

EXPOSURE DRAFT

2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (29 August 2019)
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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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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*.

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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.

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Preliminary **Part 1**

Section 4

- 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
3 (b) the principle that every person is free and equal in dignity
4 and rights.

5 **4 Simplified outline of this Act**

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

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

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

15 Statements of belief do not generally constitute discrimination (see
16 Part 4).

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

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

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

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

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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 45.

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

21 **discriminate**: see sections 7, 8, 10 and 11.

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

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

26 **employer conduct rule** means a condition, requirement or practice:

- 27 (a) that is imposed, or proposed to be imposed, by an employer
28 on its employees or prospective employees; and

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1 (b) that relates to standards of dress, appearance or behaviour of
2 those employees.

3 **employment** means:

4 (a) work under a contract of employment (within its ordinary
5 meaning); or

6 (b) work that a person is otherwise appointed or engaged to
7 perform;

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

10 **engage in conduct** means:

11 (a) do an act; or

12 (b) omit to perform an act.

13 **ground** has a meaning affected by section 6.

14 **health practitioner** means a person who, under a law of a State or
15 Territory, is registered or licensed to provide a health service.

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

18 (a) that is imposed, or proposed to be imposed, by a person on a
19 health practitioner; and

20 (b) that relates to the provision of a health service by the health
21 practitioner; and

22 (c) that would have the effect of restricting or preventing the
23 health practitioner from conscientiously objecting to
24 providing the health service because of a religious belief or
25 activity held or engaged in by the health practitioner, being a
26 religious belief or activity that may reasonably be regarded as
27 being in accordance with the doctrines, tenets, beliefs or
28 teachings of the health practitioner's religion.

29 **health service** means a service provided in the practice of any of
30 the following health professions:

31 (a) Aboriginal and Torres Strait Islander health practice;

32 (b) dental (not including the professions of dental therapist,
33 dental hygienist, dental prosthetist or oral health therapist);

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Part 1 Preliminary

Section 5

- 1 (c) medical;
2 (d) medical radiation practice;
3 (e) midwifery;
4 (f) nursing;
5 (g) occupational therapy;
6 (h) optometry;
7 (i) pharmacy;
8 (j) physiotherapy;
9 (k) podiatry;
10 (l) psychology.

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

- 12 (a) a parent, step-parent, grandparent or step-grandparent of the
13 person; or
14 (b) a child, step-child, grandchild or step-grandchild of the
15 person; or
16 (c) a brother, sister, step-brother or step-sister of the person; or
17 (d) the spouse or de facto partner of the person; or
18 (e) another person who has any of the relationships specified in
19 paragraph (a), (b) or (c) to the person's spouse or de facto
20 partner.

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

23 **parent**: without limiting who is a parent of a person for the
24 purposes of this Act, someone is the **parent** of a person if the
25 person is his or her child because of the definition of **child** in this
26 subsection.

27 **person** has a meaning affected by the *Acts Interpretation Act 1901*.

28 Note: Under section 2C of the *Acts Interpretation Act 1901*, an expression
29 that is used to denote a person includes a body corporate, which may
30 include a religious body or other religious institution.

31 **premises** includes:

- 32 (a) a structure, building, aircraft, vehicle or vessel; and

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- 1 (b) a place (whether enclosed or built on or not); and
2 (c) a part of premises (including premises of a kind mentioned in
3 paragraph (a) or (b)).

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

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

- 10 (a) the employer has or had revenue for the current or previous
11 financial year of at least \$50 million; and
12 (b) the employer is not the Commonwealth, a State or a Territory
13 or a body established for a public purpose by or under a law
14 of the Commonwealth, a State or a Territory.

15 **religious belief or activity** means:

- 16 (a) holding a religious belief; or
17 (b) engaging in lawful religious activity; or
18 (c) not holding a religious belief; or
19 (d) not engaging in, or refusing to engage in, lawful religious
20 activity.

21 **religious body**: see subsection 10(2).

22 **serious offence**: see subsection 27(2).

