

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

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
Schedule 1—Amendments		3
Part 1—Main amendments		3
<i>Marriage Act 1961</i>		3
Part 2—Amendments of the Australian Human Rights Commission Act 1986		43
<i>Australian Human Rights Commission Act 1986</i>		43
Part 3—Amendments of the Sex Discrimination Act 1984		44
<i>Sex Discrimination Act 1984</i>		44
Part 4—Amendments if Schedule 9 to the Civil Law and Justice Legislation Amendment Act 2017 not yet commenced		49
<i>Marriage Act 1961</i>		49
Part 5—Amendments once Schedule 9 to the Civil Law and Justice Legislation Amendment Act 2017 commences		50
<i>Marriage Act 1961</i>		50
Part 6—Amendment of the Charities Act 2013		51
<i>Charities Act 2013</i>		51
Part 7—Amendment of the Income Tax Assessment Act 1997		52
<i>Income Tax Assessment Act 1997</i>		52
Part 8—Amendment of the Fringe Benefits Tax Assessment Act 1997		53
<i>Fringe Benefits Tax Assessment Act 1997</i>		53
Part 9—Application and Transitional Provisions		54

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

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act is the *Marriage Amendment (Definition and Protection of*
8 *Freedoms) Act 2017*.

9 **2 Commencement**

- 10 (1) Each provision of this Act specified in column 1 of the table
11 commences, or is taken to have commenced, in accordance with
12 column 2 of the table. Any other statement in column 2 has effect
13 according to its terms.
14

Commencement information

Column 1

Column 2

Column 3

Provisions

Commencement

Date/Details

1. Sections 1 to 3
and anything in
this Act not
elsewhere covered
by this table

The day after this Act receives the Royal
Assent.

2. Schedule 1,
Parts 1 and 2

The day after this Act receives the Royal
Assent.

3. Schedule 1,
Part 3

At the same time as the provisions covered
by table item 2.

4. Schedule 1,
Part 4

At the same time as the provisions covered
by table item 2.

However, if Schedule 9 to the *Civil Law and
Justice Legislation Amendment Act 2017*
commences at or before that time, the

1 **Schedule 1—Amendments**

2 **Part 1—Main amendments**

3 *Marriage Act 1961*

4 **1 After section 2**

5 Insert:

6 **2A Objects of this Act**

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

8 (a) provides that marriage includes only:

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

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

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

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

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

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

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

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

31 (e) ensures, as far as practicable, that everyone has the same
32 rights to equality, regardless of religious or conscientious
33 belief, as the rest of the community.

1 activities of the corporation as a financial corporation
2 (as the case may be).

3 *External affairs power*

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

8 *Trade and commerce power*

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

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

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

18 *Territories power*

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

23 *Telecommunications power*

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

29 *Banking power*

30 (8) Part VAA has, by force of this subsection, the effect it would have
31 if its operation were, by express provision, confined to a person

1 engaging in conduct to the extent to which the conduct takes place
2 in the course of, or in relation to, banking (within the meaning of
3 paragraph 51(xiii) of the Constitution).

4 *Insurance power*

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

10 **2 Subsection 5(1) (paragraph (c) of the definition of**
11 ***authorised celebrant*)**

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

13 **3 Subsection 5(1)**

14 Insert:

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

19 ***Commonwealth authority*** means:

- 20 (a) a Minister; or
21 (b) an Agency within the meaning of the *Public Service Act*
22 *1999*; or
23 (c) a body (whether incorporated or not), or a tribunal,
24 established or appointed for a public purpose by or under a
25 Commonwealth enactment, not being an organisation that is
26 registered under the *Fair Work (Registered Organisations)*
27 *Act 2009* or a branch of such an organisation; or
28 (d) a body established or appointed by the Governor General, or
29 by a Minister, otherwise than by or under a Commonwealth
30 enactment; or
31 (e) a person holding or performing the duties of an office
32 established by or under, or an appointment made under, a
33 Commonwealth enactment, other than a person who, by

- 1 virtue of holding that office, is the Secretary of a Department;
2 or
3 (f) a person holding or performing the duties of an appointment,
4 being an appointment made by the Governor General, or by a
5 Minister, otherwise than under a Commonwealth enactment;
6 or
7 (g) an incorporated company over which the Commonwealth, or
8 a body or authority referred to in paragraph (a) (b) (c) (d), (e)
9 or (f), is in a position to exercise control.
10 (h) a federal court; or
11 (i) the Australian Federal Police; or
12 (j) a Norfolk Island agency as defined in the *Privacy Act 1988*.

13 **entity**: see section 5AA.

14 **law**, unless otherwise stated to the contrary, includes:

- 15 (a) a Commonwealth law; and
16 (b) a law of a State or Territory.

17 **4 Subsection 5(1) (definition of *marriage*)**

18 Repeal the definition, substitute:

19 ***marriage*** includes only:

- 20 (a) the union of a man and a woman to the exclusion of all
21 others, voluntarily entered into for life; or
22 (b) the union of 2 people to the exclusion of all others,
23 voluntarily entered into for life.

24 **5 Subsection 5(1) (paragraph (c) of the definition of** 25 ***prescribed authority*)**

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

27 **6 Subsection 5(1)**

28 Insert:

29 ***public authority*** means:

- 30 (a) a Commonwealth authority;
31 (b) a State or Territory authority;

Schedule 1 Amendments
Part 1 Main amendments

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

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

14 ***relevant belief:***

- 15 (a) for a person: see subsection 5AC(1); and
16 (b) for an entity: see subsection 5AC(2).

17 ***relevant marriage belief:***

- 18 (a) for a person: see subsection 5AB(1); and
19 (b) for an entity: see subsection 5AB(2).

20 ***religious body or organisation:*** an entity is a religious body or
21 organisation if:

- 22 (a) the entity is a body established for religious purposes to
23 which section 37 of the *Sex Discrimination Act 1984*
24 applies; or
- 25 (b) the entity is an educational institution established for
26 religious purposes to which section 38 of the *Sex*
27 *Discrimination Act 1984* applies.

