2016-2017

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Marriage Amendment (Definition and Protection of Freedoms) Bill 2017

No. , 2017

(Senator Paterson)

A Bill for an Act to amend the law relating to the definition of marriage and to protect freedom of thought, conscience, religion, expression and association, and for related purposes
Contents

<table>
<thead>
<tr>
<th></th>
<th>Short title</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Commencement</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>Schedules</td>
<td>2</td>
</tr>
</tbody>
</table>

Schedule 1—Amendments

<table>
<thead>
<tr>
<th></th>
<th>Part 1—Main amendments</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>Marriage Act 1961</em></td>
<td>3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Part 2—Amendments of the Australian Human Rights Commission Act 1986</th>
<th>43</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>Australian Human Rights Commission Act 1986</em></td>
<td>43</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Part 3—Amendments of the Sex Discrimination Act 1984</th>
<th>44</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>Sex Discrimination Act 1984</em></td>
<td>44</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Part 4—Amendments if Schedule 9 to the Civil Law and Justice Legislation Amendment Act 2017 not yet commenced</th>
<th>49</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>Marriage Act 1961</em></td>
<td>49</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Part 5—Amendments once Schedule 9 to the Civil Law and Justice Legislation Amendment Act 2017 commences</th>
<th>50</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>Marriage Act 1961</em></td>
<td>50</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Part 6—Amendment of the Charities Act 2013</th>
<th>51</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>Charities Act 2013</em></td>
<td>51</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Part 7—Amendment of the Income Tax Assessment Act 1997</th>
<th>52</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>Income Tax Assessment Act 1997</em></td>
<td>52</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Part 8—Amendment of the Fringe Benefits Tax Assessment Act 1997</th>
<th>53</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>Fringe Benefits Tax Assessment Act 1997</em></td>
<td>53</td>
</tr>
</tbody>
</table>

|   | Part 9—Application and Transitional Provisions                                                              | 54 |

No.  , 2017    Marriage Amendment (Definition and Protection of Freedoms) Bill 2017
A Bill for an Act to amend the law relating to the
definition of marriage and to protect freedom of
thought, conscience, religion, expression and
association, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the Marriage Amendment (Definition and Protection of

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.

<table>
<thead>
<tr>
<th>Commencement information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Column 1</td>
</tr>
<tr>
<td>Provisions</td>
</tr>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
</tr>
<tr>
<td>2. Schedule 1, Parts 1 and 2</td>
</tr>
<tr>
<td>3. Schedule 1, Part 3</td>
</tr>
<tr>
<td>4. Schedule 1, Part 4</td>
</tr>
</tbody>
</table>
## Commencement information

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisions</td>
<td>Commencement</td>
<td>Date/Details</td>
</tr>
<tr>
<td>provisions covered by this table item do not commence at all.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Schedule 1, Part 5</td>
<td>The later of:</td>
<td></td>
</tr>
<tr>
<td>(a) the commencement of the provisions covered by table item 2; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) immediately after the commencement of Schedule 9 to the Civil Law and Justice Legislation Amendment Act 2017.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>However, if Schedule 9 to the Civil Law and Justice Legislation Amendment Act 2017 does not commence, the provisions covered by this table item do not commence at all.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Schedule 1, Parts 6, 7, 8 and 9</td>
<td>At the same time as the provisions covered by table item 2.</td>
<td></td>
</tr>
</tbody>
</table>

### 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.
- 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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments

Part 1—Main amendments

Marriage Act 1961

1 After section 2

Insert:

2A Objects of this Act

(1) It is an object of this Act to create a legal framework that:

(a) provides that marriage includes only:

(i) the union of a man and a woman to the exclusion of all others, voluntarily entered into for life; or

(ii) the union of 2 people to the exclusion of all others, voluntarily entered into for life; and

(b) fulfils Australia’s international obligations, and addresses matters of international concern, including:

(i) protecting the rights of freedom of thought, conscience, religion, expression and association in relation to the holding, expressing, or acting on, certain beliefs; and

(ii) preventing discrimination against people and entities in relation to holding, expressing, or acting on, certain beliefs; and

(iii) making it unlawful for people or entities to be deprived of benefits, or to be subjected to detriments, obligations or sanctions, for exercising freedom of thought, conscience, religion, expression and association in holding, expressing, or acting on, certain beliefs; and

(c) protects freedoms described in subparagraphs (b)(i), (ii) and (iii); and

(d) eliminates, as far as possible, discrimination against persons or entities on the ground of religious or conscientious belief; and

(e) ensures, as far as practicable, that everyone has the same rights to equality, regardless of religious or conscientious belief, as the rest of the community.
Note: The objects of this Act relate to the marriage power and, to the extent that the objects provide for the protection of freedoms, to the external affairs power.

(2) For the purposes of paragraph (1)(b), Australia’s international obligations include obligations under the following:

(a) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23), including Articles 18, 19 and 22;

(b) the International Convention on the Elimination of All Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40), including Article 5;

(c) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5), including Article 13;


(3) In addition, the elimination of intolerance and discrimination on the basis of religion or belief, including as evidenced by the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by the General Assembly of the United Nations on 25 November 1981 (resolution 36/55), is a matter of international concern.

2B Alternative constitutional basis for Part VAA

(1) Without prejudice to its effect apart from this section, Part VAA also has effect as provided by this section.

Corporations power

(2) Part VAA has, by force of this subsection, the effect it would have if its operation were, by express provision:

(a) confined to a person that is a corporation (within the meaning of paragraph 51(xx) of the Constitution); or

(b) confined to a person:

(i) who is an officer or employee of such a corporation; and

(ii) in connection with the person’s duties as an officer or employee that relate to the trading activities of the corporation as a trading corporation or the financial
activities of the corporation as a financial corporation (as the case may be).

External affairs power

(3) Part VAA has, by force of this subsection, the effect it would have if its operation were, by express provision, confined to giving effect to the international obligations and matters of international concern including those mentioned in section 2A.

Trade and commerce power

(4) Part VAA has, by force of this subsection, the effect it would have if its operation were, by express provision, confined to a person engaging in conduct to the extent to which the conduct takes place in the course of, or in relation to, trade or commerce (within the meaning of paragraph 51(i) of the Constitution).

(5) Subsections (4) does not apply to the extent (if any) that its application would infringe section 92 of the Constitution.

Note: Section 92 of the Constitution requires trade among the States to be absolutely free.

Territories power

(6) Part VAA has, by force of this subsection, the effect it would have if its operation were, by express provision, confined to a person engaging in conduct to the extent to which the conduct takes place wholly or partly in a Territory.

Telecommunications power

(7) Part VAA has, by force of this subsection, the effect it would have if its operation were, by express provision, confined to a person engaging in conduct to the extent to which the conduct is engaged in using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

Banking power

(8) Part VAA has, by force of this subsection, the effect it would have if its operation were, by express provision, confined to a person
engaging in conduct to the extent to which the conduct takes place in the course of, or in relation to, banking (within the meaning of paragraph 51(xiii) of the Constitution).

Insurance power

(9) Part VAA has, by force of this subsection, the effect it would have if its operation were, by express provision, confined to a person engaging in conduct to the extent to which the conduct takes place in the course of, or in relation to, insurance (within the meaning of paragraph 51(xiv) of the Constitution).

2 Subsection 5(1) (paragraph (c) of the definition of authorised celebrant)

After “celebrant“, insert “(including a traditional marriage celebrant)”.

3 Subsection 5(1)

Insert:

authorised officer means an officer (within the meaning of the Defence Act 1903), other than a chaplain, authorised by the Chief of the Defence Force under section 71A to solemnise marriages under Division 3 of Part V.

Commonwealth authority means:

(a) a Minister; or
(b) an Agency within the meaning of the Public Service Act 1999; or
(c) a body (whether incorporated or not), or a tribunal, established or appointed for a public purpose by or under a Commonwealth enactment, not being an organisation that is registered under the Fair Work (Registered Organisations) Act 2009 or a branch of such an organisation; or
(d) a body established or appointed by the Governor General, or by a Minister, otherwise than by or under a Commonwealth enactment; or
(e) a person holding or performing the duties of an office established by or under, or an appointment made under, a Commonwealth enactment, other than a person who, by
virtue of holding that office, is the Secretary of a Department;

or

(f) a person holding or performing the duties of an appointment,

being an appointment made by the Governor General, or by a

Minister, otherwise than under a Commonwealth enactment;

or

(g) an incorporated company over which the Commonwealth, or

a body or authority referred to in paragraph (a) (b) (c) (d), (e)

or (f), is in a position to exercise control.