23 **services** means services of any kind, including (for example) the
24 following:

- 25 (a) services relating to banking, insurance, superannuation and
26 the provision of grants, loans, credit or finance;
27 (b) services relating to entertainment, recreation or refreshment;
28 (c) services relating to transport or travel;
29 (d) services relating to telecommunications;
30 (e) services of the kind provided by the members of any
31 profession or trade;

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Part 1 Preliminary

Section 5

1 (f) services of the kind provided by a government, a government
2 authority or a local government body.

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

4 (a) the statement:

5 (i) is of a religious belief held by a person; and

6 (ii) is made by the person in good faith; and

7 (iii) is of a belief that may reasonably be regarded as being
8 in accordance with the doctrines, tenets, beliefs or
9 teachings of the religion; or

10 (b) the statement:

11 (i) is made by a person who does not hold a religious
12 belief; and

13 (ii) is of a belief held by the person that arises directly from
14 the fact that the person does not hold a religious belief;
15 and

16 (iii) is made in good faith; and

17 (iv) is about religion.

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

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

28 **this Act** includes the regulations.

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

32 (a) a club; or

- 1 (b) a body established by a law of the Commonwealth, a State or
2 a Territory; or
3 (c) an association that provides grants, loans, credit or finance to
4 its members.
- 5 (2) For the purposes of this Act, if one person is the child of another
6 person because of the definition of *child* in subsection (1),
7 relationships traced to or through that person are to be determined
8 on the basis that the person is the child of the other person.

9 **6 Extended meaning of *ground***

- 10 Discrimination on the *ground* of a person's religious belief or
11 activity includes discrimination:
12 (a) on the ground of a characteristic that people who have or
13 engage in the religious belief or activity generally have; and
14 (b) on the ground of a characteristic that people who have or
15 engage in the religious belief or activity are generally
16 presumed to have; and
17 (c) on the ground of the religious belief or activity that a person
18 has or engages in; and
19 (d) on the ground of the religious belief or activity that a person
20 has had or engaged in in the past, whether or not the person
21 still has or engages in the religious belief or activity; and
22 (e) on the ground of the religious belief or activity that a person
23 is thought to have or engage in, whether or not the person has
24 or engages in the religious belief or activity; and
25 (f) on the ground of the religious belief or activity that a person
26 is thought to have had or engaged in in the past, whether or
27 not the person has had or engaged in the religious belief or
28 activity in the past.

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

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 have 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), (5) and (6), whether a condition,
28 requirement or practice is reasonable depends on all the relevant
29 circumstances of the case, including the following:

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- 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 of the employer to have or engage in
11 the employee’s religious belief or activity.

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

- 13 (3) For the purposes of paragraph (1)(c), an employer conduct rule
14 that:
15 (a) is imposed, or proposed to be imposed, by a relevant
16 employer; and
17 (b) would have the effect of restricting or preventing an
18 employee of the employer from making a statement of belief
19 at a time other than when the employee is performing work
20 on behalf of the employer;

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

23 Note: A requirement to comply with an employer conduct rule that is not
24 reasonable under this subsection is also not an inherent requirement of
25 employment (see subsection 31(6)).

- 26 (4) Subsection (3) does not apply in relation to a statement of belief:
27 (a) that is malicious; or
28 (b) that would, or is likely to, harass, vilify or incite hatred or
29 violence against another person or group of persons; or
30 (c) that is covered by paragraph 27(1)(b).

31 Note: Paragraph 27(1)(b) covers expressions of religious belief that a
32 reasonable person, having regard to all the circumstances, would
33 conclude counsel, promote, encourage or urge conduct that would
34 constitute a serious offence.

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

Section 8

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

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

8 Note: A requirement to comply with a health practitioner conduct rule that is
9 not reasonable under this subsection is also not an inherent
10 requirement of work (see subsection 31(7)).

11 (6) For the purposes of paragraph (1)(c), if subsection (5) does not
12 apply, a health practitioner conduct rule is not reasonable unless
13 compliance with the rule is necessary to avoid an unjustifiable
14 adverse impact on:

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

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

19 Note: 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 of work (see subsection 31(7)).

22 *Burden of proof*

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

27 Note: As a result of this subsection, the person who imposes, or proposes to
28 impose, the condition, requirement or practice also has the burden of
29 proving that compliance with the rule is necessary as referred to in
30 subsection (3) or (6).