28 ***State or Territory authority*** means:

- 29 (a) a State or Territory Minister; or
30 (b) a Department of State of a State or Territory; or
31 (c) a body (whether incorporated or not), or a tribunal,
32 established or appointed for a public purpose by or under a
33 law of a State or Territory, other than an association of
34 employers or employees that is registered or recognised
35 under a law of a State or Territory dealing with the resolution
36 of industrial disputes; or
-

- 1 (d) a body established or appointed, otherwise than by or under a
2 law of a State or Territory, by:
3 (i) a Governor of a State; or
4 (ii) the Australian Capital Territory Executive; or
5 (iii) the Administrator of the Northern Territory; or
6 (iv) a State or Territory Minister; or
7 (e) a person holding or performing the duties of an office
8 established by or under, or an appointment made under, a law
9 of a State or Territory, other than the office of head of a State
10 or Territory Department (however described); or
11 (f) a person holding or performing the duties of an appointment
12 made, otherwise than under a law of a State or Territory, by:
13 (i) a Governor of a State; or
14 (ii) the Australian Capital Territory Executive; or
15 (iii) the Administrator of the Northern Territory; or
16 (iv) a State or Territory Minister; or
17 (g) an incorporated company over which the State or Territory,
18 or a body or authority referred to in paragraph (a) (b) (c) (d)
19 (e) or (f), is in a position to exercise control; or
20 (h) a State or Territory court; or
21 (i) a State or Territory police force.

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

25 **7 After section 5A**

26 Insert:

27 **5AA Meaning of *entity***

- 28 (1) For the purposes of the Act, an ***entity*** means:
29 (a) an entity (other than an individual) within the meaning of
30 section 184-1 of the *A New Tax System (Goods and Services*
31 *Tax) Act 1999*; and
32 (b) a non-entity joint venture within the meaning of
33 section 195-1 of the *A New Tax System (Goods and Services*
34 *Tax) Act 1999*.

- 1 (v) a fundamental feature of a marriage between a man and
2 a woman is the modelling for children born from, or
3 raised in, that marriage of the gender difference and
4 complementarity of the man and the woman;
5 but for the avoidance of doubt, does not include the belief
6 mentioned at paragraph 5AC(1)(b).
- 7 (2) An entity holds a *relevant marriage belief* if the entity has
8 adopted:
9 (a) a belief mentioned in paragraph (1)(a); or
10 (b) one or more beliefs mentioned in paragraph (1)(b),
11 as beliefs that the entity holds.

12 **5AC Meaning of *relevant belief***

- 13 (1) A person holds a *relevant belief* if the person holds:
14 (a) a relevant marriage belief; or
15 (b) a genuine religious or conscientious belief that:
16 (i) a same-sex relationship is not consistent with the
17 doctrines, tenets, beliefs or teachings of the religion or
18 the conscience of the person; or
19 (ii) the normative state of gender is binary and can, in the
20 overwhelming majority of cases, be identified at birth;
21 or
22 (iii) any one or a combination of genuine religious or
23 conscientious beliefs that are constitutive of, supporting
24 of or a corollary of a belief mentioned in paragraphs
25 (1)(b)(i) or (1)(b)(ii).
- 26 (2) An entity holds a *relevant belief* if the entity has adopted:
27 (a) a belief mentioned in paragraph (1)(a); or
28 (b) one or more beliefs mentioned in paragraph (1)(b),
29 as beliefs that the entity holds.

30 **5AD Determining when a belief is held etc.**

- 31 (1) For the purposes of this Act, a person or entity holds a genuine
32 belief, or holds a genuine religious or conscientious belief, or
33 genuinely believes, if the holding of the belief (inclusive of the

- 1 person's or entities beliefs as to the actions, refusals, omissions or
2 expressions that are consistent with, a consequence of, made in
3 connection with, based upon, constitutive of, supporting of, or a
4 corollary of that belief) is not fictitious, capricious or an artifice.
- 5 (2) For the purposes of subsections 5AB(2) and 5AC(2), but without
6 limiting those subsections, an entity may state or adopt a belief as a
7 belief the entity holds by:
- 8 (a) including the belief in its governing documents, organising
9 principles, statement of beliefs or statement of values; or
10 (b) adopting principles, beliefs or values of another entity which
11 include the belief; or
12 (c) adopting principles, beliefs or values from a document or
13 source which include the belief; or
14 (d) acting consistently with that belief,
- 15 (3) For the purposes of this Act, if an authorised celebrant, chaplain or
16 an authorised officer holds a relevant marriage belief or a relevant
17 belief, then in holding, expressing or acting on that belief:
- 18 (a) whether or not another person who is to be married is a man
19 or a woman is to be determined by the authorised celebrant,
20 chaplain or authorised officer; and
21 (b) in determining whether the other person is a man or a
22 woman, if the authorised celebrant, chaplain or authorised
23 officer reasonably believes and genuinely believes that the
24 current legal status of the other person as a man or a woman
25 is different from the legal status of the other person as a man
26 or a woman at the time of the other person's registration
27 following the other person's birth, the authorised celebrant,
28 chaplain or an authorised officer may disregard the current
29 legal status of the other person's sex or gender, or their
30 gender identity or intersex status.

31 **8 After section 5A**

32 Insert:

33 **5B Act binds Crown**

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

1 (2) This Act does not make the Crown liable to be prosecuted for an
2 offence.

3 **9 Section 6 (heading)**

4 Repeal the heading, substitute:

5 **6 Interaction of Act with State and Territory laws**

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

8 **10 Section 6**

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

10 **11 At the end of section 6**

11 Add:

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

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

- 19 (a) to cover the field in relation to those protections, rights,
20 privileges and entitlements; and
21 (b) to provide a complete, exhaustive and exclusive statement of
22 the law relating to those protections, rights, privileges and
23 entitlements; and
24 (c) to exclude and limit the operation of the laws of the States
25 and Territories in relation to those protections, rights,
26 privileges and entitlements.

27 (3) For the avoidance of doubt, and without limiting subsection (2),
28 if a protection, right, privilege or entitlement granted, or a
29 limitation provided for under Part VAA of this Act, is inconsistent
30 with a protection, right, privilege or entitlement granted, or a
31 limitation provided for, under a law of a State or Territory, this law

1 shall prevail, and the State or Territory law shall, to the extent of
2 the inconsistency, be invalid.

3 (4) In addition, proceedings must not be brought against a person,
4 and a person must not be convicted of an offence under a State
5 or Territory law or otherwise be found to have contravened a
6 provision of a State or a Territory law, if:

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

9 (b) an act or omission by a person that constitutes an offence
10 against, or a contravention of, that law is permitted by
11 Part VAA of this Act.

12 **12 Paragraph 21(2)(b)**

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

14 **13 Paragraph 23B(2)(b)**

15 Omit “a brother and a sister”, substitute “2 siblings”.

16 **14 After section 39D**

17 Insert:

18 **Subdivision D—Traditional marriage celebrants**

19 **39DA Entitlement to be identified as a traditional marriage** 20 **celebrant on the register of marriage celebrants**

21 A person is entitled to be identified as a traditional marriage
22 celebrant on the register of marriage celebrants if:

23 (a) the person is registered as a person that may solemnise
24 marriages under Subdivision B of this Division and the
25 person holds a genuine religious or conscientious belief that
26 marriage is the union of a man and a woman to the exclusion
27 of all others, voluntarily entered into for life; or

28 (b) the person is registered as a marriage celebrant under
29 Subdivision C of this Division and either:

30 (i) the person is a minister of religion; or

31 (ii) the person holds a genuine religious or conscientious
32 belief that marriage is the union of a man and a woman

1 to the exclusion of all others, voluntarily entered into for
2 life.