(h) a federal court; or

(i) the Australian Federal Police; or

(j) a Norfolk Island agency as defined in the Privacy Act 1988.

entity: see section 5AA.

law, unless otherwise stated to the contrary, includes:

(a) a Commonwealth law; and

(b) a law of a State or Territory.

4 Subsection 5(1) (definition of marriage)

Repeal the definition, substitute:

marriage includes only:

(a) the union of a man and a woman to the exclusion of all

others, voluntarily entered into for life; or

(b) the union of 2 people to the exclusion of all others,

voluntarily entered into for life.

5 Subsection 5(1) (paragraph (c) of the definition of

prescribed authority)

After “a chaplain”, insert “or an authorised officer”.

6 Subsection 5(1)

Insert:

public authority means:

(a) a Commonwealth authority;

(b) a State or Territory authority;
Schedule 1 Amendments
Part 1 Main amendments

(c) a local government body established by or under the law of
the Commonwealth, a State or Territory;
(d) an officer or employee of any of the authorities mentioned in
paragraphs (a) to (c) when acting in that capacity;
(e) a person or entity whose functions are or include functions of
a public nature, when it is exercising those functions on
behalf of another public authority (whether under contract or
otherwise);
(f) a person or entity declared by the regulations to be a public
authority.

Note: A non-government school in educating students may be exercising
functions of a public nature but as it is not doing so on behalf of the
government it is not a public authority.

relevant belief:
(a) for a person: see subsection 5AC(1); and
(b) for an entity: see subsection 5AC(2).

relevant marriage belief:
(a) for a person: see subsection 5AB(1); and
(b) for an entity: see subsection 5AB(2).

religious body or organisation: an entity is a religious body or
organisation if:
(a) the entity is a body established for religious purposes to
which section 37 of the *Sex Discrimination Act 1984*
applies; or
(b) the entity is an educational institution established for
religious purposes to which section 38 of the *Sex
Discrimination Act 1984* applies.

State or Territory authority means:
(a) a State or Territory Minister; or
(b) a Department of State of a State or Territory; or
(c) a body (whether incorporated or not), or a tribunal,
established or appointed for a public purpose by or under a
law of a State or Territory, other than an association of
employers or employees that is registered or recognised
under a law of a State or Territory dealing with the resolution
of industrial disputes; or
(d) a body established or appointed, otherwise than by or under a
law of a State or Territory, by:
   (i) a Governor of a State; or
   (ii) the Australian Capital Territory Executive; or
   (iii) the Administrator of the Northern Territory; or
   (iv) a State or Territory Minister; or
(e) a person holding or performing the duties of an office
   established by or under, or an appointment made under, a law
   of a State or Territory, other than the office of head of a State
   or Territory Department (however described); or
(f) a person holding or performing the duties of an appointment
   made, otherwise than under a law of a State or Territory, by:
      (i) a Governor of a State; or
      (ii) the Australian Capital Territory Executive; or
      (iii) the Administrator of the Northern Territory; or
      (iv) a State or Territory Minister; or
(g) an incorporated company over which the State or Territory,
   or a body or authority referred to in paragraph (a) (b) (c) (d)
   (e) or (f), is in a position to exercise control; or
(h) a State or Territory court; or
   (i) a State or Territory police force.

*traditional marriage celebrant* means a person identified as a
traditional marriage celebrant on the register of marriage celebrants
under Subdivision D of Division 1 of Part IV.

7 After section 5A

Insert:

5AA Meaning of entity

(1) For the purposes of the Act, an *entity* means:
   (a) an entity (other than an individual) within the meaning of
      section 184-1 of the *A New Tax System (Goods and Services
      Tax) Act 1999*; and
(b) a non-entity joint venture within the meaning of
   section 195-1 of the *A New Tax System (Goods and Services
   Tax) Act 1999*.
5AB Meaning of relevant marriage belief

(1) A person holds a relevant marriage belief if the person holds:

(a) a genuine religious or conscientious belief that marriage is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life; or

(b) any one or a combination of genuine religious or conscientious beliefs that are constitutive of, supporting of or a corollary of the belief that marriage is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life, which beliefs may include, without limitation, any of the following beliefs:

(i) a marriage that is not a union of a man or a woman is not consistent with the doctrines, tenets, beliefs or teachings of the religion or the conscience of the person; or

(ii) the family structure of a man and a woman united in marriage with their children is a fundamental building block of human society, and this family structure has significant advantages for the nurture and raising of children; or

(iii) sexual relations should only occur within a marriage, understood as the union of a man and a woman to the exclusion of all others, voluntarily entered into for life; or

(iv) the gender difference and complementarity of men and women is an inherent and fundamental feature of human society and is reflected in the gender difference and complementarity of a man and a woman united in marriage; or

Note: The term entity includes body corporates, body politics, partnerships, unincorporated associations or other bodies of persons, trusts and superannuation funds.

(2) For the purposes of subsection (1), an entity is an entity regardless of whether:

(a) the entity is for-profit or not-for-profit; or

(b) the entity is a religious body or organisation; or

(c) the entity operates to make a profit or not.
(v) a fundamental feature of a marriage between a man and a woman is the modelling for children born from, or raised in, that marriage of the gender difference and complementarity of the man and the woman; but for the avoidance of doubt, does not include the belief mentioned at paragraph 5AC(1)(b).

(2) An entity holds a relevant marriage belief if the entity has adopted:
   (a) a belief mentioned in paragraph (1)(a); or
   (b) one or more beliefs mentioned in paragraph (1)(b), as beliefs that the entity holds.

5AC  Meaning of relevant belief

(1) A person holds a relevant belief if the person holds:
   (a) a relevant marriage belief; or
   (b) a genuine religious or conscientious belief that:
      (i) a same-sex relationship is not consistent with the doctrines, tenets, beliefs or teachings of the religion or the conscience of the person; or
      (ii) the normative state of gender is binary and can, in the overwhelming majority of cases, be identified at birth; or
      (iii) any one or a combination of genuine religious or conscientious beliefs that are constitutive of, supporting of or a corollary of a belief mentioned in paragraphs (1)(b)(i) or (1)(b)(ii).

(2) An entity holds a relevant belief if the entity has adopted:
   (a) a belief mentioned in paragraph (1)(a); or
   (b) one or more beliefs mentioned in paragraph (1)(b), as beliefs that the entity holds.

5AD  Determining when a belief is held etc.

(1) For the purposes of this Act, a person or entity holds a genuine belief, or holds a genuine religious or conscientious belief, or genuinely believes, if the holding of the belief (inclusive of the
person’s or entities beliefs as to the actions, refusals, omissions or expressions that are consistent with, a consequence of, made in connection with, based upon, constitutive of, supporting of, or a corollary of that belief) is not fictitious, capricious or an artifice.

(2) For the purposes of subsections 5AB(2) and 5AC(2), but without limiting those subsections, an entity may state or adopt a belief as a belief the entity holds by:

(a) including the belief in its governing documents, organising principles, statement of beliefs or statement of values; or
(b) adopting principles, beliefs or values of another entity which include the belief; or
(c) adopting principles, beliefs or values from a document or source which include the belief; or
(d) acting consistently with that belief,

(3) For the purposes of this Act, if an authorised celebrant, chaplain or an authorised officer holds a relevant marriage belief or a relevant belief, then in holding, expressing or acting on that belief:

(a) whether or not another person who is to be married is a man or a woman is to be determined by the authorised celebrant, chaplain or authorised officer; and
(b) in determining whether the other person is a man or a woman, if the authorised celebrant, chaplain or authorised officer reasonably believes and genuinely believes that the current legal status of the other person as a man or a woman is different from the legal status of the other person as a man or a woman at the time of the other person’s registration following the other person’s birth, the authorised celebrant, chaplain or an authorised officer may disregard the current legal status of the other person’s sex or gender, or their gender identity or intersex status.

8 After section 5A

Insert:

5B Act binds Crown

(1) This Act binds the Crown in each of its capacities.
(2) This Act does not make the Crown liable to be prosecuted for an offence.

9 Section 6 (heading)

Repeal the heading, substitute:

6 Interaction of Act with State and Territory laws

Act (other than Part VAA) not to exclude operation of certain State and Territory laws

10 Section 6

Omit “This Act”, substitute “(1) This Act (other than Part VAA)”.

