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The Parliament of the
Commonwealth of Australia

THE SENATE

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**Sexuality and Gender Identity
Discrimination Bill 2003**

No. , 2003

(Senator Greig)

**A Bill for an Act to prohibit discrimination on the
ground of sexuality, transgender identity or
intersex status, and for related purposes**

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A Bill for an Act to prohibit discrimination on the ground of sexuality, transgender identity or intersex status, and for related purposes

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Sexuality and Gender Identity Discrimination Act 2003*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

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1 **3 Object**

2 The object of this Act is to eliminate, as far as possible,
3 discrimination against people on the grounds of sexuality,
4 transgender identity, or intersex status.

5 **4 Application of Act**

6 (1) This Act applies throughout Australia and the external territories to
7 the extent that this Act:

8 (a) gives effect to:

9 (i) the International Covenant on Civil and Political Rights;
10 or

11 (ii) the International Covenant on Economic, Social and
12 Cultural Rights; or

13 (iii) the Convention Concerning Discrimination in Respect
14 of Employment and Occupation, 1958; or

15 (iv) a prescribed treaty or international agreement; or

16 (b) relates to matters external to Australia; or

17 (c) relates to matters of international concern.

18 (2) This Act applies to things done by or for the Commonwealth or a
19 public authority of the Commonwealth.

20 (3) This Act applies to:

21 (a) Commonwealth employees in connection with their
22 employment as Commonwealth employees; and

23 (b) people seeking to become Commonwealth employees.

24 (4) This Act applies to things done by an authority or body in the
25 exercise of a power under a Commonwealth law to confer, renew,
26 extend, revoke or withdraw an authorisation or qualification.

27 (5) This Act applies to things done by or for:

28 (a) the Commonwealth or the government of a Territory; or

29 (b) a body or authority established for a public purpose by a law
30 of the Commonwealth or a law of a Territory;

31 in the exercise of a power conferred by a law of the
32 Commonwealth or a law of a Territory.

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- 1 (6) This Act applies to things done by a person in connection with
2 exercising a power conferred by a law of the Commonwealth or a
3 law of a Territory.
- 4 (7) This Act applies to things done by:
5 (a) a person who is a Commonwealth employee in connection
6 with the person's duties as a Commonwealth employee; or
7 (b) a person who is a member of the staff of an educational
8 institution established by a law of the Commonwealth or a
9 law of a Territory in connection with the person's duties as a
10 member of the staff of the institution.
- 11 (8) This Act applies to:
12 (a) things done by a foreign corporation; or
13 (b) things done by a trading or financial corporation formed
14 within the limits of the Commonwealth for the purpose of its
15 trading or financial activities.
- 16 (9) This Act applies to things done in the course of the carrying on of
17 the business of:
18 (a) banking, other than State banking not extending beyond the
19 limits of the State concerned; or
20 (b) insurance, other than State insurance not extending beyond
21 the limits of the State concerned.
- 22 (10) This Act applies to things done in the course of trade or commerce:
23 (a) between Australia and a place outside Australia; or
24 (b) among the States; or
25 (c) between a State and a Territory; or
26 (d) between 2 Territories.
- 27 (11) This Act applies to things done within Australia involving people
28 or things, or matters arising, outside Australia.

29 5 Definitions

30 In this Act:

31 **accommodation** includes residential and business accommodation.

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administrative office means:

- (a) an office established by, or an appointment made under, a law of the Commonwealth; or
- (b) an office established by, or an appointment made under, a law of a Territory; or
- (c) an appointment made by the Governor-General or a Minister otherwise than under a law of the Commonwealth or of a Territory; or
- (d) an appointment as a director of an incorporated company that is a public authority of the Commonwealth;

but does not include:

- (e) an office of member of the Assembly, member of the Executive, or Minister within the meaning of the *Australian Capital Territory (Self-Government) Act 1988*; or
- (f) an office of member of the Legislative Assembly, member of the Council or Minister of the Territory, within the meaning of the *Northern Territory (Self-Government) Act 1978*; or
- (g) an office of member of the Legislative Assembly within the meaning of the *Norfolk Island Act 1979*; or
- (h) an office or appointment in the Australian Public Service or the Australian Parliamentary Service.

agency has the same meaning as in the *Public Service Act 1999*.

androgyne means someone who identifies as not exclusively male or female who is not intersexed.

associate of a person means:

- (a) another person with whom the person associates, whether socially, in business or otherwise; or
- (b) another person who is a partner of, or who is wholly or mainly dependent on a partner, or on a member of the household of, the person.

class member, in relation to a representative complaint, means any of the people on whose behalf the complaint was lodged, but does not include a person who has withdrawn his or her complaint.

1 **club** means an association (whether incorporated or
2 unincorporated) of at least 30 people associated together for social,
3 literary, cultural, political, sporting, athletic or other lawful
4 purposes that:

- 5 (a) provides and maintains its facilities, in whole or in part, from
6 the funds of the association; and
7 (b) sells or supplies liquor for consumption on its premises.

8 **Commission** means the Human Rights and Equal Opportunity
9 Commission established by the *Human Rights and Equal*
10 *Opportunity Commission Act 1986*.

11 **commission agent** means a person who does work for another
12 person as the agent of the other person and who is remunerated,
13 wholly or partly, by commission.

14 **Commissioner** means the Sex Discrimination Commissioner
15 appointed under section 96 of the *Sex Discrimination Act 1984*.