3 **39DB Request to be identified as a traditional marriage celebrant on**
4 **the register of marriage celebrants**

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

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

11 **39DC Identification as a traditional marriage celebrant**

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

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

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

20 **39DD Process of identification on the register as a traditional**
21 **marriage celebrant**

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

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

28 **39DE Request for identification as a traditional marriage celebrant**
29 **to be removed**

30 (1) A traditional marriage celebrant may, in writing, give the Registrar
31 of Marriage Celebrants notice that the celebrant no longer wishes

1 to be identified as a traditional marriage celebrant on the register of
2 marriage celebrants.

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

7 **Subdivision E—General provisions relating to all marriage**
8 **celebrants**

9 **15 After paragraph 39M(c)**

10 Insert:

11 (d) a person was identified as a traditional marriage celebrant on
12 the register of marriage celebrants; or

13 (e) a person was not identified as a traditional marriage celebrant
14 on the register of marriage celebrants.

15 **16 At the end of section 43**

16 Add “(subject to Part VAA)”.

17 **17 Before subsection 45(1)**

18 Insert:

19 *Ministers of religion*

20 **18 Before subsection 45(2)**

21 Insert:

22 *Traditional marriage celebrants*

23 **19 Subsection 45(2)**

24 Omit “not being a minister of religion”, insert “being a traditional
25 marriage celebrant (other than a minister of religion)”.

26 **20 After subsection 45(2)**

27 Insert:

1 *Other authorised celebrants*

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

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

10 or words to that effect.

11 *Certificates of marriage*

12 **21 Before subsection 46(1)**

13 Insert:

14 *Traditional marriage celebrants*

15 **22 Subsection 46(1)**

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

18 **23 After subsection 46(1)**

19 Insert:

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

22 (1A) Subject to subsection (2), before a marriage is solemnised by or in
23 the presence of an authorised celebrant, not being a minister of
24 religion of a recognised denomination or a traditional marriage
25 celebrant, the authorised celebrant shall say to the parties, in the
26 presence of the witnesses, the words:

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

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

1 “Marriage, according to law in Australia, is the union of 2
2 people to the exclusion of all others, voluntarily entered into
3 for life.”;
4 or words to that effect.

5 *State and Territory officers*

6 **24 Subsection 46(2)**

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

8 **25 Section 47**

9 Repeal the section, substitute:

10 **47 Ministers of religion may refuse to solemnise marriages**

11 *Refusing to solemnise a marriage despite this Part*

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

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

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

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

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

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

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

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

28 (a) the refusal is consistent with the doctrines, tenets or beliefs of
29 the religion of the minister’s religious body or religious
30 organisation;

- 1 (b) the refusal is made because of the religious susceptibilities of
2 adherents of that religion;
3 (c) the minister’s genuine religious or conscientious beliefs do
4 not allow the minister to solemnise the marriage.

5 *Grounds for refusal not limited by this section*

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

8 **26 Before section 48**

9 Insert:

10 **47A Traditional marriage celebrants may refuse to solemnise** 11 **marriages**

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

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

- 16 (2) Despite anything in this Part or any law of a State or Territory, the
17 celebrant may refuse to solemnise a marriage that is not the union
18 of a man and a woman if:
19 (a) the celebrant holds a genuine religious or conscientious belief
20 that marriage is the union of a man and a woman to the
21 exclusion of all others, voluntarily entered into for life; and
22 (b) the holding by the celebrant of that belief does not allow the
23 celebrant to solemnise the marriage.
24 (3) This section does not limit the grounds on which a traditional
25 marriage celebrant may refuse to solemnise a marriage.

26 **27 Subsection 71(1)**

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

28 **28 After section 71**

29 Insert:

1 **71A Officers authorised to solemnise marriages**

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

5 **29 Paragraphs 72(1)(a) and (b)**

6 After “the chaplain” (wherever occurring), insert “or authorised
7 officer”.

8 **30 Subsection 72(2)**

9 After “the chaplain” (wherever occurring), insert “or authorised
10 officer”.

11 **31 Subsection 72(2)**

12 After “*or husband*”, insert “, *or spouse*”.

13 **32 Section 74 (heading)**

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

15 **33 Subsection 74(1)**

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

17 **34 Subsection 74(3)**

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

19 **35 Section 75 (heading)**

20 After “Chaplain”, insert “or authorised officer”.

21 **36 Section 75**

22 After “A chaplain”, insert “or authorised officer”.

23 **37 Section 75**

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

25 **38 Subsections 76(1), 77(1) and 78(2)**

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

1 **39 Section 79 (heading)**

2 After “Chaplain”, insert “or authorised officer”.

3 **40 Section 79**

4 After “A chaplain”, insert “or authorised officer”.

5 **41 Section 79**

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

7 **42 Subsection 80(1)**

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

9 **43 Subsection 80(1)**

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

11 **44 Paragraphs 80(2)(a) and (c)**

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

13 **45 Subsection 80(4)**

14 After “The chaplain”, insert “or authorised officer”.

15 **46 Subsections 80(5) and (6)**

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

17 **47 Subsection 80(8)**

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

19 **48 Subsection 80(9)**

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

21 **49 Paragraph 80(9)(b)**

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

23 **50 Subsection 80(10)**

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

1 **51 Section 81 (heading)**

2 Repeal the heading, substitute:

3 **81 Power to refuse to solemnise marriage**

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

6 **52 Section 81**

7 Omit “A chaplain”, insert “(1) A chaplain or authorised officer”.

8 **53 Section 81**

9 After “the chaplain” (wherever occurring), insert “or authorised
10 officer”.

11 **54 At the end of section 81**

12 Add:

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

15 (2) To avoid doubt, a chaplain may refuse to solemnise a marriage
16 despite anything in this Part or any law of a State or Territory, if
17 any of the following applies:

18 (a) the refusal is consistent with the doctrines, tenets or beliefs of
19 the religion of the chaplain’s religious body or religious
20 organisation;

21 (b) the refusal is because of the religious susceptibilities of
22 adherents of that religion;

23 (c) the chaplain’s genuine religious or conscientious beliefs do
24 not allow the chaplain to solemnise the marriage.