11 At the end of section 6

Add:

Part VAA of this Act is intended to “cover the field”

(2) It is the intention of Parliament that, in order to recognise the protections, rights, privileges and entitlements of a person or entity that holds a relevant belief or a relevant marriage belief and to ensure that such protections, rights, privileges and entitlements are recognised equally and without discrimination in all States and Territories, Part VAA operates:

(a) to cover the field in relation to those protections, rights, privileges and entitlements; and

(b) to provide a complete, exhaustive and exclusive statement of the law relating to those protections, rights, privileges and entitlements; and

(c) to exclude and limit the operation of the laws of the States and territories in relation to those protections, rights, privileges and entitlements.

(3) For the avoidance of doubt, and without limiting subsection (2), if a protection, right, privilege or entitlement granted, or a limitation provided for under Part VAA of this Act, is inconsistent with a protection, right, privilege or entitlement granted, or a limitation provided for, under a law of a State or Territory, this law
shall prevail, and the State or Territory law shall, to the extent of
the inconsistency, be invalid.

(4) In addition, proceedings must not be brought against a person,
and a person must not be convicted of an offence under a State
or Territory law or otherwise be found to have contravened a
provision of a State or a Territory law, if:
(a) a law of a State or Territory deals with a matter dealt with by
Part VAA of this Act; and
(b) an act or omission by a person that constitutes an offence
against, or a contravention of, that law is permitted by
Paragraph 21(2)(b)
After “the chaplain”, insert “or authorised officer”.

Paragraph 23B(2)(b)
Omit “a brother and a sister”, substitute “2 siblings”.

After section 39D
Insert:

Subdivision D—Traditional marriage celebrants

A person is entitled to be identified as a traditional marriage
celebrant on the register of marriage celebrants if:
(a) the person is registered as a person that may solemnise
marriages under Subdivision B of this Division and the
person holds a genuine religious or conscientious belief that
marriage is the union of a man and a woman to the exclusion
of all others, voluntarily entered into for life; or
(b) the person is registered as a marriage celebrant under
Subdivision C of this Division and either:
(i) the person is a minister of religion; or
(ii) the person holds a genuine religious or conscientious
belief that marriage is the union of a man and a woman
39DB Request to be identified as a traditional marriage celebrant on the register of marriage celebrants

(1) A person may, in writing, give the Registrar of Marriage Celebrants notice that the person wishes to be identified as a traditional marriage celebrant on the register of marriage celebrants.

(2) The notice must be in a form approved by the Registrar, and include all of the information required by the form.

39DC Identification as a traditional marriage celebrant

The Registrar of Marriage Celebrants must identify a person as a traditional marriage celebrant on the register of marriage celebrants if:

(a) the person has given the Registrar notice in accordance with section 39DB that the person wishes to be identified as a traditional marriage celebrant on the register; and

(b) the person is entitled to be identified as a traditional marriage celebrant on the register.

39DD Process of identification on the register as a traditional marriage celebrant

(1) The Registrar identifies a person as a traditional marriage celebrant on the register of marriage celebrants by annotating the register to include that detail.

(2) If the Registrar identifies a person as a traditional marriage celebrant on the register of marriage celebrants, the Registrar must, as soon as practicable, give the person written notice of that fact.

39DE Request for identification as a traditional marriage celebrant to be removed

(1) A traditional marriage celebrant may, in writing, give the Registrar of Marriage Celebrants notice that the celebrant no longer wishes
to be identified as a traditional marriage celebrant on the register of marriage celebrants.

(2) If a traditional marriage celebrant gives the Registrar of Marriage Celebrants notice in accordance with subsection (1), the Registrar must remove the identification of the celebrant as a traditional marriage celebrant from the register.

Subdivision E—General provisions relating to all marriage celebrants

15 After paragraph 39M(c)
Insert:
(d) a person was identified as a traditional marriage celebrant on the register of marriage celebrants; or
(e) a person was not identified as a traditional marriage celebrant on the register of marriage celebrants.

16 At the end of section 43
Add “(subject to Part VAA)”.

17 Before subsection 45(1)
Insert:

Ministers of religion

18 Before subsection 45(2)
Insert:

Traditional marriage celebrants

19 Subsection 45(2)
Omit “not being a minister of religion”, insert “being a traditional marriage celebrant (other than a minister of religion)”.

20 After subsection 45(2)
Insert:
Other authorised celebrants

(2A) Where a marriage is solemnised by or in the presence of an authorised celebrant, not being a minister of religion or a traditional marriage celebrant, it is sufficient if each of the parties says to the other, in the presence of the authorised celebrant and the witnesses, the words:

“I call upon the persons here present to witness that I, A.B. (or C.D.), take thee, C.D. (or A.B.), to be my lawful wedded wife (or husband or spouse);”
or words to that effect.

Certificates of marriage

21 Before subsection 46(1)

Insert:

Traditional marriage celebrants

22 Subsection 46(1)

After “denomination”, insert “but being a traditional marriage celebrant”.

23 After subsection 46(1)

Insert:

Authorised celebrants (other than ministers of religion or traditional marriage celebrants)

(1A) Subject to subsection (2), before a marriage is solemnised by or in the presence of an authorised celebrant, not being a minister of religion of a recognised denomination or a traditional marriage celebrant, the authorised celebrant shall say to the parties, in the presence of the witnesses, the words:

“I am duly authorised by law to solemnise marriages according to law.”

“Before you are joined in marriage in my presence and in the presence of these witnesses, I am to remind you of the solemn and binding nature of the relationship into which you are now about to enter.”
Schedule 1 Amendments

Part 1 Main amendments

“Marriage, according to law in Australia, is the union of 2 people to the exclusion of all others, voluntarily entered into for life.”;

or words to that effect.

State and Territory officers

24 Subsection 46(2)

After “subsection (1)”, insert “or (1A)”.

25 Section 47

Repeal the section, substitute:

47 Ministers of religion may refuse to solemnise marriages

Refusing to solemnise a marriage despite this Part

(1) A minister of religion may refuse to solemnise a marriage despite anything in this Part.

(2) In particular, nothing in this Part prevents a minister of religion from:

(a) making it a condition of solemnising a marriage that:

(i) notice of the intended marriage is given to the minister earlier than this Act requires; or

(ii) additional requirements to those provided by this Act are complied with; and

(b) refusing to solemnise the marriage if the condition is not observed.

Refusing to solemnise a marriage on the basis of religious or conscientious beliefs etc.

(3) To avoid doubt, a minister of religion may refuse to solemnise a marriage, despite anything in this Part or any law of a State or Territory, if any of the following applies:

(a) the refusal is consistent with the doctrines, tenets or beliefs of the religion of the minister’s religious body or religious organisation;
(b) the refusal is made because of the religious susceptibilities of adherents of that religion;
(c) the minister’s genuine religious or conscientious beliefs do not allow the minister to solemnise the marriage.

Grounds for refusal not limited by this section

(4) Subsections (2) and (3) do not limit the grounds on which a minister of religion may refuse to solemnise a marriage.

26 Before section 48

Insert:

47A Traditional marriage celebrants may refuse to solemnise marriages

(1) This section applies to a traditional marriage celebrant who is not a minister of religion.

Note: For the refusal by a minister of religion to solemnise a marriage, see section 47.

(2) Despite anything in this Part or any law of a State or Territory, the celebrant may refuse to solemnise a marriage that is not the union of a man and a woman if:

(a) the celebrant holds a genuine religious or conscientious belief that marriage is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life; and
(b) the holding by the celebrant of that belief does not allow the celebrant to solemnise the marriage.

(3) This section does not limit the grounds on which a traditional marriage celebrant may refuse to solemnise a marriage.

27 Subsection 71(1)

After “a chaplain”, insert “or an authorised officer”.

28 After section 71

Insert:
71A Officers authorised to solemnise marriages

The Chief of the Defence Force may, by instrument in writing, authorise an officer (within the meaning of the Defence Act 1903), other than a chaplain, to solemnise marriages under this Division.