16 **Commonwealth agency** means an agency within the meaning of
17 the *Privacy Act 1988*.

18 **Commonwealth employee** means a person who:

- 19 (a) holds an office or appointment in the Australian Public
20 Service or the Australian Parliamentary Service or is
21 employed in a temporary capacity in an agency; or
22 (b) holds an administrative office; or
23 (c) is employed by a public authority of the Commonwealth; or
24 (d) holds an office or appointment in the Commonwealth
25 Teaching Service or is employed as a temporary employee
26 under the *Commonwealth Teaching Service Act 1972*; or
27 (e) is employed under the *Australian Security Intelligence*
28 *Organisation Act 1979*, the *Commonwealth Electoral Act*
29 *1918*, the *Supply and Development Act 1939* or the *Naval*
30 *Defence Act 1910*; or
31 (f) is a member of the Defence Force.

32 **Commonwealth law** means:

- 33 (a) an Act, or an instrument made under an Act; or
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- 1 (b) an Act or Ordinance of a Territory, or an instrument made
2 under an Act or Ordinance of a Territory; or
3 (c) an order or award made under a law referred to in
4 paragraph (a) or (b).

5 **Commonwealth program** means a program conducted by or for the
6 Commonwealth government.

7 **contract worker** means a person who does work for another person
8 under a contract between them.

9 **de facto spouse** of a person means another person who is not
10 married to the person but lives with the person on a bona fide
11 domestic basis.

12 **educational authority** means a body or person administering an
13 educational institution.

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

16 **employment** includes:

- 17 (a) part time and temporary employment; and
18 (b) work under a contract for services; and
19 (c) work as a Commonwealth employee; and
20 (d) work as an employee of a State or an instrumentality of a
21 State.

22 **employment agency** means a person who or body that, whether for
23 payment or not, assists people to find employment or other work or
24 assists employers to find employees or workers, and includes
25 Centrelink.

26 **homosexuality** means the identity of being gay, lesbian or
27 homosexual.

28 **intersex** means a condition where a person is born with
29 reproductive organs and/or sex chromosomes which are not
30 exclusively male or female.

31 **near relative** of a person means:

- 1 (a) a parent, child, grandparent, grandchild, brother or sister of
2 the person; or
3 (b) the spouse or de facto spouse of the person or of a person
4 referred to in paragraph (a).

5 ***President*** means the President of the Commission.

6 ***principal*** means:

- 7 (a) for a commission agent, a person for whom the commission
8 agent works as a commission agent; and
9 (b) for a contract worker, a person for whom the contract worker
10 does work under a contract between them.

11 ***principal executive***, in relation to a Commonwealth agency, has
12 the same meaning as in Part V of the *Privacy Act 1988*.

13 ***public authority of the Commonwealth*** means:

- 14 (a) a body incorporated, whether before or after the
15 commencement of this Act, for a public purpose by a law of
16 the Commonwealth or a law of a Territory, being a body that
17 employs staff on its own behalf; or
18 (b) an unincorporated authority or body established, whether
19 before or after the commencement of this Act, for a public
20 purpose by or under a law of the Commonwealth or a law of
21 a Territory, being an authority or body that employs staff on
22 its own behalf; or
23 (c) an incorporated company over which the Commonwealth, or
24 a body or authority referred to in paragraph (a) or (b), is in a
25 position to exercise control.

26 ***reassignment procedure*** means:

- 27 (a) a medical or surgical procedure, or a combination of medical
28 and surgical procedures, to alter the genitals and other sexual
29 characteristics of a person who was identified by birth
30 certificate as male or female in a way that the person will be
31 identified as a person of the opposite sex; or
32 (b) in relation to a person under 18, such a procedure or
33 combination of procedures to correct or eliminate ambiguities
34 in the person's sexual characteristics.

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1 **registered organisation** means an organisation within the meaning
2 of the *Workplace Relations Act 1996*.

3 **relative** of a person means another person to whom the person is
4 related by blood, marriage, affinity or adoption.

5 **representative complaint** means a complaint where the people on
6 whose behalf the complaint was made include people other than
7 the complainant, but does not include a complaint that the
8 Commission has decided should no longer be continued as a
9 representative complaint.

10 **services** includes:

- 11 (a) services relating to banking, insurance and the provision of
12 grants, loans, credit or finance;
13 (b) services relating to entertainment, recreation or refreshment;
14 (c) services relating to transport or travel;
15 (d) services of the kind provided by the members of a profession
16 or trade;
17 (e) services of the kind provided by a government, a government
18 agency or a local government body.

19 **sexuality** means heterosexuality, homosexuality, bisexuality and
20 asexuality that presently exists, existed in the past or may exist in
21 the future.

22 **State**, except in subsections 4(11) and (12), includes the Australian
23 Capital Territory and the Northern Territory.

24 **superannuation benefit**, in relation to a member of a
25 superannuation fund, means a benefit that is payable, under the
26 terms and conditions relating to the fund:

- 27 (a) in the event of the member's death, to the estate of the
28 deceased or to someone other than the deceased; or
29 (b) in the event of the member's physical or mental incapacity, to
30 the member or to another person.

31 **superannuation fund** means a superannuation or provident fund or
32 scheme.

1 ***superannuation fund conditions***, in relation to a superannuation
2 fund, means the terms and conditions that relate to membership of,
3 or benefits payable from, the superannuation fund.