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

27 (3) Despite anything in this Part or any law of a State or Territory, an
28 authorised officer may refuse to solemnise a marriage that is not
29 the union of a man and a woman, if:

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

6 *Grounds for refusal not limited by this section*

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

10 **55 Subsection 83(2)**

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

12 **56 Section 84 (heading)**

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

14 **57 Paragraph 84(1)(a)**

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

16 **58 Paragraphs 84(1)(b) and (c)**

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

18 **59 Subsection 84(1)**

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

20 **60 Paragraph 85(1)(b)**

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

22 **61 Paragraph 85(1)(c)**

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

24 **62 Subsection 85(1)**

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

26 **63 Section 88EA**

27 Repeal the section.

1 **64 After Part VA**

2 Insert:

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

6 **Division 1—Protection of freedoms**

7 **88J Freedom to hold or express relevant belief**

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

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

14 (3) A reference in this section to lawful expression of a relevant
15 belief:

16 (a) does not include expression that would constitute an offence
17 against or a contravention of, a law;

18 (b) for the avoidance of doubt does include expression that is not
19 an offence against, or a contravention of, a law because of
20 section 88KA.

21 **88JA Freedom to hold, express or act on relevant marriage belief**

22 (1) A person or an entity has the right to freedom of thought,
23 conscience, religion or belief in relation to holding, expressing,
24 or acting on, a relevant marriage belief, including:

25 (a) the right to have or adopt that belief; and

26 (b) the right to manifest that belief:

27 (i) individually or in community with others; and

28 (ii) in public or private; and

29 (iii) in worship, observance, practice or teaching; and

30 (iv) in any action or refusal to act.

Schedule 1 Amendments
Part 1 Main amendments

- 1 (f) the provision of economic benefits, including grants, funding
2 or subsidies;
- 3 (g) the supply or acquisition of goods, services or facilities;
- 4 (h) the assessment or selection of a person or entity to be a
5 supplier or acquirer of goods or services or facilities;
- 6 (i) the administration or enforcement of Commonwealth, State,
7 Territory or local government laws and programs, including
8 the granting of funding under those laws or programs;
- 9 because the other person or entity:
- 10 (j) holds or expresses a relevant belief other than a relevant
11 marriage belief; or
- 12 (k) holds or expresses a relevant marriage belief; or
- 13 (l) engages in any lawful act or lawfully refuses or omits to
14 engage in an act because the person or entity genuinely
15 believes that the act or refusal or omission is consistent
16 with a relevant marriage belief; or
- 17 (m) has a characteristic that appertains generally to a person or
18 entity described in paragraphs (j), (k) or (l); or
- 19 (n) has a characteristic that is generally imputed to a person or
20 entity described in paragraphs (j), (k) or (l); or
- 21 (o) associates with a person or entity described in paragraphs (j),
22 (k) or (l) or associates with a group or is a member of a group
23 which is an entity described in paragraphs (j), (k) or (l) or
24 which includes a person or entity described in paragraphs (j),
25 (k) or (l); or
- 26 (p) employs or engages as a contractor or volunteer (or has not
27 refused to employ or engage as a contractor or volunteer) a
28 person who is described in paragraphs (j), (k) or (l); or
- 29 (q) provides goods, services, funding, subsidies or other
30 economic benefits to a person or entity who is described in
31 paragraphs (j), (k) or (l) (or has not refused to do so); or
- 32 (r) acquires goods, services, funding, subsidies or other
33 economic benefits from a person who is described in
34 paragraphs (j), (k) or (l) (or has not refused to do so).
- 35

36 Note: Examples of detrimental action made unlawful by section 88K include
37 the following:

- 1 (a) A public authority, such as a government agency, refuses to appoint or
2 hire or promote or dismisses a person, employee or contractor because
3 that person holds or expresses a relevant marriage belief or a relevant
4 belief or is associated with a person or entity which does so.
- 5 (b) A public authority, such as a government agency or private sector body
6 exercising professional or trade accreditation functions on behalf of
7 government or under statutory authority refuses to accredit or imposes
8 disadvantageous conditions on an accreditation of a person or entity
9 because the person holds or expresses a relevant marriage belief or a
10 relevant belief or is associated with a person or entity which does so.
- 11 (c) A public authority such as a local government or State or Territory or
12 Commonwealth Government department or agency refuses to provide a
13 grant or funding or provides it on disadvantageous conditions because
14 the grant applicant holds or expresses a relevant marriage belief or a
15 relevant belief or is associated with a person or entity which does so.
- 16 (d) A government education authority, including a government school, or a
17 private school when acting on the instruction of or in accordance with its
18 funding contract with a government authority, suspends or expels a
19 student or bans or refuses access to facilities or funding to a student club
20 because the student or the student club holds or expresses a relevant
21 marriage belief or a relevant belief or is associated with a person or
22 entity which does so.
- 23 (e) A public authority refuses to supply to or acquire from a person or entity
24 goods or services or facilities or discriminates against the person or
25 entity in a tender process because the person or entity holds or expresses
26 a relevant marriage belief or a relevant belief or is associated with a
27 person or entity which does so.
- 28 (2) In this section a ***relevant person or entity*** means a person or entity
29 which engages in the conduct described in subsection (1) because
30 it is caused or induced to do so by a public authority, including
31 being caused or induced to do so:
- 32 (a) by a request or instruction or expectation of a public
33 authority; or
- 34 (b) by a condition of a contract or arrangement with a public
35 authority; or
- 36 (c) by a condition of direct or indirect funding by a public
37 authority; or
- 38 (d) by a condition of a licence or permission granted by a public
39 authority.
-

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

4 (4) A:

5 (a) request or instruction or expectation of a public authority
6 directed to a person or entity; or

7 (b) a condition of a contract or arrangement between a public
8 authority and a person or entity; or

9 (c) a condition of direct or indirect funding by a public authority
10 to a person or entity; or

11 (d) a condition of a licence or permission granted by a public
12 authority to a person or entity;

13 is void to the extent that it would cause or induce the person or
14 entity to engage in conduct described in sub-section (1).

15

16 (5) The reference in paragraph (1)(1) to engaging in a lawful act or
17 lawfully refusing or omitting to engage in an act:

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

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

24 **88KA Protection from certain laws when expressing or acting on a**
25 **relevant marriage belief or a relevant belief**

26 *Relevant marriage belief*

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

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

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

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

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

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

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

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

16 (b) expressing a relevant marriage belief.

17 *Relevant belief*

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

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

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

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

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

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

- 1 (4) For the purposes of subsection (3), *conduct* includes expressing a
2 relevant belief.
- 3 (5) The inclusion of relevant marriage belief within relevant belief at
4 section 5AC does not imply any limitation on the rights of a person
5 or entity to act on a relevant marriage belief.
- 6 (6) Subsections (1) and (3) do not prevent a person or entity
7 committing an offence in relation to discrimination or contravening
8 a prohibition on discrimination in the *Sex Discrimination Act 1984*
9 if:
- 10 (a) the person or entity engages in conduct which under that Act
11 is unlawful discrimination against another person; and
12 (b) section 88M does not authorise that conduct.