29 Paragraphs 72(1)(a) and (b)
After “the chaplain” (wherever occurring), insert “or authorised officer”.

30 Subsection 72(2)
After “the chaplain” (wherever occurring), insert “or authorised officer”.

31 Subsection 72(2)
After “or husband”, insert “, or spouse”.

32 Section 74 (heading)
After “chaplain”, insert “or authorised officer”.

33 Subsection 74(1)
After “the chaplain”, insert “or authorised officer”.

34 Subsection 74(3)
After “chaplain”, insert “or authorised officer”.

35 Section 75 (heading)
After “Chaplain”, insert “or authorised officer”.

36 Section 75
After “A chaplain”, insert “or authorised officer”.

37 Section 75
After “the chaplain”, insert “or authorised officer”.

38 Subsections 76(1), 77(1) and 78(2)
After “chaplain”, insert “or authorised officer”.

Marriage Amendment (Definition and Protection of Freedoms) Bill No. 2017, 2017
39 Section 79 (heading)
   After “Chaplain”, insert “or authorised officer”.

40 Section 79
   After “A chaplain”, insert “or authorised officer”.

41 Section 79
   After “the chaplain”, insert “or authorised officer”.

42 Subsection 80(1)
   After “a chaplain”, insert “or authorised officer”.

43 Subsection 80(1)
   After “the chaplain”, insert “or authorised officer”.

44 Paragraphs 80(2)(a) and (c)
   After “the chaplain”, insert “or authorised officer”.

45 Subsection 80(4)
   After “The chaplain”, insert “or authorised officer”.

46 Subsections 80(5) and (6)
   After “the chaplain”, insert “or authorised officer”.

47 Subsection 80(8)
   After “a chaplain”, insert “or authorised officer”.

48 Subsection 80(9)
   After “the chaplain” (first occurring), insert “or authorised officer”.

49 Paragraph 80(9)(b)
   After “the chaplain”, insert “or authorised officer”.

50 Subsection 80(10)
   After “a chaplain”, insert “or authorised officer”.

No. 2017 Marriage Amendment (Definition and Protection of Freedoms) Bill 2017
51 Section 81 (heading)
Repeal the heading, substitute:

81 Power to refuse to solemnise marriage

Chaplain or authorised officer may refuse to solemnise marriage on any grounds

52 Section 81
Omit “A chaplain”, insert “(1) A chaplain or authorised officer”.

53 Section 81
After “the chaplain” (wherever occurring), insert “or authorised officer”.

54 At the end of section 81
Add:

Chaplain may refuse to solemnise marriage on the basis of religious or conscientious beliefs etc.

(2) To avoid doubt, a chaplain may refuse to solemnise a marriage despite anything in this Part or any law of a State or Territory, if any of the following applies:
   (a) the refusal is consistent with the doctrines, tenets or beliefs of the religion of the chaplain’s religious body or religious organisation;
   (b) the refusal is because of the religious susceptibilities of adherents of that religion;
   (c) the chaplain’s genuine religious or conscientious beliefs do not allow the chaplain to solemnise the marriage.

Authorised officer may refuse to solemnise marriage on the basis of genuine religious or conscientious belief

(3) Despite anything in this Part or any law of a State or Territory, an authorised officer may refuse to solemnise a marriage that is not the union of a man and a woman, if:
(a) the officer holds a genuine religious or conscientious belief that marriage is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life; and
(b) the holding by the officer of that belief does not allow the officer to solemnise the marriage.

*Grounds for refusal not limited by this section*

(4) Subsections (2) and (3) do not limit the grounds on which a chaplain or an authorised officer may refuse to solemnise a marriage.

55 **Subsection 83(2)**

After “a chaplain”, insert “or authorised officer”.

56 **Section 84 (heading)**

After “a chaplain”, insert “or authorised officer”.

57 **Paragraph 84(1)(a)**

After “a chaplain”, insert “or authorised officer”.

58 **Paragraphs 84(1)(b) and (c)**

After “the chaplain”, insert “or authorised officer”.

59 **Subsection 84(1)**

After “the chaplain” (last occurring), insert “or authorised officer”.

60 **Paragraph 85(1)(b)**

After “a chaplain”, insert “or authorised officer”.

61 **Paragraph 85(1)(c)**

After “a chaplain”, insert “or authorised officer”.

62 **Subsection 85(1)**

After “the chaplain” (last occurring), insert “or authorised officer”.

63 **Section 88EA**

Repeal the section.
64 After Part VA

Insert:

Part VAA—Freedom of thought, conscience,
religion, expression and association in
relation to holding certain beliefs

Division 1—Protection of freedoms

88J Freedom to hold or express relevant belief

(1) A person or an entity has the right to freedom of thought,
conscience, religion or belief in relation to holding or
expressing a relevant belief, including the right to have or adopt
that belief.

(2) Despite any law, it is lawful for a person or an entity to hold or
lawfully express a relevant belief.

(3) A reference in this section to lawful expression of a relevant
belief:
   (a) does not include expression that would constitute an offence
   against or a contravention of, a law;
   (b) for the avoidance of doubt does include expression that is not
   an offence against, or a contravention of, a law because of
   section 88KA.

88JA Freedom to hold, express or act on relevant marriage belief

(1) A person or an entity has the right to freedom of thought,
conscience, religion or belief in relation to holding, expressing,
or acting on, a relevant marriage belief, including:
   (a) the right to have or adopt that belief; and
   (b) the right to manifest that belief:
      (i) individually or in community with others; and
      (ii) in public or private; and
      (iii) in worship, observance, practice or teaching; and
      (iv) in any action or refusal to act.
Note: For the purposes of subparagraph (1)(b)(iv), examples include acting, or refusing to act, in the course of engaging in any of the following for the purposes of preparing for, solemnising or celebrating a marriage:
(a) a for-profit or a not-for-profit business; or
(b) duties as an employer or an employee; or
(c) activities related to community and public affairs.

(2) Despite any law, it is lawful for a person or an entity to hold or lawfully express a relevant marriage belief and engage in lawful conduct which manifests a relevant marriage belief.

(3) A reference in this section to lawful expression and lawful conduct:
(a) does not include expression or conduct that would constitute an offence against or a contravention of, a law;
(b) for the avoidance of doubt does include expression or conduct that is not an offence against, or a contravention of, a law because of section 88KA.

(4) This section does not imply any limitation on the rights of a person or entity to act on a relevant belief.

88K Protection from unfavourable treatment

(1) Despite any law it is unlawful for a public authority or a relevant person or entity within the meaning of subsection (2) to treat or propose to treat another person or entity unfavourably, or subject or propose to subject the person or entity to any detriment or disadvantage, obligation or sanction, or denial of any benefit, whether directly or indirectly, including, without limitation, in relation to any of the following:
(a) the employment of a person;
(b) the engagement of a contractor or volunteer;
(c) academic, trade or professional qualifications, accreditation or licensing;
(d) accommodation;
(e) education;
(f) the provision of economic benefits, including grants, funding or subsidies;
(g) the supply or acquisition of goods, services or facilities;
(h) the assessment or selection of a person or entity to be a supplier or acquirer of goods or services or facilities;
(i) the administration or enforcement of Commonwealth, State, Territory or local government laws and programs, including the granting of funding under those laws or programs;

because the other person or entity:

(j) holds or expresses a relevant belief other than a relevant marriage belief; or
(k) holds or expresses a relevant marriage belief; or
(l) engages in any lawful act or lawfully refuses or omits to engage in an act because the person or entity genuinely believes that the act or refusal or omission is consistent with a relevant marriage belief; or
(m) has a characteristic that appertains generally to a person or entity described in paragraphs (j), (k) or (l); or
(n) has a characteristic that is generally imputed to a person or entity described in paragraphs (j), (k) or (l); or
(o) associates with a person or entity described in paragraphs (j), (k) or (l) or associates with a group or is a member of a group which is an entity described in paragraphs (j), (k) or (l) or which includes a person or entity described in paragraphs (j), (k) or (l); or
(p) employs or engages as a contractor or volunteer (or has not refused to employ or engage as a contractor or volunteer) a person who is described in paragraphs (j), (k) or (l); or
(q) provides goods, services, funding, subsidies or other economic benefits to a person or entity who is described in paragraphs (j), (k) or (l) (or has not refused to do so); or
(r) acquires goods, services, funding, subsidies or other economic benefits from a person who is described in paragraphs (j), (k) or (l) (or has not refused to do so).

Note: Examples of detrimental action made unlawful by section 88K include the following:
(a) A public authority, such as a government agency, refuses to appoint or hire or promote or dismisses a person, employee or contractor because that person holds or expresses a relevant marriage belief or a relevant belief or is associated with a person or entity which does so.