4 ***trade union*** means:

- 5 (a) an organisation of employees that is a registered
6 organisation; or
7 (b) a trade union within the meaning of a State Act or a law of a
8 Territory; or
9 (c) another similar body.

10 ***transgender person*** means a person originally of one sex who:

- 11 (a) identifies and lives or seeks to live as a member of the other
12 sex; and
13 (b) assumes the characteristics of the other sex on a full time
14 basis or as much as is reasonable in the circumstances; and
15 (c) includes a transsexual; and
16 (d) for the purposes of this Act, includes those of androgyne
17 identity; and

18 a reference to transgender status includes a reference to part or
19 future status or perceived status.

20 ***transsexual person*** means a person who:

- 21 (a) has undergone, or is in the process of undergoing, a surgical
22 reassignment procedure; and
23 (b) who identifies and lives or seeks to live as a member of the
24 sex to which he or she has been reassigned or seeks to be
25 reassigned.

26 **6 What is discrimination on the ground of sexuality, transgender** 27 **identity or intersex status**

- 28 (1) A person (the ***discriminator***) discriminates against another person
29 (the ***aggrieved person***) on the ground of sexuality if, because of the
30 actual or perceived sexuality of the aggrieved person or of a
31 relative or associate of the aggrieved person, the discriminator
32 treats the aggrieved person less favourably than, in the same
33 circumstances or in circumstances that are not materially different,

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- 1 the discriminator treats or would treat a person of a different
2 sexuality or who had a relative or associate of a different sexuality.
- 3 (2) A person (the *discriminator*) also discriminates against another
4 person (the *aggrieved person*) on the ground of sexuality if the
5 discriminator requires the aggrieved person to comply with a
6 requirement or condition:
- 7 (a) with which a substantial proportion of people of the same
8 sexuality as the aggrieved person cannot comply; and
9 (b) that, on the balance of probabilities, is considered to cause
10 disadvantage to the aggrieved person or group.
- 11 (3) A person (the *discriminator*) discriminates against another person
12 (the *aggrieved person*) on the ground of transgender identity or
13 intersex status if, because the aggrieved person or a relative or
14 associate of the aggrieved person is transgender or is thought to be
15 transgender or intersex, the discriminator treats the aggrieved
16 person less favourably than, in the same circumstances or in
17 circumstances that are not materially different, the discriminator
18 treats or would treat a person who is not transgender or intersex or
19 who had a relative or associate who is not transgender or intersex.
- 20 (4) A person (the *discriminator*) also discriminates against another
21 person (the *aggrieved person*) on the ground of transgender
22 identity or intersex status if the discriminator requires the
23 aggrieved person to comply with a requirement or condition that,
24 on the balance of probabilities, is considered to have a
25 disadvantageous effect on the complainant group.
- 26 (5) For the purposes of this section, a *complainant group* is restricted
27 to transgender people of a particular gender, regardless of
28 reassignment procedures.
- 29 (6) Discrimination includes harassment, which is an act reasonably
30 likely, in all the circumstances, to offend, insult, humiliate or
31 intimidate a person or an associate or relative of the person.
- 32 (7) Harassment of a person on the ground of transgender identity or
33 intersex status includes harassment of a person by refusing to

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- 1 acknowledge that he or she wishes to be known as a member of a
2 specific gender and has made this preference clear.
- 3 (8) Harassment of a person on the grounds of bisexuality includes a
4 refusal to accept bisexuality as a distinct sexuality.
- 5 (9) Discrimination includes a failure to offer or continue employment,
6 or to provide access to goods and services, on the basis that a
7 person's dress or appearance suggests he or she is of a particular
8 sexuality or is a transgender or intersex person, or is thought to be
9 of a particular sexuality or to be a transgender or intersex person,
10 or has a relative or associate who appears to be, or is thought to be,
11 of a particular sexuality or a transgender or intersex person.
- 12 (10) In determining whether or not a person engages in discrimination,
13 the person's motive is irrelevant.

14 7 Operation of State and Territory laws

- 15 (1) In this section:
- 16 *law of a State or Territory* means a law of a State or Territory that
17 deals with discrimination on the ground of sexuality, transgender
18 identity or intersex status.
- 19 (2) This Act is not intended to exclude or limit the operation of a law
20 of a State or Territory that is capable of operating concurrently
21 with this Act.
- 22 (3) If:
- 23 (a) a law of a State or Territory deals with a matter dealt with by
24 this Act; and
- 25 (b) a person has made a complaint, instituted a proceeding or
26 taken other action under that law about an act or omission;
27 and
- 28 (c) the person would, apart from this subsection, be entitled to
29 make a complaint under this Act about the act or omission;
30 the person is not entitled to make a complaint or institute a
31 proceeding under this Act about that act or omission.

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- 1 (4) If:
2 (a) a law of a State or Territory deals with a matter dealt with by
3 this Act; and
4 (b) an act or omission by a person that constitutes an offence
5 against that law also constitutes an offence against this Act;
6 the person may be prosecuted and convicted either under that law
7 or under this Act, but this subsection does not render a person
8 liable to be punished more than once for the same act or omission.

