   (b) a person engages in the conduct:
       (i) in the performance of a function under or in connection
           with this Act; or
       (ii) in the exercise of a power conferred on the Commission
           or the Commissioner by this Act; or
       (iii) in accordance with an arrangement in force under
           section 16 of the Australian Human Rights Commission
           Act 1986.

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

(3) A person who is, or has been, an entrusted person must not be
required:
   (a) to disclose to a court protected information acquired in the
       person’s capacity as an entrusted person; or
   (b) to produce in a court a document containing protected
       information of which that person has custody, or to which
       that person has access, in that person’s capacity as an
       entrusted person;
       except where it is necessary to do so for the purposes of this Act.

(4) In this section:
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1. court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

2. entrusted person means:
   (a) the Commissioner or another member of the Commission; or
   (b) a member of the staff assisting the Commission; or
   (c) a delegate of the Commission; or
   (d) a delegate of the Commissioner.

3. produce includes permit access to.

4. protected information means information:
   (a) that is obtained by an entrusted person under or for the purposes of this Act; and
   (b) that relates to the affairs of another person.

69 Commissioner to give information to the Commission

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

70 Regulations

The Governor-General may make regulations prescribing matters:
   (a) required or permitted by this Act to be prescribed by the regulations; or
   (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.