(b) A public authority, such as a government agency or private sector body exercising professional or trade accreditation functions on behalf of government or under statutory authority refuses to accredit or imposes disadvantageous conditions on an accreditation of a person or entity because the person holds or expresses a relevant marriage belief or a relevant belief or is associated with a person or entity which does so.

(c) A public authority such as a local government or State or Territory or Commonwealth Government department or agency refuses to provide a grant or funding or provides it on disadvantageous conditions because the grant applicant holds or expresses a relevant marriage belief or a relevant belief or is associated with a person or entity which does so.

(d) A government education authority, including a government school, or a private school when acting on the instruction of or in accordance with its funding contract with a government authority, suspends or expels a student or bans or refuses access to facilities or funding to a student club because the student or the student club holds or expresses a relevant marriage belief or a relevant belief or is associated with a person or entity which does so.

(e) A public authority refuses to supply to or acquire from a person or entity goods or services or facilities or discriminates against the person or entity in a tender process because the person or entity holds or expresses a relevant marriage belief or a relevant belief or is associated with a person or entity which does so.

(2) In this section a relevant person or entity means a person or entity which engages in the conduct described in subsection (1) because it is caused or induced to do so by a public authority, including being caused or induced to do so:

(a) by a request or instruction or expectation of a public authority; or

(b) by a condition of a contract or arrangement with a public authority; or

(c) by a condition of direct or indirect funding by a public authority; or

(d) by a condition of a licence or permission granted by a public authority.
(3) It is unlawful for a public authority to cause or induce a relevant person or entity to engage in conduct described in sub-section (1), including in the ways described in sub-section (2).

(4) A:
   (a) request or instruction or expectation of a public authority directed to a person or entity; or
   (b) a condition of a contract or arrangement between a public authority and a person or entity; or
   (c) a condition of direct or indirect funding by a public authority to a person or entity; or
   (d) a condition of a licence or permission granted by a public authority to a person or entity;
   is void to the extent that it would cause or induce the person or entity to engage in conduct described in sub-section (1).

(5) The reference in paragraph (1)(l) to engaging in a lawful act or lawfully refusing or omitting to engage in an act:
   (a) does not include engaging in an act, refusal or omission that would constitute an offence against, or a contravention of, a law;
   (b) for the avoidance of doubt does include engaging in an act, refusal or omission that is not an offence against, or a contravention of, a law because of section 88KA.

88KA Protection from certain laws when expressing or acting on a relevant marriage belief or a relevant belief

Relevant marriage belief

(1) Subject to subsection (6), despite any law, a person or entity that holds a relevant marriage belief does not:
   (a) commit an offence against or contravene a law prohibiting discrimination; or
   (b) commit an offence against or contravene a law prohibiting vilification or a law which makes it unlawful to offend, humiliate, intimidate, insult or ridicule another person;
if, and to the extent that, the conduct of the person or entity that, apart from this subsection, would constitute the offence or contravention (or an element of the offence or contravention) is:

(c) engaged in because the person or entity genuinely believes that the conduct is consistent with the relevant marriage belief; and

(d) where the conduct is the expression of a relevant marriage belief, the conduct would not be reasonably likely, in all the circumstances, to threaten or harass another person or group of persons on the basis of the sexual orientation, gender identity, intersex status, marital or relationship status or the family responsibilities of the person or persons in the group.

(2) For the purposes of subsection (1), conduct includes:

(a) engaging in an act, or refusing or omitting to engage in an act; or

(b) expressing a relevant marriage belief.

Relevant belief

(3) Subject to subsection (6), despite any law, a person or entity that holds a relevant belief does not:

(a) commit an offence against, or contravene, a law prohibiting discrimination; or

(b) commit an offence against, or contravene, a law prohibiting vilification or a law which makes it unlawful to offend, humiliate, intimidate, insult or ridicule another person;

if, and to the extent that, the conduct of the person or entity that, apart from this subsection, would constitute the offence or contravention (or an element of the offence or contravention), is:

(c) engaged in because the person or entity genuinely believes that the conduct is consistent with the relevant belief; and

(d) where the conduct is the expression of a relevant belief, the conduct would not be reasonably likely, in all the circumstances, to threaten or harass another person or group of persons on the basis of the sexual orientation, gender identity, intersex status, marital or relationship status or family responsibilities of the person or persons in the group.
(4) For the purposes of subsection (3), conduct includes expressing a relevant belief.

(5) The inclusion of relevant marriage belief within relevant belief at section 5AC does not imply any limitation on the rights of a person or entity to act on a relevant marriage belief.

(6) Subsections (1) and (3) do not prevent a person or entity committing an offence in relation to discrimination or contravening a prohibition on discrimination in the Sex Discrimination Act 1984 if:

(a) the person or entity engages in conduct which under that Act is unlawful discrimination against another person; and

(b) section 88M does not authorise that conduct.

88KB Determining what is a public authority

(1) In determining if a function is of a public nature within the meaning of subparagraph (e) of the definition of public authority in section 5(1) the factors that may be taken into account include—

(a) that the function is conferred on the entity by or under a statutory provision;

(b) that the function is connected to or generally identified with functions of government;

(c) that the function is of a regulatory nature;

(d) that the entity is publicly funded to perform the function.

(2) To avoid doubt—

(a) the factors listed in subsection (1) are not exhaustive of the factors that may be taken into account in determining if a function is of a public nature; and

(b) the fact that one or more of the factors set out in subsection (1) are present in relation to a function does not necessarily result in the function being of a public nature.

(3) For the purposes of subparagraph (c) of the definition of public authority in section 5(1) an entity may be acting on behalf of the public authority even if there is no agency relationship between the entity and the public authority.
(4) For the purposes of subparagraph (e) of the definition of public authority in section 5(1) the fact that an entity is publicly funded to perform a function does not necessarily mean that it is exercising that function on behalf of the public authority.

88L Scope of rights—expressing a relevant marriage belief or a relevant belief

The right of a person or an entity that holds a relevant marriage belief or a relevant belief to express that belief includes, but is not limited to, the freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other medium.

88M Supply of facilities or provision of goods and services

(1) A person or an entity that holds a relevant marriage belief may, despite any law, refuse to do an act (in whole or in part or subject to conditions) for a purpose mentioned in subsection (2), including any of the following:
   (a) making a facility available;
   (b) providing goods, services or accommodation;
   (c) providing an advantage or a privilege;
   (d) registering a marriage that is not the union of a man and a woman on a register of marriages

if the person or entity genuinely believes that the refusal is in accordance with the relevant marriage belief.

Note 1: For paragraph (1)(b), examples of goods and services include:
   (a) provision of goods by artisans, bakers, caterers, jewelers, printers, publishers, dress makers, tailors and florists;
   (b) provision of services by relationship counsellors, producers of media, photographers, musicians, transport providers, event planners and advisory services and operators of accommodation suites;
   (c) hire of reception halls.

Note 2: For paragraph (1)(d), an example is an individual who, under a law of a State or Territory, has the function of registering marriages in the State or Territory or a part of the State or Territory.

(2) The purposes mentioned in subsection (1) are:
Schedule 1 Amendments
Part 1 Main amendments

(a) the purpose of preparing for the solemnisation of a marriage that is not the union of a man and a woman; and
(b) the purpose of solemnising a marriage that is not the union of a man and a woman; and
(c) the purpose of celebrating a marriage, contemporaneously with the marriage, that is not the union of a man and a woman; and
(d) any purpose reasonably incidental to a purpose mentioned in paragraphs (a), (b) or (c).

(3) Subsection (1) applies to acts done, and facilities made available, and goods and services, accommodation, and providing any advantages or privileges, whether for payment or not.

(4) This section does not limit the grounds on which a person or entity may refuse to do an act, make a facility available, or to provide goods or services, accommodation, advantages or privileges for a purpose mentioned in subsection (2).

(5) Subsection (1) applies regardless of whether the person in relation to whom another person or entity has refused to do an act under that subsection:

(a) holds the doctrines, tenets, beliefs or teachings of the religion of the other person or entity; or

(b) has the religious susceptibilities of adherents of the other person’s or entities religion.

