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The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Marriage Law Survey (Additional Safeguards) Bill 2017

No. , 2017

(Finance)

**A Bill for an Act to provide additional safeguards
in relation to the marriage law survey, and for
related purposes**

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1 **A Bill for an Act to provide additional safeguards**
2 **in relation to the marriage law survey, and for**
3 **related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act is the *Marriage Law Survey (Additional Safeguards) Act*
9 *2017*.

Section 2

1 **2 Commencement**

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

6

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

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

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

13 **3 Simplified outline of this Act**

14 As a result of the *Census and Statistics (Statistical Information)*
15 *Direction 2017*, the Statistician is to conduct a survey to collect
16 statistical information about the views of enrolled persons on
17 whether the law should be changed to allow same-sex couples to
18 marry.

19 This Act requires certain paid advertisements, printed material, and
20 material intended to affect whether a person provides a response to
21 the survey or the content of the response, to be clearly authorised.
22 (Matter that is published or printed by the Statistician is not
23 required to be authorised.) Under Division 1 of Part 2, the person
24 who approves the communication is responsible for including
25 particulars relating to the authorisation.

26 Separate obligations are imposed on broadcasters under Division 2
27 of Part 2, and Part 3. These obligations are similar to the

1 obligations imposed by the *Broadcasting Services Act 1992*, and by
 2 the Commercial Television Industry Code of Practice during an
 3 election period. Broadcasters are also required to provide
 4 reasonable opportunities to representatives of organisations that
 5 hold opposing views in relation to the marriage law survey
 6 question to broadcast their views.

7 This Act also creates specific offences and civil penalties in
 8 relation to the survey. For example, it is an offence:

- 9 (a) for a person to receive a bribe on the understanding that
 10 the person's decision as to whether to respond to the
 11 survey, or the content of the person's response, will be
 12 influenced or affected; or
 13 (b) to bribe a person, or to make a threat to a person, for the
 14 purposes of influencing or affecting whether the person
 15 responds to the survey, or the content of the person's
 16 response to the survey.

17 A person may, for example, be liable to a civil penalty if the person
 18 vilifies, intimidates or threatens to cause harm to another person or
 19 persons because of:

- 20 (a) views expressed or held, or believed to be held, by the
 21 other person or persons in relation to the marriage law
 22 survey question; or
 23 (b) the religious conviction, sexual orientation, gender
 24 identity or intersex status of the person or persons.

25 **4 Objects of this Act**

26 The objects of this Act are to promote the following:

- 27 (a) the integrity of the responses provided to, and of the results
 28 of the process conducted by, the Statistician, for the purposes
 29 of the *Census and Statistics (Statistical Information)*
 30 *Direction 2017*, relating to whether the law should be
 31 changed to allow same-sex couples to marry;
 32 (b) proper and respectful public comments on marriage law
 33 survey matter by ensuring that those making public
 34 comments are accountable for them;

Section 5

- 1 (c) the ability of persons, or groups of persons, to hold and
2 express views in relation to the marriage law survey question
3 without vilification, in order to ensure that the integrity of the
4 responses provided to, and of the results of the process
5 conducted by, the Statistician for the purposes of the *Census
6 and Statistics (Statistical Information) Direction 2017* is not
7 undermined or impaired by the adverse effects of allowing
8 such vilification;
- 9 (d) reasonable opportunities for the broadcasting of views about
10 whether the law should be changed to allow same-sex
11 couples to marry.

12 Note: The integrity of responses provided to the Statistician is also promoted
13 by the requirements of the *Public Service Act 1999*, the *Census and
14 Statistics Act 1905*, the *Australian Bureau of Statistics Act 1975* and
15 the *Recommendation of the OECD Council on Good Statistical
16 Practice*.

17 **5 Definitions**

18 In this Act:

19 **ABC** means the Australian Broadcasting Corporation referred to in
20 section 5 of the *Australian Broadcasting Corporation Act 1983*.