31 *Employee includes prospective employee*

32 (8) In this section, a reference to an employee includes a reference to a
33 prospective employee.

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1 **9 Conduct engaged in for 2 or more reasons**

2 If:

- 3 (a) conduct is engaged in for 2 or more reasons; and
4 (b) one of the reasons is a person’s religious belief or activity
5 (whether or not it is the dominant or a substantial reason for
6 the conduct);

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

9 **10 Religious bodies may act in accordance with their faith**

10 (1) A religious body does not *discriminate* against a person under this
11 Act by engaging, in good faith, in conduct that may reasonably be
12 regarded as being in accordance with the doctrines, tenets, beliefs
13 or teachings of the religion in relation to which the religious body
14 is conducted.

15 (2) *Religious body* means:

- 16 (a) an educational institution that is conducted in accordance
17 with the doctrines, tenets, beliefs or teachings of a particular
18 religion; or
19 (b) a registered charity that is conducted in accordance with the
20 doctrines, tenets, beliefs or teachings of a particular religion
21 (other than a registered charity that engages solely or
22 primarily in commercial activities); or
23 (c) any other body that is conducted in accordance with the
24 doctrines, tenets, beliefs or teachings of a particular religion
25 (other than a body that engages solely or primarily in
26 commercial activities).

27 (3) This section applies despite anything else in this Act.

28 **11 Conduct that is not *discrimination*—reasonable conduct intended
29 to meet a need or reduce a disadvantage**

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

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

Section 11

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

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Unlawful discrimination **Part 3**

Introduction **Division 1**

Section 12

1 **Part 3—Unlawful discrimination**

2 **Division 1—Introduction**

3 **12 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).

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Part 3 Unlawful discrimination

Division 2 Discrimination in work

Section 13

1 **Division 2—Discrimination in work**

2 **13 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.

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1 **14 Partnerships**

2 *Discrimination in relation to forming partnerships etc.*

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

19 *Discrimination against partner*

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

29 **15 Qualifying bodies**

- 30 (1) This section applies to an authority or body that is empowered to
31 confer, renew, extend, revoke, vary or withdraw an authorisation or
-

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Part 3 Unlawful discrimination

Division 2 Discrimination in work

Section 16

- 1 qualification that is needed for, or facilitates, the practice of a
2 profession, the carrying on of a trade or the engaging in of an
3 occupation.
- 4 (2) It is unlawful for the authority or body to discriminate against
5 another person on the ground of the person's religious belief or
6 activity:
- 7 (a) by refusing or failing to confer, renew, extend or vary the
8 authorisation or qualification; or
- 9 (b) in the terms or conditions on which the authority or body is
10 prepared to confer, renew, extend or vary the authorisation or
11 qualification; or
- 12 (c) by revoking, varying or withdrawing the authorisation or
13 qualification.

14 **16 Registered organisations**

15 *Discrimination in relation to applications for membership*

- 16 (1) It is unlawful for a registered organisation, the committee of
17 management of a registered organisation or a member of the
18 committee of management of a registered organisation to
19 discriminate against another person, on the ground of the person's
20 religious belief or activity:
- 21 (a) by refusing or failing to accept the person's application for
22 membership; or
- 23 (b) in the terms or conditions on which the organisation is
24 prepared to admit the person to membership.

25 *Discrimination against members*

- 26 (2) It is unlawful for a registered organisation, the committee of
27 management of a registered organisation or a member of the
28 committee of management of a registered organisation to
29 discriminate against a person who is a member of the registered
30 organisation, on the ground of the member's religious belief or
31 activity:

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Unlawful discrimination **Part 3**
Discrimination in work **Division 2**

Section 17

- 1 (a) by denying the member access, or limiting the member's
2 access, to any benefit provided by the organisation; or
3 (b) by depriving the member of membership or varying the terms
4 of the member's membership; or
5 (c) by subjecting the member to any other detriment.