9 **8 Act does not prevent action to stop unlawful behaviour**

10 This Act does not prevent a person from taking action to stop
11 another person from engaging in unlawful behaviour.

12 **9 Extent to which Act binds the Crown**

- 13 (1) This Act binds the Crown in right of the Commonwealth, of each
14 State and Territory.
15 (2) This Act does not render the Crown in right of the Commonwealth,
16 of a State or Territory liable to be prosecuted for an offence.
17

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2 **Part 2—Prohibition of discrimination**

3 **Division 1—Discrimination in work**

4 **10 Discrimination in employment**

5 (1) It is unlawful to discriminate on the ground of sexuality,
6 transgender identity or intersex status against an employee or an
7 applicant for employment, including but not limited to persons
8 seeking employment or working as employees, commission agents,
9 contract workers and volunteers, in:

- 10 (a) the offering of employment;
- 11 (b) the terms and conditions afforded an employee;
- 12 (c) the payment of a superannuation benefit;
- 13 (d) the issue of an authorisation or qualification necessary for or
14 to facilitate the practice of an occupation;
- 15 (e) the provision of services by an employment agency;
- 16 (f) the consideration of application for membership or the access
17 to benefits of a registered organisation under the *Workplace*
18 *Relations Act 1988*;
- 19 (g) the invitation to become a partner or the terms of a
20 partnership.

- 21 (2) Paragraph (1)(a) does not make it unlawful for a person to
22 discriminate in the offering of employment to another person on
23 the ground of sexuality, transgender identity or intersex status
24 when that employment is:
- 25 (a) to perform domestic duties at the premises at which the
26 first-mentioned person resides; or
- 27 (b) as a member of the staff of an educational institution that is
28 conducted in accordance with the tenets, beliefs or teachings
29 of a particular religion or creed.

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11 Rights etc. of same sex couples under the laws of the Commonwealth

(1) This section applies to a law of the Commonwealth that:

(a) confers a right or entitlement on a person, or imposes an obligation on a person; or

(b) applies to a person in a particular way;

because of the person living together with another person of the opposite sex on a genuine domestic basis although not married to the other person.

(2) After commencement, this Act:

(a) confers the same right or entitlement, or imposes the same obligation, on a person who lives together with another person of the same sex, or when either or both are transgender, on a genuine domestic basis; or

(b) applies to such people in the same way.

(3) The regulations may provide that this section does not apply to a specified law of the Commonwealth.

(4) The operation of this Act is to be reported on, including with statistical and analytical information on all cases coming before the Commission under this Act, in a separate section of the Annual Report of the Human Rights and Equal Opportunity Commission.

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3 **Division 2—Discrimination in other areas**

4 **12 Discrimination in non-employment areas**

- 5 (1) It is unlawful for a person, authority, agency or association to
6 discriminate on the ground of sexuality, transgender identity or
7 intersex status, against a person, including:
8 (a) in education by any educational authority;
9 (b) in the provision of goods and services or facilities, whether
10 for payment or not, and including but not restricted to the
11 provision of accommodation, or the disposal of an estate or
12 interest in land;
13 (c) in the membership of a club or incorporated association;
14 (d) in relation to a sporting activity;
15 (e) in the administration or conduct of a Commonwealth
16 program, or in the conduct of an organisation receiving
17 Commonwealth funding.
- 18 (2) Paragraph (1)(b) does not make it unlawful for a person to
19 discriminate against a person on the ground of sexuality,
20 transgender identity or intersex status:
21 (a) in providing accommodation, if the person who provides or
22 proposes to provide the accommodation or a near relative of
23 that person resides, and intends to continue to reside, on
24 those premises, and not more than four people will be
25 provided with accommodation at the premises; or
26 (b) in the disposal of an estate or interest in land by will or by
27 way of gift.

28 **13 Application forms etc.**

29 It is unlawful for a person to request or require that a person of
30 transsexual identity or intersex status, or who has a relative or
31 associate of that identity or status, to provide information, by way
32 of completing a form or otherwise, that a person who is not

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1 transgender or of a different sexuality would not be requested or
2 required to provide.

3 **14 Official documents etc.**

4 (1) This section applies to a person who has been issued with a
5 certificate under a law of a State that specifies that the person is of
6 the sex stated in the certificate.

7 (2) It is unlawful for a person who is responsible for issuing an official
8 document, such as a passport or a driver's licence, to refuse to
9 recognise in the document the sex of a person to whom this section
10 applies as specified in the certificate.

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**Division 3—Inciting hatred etc. on ground of sexuality,
transgender identity or intersex status**

**15 Inciting hatred etc. on ground of sexuality, transgender identity
or intersex status**

(1) In this section:

public act includes:

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing tapes or other recorded material; and
- (b) other conduct observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia.

(2) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the sexuality, transgender identity or intersex status of the person or members of the group.

(3) This section does not make unlawful:

- (a) a fair report of a public act referred to in subsection (2); or
- (b) a public act, done reasonably and in good faith, for academic, artistic, religious instruction, scientific or research purposes or for other purposes in the public interest, including discussion or debate about, and expositions of, an act or matter.

(4) A review of this section is to be completed, either by the Human Rights and Equal Opportunity Commission or by an appropriately qualified organisation or review panel, within 2 years from the commencement of the Act, with a view to determining if the provisions regarding incitement to hatred should be retained, modified or repealed.