21 **address** of an individual or entity means:

- 22 (a) for an individual—a full street address and suburb or locality
23 at which the individual can be contacted; or
24 (b) for an entity:
25 (i) if the entity has a principal office—a full street address
26 and suburb or locality of the office; or
27 (ii) if the entity does not have a principal office, but does
28 have premises—a full street address and suburb or
29 locality of the premises; or
30 (iii) in the case of any other entity that authorised the
31 communication of marriage law survey matter—a full
32 street address and suburb or locality at which the
33 individual who was responsible for giving effect to the
34 authorisation can be contacted.

1 **ancillary contravention** of section 6, 15, 16 or 17 means a
2 contravention of that section as a result of section 92 of the
3 Regulatory Powers Act (ancillary contravention of civil penalty
4 provisions).

5 **authorises**: a person authorises the communication of marriage law
6 survey matter if:

- 7 (a) if the content of the matter is approved before the matter is
8 communicated—the person approves the content of the
9 matter; or
10 (b) otherwise—the person communicates the matter.

11 Examples: In the case of a call centre, the person who was originally responsible
12 for approving the content of the phone calls from the call centre is the
13 person who authorises the communication. In the case of an email
14 whose content has not previously been approved, the person who
15 sends the email authorises the communication.

16 **broadcaster** means:

- 17 (a) a broadcaster within the meaning of subclause 4(1) of
18 Schedule 2 to the *Broadcasting Services Act 1992*; or
19 (b) a datacasting licensee within the meaning of Schedule 6 to
20 that Act; or
21 (c) the ABC; or
22 (d) the SBS.

23 **bulk text message** means a text message that is sent in bulk.

24 **bulk voice call** means a call or calls that send in bulk a
25 pre-recorded message to standard telephone services.

26 **carriage service provider** has the meaning given by section 87 of
27 the *Telecommunications Act 1997*.

28 **civil penalty provision** has the meaning given by the Regulatory
29 Powers Act.

30 **commercial television broadcasting licensee** means a person that
31 holds a commercial television broadcasting licence (within the
32 meaning of the *Broadcasting Services Act 1992*).

Section 5

1 **Commercial Television Industry Code of Practice** means the
2 *Commercial Television Industry Code of Practice* that commenced
3 on 1 December 2015.

4 Note: In 2017, the Code of Practice could be viewed at the website of the
5 Australian Communications and Media Authority
6 (<https://www.acma.gov.au>).

7 **communicate**: a broadcaster or a carriage service provider does not
8 **communicate** marriage law survey matter merely because:

- 9 (a) the broadcaster broadcasts the matter; or
10 (b) the carriage service provider supplies the listed carriage
11 service used to communicate the matter.

12 **conduct** means an act or an omission to perform an act.

13 **Electoral Commissioner** means the Electoral Commissioner
14 referred to in section 18 of the *Commonwealth Electoral Act 1918*.

15 **enrolled person** has the same meaning as **elector** has in section 3
16 of the *Census and Statistics (Statistical Information)*
17 *Direction 2017*.

18 **Federal Court** means the Federal Court of Australia.

19 **limitation period** means the period:

- 20 (a) beginning on the day this Act commences; and
21 (b) ending on:
22 (i) 15 November 2017; or
23 (ii) if statistical information is published before that day for
24 the purposes of the *Census and Statistics (Statistical*
25 *Information) Direction 2017*—the day the information
26 is published.

27 **listed carriage service** has the meaning given by section 16 of the
28 *Telecommunications Act 1997*.

29 **marriage law survey matter** means matter of any of the following
30 kinds:

- 31 (a) matter commenting on same-sex marriage, the marriage law
32 survey process or the marriage law survey question (other
33 than matter printed or published by the Statistician);

- 1 (b) matter stating or indicating the marriage law survey question
 2 (other than matter printed or published by the Statistician);
 3 (c) matter referring to a meeting held or to be held in connection
 4 with same-sex marriage, the marriage law survey process or
 5 the marriage law survey question.

6 Note: For example, paragraph (a) would cover matter encouraging an
 7 enrolled person to provide, or not provide, a marriage law survey
 8 response to the Statistician (except matter printed or published by the
 9 Statistician).

10 **marriage law survey process** means the process conducted by the
 11 Statistician of collecting statistical information for the purposes of
 12 the *Census and Statistics (Statistical Information) Direction 2017*.