6 *Meaning of registered organisation*

7 (3) In this section:

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

10 **17 Employment agencies**

11 It is unlawful for an employment agency to discriminate against a
12 person on the ground of the person's religious belief or activity:

- 13 (a) by refusing to provide the person with any of its services; or
14 (b) in the terms or conditions on which it offers to provide the
15 person with any of its services; or
16 (c) in the manner in which it provides the person with any of its
17 services.

EXPOSURE DRAFT

Part 3 Unlawful discrimination

Division 3 Discrimination in other areas

Section 18

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

2 **18 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 **19 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

EXPOSURE DRAFT

- 1 (e) by requiring the other person to leave such premises or cease
2 to use such facilities.

3 **20 Goods, services and facilities**

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

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

17 **21 Accommodation**

- 18 (1) It is unlawful for a person, whether as principal or agent, to
19 discriminate against another person on the ground of the other
20 person's religious belief or activity:
21 (a) by refusing the other person's application for
22 accommodation; or
23 (b) in the terms or conditions on which the accommodation is
24 offered to the other person; or
25 (c) by deferring the other person's application for
26 accommodation or according to the other person a lower
27 order of precedence in any list of applicants for that
28 accommodation.
- 29 (2) It is unlawful for a person, whether as principal or agent, to
30 discriminate against another person on the ground of the other
31 person's religious belief or activity:

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Part 3 Unlawful discrimination

Division 3 Discrimination in other areas

Section 22

- 1 (a) by denying the other person access, or limiting the other
2 person's access, to any benefit associated with
3 accommodation occupied by the other person; or
4 (b) by evicting the other person from accommodation occupied
5 by the other person; or
6 (c) by subjecting the other person to any other detriment in
7 relation to accommodation occupied by the other person.

8 **22 Land**

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

- 12 (a) by refusing or failing to dispose of an estate or interest in
13 land to the other person; or
14 (b) in the terms or conditions on which an estate or interest in
15 land is offered to the other person.

16 **23 Sport**

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 by
19 excluding that other person from participation in a sporting activity
20 (including umpiring, coaching and administration of sporting
21 activities).

22 **24 Clubs**

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

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- 1 (2) It is unlawful for a club, the committee of management of a club or
2 a member of the committee of management of a club to
3 discriminate against a person who is a member of the club on the
4 ground of the member's religious belief or activity:
5 (a) in the terms or conditions of membership that are afforded to
6 the member; or
7 (b) by refusing or failing to accept the member's application for
8 a particular class or type of membership; or
9 (c) by denying the member access, or limiting the member's
10 access to any benefit provided by the club; or
11 (d) by depriving the member of membership or varying the terms
12 of membership; or
13 (e) by subjecting the member to any other detriment.

14 **25 Requesting or requiring information**

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

- 17 (a) the first person requests or requires the information for the
18 purpose of engaging in conduct in relation to the other
19 person; and
20 (b) the conduct would be unlawful under another provision of
21 this Part.

22 Example: It is unlawful under section 13 to refuse to employ a person on the
23 ground of the person's religious belief or activity. Under this section,
24 it is therefore also unlawful to ask a person in a job interview if they
25 are religious if the question is asked for the purposes of determining
26 whether to employ the person.

27 **26 Commonwealth laws and programs**

28 It is unlawful for a person who:

- 29 (a) performs any function or exercises any power:
30 (i) under a law of the Commonwealth; or
31 (ii) for the purposes of a program conducted by or on behalf
32 of the Commonwealth; or
33 (b) has any other responsibility for:

EXPOSURE DRAFT

Part 3 Unlawful discrimination

Division 3 Discrimination in other areas

Section 26

- 1 (i) the administration of a law of the Commonwealth; or
- 2 (ii) the conduct of a program conducted by or on behalf of
- 3 the Commonwealth;
- 4 to discriminate against another person on the ground of the other
- 5 person's religious belief or activity in performing that function,
- 6 exercising that power or fulfilling that responsibility.