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3 **Division 4—Special measures**

4 **16 Special measures**

5 This Part does not make it unlawful to do an act that is reasonably
6 intended to:

- 7 (a) ensure that persons of a particular sexuality, transgender
8 identity or intersex status have equal opportunities with other
9 persons in circumstances in relation to which provision is
10 made by this Act; or
- 11 (b) afford persons of a particular sexuality, transgender identity
12 or intersex status, equal opportunities in relation to:
- 13 (i) employment, education, accommodation, clubs or sport;
14 or
- 15 (ii) the provision of goods, services or facilities; or
- 16 (iii) the administration of Commonwealth laws and
17 programs; or
- 18 (c) afford persons of a particular sexuality, transgender identity
19 or intersex status, grants, benefits or programs, whether direct
20 or indirect, to meet their special needs in relation to:
- 21 (i) employment, education, accommodation, clubs or sport;
22 or
- 23 (ii) the provision of goods, services, facilities or land; or
- 24 (iii) the making available of facilities; or
- 25 (iv) the administration of Commonwealth laws and
26 programs.

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3 **Division 5—Exemptions**

4 **17 Religious bodies**

5 Subject to section 18, Divisions 1 and 2 of this Part do not affect an
6 act or practice of a body established for religious purposes that
7 conforms to the doctrines, tenets or beliefs of that religion or is
8 necessary to avoid injury to the religious susceptibilities of
9 adherents of that religion, including:

- 10 (a) the ordination, appointment or employment of priests,
11 ministers of religion or members of a religious order; or
12 (b) the training or education of persons seeking ordination,
13 appointment or employment as priests, ministers of religion
14 or members of a religious order; or
15 (c) the selection, appointment or employment of persons to
16 perform duties or functions for the purpose of or in
17 connection with, or otherwise to participate in, a religious
18 observance or practice.

19 **18 Acts done under statutory authority**

- 20 (1) Divisions 1 and 2 of this Part do not affect anything done by a
21 person in direct compliance with:
22 (a) a determination or decision of the Commission; or
23 (b) an order of a court.
24 (2) Divisions 1 and 2 of this Part do not affect anything done by a
25 person in direct compliance with a law of the Commonwealth.

26 **19 Superannuation and insurance**

- 27 (1) This Part does not make it unlawful for a person to discriminate
28 against another person on the ground of sexuality, transgender
29 identity or intersex status by refusing to offer the other person:
30 (a) an annuity; or
31 (b) a life insurance policy; or

Part 2 Prohibition of discrimination

Division 5 Exemptions

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- 1 (c) a policy of insurance against accident or any other policy of
2 insurance; or
3 (d) membership of a superannuation or provident fund; or
4 (e) membership of a superannuation or provident scheme;
5 if the discrimination:
6 (f) is based on relevant actuarial and statistical data; and
7 (g) is reasonable, having regard to other available relevant
8 material.
- 9 (2) If a person refuses to offer another person a service listed in
10 paragraph (1)(a), (b), (c), (d) or (e), the other person may appeal to
11 the Human Rights and Equal Opportunity Commission for an
12 assessment of the basis of the decision, and must be provided with
13 the information on which the decision was based.
- 14 (3) This Part does not make it unlawful for a person to discriminate
15 against another person, on the ground of sexuality, transgender
16 identity or intersex status, in respect of the terms or conditions on
17 which:
18 (a) an annuity; or
19 (b) a life insurance policy; or
20 (c) a policy of insurance against accident or any other policy of
21 insurance; or
22 (d) membership of a superannuation or provident fund; or
23 (e) membership of a superannuation or provident scheme;
24 is offered to, or may be obtained by, the other person if the
25 discrimination:
26 (f) is based on actuarial or statistical data on which it is
27 reasonable for the person to rely; and
28 (g) is reasonable having regard to the data and other relevant
29 factors.

20 Commission may grant exemptions

- 30
31 (1) The Commission may, on application by:
32 (a) a person, on that person's own behalf or on behalf of that
33 person and another person or other persons; or

- 1 (b) 2 or more persons, on their own behalf or on behalf of
2 themselves and another person or other persons; or
3 (c) a person or persons included in a class of persons on behalf
4 of the persons included in that class of persons;
5 by instrument in writing, grant to the person, persons or class of
6 persons an exemption from the operation of a provision of
7 Division 1 or 2 of this Part, as specified in the instrument.
- 8 (2) The Commission may, on application by a person to, or in respect
9 of, whom an exemption from a provision of Division 1 or 2 of this
10 Part has been granted under subsection (1), being an application
11 made before the end of the period for which that exemption was
12 granted, grant a further exemption from the operation of that
13 provision.
- 14 (3) An exemption under subsection (1), or a further exemption under
15 subsection (2):
16 (a) may be granted subject to terms and conditions specified in
17 the instrument; and
18 (b) may be expressed to apply only in circumstances, or in
19 relation to activities, specified in the instrument; and
20 (c) must be granted for a specified period that does not exceed 5
21 years; and
22 (d) must not be granted until the Commission has advertised the
23 fact that it proposes to grant the exemption or further
24 exemption and has given interested persons a reasonable
25 opportunity of not less than 14 days after the publication of
26 the advertisement to make written submissions opposing the
27 grant.
- 28 (4) The President of the Commission must arrange for an organisation
29 with appropriate legal qualifications and experience in the field of
30 human rights legislation to review and report on all exemptions,
31 other than those subject to specific review, within three years from
32 the commencement of the Act.
- 33 (5) The President of the Commission must provide a copy of the report
34 of the review prepared under subsection (4) to the Minister.
-

Section 21

- 1 (6) The Minister must cause a copy of the report received in
2 accordance with subsection (5) to be tabled in both Houses of the
3 Parliament within 15 sitting days of receipt.