13 **88KB Determining what is a public authority**

- 14 (1) In determining if a function is of a public nature within the
15 meaning of subparagraph (e) of the definition of public authority in
16 section 5(1) the factors that may be taken into account include—
- 17 (a) that the function is conferred on the entity by or under a
18 statutory provision;
- 19 (b) that the function is connected to or generally identified with
20 functions of government;
- 21 (c) that the function is of a regulatory nature;
- 22 (d) that the entity is publicly funded to perform the function.
- 23 (2) To avoid doubt—
- 24 (a) the factors listed in subsection (1) are not exhaustive of the
25 factors that may be taken into account in determining if a
26 function is of a public nature; and
- 27 (b) the fact that one or more of the factors set out in subsection
28 (1) are present in relation to a function does not necessarily
29 result in the function being of a public nature.
- 30 (3) For the purposes of subparagraph (e) of the definition of public
31 authority in section 5(1) an entity may be acting on behalf of the
32 public authority even if there is no agency relationship between the
33 entity and the public authority.

- 1 (4) For the purposes of subparagraph (e) of the definition of public
2 authority in section 5(1) the fact that an entity is publicly funded to
3 perform a function does not necessarily mean that it is exercising
4 that function on behalf of the public authority.

5 **88L Scope of rights—expressing a relevant marriage belief or a**
6 **relevant belief**

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

12 **88M Supply of facilities or provision of goods and services**

- 13 (1) A person or an entity that holds a relevant marriage belief may,
14 despite any law, refuse to do an act (in whole or in part or
15 subject to conditions) for a purpose mentioned in subsection (2),
16 including any of the following:

- 17 (a) making a facility available;
18 (b) providing goods, services or accommodation;
19 (c) providing an advantage or a privilege;
20 (d) registering a marriage that is not the union of a man and a
21 woman on a register of marriages

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

24 Note 1: For paragraph (1)(b), examples of goods and services include:

- 25 (a) provision of goods by artisans, bakers, caterers, jewellers,
26 printers, publishers, dress makers, tailors and florists;
27 (b) provision of services by relationship counsellors, producers of
28 media, photographers, musicians, transport providers, event
29 planners and advisory services and operators of accommodation
30 suites;
31 (c) hire of reception halls.

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

- 35 (2) The purposes mentioned in subsection (1) are:
-

- 1 (a) the purpose of preparing for the solemnisation of a marriage
2 that is not the union of a man and a woman; and
3 (b) the purpose of solemnising a marriage that is not the union of
4 a man and a woman; and
5 (c) the purpose of celebrating a marriage, contemporaneously
6 with the marriage, that is not the union of a man and a
7 woman; and
8 (d) any purpose reasonably incidental to a purpose mentioned in
9 paragraphs (a), (b) or (c).
- 10 (3) Subsection (1) applies to acts done, and facilities made
11 available, and goods and services, accommodation, and
12 providing any advantages or privileges, whether for payment or
13 not.
- 14 (4) This section does not limit the grounds on which a person or entity
15 may refuse to do an act, make a facility available, or to provide
16 goods or services, accommodation, advantages or privileges for a
17 purpose mentioned in subsection (2).
- 18 (5) Subsection (1) applies regardless of whether the person in relation
19 to whom another person or entity has refused to do an act under
20 that subsection:
- 21 (a) holds the doctrines, tenets, beliefs or teachings of the religion
22 of the other person or entity; or
23 (b) has the religious susceptibilities of adherents of the other
24 person's or entities religion.

25 **88N Non-discrimination in the allocation of funding**

- 26 (1) Despite any law, it is unlawful for the Commonwealth, a State,
27 a Territory or a government entity to:
- 28 (a) decline to provide funding; or
29 (b) impose a condition on funding that is provided;
30 that discriminates against a person or an entity because the
31 person or entity:
- 32 (c) holds a relevant marriage belief or a relevant belief; or
33 (d) acts, or refuses or omits to do an act, because the person or
34 entity genuinely believes that the action, refusal or omission

1 is consistent with the relevant marriage belief or relevant
2 belief; or

3 (e) expresses the relevant marriage belief or relevant belief.

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

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

7 (3) In this section:

8 **government entity** means:

9 (a) a government entity (within the meaning of the *A New Tax*
10 *System (Australian Business Number) Act 1999*; or

11 (b) an entity established by or under a law of a State or Territory.

12 **88O Charitable status**

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

16 (a) the entity holds, expresses or acts upon a relevant marriage
17 belief or a relevant belief; or

18 (b) the entity refuses, or omits, to do an act because the entity
19 genuinely believes that the action, refusal or omission is
20 consistent with the relevant marriage belief or relevant belief.

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

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

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

31 (i) unlawful or contrary to public policy; or

32 (ii) determined to be unlawful or contrary to public policy.

1 **88P Requiring a person to express, publish, associate with or**
2 **support statements or opinions**

- 3 (1) Despite any law, it is unlawful for a person or entity to:
4 (a) require another person or entity to engage in relevant
5 conduct in relation to a statement or opinion; or
6 (b) treat another person or entity unfavourably because the
7 other person or entity refuses or omits to engage in
8 relevant conduct in relation to a statement or opinion;
9 if the other person or entity holds a relevant belief and genuinely
10 believes that the statement or opinion is not consistent with that
11 belief.
12
13 (2) In sub-section (1) relevant conduct in relation to a statement or
14 opinion means:
15 (a) expressing, publishing or disseminating the statement or
16 opinion;
17 (b) producing or distributing a thing which expresses or
18 supports or endorses the statement or opinion;
19 (c) associating the second person or entity with the statement
20 or opinion; or
21 (d) endorsing or supporting the statement or opinion.

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

28 **88Q Religious bodies or organisations**

- 29 (1) Despite any law, a religious body or organisation may engage in
30 a lawful act, or lawfully refuse or omit to engage in an act, if the
31 body or organisation:
32 (a) is an entity that holds a relevant marriage belief or a
33 relevant belief; and
34 (b) genuinely believes that the act, refusal or omission is
35 consistent with the holding of that belief.

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

9

10 **88R Right not to attend class if material taught is not consistent with**
11 **a relevant marriage belief or a relevant belief**

- 12 (1) This section applies to a person who:
- 13 (a) holds a relevant marriage belief or a relevant belief; and
14 (b) either:
- 15 (i) is a parent or guardian of a student of an educational
16 institution who has not attained the age of 16; or
17 (ii) is a student of an educational institution who has
18 attained the age of 16.
- 19 (2) Despite any law, if a person genuinely believes that material taught
20 by the educational institution in a class is not consistent with the
21 relevant marriage belief or relevant belief held by the person, the
22 person may request the principal of the educational institution to:
- 23 (a) if the person is a parent or guardian of a student—release the
24 student from attendance of that class and any subsequent
25 class in which that material is taught (or the relevant parts of
26 those classes); and
27 (b) if the person is a student—be released from attendance of
28 that class and any subsequent class (or the relevant parts of
29 those classes) in which that material is taught.
- 30 (3) The request must:
- 31 (a) be in writing; and
32 (b) be made at least 24 hours before the start of the first class in
33 respect of which the request is made.