EXPOSURE DRAFT

Unlawful discrimination **Part 3**
Exceptions and exemptions **Division 4**

Section 27

1 **Division 4—Exceptions and exemptions**

2 **Subdivision A—General exceptions**

3 **27 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 **28 Registered charities**

18 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 benefits for charitable purposes; or
23 (ii) enables charitable benefits to be conferred;
24 wholly or in part on persons who have 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.

EXPOSURE DRAFT

Part 3 Unlawful discrimination

Division 4 Exceptions and exemptions

Section 29

1 **29 Conduct in direct compliance with certain legislation etc.**

2 *Provisions of Commonwealth Acts etc.*

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

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

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

20 *State and Territory Acts etc.*

- 21 (3) Nothing in Division 2 or 3 makes it unlawful for a person to
22 discriminate against another person, on the ground of the other
23 person's religious belief or activity, if:
24 (a) the conduct constituting the discrimination is in direct
25 compliance with a provision of a law of a State or a
26 Territory; and
27 (b) that provision is not prescribed by the regulations for the
28 purposes of this paragraph.
- 29 (4) Despite subsection 14(2) of the *Legislation Act 2003*, regulations
30 made for the purposes of paragraph (3)(b) of this section may
31 prescribe a provision of a law of a State or a Territory as in force at
32 a particular time or as in force from time to time.

EXPOSURE DRAFT

Unlawful discrimination **Part 3**
Exceptions and exemptions **Division 4**

Section 30

1 *Meaning of national security*

2 (5) In this section:

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

7 **30 Orders, determinations and industrial instruments**

8 Nothing in Division 2 or 3 makes it unlawful for a person to
9 discriminate against another person, on the ground of the other
10 person's religious belief or activity, if the conduct constituting the
11 discrimination is necessary to comply with any of the following:

- 12 (a) an order of a court or tribunal;
- 13 (b) without limiting paragraph (a)—an order, determination or
14 award of a court or tribunal that has power to fix minimum
15 wages or other terms and conditions of employment;
- 16 (c) an instrument that is:
- 17 (i) a fair work instrument (within the meaning of the *Fair*
18 *Work Act 2009*); or
- 19 (ii) a transitional instrument or Division 2B State
20 instrument (within the meaning of the *Fair Work*
21 *(Transitional Provisions and Consequential*
22 *Amendments) Act 2009*).

23 **Subdivision B—Specific exceptions relating to particular areas** 24 **of public life**

25 **31 Exceptions relating to work**

26 *Exception—domestic duties*

27 (1) Paragraphs 13(1)(a) and (b) (about offering employment) do not
28 make it unlawful for a person (the *first person*) to discriminate
29 against another person, on the ground of the other person's
30 religious belief or activity, in connection with employment to

EXPOSURE DRAFT

Part 3 Unlawful discrimination

Division 4 Exceptions and exemptions

Section 31

1 perform domestic duties on the premises on which the first person
2 resides.

3 *Exception—inherent requirements*

4 (2) Sections 13 (about employment) and 14 (about partnerships) do not
5 make it unlawful for a person (the *first person*) to discriminate
6 against another person, on the ground of the other person's
7 religious belief or activity, if:

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

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

13 (3) Subsection (2) does not apply in relation to discrimination referred
14 to in paragraph 13(2)(b) or (d) or 14(3)(a) or (c), other than
15 discrimination in determining who should be offered promotion or
16 transfer.

17 (4) Section 15 (about qualifying bodies) does not make it unlawful for
18 an authority or body to discriminate against a person, on the
19 ground of the person's religious belief or activity, if the person is
20 unable to carry out the inherent requirements of the profession,
21 trade or occupation because of the person's religious belief or
22 activity.

23 (5) Section 17 (about employment agencies) does not make it unlawful
24 for an employment agency to discriminate against a person, on the
25 ground of the person's religious belief or activity, if the person is
26 unable to carry out the inherent requirements of the work sought
27 because of the person's religious belief or activity.