4 **21 Review by Administrative Appeals Tribunal**

5 Applications may be made to the Administrative Appeals Tribunal
6 for review of decisions made by the Commission under section 20.

7 **22 Notice of exemptions to be published**

- 8 (1) The Commission must, not later than one month after it grants an
9 exemption in relation to a complaint of discrimination in
10 accordance with this Act, cause to be published in the *Gazette* a
11 notice of the granting of the exemption:
12 (a) setting out its findings on material questions of fact; and
13 (b) referring to the evidence on which the findings were based;
14 and
15 (c) giving the reasons for the granting of the exemption; and
16 (d) containing a statement to the effect that, subject to the
17 *Administrative Appeals Tribunal Act 1975*, application may
18 be made to the Administrative Appeals Tribunal for a review
19 of the granting of the exemption to which the notice relates
20 by or for any person or people whose interests are affected by
21 the granting of the exemption.
- 22 (2) A failure to comply with the requirements of subsection (1) in
23 relation to the granting of an exemption does not affect the validity
24 of the exemption.

25 **23 Effect of exemptions**

26 Divisions 1 and 2 of this Part do not make it unlawful for a person
27 who has been granted an exemption from a provision of Division 1
28 or 2 of this Part, or a person in the employment or under the
29 direction or control of a person who has been granted such an
30 exemption, to do an act in accordance with the exemption.

31

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2 **Part 3—Lodgment and investigation of complaints**
3 **of discrimination on the ground of**
4 **sexuality, transgender identity or intersex**
5 **status**
6

7 **24 Jurisdiction to handle complaints of discrimination arising under**
8 **this Act**

9 It is the intention of this Act to confer full jurisdiction on the
10 Human Rights and Equal Opportunity Commission to receive,
11 investigate and in all ways deal to the full extent of its powers with
12 any complaint arising from rights bestowed by this Act.

13 **25 Additional functions of Human Rights and Equal Opportunity**
14 **Commission**

- 15 (1) The following additional functions are conferred on the
16 Commission:
- 17 (a) to inquire into alleged infringements of Part 2 of this Act, and
18 endeavour by conciliation to effect a settlement of the matters
19 to which the alleged infringements relate;
 - 20 (b) to inquire into, and make determinations on, matters referred
21 to it by the Minister or of its own motion;
 - 22 (c) to promote an understanding and acceptance of, and
23 compliance with, this Act;
 - 24 (d) to undertake research and educational programs, and other
25 programs, for the Commonwealth for the purpose of
26 promoting the object of this Act;
 - 27 (e) to examine enactments, and (when requested to do so by the
28 Minister or a House of the Parliament) proposed enactments,
29 for the purpose of establishing whether the enactments or
30 proposed enactments are, or would be, inconsistent with or
31 contrary to the object of this Act, and to report to the Minister
32 or that House the results of any such examination;

Section 26

- 1 (f) on its own initiative or when requested by the Minister, or
2 when requested by a House of the Parliament, to report to the
3 Minister, or that House, as the case may be, as to the laws
4 that should be made by the Parliament, or action that should
5 be taken by the Commonwealth, on matters relating to
6 discrimination on the ground of sexuality, transgender
7 identity or intersex status;
- 8 (g) to prepare, and to publish in such manner as the Commission
9 considers appropriate, guidelines for the avoidance of
10 discrimination on the ground of sexuality, transgender
11 identity or intersex status;
- 12 (h) if the Commission considers it appropriate to do so, with the
13 leave of the court hearing the proceedings and subject to any
14 conditions imposed by the court, to intervene in proceedings
15 that involve issues of discrimination on the ground of
16 sexuality, transgender identity or intersex status;
- 17 (i) to do anything incidental or conducive to the performance of
18 any of the preceding functions.

19 Note: For the provisions about inquiries into complaints of discrimination
20 and conciliation of those complaints: see Part IIB of the *Human Rights
21 and Equal Opportunity Commission Act 1986*.

22 (2) In this section:

23 *enactment* has the same meaning as in the *Human Rights and
24 Equal Opportunity Commission Act 1986*.

25 *proposed enactment* has the same meaning as in the *Human Rights
26 and Equal Opportunity Commission Act 1986*.

27 **26 Additional functions of Sex Discrimination Commissioner**

- 28 (1) The Sex Discrimination Commissioner is to assume responsibility
29 for issues of sexuality and gender identity discrimination.
- 30 (2) Within two years of the commencement of this Act, the President
31 of the Commission is to report on the management of sexuality and
32 gender identity complaints, including the appropriateness of the
33 Sex Discrimination Commissioner continuing to have

1 responsibility for sexuality and gender identity discrimination
2 issues, and if there is a demonstrated need for additional resources.

3 **27 Complaints**

4 (1) A complaint alleging that a person has done an act that is unlawful
5 because of a provision of Part 2 of this Act may be lodged with the
6 Human Rights and Equal Opportunity Commission in accordance
7 with Part IIB of the *Human Rights and Equal Opportunity*
8 *Commission Act 1986*.

9 (2) A complaint made under subsection (1) must be handled by the
10 Commission in accordance with Parts IIB and IIC of the *Human*
11 *Rights and Equal Opportunity Commission Act 1986*.

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Part 4—Offences

3

4

28 Unlawful act not offence unless expressly so provided

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Except as expressly provided by this Part or the *Human Rights and Equal Opportunity Commission Act 1986*, this Act does not make it an offence to do an act that is unlawful because of a provision of Part 2.