- 1 (4) The principal must release the student from the class (or the
2 relevant parts of a class), and any subsequent class, if the principal
3 is satisfied that the request has been made by the person on the
4 basis that the person holds a relevant marriage belief or a relevant
5 belief.
- 6 (5) Where a student is released from a class (or the relevant parts of a
7 class) the principal must take all reasonable steps to arrange
8 adequate supervision of the student during the period of that
9 release.
- 10 (6) Where an educational institution proposes to teach or present
11 material that is likely to be objectionable to a person who holds a
12 relevant marriage belief or a relevant belief, the institution must:
- 13 (a) notify the person in writing at least a week in advance of the
14 day of the first relevant class that:
- 15 (i) the class or classes will contain that material; and
16 (ii) the student has the right to be released from the
17 class or classes or the relevant part of the classes; and
18 (b) ensure that the material is taught in a single class or as few
19 classes as is possible.

20 **Division 2—Offences**

21 **88S Victimisation**

- 22 (1) A person commits an offence if the person commits an act of
23 victimisation against another person.
- 24 Penalty: 25 penalty units.
- 25 (2) For the purposes of subsection (1), a person is taken to have
26 committed an act of victimisation against another person if the
27 person subjects, or threatens to subject, the other person to any
28 detriment on the ground that the other person:
- 29 (a) has made, or proposes to make, a complaint under the
30 *Australian Human Rights Commission Act 1986*; or
31 (b) has brought, or proposes to bring, proceedings under that Act
32 or under this Part; or

- 1 (c) has given, or proposes to give, any information, or has
2 produced, or proposes to produce, any documents to a person
3 exercising or performing any power or function under that
4 Act; or
5 (d) has attended, or proposes to attend, a conference held under
6 that Act; or
7 (e) has appeared, or proposes to appear, as a witness in a
8 proceeding under that Act or under this Part; or
9 (f) has reasonably asserted, or proposes to assert, any rights of
10 the person or of any other person under that Act or under this
11 Part; or
12 (g) has made an allegation that a person has done an act that is in
13 contravention of or unlawful under a provision of this Part;
14 or on the ground that the first-mentioned person believes that the
15 other person has done, or proposes to do, an act or thing referred to
16 in any of paragraphs (a) to (g).
- 17 (3) It is a defence to a prosecution for an offence under subsection (1)
18 constituted by subjecting, or threatening to subject, a person to a
19 detriment on the ground that the person has made an allegation that
20 another person had done an act that was unlawful by reason of a
21 provision of Division 1 of this Part if it is proved that the allegation
22 was false and was not made in good faith.

23 **Division 3—Remedies**

24 **Subdivision A—Civil enforcement**

25 **88T Actions for loss or damage**

- 26 (1) A person:
27 (a) who suffers loss or damage; or
28 (b) who is detrimentally affected by the conduct of another
29 person; or
30 (c) whose rights are interfered with;
31 because another person contravenes, or was involved in
32 contravening, a provision of Part VAA of this Act may bring an
33 action in a court of competent jurisdiction to recover the amount of
34 the loss or damage from the other person.

- 1 (2) An action mentioned in subsection (1) may be brought by:
2 (a) an interested person; or
3 (b) a person acting on behalf of an interested person.
- 4 (3) An action under subsection (1) may only be begun within 3 years
5 after the day on which the cause of action arose.
- 6 (4) This section does not affect any right or liability that a person has
7 under any other law.
- 8 (5) For the purposes of this section, a person is *involved in a*
9 *contravention* if, and only if, the person has:
10 (a) aided, abetted, counselled or procured the contravention; or
11 (b) has induced, whether by threats or promises or otherwise, the
12 contravention; or
13 (c) has been in any way, by act or omission, directly or
14 indirectly, knowingly concerned in or party to the
15 contravention; or
16 (d) has conspired with others to effect the contravention.

17 **88U Injunctions for contravention of this Act**

18 *Application for injunctions*

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

26 *Prohibitory injunctions*

- 27 (2) If a person has engaged, is engaging or is proposing to engage in
28 conduct constituting an offence or other contravention of
29 Part VAA of this Act, the court may grant an injunction restraining
30 the person from engaging in the conduct. The court may grant the
31 injunction:

- 1 (a) whether or not it appears to the court that the person intends
2 to engage again, or to continue to engage, in conduct of that
3 kind; and
4 (b) whether or not the person has previously engaged in conduct
5 of that kind.

6 *Mandatory injunctions*

- 7 (3) If:
8 (a) a person has refused or failed, or is refusing or failing, or is
9 proposing to refuse or fail to do an act; and
10 (b) the refusal or failure did, does or would constitute an offence
11 or other contravention of Part VAA of this Act;
12 the court may grant an injunction requiring the person to do the act.
13 The court may grant the injunction:
14 (c) whether or not it appears to the court that the person intends
15 to refuse or fail again, or to continue to refuse or fail, to do
16 the act; and
17 (d) whether or not the person has previously refused or failed to
18 do the act.

19 *Interim injunctions*

- 20 (4) Before deciding an application for an injunction under this section,
21 the court may grant an interim injunction:
22 (a) restraining a person from engaging in conduct; or
23 (b) requiring a person to do an act.

24 *Discharging or varying injunctions*

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

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

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

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

- 30 (7) The powers conferred on a court by this section are in addition to
31 (and do not limit) any other powers of the court.
-

88V Court may make other orders

- 1
- 2 (1) A court of competent jurisdiction may make any other order
3 (including a declaratory order) it thinks fit if a person or entity
4 contravenes Part VAA of this Act.
- 5 (2) The court may make an order under this section only on
6 application by:
7 (a) an interested person; or
8 (b) a person acting on behalf of an interested person.
- 9 (3) An order under this section may be enforced as if it were a
10 judgment of the court.
- 11 (4) Without limiting the generality of subsection (1), where, in a
12 proceeding instituted under this Part, the Court finds that a person
13 who is a party to the proceeding has suffered, or is likely to suffer,
14 loss or damage by conduct of another person that was engaged in
15 contravention of a provision of Part VAA, the Court may, whether
16 or not it grants an injunction under section 88U or makes an order
17 under section 88V, make such order or orders as it thinks
18 appropriate against the person who engaged in the conduct or a
19 person who was involved in the contravention (including all or any
20 of the orders mentioned in subsection (5) of this section) if the
21 Court considers that the order or orders concerned will compensate
22 the first-mentioned person in whole or in part for the loss or
23 damage or will prevent or reduce the loss or damage.
- 24 (5) The orders referred to in subsection (4) are:
25 (a) an order declaring the whole or any part of a contract made
26 between the person who suffered, or is likely to suffer, the loss or
27 damage and the person who engaged in the conduct or a person
28 who was involved in the contravention constituted by the conduct,
29 or of a collateral arrangement relating to such a contract, to be void
30 and, if the Court thinks fit, to have been void ab initio or at all
31 times on and after such date before the date on which the order is
32 made as is specified in the order;
33 (b) an order varying such a contract or arrangement in such
34 manner as is specified in the order and, if the Court thinks fit,
35 declaring the contract or arrangement to have had effect as so