28 (6) If an employer conduct rule:

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

31 (b) would have the effect of restricting or preventing an
32 employee of the employer from making a statement of belief

EXPOSURE DRAFT

1 at a time other than when the employee is performing work
2 on behalf of the employer; and

3 (c) is not reasonable for the purposes of section 8;
4 a requirement to comply with the rule is not an inherent
5 requirement of employment for the purposes of subsection (2) of
6 this section.

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

11 **32 Exception for accommodation provider who is resident etc.**

12 Section 21 (about accommodation) does not apply to or in respect
13 of the provision of accommodation in premises if:

- 14 (a) the person who provides, or proposes to provide, the
15 accommodation or a near relative of that person resides, and
16 intends to continue to reside on those premises; and
17 (b) the accommodation provided in those premises is for no more
18 than 3 persons, other than a person mentioned in
19 paragraph (a) or near relatives of such a person.

20 **33 Exception for disposal of land**

21 Section 22 (about land) does not apply in relation to a disposal of
22 an estate or interest in land by will or by way of gift.

23 **34 Exception relating to clubs**

24 Section 24 (about clubs) does not make it unlawful to discriminate
25 against a person, on the ground of the person's religious belief or
26 activity, if membership (however described) of the club is
27 restricted to persons who have or engage in a particular religious
28 belief or activity and the person does not have or engage in that
29 religious belief or activity.

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Part 3 Unlawful discrimination

Division 4 Exceptions and exemptions

Section 35

1 **35 Exception relating to voluntary bodies**

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

5 (2) Divisions 2 and 3 do not make it unlawful for a voluntary body to
6 discriminate against a person, on the ground of the person's
7 religious belief or activity, in connection with:

8 (a) the admission of persons as members of the body; or

9 (b) the provision of benefits, facilities or services to members of
10 the body.

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

12 **36 Commission may grant exemptions**

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

16 (2) The exemption must:

17 (a) specify the persons or bodies covered by the exemption; and

18 (b) specify the provision or provisions to which the exemption
19 applies; and

20 (c) be granted for a specified period (which must not exceed 5
21 years, starting from when the exemption takes effect).

22 (3) The exemption may:

23 (a) be granted subject to such terms and conditions as are
24 specified in the instrument of exemption; and

25 (b) be expressed to apply only in such circumstances, or in
26 relation to such activities, as are specified in the instrument
27 of exemption.

28 **37 Applying for an exemption**

29 (1) One or more persons or bodies may apply to the Commission for
30 the granting of an exemption under section 36.

EXPOSURE DRAFT

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

3 **38 Effect of exemptions**

- 4 This Part does not make it unlawful for:
5 (a) a person or body that is covered by an exemption granted
6 under section 36; or
7 (b) a person employed by, or under the direction or control of, a
8 person or body that is covered by an exemption granted
9 under section 36;
10 to engage in conduct in accordance with the exemption.

11 **39 Variation and revocation of exemptions**

- 12 (1) The Commission or the Minister may, by notifiable instrument,
13 vary or revoke an exemption granted under section 36.
14 (2) The variation or revocation takes effect on the day specified in the
15 notifiable instrument.

16 **40 Review by Administrative Appeals Tribunal**

- 17 Applications may be made to the Administrative Appeals Tribunal
18 for review of the following decisions:
19 (a) decisions of the Commission under section 36;
20 (b) decisions of the Commission under section 39;
21 (c) decisions of the Minister under section 39.

EXPOSURE DRAFT

Part 4 Statements of belief do not constitute discrimination etc.

Section 41

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

4 **41 Statements of belief do not constitute discrimination etc.**

- 5 (1) A statement of belief 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* of Tasmania; 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:
14 (a) that is malicious; or
15 (b) that would, or is likely to, harass, vilify or incite hatred or
16 violence against another person or group of persons; or
17 (c) that is covered by paragraph 27(1)(b).

18 Note: Paragraph 27(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.

1 **Part 5—Offences**
2

3 **42 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 **43 Victimisation**

8 *Victimisation—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

EXPOSURE DRAFT

Part 5 Offences

Section 43

- 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
-

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 **44 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.