6

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29 Advertisements

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- (1) A person must not publish or display, or cause or permit to be published or displayed, an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful because of a provision of Part 2.

11

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13

14

Maximum penalty: 10 penalty units.

15

- (2) In subsection (1):

16

advertisement includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television, radio, internet or e-mail, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and the reference in that subsection to publish or display, in relation to an advertisement, is to be construed accordingly.

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30 Victimization

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- (1) A person must not commit an act of victimisation against another person.

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Maximum penalty: 25 penalty units.

28

- (2) For the purposes of subsection (1), a person commits an act of victimisation against another person if the first-mentioned person

29

Section 31

1 subjects, or threatens to subject, the other person to any detriment
2 on the ground that the other person:

- 3 (a) has made, or proposes to make, a complaint under this Act;
4 or
5 (b) has brought, or proposes to bring, proceedings under this Act
6 against any person; or
7 (c) has provided or proposes to provide information, or has
8 produced or proposes to produce documents, to a person
9 exercising or performing any power or function under this
10 Act; or
11 (d) has appeared, or proposes to appear, as a witness before the
12 Commission in a proceeding under this Act; or
13 (e) has reasonably asserted, or proposes to assert, any rights of
14 the person or the rights of any other person under this Act; or
15 (f) has made an allegation that a person has done an act that is
16 unlawful because of a provision of Part 2 of this Act;

17 or on the ground that the first-mentioned person believes that the
18 other person has done, or proposes to do, an act or thing referred to
19 in any of paragraphs (a) to (f), inclusive.

- 20 (3) It is a defence to a prosecution for an offence under subsection (1)
21 constituted by subjecting, or threatening to subject, a person to a
22 detriment on the ground in paragraph (2)(f) if it is proved that the
23 allegation was false and was not made in good faith.

24 **31 Offence to vilify on the ground of sexuality, transgender identity**
25 **or intersex status**

- 26 (1) In this section:

27 *public act* has the same meaning as in section 15.

- 28 (2) A person must not, by a public act, incite hatred towards, serious
29 contempt for, or severe ridicule of, a person or group of persons on
30 the ground of the sexuality, transgender identity or intersex status
31 of the person or members of the group by means that include:
32 (a) threatening physical harm to, or to property of, the person or
33 members of the group; or

Section 32

1 (b) inciting others to threaten physical harm to, or to property of,
2 the person or members of the group.

3 Maximum penalty: 50 penalty units or imprisonment for 6
4 months, or both.

5 **32 Obstruction etc.**

6 A person must not insult, hinder, obstruct, molest or interfere with
7 a person exercising a power or performing a function under this
8 Act.

9 Maximum penalty: 10 penalty units.

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2**Part 5—Miscellaneous**3
4**33 This Act does not make unlawful acts lawful**

6 Nothing in this Act makes it lawful to do a thing that would be
7 unlawful apart from this Act.

34 Delegation

9 (1) The Commission may by writing under its seal, delegate to a
10 member of the Commission, the Commissioner, a member of the
11 staff of the Commission or another person or body of people all or
12 any of the powers conferred on the Commission under this Act,
13 other than powers in connection with the performance of the
14 functions that, under section 26, are to be performed by the
15 Commissioner for the Commission.

16 (2) The Commissioner may, by writing signed by the Commissioner,
17 delegate to a member of the staff of the Commission approved by
18 the Commission, all or any of the powers exercisable by the
19 Commissioner under this Act.

35 Liability of people involved in unlawful acts

21 A person who causes, instructs, induces, aids or permits another
22 person to do an act that is unlawful under Division 1 or 2 of Part 2
23 is, for the purposes of this Act, taken also to have done the act.

36 Vicarious liability etc.

25 (1) Subject to subsection (2), if an employee or agent of a person does,
26 in connection with the employment of the employee or with the
27 duties of the agent as an agent, an act that would, if it were done by
28 the person, be unlawful under Division 1 or 2 of Part 2 (whether or
29 not the act done by the employee or agent is unlawful under
30 Division 1 or 2 of Part 2), this Act applies to that person as if that
31 person had also done the act.

Section 37

1 (2) Subsection (1) does not apply in relation to an act of a kind
2 referred to in subsection (1) done by an employee or agent of a
3 person if it is established that the person took all reasonable steps
4 to prevent the employee or agent from doing acts of the kind
5 referred to in that subsection.

6 **37 Acts done for bodies corporate**

7 If, for the purposes of this Act, it is necessary to establish that a
8 body corporate has done an act on a particular ground, it is
9 sufficient to establish that a person who acted for the body
10 corporate in the matter so acted on that ground.

11 **38 Commonwealth taken to be employer**

12 For the purposes of this Act, all Commonwealth employees are
13 taken to be employed by the Commonwealth.

14 **39 Awards inconsistent with this Act not to be made**

15 This Act is a prescribed Act for the purposes of section 121 of the
16 *Workplace Relations Act 1996*.

17 **40 Unlawful act not basis of civil action unless expressly so provided**

18 Except as expressly provided by this Act, nothing in this Act
19 confers on a person any right of action in respect of the doing of an
20 act that is unlawful because of a provision of Part 2.