88N Non-discrimination in the allocation of funding

(1) Despite any law, it is unlawful for the Commonwealth, a State, a Territory or a government entity to:

(a) decline to provide funding; or

(b) impose a condition on funding that is provided; that discriminates against a person or an entity because the person or entity:

(c) holds a relevant marriage belief or a relevant belief; or

(d) acts, or refuses or omits to do an act, because the person or entity genuinely believes that the action, refusal or omission
is consistent with the relevant marriage belief or relevant belief; or
(e) expresses the relevant marriage belief or relevant belief.

Note: For paragraph (1)(a), an example of funding is a grant made by the Minister under Part 1A of the Act.

(2) This section does not limit sections 88J, 88JA, 88K or 88KA.

(3) In this section:

**government entity** means:

(a) a government entity (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*; or
(b) an entity established by or under a law of a State or Territory.

### 88O Charitable status

(1) An entity does not fail to satisfy the requirement in subparagraph (b)(i) of the definition of *charity* in section 5 of the *Charities Act 2013* for the reason that:

(a) the entity holds, expresses or acts upon a relevant marriage belief or a relevant belief; or
(b) the entity refuses, or omits, to do an act because the entity genuinely believes that the action, refusal or omission is consistent with the relevant marriage belief or relevant belief.

(2) For the purposes of paragraph (c) of the definition of *charity* in section 5 of the *Charities Act 2013*, a purpose of an entity is not a **disqualifying purpose** (within the meaning of section 11 of that Act) for the reason that:

(a) the entity has a purpose of engaging in or promoting, or engages in or promotes, activities that the entity genuinely believes are in connection with, or as a consequence of, the entity holding, expressing or acting upon a relevant marriage belief or a relevant belief; and

(b) if it were not for this Part, the activities may be:

(i) unlawful or contrary to public policy; or

(ii) determined to be unlawful or contrary to public policy.
Schedule 1  Amendments

Part 1  Main amendments

88P  Requiring a person to express, publish, associate with or support statements or opinions

(1) Despite any law, it is unlawful for a person or entity to:
   (a) require another person or entity to engage in relevant conduct in relation to a statement or opinion; or
   (b) treat another person or entity unfavourably because the other person or entity refuses or omits to engage in relevant conduct in relation to a statement or opinion; if the other person or entity holds a relevant belief and genuinely believes that the statement or opinion is not consistent with that belief.

(2) In sub-section (1) relevant conduct in relation to a statement or opinion means:
   (a) expressing, publishing or disseminating the statement or opinion;
   (b) producing or distributing a thing which expresses or supports or endorses the statement or opinion;
   (c) associating the second person or entity with the statement or opinion; or
   (d) endorsing or supporting the statement or opinion.

Note: Examples of unlawful conduct under section 88P include any one or more requirements that a printer, signwriter, artisan, film-maker or media business which holds a relevant marriage belief or a relevant belief express a statement or opinion or publish or produce a poster, sign, cake, video or media content which expresses or endorses a statement or opinion that they genuinely believe is not consistent with that belief.

88Q  Religious bodies or organisations

(1) Despite any law, a religious body or organisation may engage in a lawful act, or lawfully refuse or omit to engage in an act, if the body or organisation:
   (a) is an entity that holds a relevant marriage belief or a relevant belief; and
   (b) genuinely believes that the act, refusal or omission is consistent with the holding of that belief.
(2) The reference in subsection (1) to engaging in a lawful act or lawfully refusing or omitting to engage in an act:

(a) does not include engaging in an act, refusal or omission that would constitute an offence against, or a contravention of, a law;

(b) for the avoidance of doubt does include engaging in an act, refusal or omission that is not an offence against, or a contravention of, a law because of section 88KA.

88R Right not to attend class if material taught is not consistent with a relevant marriage belief or a relevant belief

(1) This section applies to a person who:

(a) holds a relevant marriage belief or a relevant belief; and

(b) either:

(i) is a parent or guardian of a student of an educational institution who has not attained the age of 16; or

(ii) is a student of an educational institution who has attained the age of 16.

(2) Despite any law, if a person genuinely believes that material taught by the educational institution in a class is not consistent with the relevant marriage belief or relevant belief held by the person, the person may request the principal of the educational institution to:

(a) if the person is a parent or guardian of a student—release the student from attendance of that class and any subsequent class in which that material is taught (or the relevant parts of those classes); and

(b) if the person is a student—be released from attendance of that class and any subsequent class (or the relevant parts of those classes) in which that material is taught.

(3) The request must:

(a) be in writing; and

(b) be made at least 24 hours before the start of the first class in respect of which the request is made.

No. 2017 Marriage Amendment (Definition and Protection of Freedoms) Bill 2017
(4) The principal must release the student from the class (or the relevant parts of a class), and any subsequent class, if the principal is satisfied that the request has been made by the person on the basis that the person holds a relevant marriage belief or a relevant belief.

(5) Where a student is released from a class (or the relevant parts of a class) the principal must take all reasonable steps to arrange adequate supervision of the student during the period of that release.

(6) Where an educational institution proposes to teach or present material that is likely to be objectionable to a person who holds a relevant marriage belief or a relevant belief, the institution must:

(a) notify the person in writing at least a week in advance of the day of the first relevant class that:

(i) the class or classes will contain that material; and

(ii) the student has the right to be released from the class or classes or the relevant part of the classes; and

(b) ensure that the material is taught in a single class or as few classes as is possible.

Division 2—Offences

88S Victimisation

(1) A person commits an offence if the person commits an act of victimisation against another person.

Penalty: 25 penalty units.

(2) For the purposes of subsection (1), a person is taken to have committed an act of victimisation against another person if the person subjects, or threatens to subject, the other person to any detriment on the ground that the other person:

(a) has made, or proposes to make, a complaint under the Australian Human Rights Commission Act 1986; or

(b) has brought, or proposes to bring, proceedings under that Act or under this Part; or
(c) 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 that
Act; or
(d) has attended, or proposes to attend, a conference held under
that Act; or
(e) has appeared, or proposes to appear, as a witness in a
proceeding under that Act or under this Part; or
(f) has reasonably asserted, or proposes to assert, any rights of
the person or of any other person under that Act or under this
Part; or
(g) has made an allegation that a person has done an act that is in
contravention of or unlawful under a provision of this Part;
or on the ground that the first-mentioned person believes that the
other person has done, or proposes to do, an act or thing referred to
in any of paragraphs (a) to (g).

(3) It is a defence to a prosecution for an offence under subsection (1)
constituted by subjecting, or threatening to subject, a person to a
detriment on the ground that the person has made an allegation that
another person had done an act that was unlawful by reason of a
provision of Division 1 of this Part if it is proved that the allegation
was false and was not made in good faith.

Division 3—Remedies

Subdivision A—Civil enforcement

88T Actions for loss or damage

(1) A person:
(a) who suffers loss or damage; or
(b) who is detrimentally affected by the conduct of another
person; or
(c) whose rights are interfered with;
because another person contravenes, or was involved in
contravening, a provision of Part VAA of this Act may bring an
action in a court of competent jurisdiction to recover the amount of
the loss or damage from the other person.
Schedule 1 Amendments
Part 1 Main amendments

(2) An action mentioned in subsection (1) may be brought by:
   (a) an interested person; or
   (b) a person acting on behalf of an interested person.

(3) An action under subsection (1) may only be begun within 3 years
    after the day on which the cause of action arose.

(4) This section does not affect any right or liability that a person has
    under any other law.

(5) For the purposes of this section, a person is involved in a
    contravention if, and only if, the person has:
       (a) aided, abetted, counselled or procured the contravention; or
       (b) has induced, whether by threats or promises or otherwise, the
           contravention; or
       (c) has been in any way, by act or omission, directly or
           indirectly, knowingly concerned in or party to the
           contravention; or
       (d) has conspired with others to effect the contravention.

88U Injunctions for contravention of this Act

Application for injunctions

(1) If a person has engaged, engages or proposes to engage in conduct
    consisting of an act or omission that constitutes an offence or other
    contravention of Part VAA of this Act, either of the following
    persons may apply to a court of competent jurisdiction for an
    injunction under subsection (2) or (3):
       (a) an interested person;
       (b) a person acting on behalf of an interested person.

Prohibitory injunctions

(2) If a person has engaged, is engaging or is proposing to engage in
    conduct constituting an offence or other contravention of
    Part VAA of this Act, the court may grant an injunction restraining
    the person from engaging in the conduct. The court may grant the
    injunction:
(a) whether or not it appears to the court that the person intends
to engage again, or to continue to engage, in conduct of that
kind; and
(b) whether or not the person has previously engaged in conduct
of that kind.