EXPOSURE DRAFT

Part 6 Freedom of Religion Commissioner

Section 45

Part 6—Freedom of Religion Commissioner

45 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.

46 Term of appointment

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

47 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*.

1 **48 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 **49 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 **50 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 **51 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.

EXPOSURE DRAFT

Part 6 Freedom of Religion Commissioner

Section 52

1 **52 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

1 **53 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.

EXPOSURE DRAFT

Part 7 Functions of the Australian Human Rights Commission

Section 54

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

4 **54 Functions of the Commission**

5 The following functions are conferred on the Commission:

- 6 (a) to exercise the powers conferred on it by section 36 (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

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Functions of the Australian Human Rights Commission **Part 7**

Section 54

- 1 proceedings that involve issues of discrimination on the
2 ground of religious belief or activity;
3 (j) to do anything incidental or conducive to the performance of
4 any of the above functions.

EXPOSURE DRAFT

Part 8 Application and constitutional provisions

Section 55

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

3 **55 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 **56 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 **57 Main 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);

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- 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 **58 Other constitutional bases of this Act**

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

- 9 (1) Independently of section 57, 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

Part 8 Application and constitutional provisions

Section 58

- 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

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Trade or commerce

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(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:

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(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:

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(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

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19

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(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.

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Telecommunications

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(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.

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Defence

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(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

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EXPOSURE DRAFT

Part 8 Application and constitutional provisions

Section 59

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

3 **59 Compensation for acquisition of property**

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

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

14 **60 Relationship with State and Territory laws**

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

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

19 (2) If:

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

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

28 the person is not entitled to make a complaint or institute a
29 proceeding under the *Australian Human Rights Commission Act*
30 *1986* alleging that the act or omission is unlawful under a provision
31 of this Act.

32 (3) If:

EXPOSURE DRAFT

Section 60

- 1 (a) a law of a State or Territory deals with a matter dealt with by
- 2 this Act; and
- 3 (b) conduct engaged in by a person that constitutes an offence
- 4 against that law also constitutes an offence against this Act;
- 5 the person may be prosecuted and convicted either under that law
- 6 of the State or Territory or under this Act.

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

EXPOSURE DRAFT

Part 9 Other matters

Section 61

1 **Part 9—Other matters**
2

3 **61 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 **62 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;

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

9 **63 Conduct by representatives**

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

EXPOSURE DRAFT

Part 9 Other matters

Section 64

1 (c) if the person is an individual—an employee or agent of the
2 individual.

3 (5) This section does not apply to proceedings for an offence against
4 Part 5.

5 **64 Protection from civil actions**

6 (1) Subsection (2) applies to:

- 7 (a) the Commission; and
8 (b) the Commissioner or another member of the Commission;
9 and
10 (c) a person acting for or on behalf of:
11 (i) the Commission; or
12 (ii) the Commissioner or another member of the
13 Commission.

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

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

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

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

29 (5) This section is subject to section 59 (about acquisition of property).

1 **65 No right of action unless expressly provided**

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

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

6 **66 Non-disclosure of protected information**

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

12 Penalty: Imprisonment for 2 years.

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

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

- 26 (3) A person who is, or has been, an entrusted person must not be
27 required:
28 (a) to disclose to a court protected information acquired in the
29 person's capacity as an entrusted person; or
30 (b) to produce in a court a document containing protected
31 information of which that person has custody, or to which

EXPOSURE DRAFT

Part 9 Other matters

Section 67

1 that person has access, in that person's capacity as an
2 entrusted person;
3 except where it is necessary to do so for the purposes of this Act.

4 (4) In this section:

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

7 *entrusted person* means:

- 8 (a) the Commissioner or another member of the Commission; or
9 (b) a member of the staff assisting the Commission; or
10 (c) a delegate of the Commission; or
11 (d) a delegate of the Commissioner.

12 *produce* includes permit access to.

13 *protected information* means information obtained by an entrusted
14 person that relates to the affairs of another person.

15 **67 Commissioner to give information to the Commission**

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

19 **68 Regulations**

20 The Governor-General may make regulations prescribing matters:

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