21 **41 Protection from civil actions**

22 (1) The Commission, a member of the Commission, the Commissioner
23 or a person acting under the direction or authority of the
24 Commission or of the Commissioner or under a delegation under
25 this Part is not liable to an action or other proceeding for damages
26 for or in relation to an act done or omitted to be done in good faith
27 in the performance or purported performance of a function, or in
28 the exercise or purported exercise of any power or authority,
29 conferred on the Commission or the Commissioner.

- 1 (2) If:
2 (a) a complaint has been made to the Commission; or
3 (b) a submission has been made, a document or information has
4 been provided, or evidence has been given, to the
5 Commission or the Commissioner;
6 a person is not liable to an action, suit or other proceeding in
7 respect of loss, damage or injury of any kind suffered by another
8 person by reason only that the complaint or submission was made,
9 the document or information was provided or the evidence was
10 given.

11 **42 Non-disclosure of private information**

- 12 (1) This section applies to a person who is, or has at any time been:
13 (a) the Commissioner; or
14 (b) a member of the Commission or a member of the staff
15 assisting the Commission; or
16 (c) authorised to perform or exercise a function or power of the
17 Commission or the Commissioner or a function or power for
18 the Commission or the Commissioner, being a function or
19 power conferred on the Commission or on the Commissioner
20 under this Act.
- 21 (2) A person to whom this section applies must not, either directly or
22 indirectly, except in the performance of a duty under or in
23 connection with this Act or in the performance or exercise of a
24 function or power referred to in paragraph (1)(c):
25 (a) make a record of, or divulge or communicate to any person,
26 any information relating to the affairs of another person
27 acquired by the person because of that person's office or
28 employment under or for the purposes of this Act or because
29 of the person being or having been so authorised; or
30 (b) make use of any such information as is mentioned in
31 paragraph (a); or
32 (c) produce to any person a document relating to the affairs of
33 another person provided for the purposes of this Act.

Section 42

1 Maximum penalty: 50 penalty units, or imprisonment for 1 year,
2 or both.

3 (3) A person to whom this section applies must not be required:

4 (a) to divulge or communicate to a court information relating to
5 the affairs of another person acquired by the person because
6 of the person's office or employment under or for the
7 purposes of this Act or because of the person being or having
8 been so authorised; or

9 (b) to produce in a court a document relating to the affairs of
10 another person of which the person has custody, or to which
11 that person has access, because of the person's office or
12 employment under or for the purposes of this Act or because
13 of the person being or having been so authorised;

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

15 (4) Nothing in this section prohibits a person from:

16 (a) making a record of information that is, or is included in a
17 class of information that is, required or permitted by an Act
18 to be recorded, if the record is made under that Act; or

19 (b) divulging or communicating information, or producing a
20 document, to a person in accordance with an arrangement in
21 force under section 16 of the *Human Rights and Equal
22 Opportunity Commission Act 1986*; or

23 (c) divulging or communicating information, or producing a
24 document, that is, or is included in a class of information that
25 is or class of documents that are, required or permitted by an
26 Act to be divulged, communicated or produced, as the case
27 may be, if the information is divulged or communicated, or
28 the document is produced, for the purposes of or pursuant to
29 that Act.

30 (5) Subsection (3) does not prevent a person from being required, for
31 the purposes of an Act, to divulge or communicate information, or
32 to produce a document, that is, or is included in a class of
33 information that is or class of documents that are, required or
34 permitted by that Act to be divulged, communicated or produced.

35 (6) In this section:

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

3 *produce* includes permit access to.

4 **43 Information stored otherwise than in written form**

5 If information is recorded or stored by means of a mechanical,
6 electronic or other device, any duty imposed by this Act to produce
7 the document recording that information is a duty to provide a
8 document containing a clear reproduction in writing of the
9 information.

10 **44 Commissioner to provide information**

11 The Commissioner must give to the Commission such information
12 relating to the operations of the Commissioner under this Act as
13 the Commission from time to time requires.

14 **45 Amendment of the *Human Rights and Equal Opportunity* 15 *Commission Act 1986***

16 The *Human Rights and Equal Opportunity Commission Act 1986* is
17 amended as set out in the Schedule.

18 **46 Regulations**

19 The Governor-General may make regulations prescribing matters:
20 (a) required or permitted by this Act to be prescribed; or
21 (b) necessary or convenient to be prescribed for carrying out or
22 giving effect to this Act.
23

Section 46

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2

3 **Schedule 1—Amendment of the Human**
4 **Rights and Equal Opportunity**
5 **Commission Act 1986**
6

7 **1 Subsection 3(1) (at the end of the definition of *unlawful***
8 ***discrimination*)**

9 Add:

10 ; or (g) Part 2 of the *Sexuality and Gender Identity Discrimination*
11 *Act 2003*.

12 **2 Paragraph 11(1)(a)**

13 After “1984”, insert “, the *Sexuality and Gender Discrimination Act*
14 *2003*”.

15 **3 Subsection 11(3)**

16 After “1984”, insert “, the *Sexuality and Gender Identity Discrimination*
17 *Act 2003*”.

18 **4 Subsection 14(8)**

19 After “1984”, insert “, the *Sexuality and Gender Identity Discrimination*
20 *Act 2003*”.

21 **5 Subsection 16(2A)**

22 After “1984”, insert “, the *Sexuality and Gender Identity Discrimination*
23 *Act 2003*”.

24 **4 Subsection 19(6)**

25 After “1984”, insert “, the *Sexuality and Gender Identity Discrimination*
26 *Act 2003*”.