**Mandatory injunctions**

(3) If:

(a) a person has refused or failed, or is refusing or failing, or is
proposing to refuse or fail to do an act; and
(b) the refusal or failure did, does or would constitute an offence
or other contravention of Part VAA of this Act;

the court may grant an injunction requiring the person to do the act.

The court may grant the injunction:

(c) whether or not it appears to the court that the person intends
to refuse or fail again, or to continue to refuse or fail, to do
the act; and
(d) whether or not the person has previously refused or failed to
do the act.

**Interim injunctions**

(4) Before deciding an application for an injunction under this section,
the court may grant an interim injunction:

(a) restraining a person from engaging in conduct; or
(b) requiring a person to do an act.

**Discharging or varying injunctions**

(5) On application, the court may discharge or vary an injunction.

**No undertakings as to damages if applicant is prescribed person**

(6) A person cannot be required, as a condition of granting an interim
injunction, to give an undertaking as to damages.

**Powers conferred are in addition to other powers of the court**

(7) The powers conferred on a court by this section are in addition to
(and do not limit) any other powers of the court.
88V Court may make other orders

(1) A court of competent jurisdiction may make any other order (including a declaratory order) it thinks fit if a person or entity contravenes Part VAA of this Act.

(2) The court may make an order under this section only on application by:
   (a) an interested person; or
   (b) a person acting on behalf of an interested person.

(3) An order under this section may be enforced as if it were a judgment of the court.

(4) Without limiting the generality of subsection (1), where, in a proceeding instituted under this Part, the Court finds that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in contravention of a provision of Part VAA, the Court may, whether or not it grants an injunction under section 88U or makes an order under section 88V, make such order or orders as it thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (5) of this section) if the Court considers that the order or orders concerned will compensate the first-mentioned person in whole or in part for the loss or damage or will prevent or reduce the loss or damage.

(5) The orders referred to in subsection (4) are:
   (a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void ab initio or at all times on and after such date before the date on which the order is made as is specified in the order;
   (b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so
varied on and after such date before the date on which the order is
made as is so specified;

(ba) an order refusing to enforce any or all of the provisions of
such a contract;

(c) an order directing the person who engaged in the conduct or a
person who was involved in the contravention constituted by the
conduct to refund money or return property to the person who
suffered the loss or damage;

(d) an order directing the person who engaged in the conduct or a
person who was involved in the contravention constituted by the
conduct to pay to the person who suffered the loss or damage the
amount of the loss or damage;

(e) an order directing the person who engaged in the conduct or a
person who was involved in the contravention constituted by the
conduct, at his or her own expense, to repair, or provide parts for,
goods that had been supplied by the person who engaged in the
conduct to the person who suffered, or is likely to suffer, the loss
or damage;

(f) an order directing the person who engaged in the conduct or a
person who was involved in the contravention constituted by the
conduct, at his or her own expense, to supply specified services to
the person who suffered, or is likely to suffer, the loss or damage.

Note: Section 88V is based on section 87 of the Competition and
Consumer Act.

88VA Contravention of Part VAA

For the avoidance of doubt, conduct which is unlawful under Part VAA
constitutes a contravention of Part VAA.

Subdivision B—Jurisdiction of courts

88W Federal Court and Federal Circuit Court have jurisdiction
For the purposes of this Division the Federal Court of Australia and the Federal Circuit Court have jurisdiction to hear and determine matters arising under Part VAA.

65 Subsection 99(3)
After “A chaplain”, insert “or authorised officer”.

66 Subsection 116(2)
Omit “celebrant or chaplain” (wherever occurring), substitute “celebrant, chaplain or authorised officer”.

67 Subsections 117(1) and (2)
After “other than Subdivision C”, insert “or D”.

68 Paragraph 119(3)(f)
After “chaplain”, insert “or authorised officer”.

Marriage Amendment (Definition and Protection of Freedoms) Bill No. 5, 2017
Part 2—Amendment of the Australian Human Rights Commission Act 1986

Australian Human Rights Commission Act 1986

69 Subsection 3(1) (after paragraph (a) of the definition of unlawful discrimination)

Insert:

(ab) Part VAA of the Marriage Act 1961; or

70 Subsection 3(1) (after paragraph (d) of the definition of unlawful discrimination)

Insert:

Part 3—Amendment of the Sex Discrimination Act 1984

Sex Discrimination Act 1984

71 Subsection 37(1)(d)

Omit subsection 37(1)(d) insert ‘(d) any other act or practice of a body established for religious purposes, being an act or practice that is consistent with the doctrines, tenets or beliefs of that religion or is because of the religious susceptibilities of adherents of that religion.’

72 After subsection 37(2)

Insert:

(3) Despite any law (including any provision of this Act and any law of a State or Territory) a body established for religious purposes includes, and shall be deemed to have always included, without limitation, a body:

(a) that is a:

(i) not for profit entity; or

(ii) charity under the Charities Act 2013, including any public benevolent institution (regardless of whether any of the charitable purposes of the entity is advancing religion);

(b) where that body:

(i) is established by or under the direction, control or administration of a body established for religious purposes; or

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

(iii) is a body to which subsection (4) applies.

(4) A charity that has a charitable purpose pursuant to the Charities Act 2013 that is not advancing religion may be a body established for religious purposes through advancing that other charitable purpose:
(a) where that other charitable purpose is an effectuation of, conducive to or incidental or ancillary to, and in furtherance or in aid of, the advancement of its religious purpose; or
(b) where the advancement of religion is an effectuation of, conducive to, or incidental or ancillary to, and in furtherance or in aid of, that other charitable purpose.

(5) Subsection (4) does not limit the circumstances in which a charity that has a charitable purpose that is not advancing religion may be a body established for religious purposes through advancing that other charitable purpose.

73 Subsection 38(1)
Omit “in order to avoid injury to”, substitute “because of”.

74 Subsection 38(2)
Omit “in order to avoid injury to”, substitute “because of”.

75 Subsection 38(3)
Omit “in order to avoid injury to”, substitute “because of”.

76 After subsection 38(3)
Insert:

38A Determining when an act or practice is consistent etc.

(1) For the purposes of section 37(1)(d) an act or practice is consistent with the doctrines, tenets or beliefs of that religion if the body established for religious purposes holds a belief that it is consistent with the doctrines, tenets or beliefs of that religion and that belief is not fictitious, capricious or an artifice.

(2) For the purposes of section 37(1)(d) an act or practice is because of the religious susceptibilities of adherents of that religion if the body established for religious purposes holds a belief that it is because of the religious susceptibilities of adherents of that religion and that belief is not fictitious, capricious or an artifice.
Schedule 1 Amendments

Part 3 Amendment of the Sex Discrimination Act 1984

(3) For the purposes of section 38 an act or omission is because of the religious susceptibilities of adherents of that religion or creed if the institution holds a belief that the act or omission is because of the religious susceptibilities of adherents of that religion and that belief is not fictitious, capricious or an artifice.

(4) A body or institution holds a doctrine, tenet or belief if it has adopted that doctrine, tenet or belief. Without limiting the foregoing, a body or institution may adopt a doctrine, tenet or belief by:

(a) including the doctrine, tenet or belief in its governing documents, organising principles, statement of beliefs or statement of values; or

(b) adopting principles, beliefs or values of another body or institution which include the doctrine, tenet or belief; or

(c) adopting principles, beliefs or values from a document or source which include the doctrine, tenet or belief; or

(d) acting consistently with that doctrine, tenet or belief.

38B Sections 37, 38 and 38A are intended to “cover the field”

(1) Despite any law, but subject to subsection (3), it is the intention of Parliament that, in order to recognise the protections, rights, privileges and entitlements of a body or institution to which sections 37, 38 or 38A apply, and to ensure that such protections, rights, privileges and entitlements are recognised equally and without discrimination in all States and Territories, sections 37, 38 and 38A operate:

(a) to cover the field in relation to those protections, rights, privileges and entitlements; and

(b) to provide a complete, exhaustive and exclusive statement of the law relating to those protections, rights, privileges and entitlements; and

(c) to exclude and limit the operation of the laws of the States and Territories in relation to those protections, rights, privileges and entitlements.
(2) For the avoidance of doubt, and without limiting subsection (1),
but subject to subsection (3), despite any law, if a protection, right,
privilege or entitlement granted, or a limitation provided for under
section 37, 38 or 38A of this Act, is inconsistent with a protection,
right, privilege or entitlement granted, or a limitation provided for,
under a law of a State or Territory, this law shall prevail, and the
State or Territory law shall, to the extent of the inconsistency, be
invalid.