1 varied on and after such date before the date on which the order is
2 made as is so specified;

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

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

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

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

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

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

25 **88VA Contravention of Part VAA**

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

28

29 **Subdivision B— Jurisdiction of courts**

30 **88W Federal Court and Federal Circuit Court have jurisdiction**

Schedule 1 Amendments
Part 1 Main amendments

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

4 **65 Subsection 99(3)**

5 After “A chaplain”, insert “or authorised officer”.

6 **66 Subsection 116(2)**

7 Omit “celebrant or chaplain” (wherever occurring), substitute
8 “celebrant, chaplain or authorised officer”.

9 **67 Subsections 117(1) and (2)**

10 After “other than Subdivision C”, insert “or D”.

11 **68 Paragraph 119(3)(f)**

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

1 **Part 2—Amendment of the Australian Human Rights**
2 **Commission Act 1986**

3 *Australian Human Rights Commission Act 1986*

4 **69 Subsection 3(1) (after paragraph (a) of the definition of**
5 ***unlawful discrimination*)**

6 Insert:

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

8 **70 Subsection 3(1) (after paragraph (d) of the definition of**
9 ***unlawful discrimination*)**

10 Insert:

11 (da) Division 2 of Part VAA of the *Marriage Act 1961*.

1 **Part 3—Amendment of the Sex Discrimination Act**
2 **1984**

3 ***Sex Discrimination Act 1984***

4 **71 Subsection 37(1)(d)**

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

9 **72 After subsection 37(2)**

10 Insert:

- 11 (3) Despite any law (including any provision of this Act and any law
12 of a State or Territory) a body established for religious purposes
13 includes, and shall be deemed to have always included, without
14 limitation, a body:
15 (a) that is a:
16 (i) not for profit entity; or
17 (ii) charity under the *Charities Act 2013*, including any
18 public benevolent institution (regardless of whether any
19 of the charitable purposes of the entity is advancing
20 religion);
21 (b) where that body:
22 (i) is established by or under the direction, control or
23 administration of a body established for religious
24 purposes; or
25 (ii) is conducted in accordance with the doctrines, tenets,
26 beliefs or teachings of a particular religion or creed; or
27 (iii) is a body to which subsection (4) applies.
28 (4) A charity that has a charitable purpose pursuant to the *Charities*
29 *Act 2013* that is not advancing religion may be a body established
30 for religious purposes through advancing that other charitable
31 purpose:

- 1 (a) where that other charitable purpose is an effectuation of,
2 conducive to or incidental or ancillary to, and in furtherance
3 or in aid of, the advancement of its religious purpose; or
4 (b) where the advancement of religion is an effectuation of,
5 conducive to, or incidental or ancillary to, and in furtherance
6 or in aid of, that other charitable purpose.
- 7 (5) Subsection (4) does not limit the circumstances in which a charity
8 that has a charitable purpose that is not advancing religion may be
9 a body established for religious purposes through advancing that
10 other charitable purpose.

11 **73 Subsection 38(1)**

12 Omit “in order to avoid injury to”, substitute “because of”.

13 **74 Subsection 38(2)**

14 Omit “in order to avoid injury to”, substitute “because of”.

15 **75 Subsection 38(3)**

16 Omit “in order to avoid injury to”, substitute “because of”.

17 **76 After subsection 38(3)**

18 Insert:

19 **38A Determining when an act or practice is consistent etc.**

- 20 (1) For the purposes of section 37(1)(d) an act or practice is consistent
21 with the doctrines, tenets or beliefs of that religion if the body
22 established for religious purposes holds a belief that it is consistent
23 with the doctrines, tenets or beliefs of that religion and that belief is
24 not fictitious, capricious or an artifice.
- 25 (2) For the purposes of section 37(1)(d) an act or practice is because of
26 the religious susceptibilities of adherents of that religion if the
27 body established for religious purposes holds a belief that it is
28 because of the religious susceptibilities of adherents of that religion
29 and that belief is not fictitious, capricious or an artifice.

- 1 (3) For the purposes of section 38 an act or omission is because of the
2 religious susceptibilities of adherents of that religion or creed if the
3 institution holds a belief that the act or omission is because of the
4 religious susceptibilities of adherents of that religion and that belief
5 is not fictitious, capricious or an artifice.
- 6 (4) A body or institution holds a doctrine, tenet or belief if it has
7 adopted that doctrine, tenet or belief. Without limiting the
8 foregoing, a body or institution may adopt a doctrine, tenet or
9 belief by:
- 10 (a) including the doctrine, tenet or belief in its governing
11 documents, organising principles, statement of beliefs or
12 statement of values; or
- 13 (b) adopting principles, beliefs or values of another body or
14 institution which include the doctrine, tenet or belief; or
- 15 (c) adopting principles, beliefs or values from a document or
16 source which include the doctrine, tenet or belief; or
- 17 (d) acting consistently with that doctrine, tenet or belief.

18 **38B Sections 37, 38 and 38A are intended to “cover the field”**

- 19 (1) Despite any law, but subject to subsection (3), it is the intention of
20 Parliament that, in order to recognise the protections, rights,
21 privileges and entitlements of a body or institution to which
22 sections 37, 38 or 38A apply, and to ensure that such protections,
23 rights, privileges and entitlements are recognised equally and
24 without discrimination in all States and Territories, sections 37, 38
25 and 38A operate:
- 26 (a) to cover the field in relation to those protections, rights,
27 privileges and entitlements; and
- 28 (b) to provide a complete, exhaustive and exclusive statement
29 of the law relating to those protections, rights, privileges and
30 entitlements; and
- 31 (c) to exclude and limit the operation of the laws of the States
32 and Territories in relation to those protections, rights, privileges
33 and entitlements.
-

- 1 (2) For the avoidance of doubt, and without limiting subsection (1),
2 but subject to subsection (3), despite any law, if a protection, right,
3 privilege or entitlement granted, or a limitation provided for under
4 section 37, 38 or 38A of this Act, is inconsistent with a protection,
5 right, privilege or entitlement granted, or a limitation provided for,
6 under a law of a State or Territory, this law shall prevail, and the
7 State or Territory law shall, to the extent of the inconsistency, be
8 invalid.
9
- 10 (3) The protections, rights, privileges and entitlements of a body or
11 institution to which sections 37, 38 or 38A apply are in addition to
12 the protections, rights, privileges and entitlements provided under
13 any law of the Commonwealth or a State or Territory. Nothing in
14 subsections (1) or (2) shall exclude or limit the operation of the
15 laws of the Commonwealth or a State or a Territory that are more
16 protective of those protections, rights, privileges and entitlements.