(3) The protections, rights, privileges and entitlements of a body or
institution to which sections 37, 38 or 38A apply are in addition to
the protections, rights, privileges and entitlements provided under
any law of the Commonwealth or a State or Territory. Nothing in
subsections (1) or (2) shall exclude or limit the operation of the
laws of the Commonwealth or a State or a Territory that are more
protective of those protections, rights, privileges and entitlements.

77 Subsection 40(2A)

Repeal the subsection, substitute:

(2A) A minister of religion (as defined in subsection 5(1) of the
Marriage Act 1961) may refuse to solemnise a marriage despite
anything in Division 1 or 2, as applying by reference to section 5A,
5B, 5C or 6, if any of the circumstances mentioned in
paragraph 47(3)(a), (b) or (c) of the Marriage Act 1961 apply.

(2AA) A traditional marriage celebrant (as defined in subsection 5(1) of
the Marriage Act 1961) may refuse to solemnise a marriage despite
anything in Division 1 or 2, as applying by reference to section 5A,
5B, 5C or 6, if:

(a) the identification of the person as a traditional marriage
celebrant on the register of marriage celebrants has not been
removed at the time the marriage is solemnised; and

(b) the circumstances mentioned in subsection 47A(2) of the
Marriage Act 1961 apply.

(2AB) A chaplain in the Defence Force may refuse to solemnise a
marriage despite anything in Division 1 or 2, as applying by
reference to section 5A, 5B, 5C or 6, if any of the circumstances
Schedule 1 Amendments
Part 3 Amendment of the Sex Discrimination Act 1984

mentioned in paragraph 81(2)(a), (b) or (c) of the Marriage Act 1961 apply.

(2AC) An authorised officer in the Defence Force may refuse to solemnise a marriage despite anything in Division 1 or 2, as applying by reference to section 5A, 5B, 5C or 6, if the circumstances mentioned in subsection 81(3) of the Marriage Act 1961 apply.

Note: Paragraph 37(1)(d) also provides that nothing in Division 1 or 2 affects any act or practice of a body established for religious purposes that is consistent with the doctrines, tenets or beliefs of that religion or is because of the religious susceptibilities of adherents of that religion.

78 After section 40

Insert:

40A Acts done under statutory authority on the basis of the holding of a relevant marriage belief

(1) Nothing in Division 1 or 2 renders it unlawful for a person or entity to discriminate against another person on the ground of the other person’s sexual orientation, gender identity, intersex status, marital or relationship status or family responsibilities if the discrimination is permitted under Part VAA of the Marriage Act 1961.

(2) In this section entity has the same meaning as in the Marriage Act 1961.
Part 4—Amendments if Schedule 9 to the Civil Law and Justice Legislation Amendment Act 2017 not yet commenced

Marriage Act 1961

79 Paragraph 115(2)(b)

Repeal the paragraph, substitute:

(b) in respect of each other person:

(i) the person’s full name, designation (if any) and address and
(ii) whether the person is identified as a traditional marriage celebrant on the register of marriage celebrants; and
(iii) where appropriate, the religious body or religious organisation to which the person belongs.

80 The Schedule (table item 1 of Part III)

Omit “by a husband and wife jointly”, substitute “by 2 people jointly”.

No. , 2017 Marriage Amendment (Definition and Protection of Freedoms) Bill 2017
Part 5—Amendments once Schedule 9 to the Civil Law and Justice Legislation Amendment Act 2017 commences

Marriage Act 1961

81 After paragraph 115(1)(ab)

Insert:

(ac) a list of the persons who are traditional marriage celebrants;

and

82 Subsection 115(2) (after table item 3)

Insert:

3A paragraph (1)(ac) the information required to be entered in the register of marriage celebrants for the purposes of subsection 39D(5); and

where appropriate, the religious body or religious organisation to which the person belongs.

83 Subsection 115(3)

Omit “paragraph (1)(a), (aa) or (ab)”, substitute “paragraph (1)(a), (aa), (ab) or (ac)”.

Marriage Amendment (Definition and Protection of Freedoms) Bill No. 50, 2017
Part 6—Amendment of the Charities Act 2013

Charities Act 2013

84 After subsection 12(3)

Insert:

(4) For the purposes of this section, disregard the fact that an entity is, or has been, a body established for religious purposes within the meaning of section 37 of the Sex Discrimination Act 1984.

Note 1: For example, a body that has a purpose of advancing social or public welfare may be registered under subparagraph (1)(c) regardless of whether it is a body established to advance religion under section 37 of the Sex Discrimination Act 1984. It may be both a body that has a purpose of advancing social or public welfare and a body established for religious purposes under section 37 of the Sex Discrimination Act 1984, but for the purposes of subparagraph (1)(c) regard is not had to its status under section 37 of the Sex Discrimination Act 1984.

Note 2: For example, a body that has a purpose of advancing religion may be registered under subparagraph (1)(d) regardless of whether it is a body established to advance religion under section 37 of the Sex Discrimination Act 1984. It may be both a body that has a purpose of advancing religion under subparagraph (1)(d) and a body established for religious purposes under section 37 of the Sex Discrimination Act 1984, but for the purposes of subparagraph (1)(d) regard is not had to its status under section 37 of the Sex Discrimination Act 1984.
Part 7—Amendment of the Income Tax Assessment Act 1997

Income Tax Assessment Act 1997

85 After subsection 30.320

Insert:

30.325 Bodies established for religious purposes

A fund, authority or institution does not fail to satisfy the requirements for endorsement under Division 30 of this Act for the reason that the fund, authority or institution is, or has been, a body established for religious purposes within the meaning of section 37 of the Sex Discrimination Act 1984.
Part 8—Amendment of the Fringe Benefits Tax Assessment Act 1986

Fringe Benefits Tax Assessment Act 1997

86 After subsection 123C(2)

Insert:

(3) An entity does not fail to satisfy the requirements for endorsement in subsection (2) for the reason that the entity is, or has been, a body established for religious purposes within the meaning of section 37 of the Sex Discrimination Act 1984.

87 After subsection 123D(2)

Insert:

(3) An entity does not fail to satisfy the requirements for endorsement in subsection (2) for the reason that the entity is, or has been, a body established for religious purposes within the meaning of section 37 of the Sex Discrimination Act 1984.
Part 9—Application and transitional provisions

88 Definitions

In this Part:

*amended Act* means the Marriage Act 1961, as amended by this Act.

89 Application of amendments

(1) Except as provided by subitem (2), the amendments made by this Schedule only apply in relation to a marriage (within the meaning of the amended Act) that takes place at or after the commencement of this item.

(2) Part VA of the amended Act (recognition of foreign marriages) applies at and after that commencement in relation to a marriage (within the meaning of the amended Act), even if the marriage took place before that commencement.

(3) Part VAA of the amended Act applies according to its terms from its commencement.

(4) For the purposes of determining whether parties to a marriage are within a prohibited relationship as mentioned in paragraph 88D(2)(c) of the amended Act (as it applies because of subitem (2)), paragraph 23B(2)(b) of the amended Act applies.

90 Recognition of certain marriages by foreign diplomatic or consular officers that occurred in Australia before commencement

(1) A marriage is recognised as valid in Australia if:

(a) the marriage was solemnised in Australia, before the commencement of this item, by or in the presence of a diplomatic or consular officer of an overseas country (whether or not the country was a proclaimed overseas country at the time the marriage was solemnised); and

(b) at the time the marriage was solemnised:

(i) the marriage was not recognised in Australia as valid because the marriage was not the union of a man and a woman; and
(ii) the marriage was recognised as valid under the law of
the overseas country; and
(c) had the marriage occurred in the overseas country at the time
the marriage was solemnised, the marriage would, after
items 57 and 58 of this Schedule commence, be recognised as
valid under Part VA of the *Marriage Act 1961*.

(2) In this item:

*Australia* includes the external Territories.

*diploamic or consular officer* has the meaning given by section 52 of
the *Marriage Act 1961*.

*overseas country* has the same meaning as in Division 3 of Part IV of
the *Marriage Act 1961*.

*proclaimed overseas country* has the meaning given by section 52 of
the *Marriage Act 1961*. 