17 **77 Subsection 40(2A)**

18 Repeal the subsection, substitute:

- 19 (2A) A minister of religion (as defined in subsection 5(1) of the
20 *Marriage Act 1961*) may refuse to solemnise a marriage despite
21 anything in Division 1 or 2, as applying by reference to section 5A,
22 5B, 5C or 6, if any of the circumstances mentioned in
23 paragraph 47(3)(a), (b) or (c) of the *Marriage Act 1961* apply.
- 24 (2AA) A traditional marriage celebrant (as defined in subsection 5(1) of
25 the *Marriage Act 1961*) may refuse to solemnise a marriage despite
26 anything in Division 1 or 2, as applying by reference to section 5A,
27 5B, 5C or 6, if:
28 (a) the identification of the person as a traditional marriage
29 celebrant on the register of marriage celebrants has not been
30 removed at the time the marriage is solemnised; and
31 (b) the circumstances mentioned in subsection 47A(2) of the
32 *Marriage Act 1961* apply.
- 33 (2AB) A chaplain in the Defence Force may refuse to solemnise a
34 marriage despite anything in Division 1 or 2, as applying by
35 reference to section 5A, 5B, 5C or 6, if any of the circumstances

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

3 (2AC) An authorised officer in the Defence Force may refuse to
4 solemnise a marriage despite anything in Division 1 or 2, as
5 applying by reference to section 5A, 5B, 5C or 6, if the
6 circumstances mentioned in subsection 81(3) of the *Marriage Act*
7 *1961* apply.

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

12 **78 After section 40**

13 Insert:

14 **40A Acts done under statutory authority on the basis of the holding** 15 **of a relevant marriage belief**

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

21 (2) In this section *entity* has the same meaning as in the *Marriage Act*
22 *1961*.

23

1 **Part 4—Amendments if Schedule 9 to the Civil Law**
2 **and Justice Legislation Amendment Act**
3 **2017 not yet commenced**

4 *Marriage Act 1961*

5 **79 Paragraph 115(2)(b)**

6 Repeal the paragraph, substitute:

7 (b) in respect of each other person:

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

14 **80 The Schedule (table item 1 of Part III)**

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

Schedule 1 Amendments

Part 5 Amendments once Schedule 9 to the Civil Law and Justice Legislation

Amendment Act 2017 commences

1 **Part 5—Amendments once Schedule 9 to the Civil**
2 **Law and Justice Legislation Amendment Act**
3 **2017 commences**

4 *Marriage Act 1961*

5 **81 After paragraph 115(1)(ab)**

6 Insert:

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

9 **82 Subsection 115(2) (after table item 3)**

10 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.
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11 **83 Subsection 115(3)**

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

1 **Part 6—Amendment of the Charities Act 2013**
2

3 *Charities Act 2013*

4 **84 After subsection 12(3)**

5 Insert:

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

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

17 Note 2: For example, a body that has a purpose of advancing religion may
18 be registered under subparagraph (1)(d) regardless of whether it is a body
19 established to advance religion under section 37 of the *Sex Discrimination*
20 *Act 1984*. It may be both a body that has a purpose of advancing religion
21 under subparagraph (1)(d) and a body established for religious purposes
22 under section 37 of the *Sex Discrimination Act 1984*, but for the purposes
23 of subparagraph (1)(d) regard is not had to its status under section 37 of
24 the *Sex Discrimination Act 1984*.

25

1 **Part 7—Amendment of the Income Tax Assessment**
2 **Act 1997**
3

4 *Income Tax Assessment Act 1997*

5 **85 After subsection 30.320**

6 Insert:

7 **30.325 Bodies established for religious purposes**

8 A fund, authority or institution does not fail to satisfy the
9 requirements for endorsement under Division 30 of this Act for the
10 reason that the fund, authority or institution is, or has been, a body
11 established for religious purposes within the meaning of section 37
12 of the *Sex Discrimination Act 1984*.
13

1 **Part 8—Amendment of the Fringe Benefits Tax**
2 **Assessment Act 1986**
3

4 *Fringe Benefits Tax Assessment Act 1997*

5 **86 After subsection 123C(2)**

6 Insert:

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

11

12 **87 After subsection 123D(2)**

13 Insert:

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

18

1 **Part 9—Application and transitional provisions**

2 **88 Definitions**

3 In this Part:

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

5 **89 Application of amendments**

- 6 (1) Except as provided by subitem (2), the amendments made by this
7 Schedule only apply in relation to a marriage (within the meaning of the
8 amended Act) that takes place at or after the commencement of this
9 item.
- 10 (2) Part VA of the amended Act (recognition of foreign marriages) applies
11 at and after that commencement in relation to a marriage (within the
12 meaning of the amended Act), even if the marriage took place before
13 that commencement.
- 14 (3) Part VAA of the amended Act applies according to its terms from its
15 commencement.
- 16 (4) For the purposes of determining whether parties to a marriage are
17 within a prohibited relationship as mentioned in paragraph 88D(2)(c) of
18 the amended Act (as it applies because of subitem (2)),
19 paragraph 23B(2)(b) of the amended Act applies.

20 **90 Recognition of certain marriages by foreign diplomatic or**
21 **consular officers that occurred in Australia before**
22 **commencement**

- 23 (1) A marriage is recognised as valid in Australia if:
- 24 (a) the marriage was solemnised in Australia, before the
25 commencement of this item, by or in the presence of a
26 diplomatic or consular officer of an overseas country
27 (whether or not the country was a proclaimed overseas
28 country at the time the marriage was solemnised); and
- 29 (b) at the time the marriage was solemnised:
- 30 (i) the marriage was not recognised in Australia as valid
31 because the marriage was not the union of a man and a
32 woman; and

- 1 (ii) the marriage was recognised as valid under the law of
2 the overseas country; and
3 (c) had the marriage occurred in the overseas country at the time
4 the marriage was solemnised, the marriage would, after
5 items 57 and 58 of this Schedule commence, be recognised as
6 valid under Part VA of the *Marriage Act 1961*.

7 (2) In this item:

8 *Australia* includes the external Territories.

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

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

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