13 **marriage law survey question** means the question of whether the
 14 law should be changed to allow same-sex couples to marry.

15 **marriage law survey response** means the response provided by an
 16 enrolled person to the Statistician for the purposes of the marriage
 17 law survey process.

18 **meeting** includes:

- 19 (a) except in paragraph (c) of the definition of **marriage law**
 20 **survey matter** in this section—any meeting whether or not
 21 organised before the meeting began; and
 22 (b) any meeting in which the members participate by telephone,
 23 internet or any other means of communication.

24 **multi-channel** has the same meaning as in the Commercial
 25 Television Industry Code of Practice.

26 **non-Program matter** has the same meaning as in the Commercial
 27 Television Industry Code of Practice.

28 **notifying entity** has the meaning given by section 6.

29 **officer** of the Australian Bureau of Statistics has the meaning given
 30 by section 3 of the *Census and Statistics Act 1905*.

primary commercial television broadcasting service has
 the same meaning as in the Commercial Television
 Industry Code of Practice.

Section 5

1 **primary contravention** of section 6, 15, 16 or 17 means a
2 contravention of that section that is not an ancillary contravention
3 of that section.

4 **Regulatory Powers Act** means the *Regulatory Powers (Standard*
5 *Provisions) Act 2014*.

6 **relevant town or city** of an entity that authorised the
7 communication of marriage law survey matter means:

- 8 (a) if the entity has a principal office—the town or city in which
9 the office is located; or
10 (b) if the entity does not have a principal office, but does have
11 premises—the town or city in which the premises are located;
12 or
13 (c) otherwise—the town or city in which the individual who was
14 responsible for giving effect to the authorisation lives.

15 **SBS** means the Special Broadcasting Service Corporation referred
16 to in section 5 of the *Special Broadcasting Service Act 1991*.

17 **Statistician** means the Australian Statistician referred to in
18 subsection 5(2) of the *Australian Bureau of Statistics Act 1975*.

19 **text message** means an electronic message (within the meaning of
20 section 5 of the *Spam Act 2003*) that is sent to an electronic address
21 in connection with a telephone account.

22 **vilify, intimidate or threaten to cause harm**: a broadcaster or a
23 carriage service provider does not **vilify, intimidate or threaten to**
24 **cause harm** to another person or persons merely because:

- 25 (a) the broadcaster broadcasts matter that vilifies, intimidates or
26 threatens to cause harm to the other person or persons; or
27 (b) the carriage service provider supplies the listed carriage
28 service used to communicate such matter.

1 **Part 2—Authorisation of marriage law survey**
2 **matter**

3 **Division 1—Authorisation of marriage law survey matter**

4 **Subdivision A—Authorisation of marriage law survey matter**

5 **6 Authorisation of marriage law survey matter**

6 (1) This section applies in relation to marriage law survey matter that
7 is communicated to a person during the limitation period if:

8 (a) all of the following apply:

9 (i) the matter is an advertisement;

10 (ii) all or part of the distribution or production of the
11 advertisement was paid for;

12 (iii) the content of the advertisement was approved by a
13 person (the *notifying entity*) (whether or not that person
14 is a person who paid for the distribution or production
15 of the advertisement); or

16 (b) both of the following apply:

17 (i) the matter forms part of a sticker, fridge magnet, leaflet,
18 flyer, pamphlet, notice or poster;

19 (ii) the content of the matter was approved by a person (the
20 *notifying entity*); or

21 (c) the matter is communicated by, or on behalf of, a person (the
22 *notifying entity*), and the matter is intended to affect whether
23 another person provides a marriage law survey response to
24 the Statistician, or the content of such a response.

25 Note 1: For paragraph (1)(c), matter may be communicated on behalf of an
26 entity whether or not the entity pays for the communication of the
27 matter.

28 Note 2: Examples of matters that may be covered by this section include
29 internet advertisements, bulk text messages and bulk voice calls
30 containing marriage law survey matter.

31 Note 3: For the geographical application of this section, see section 20.

Part 2 Authorisation of marriage law survey matter

Division 1 Authorisation of marriage law survey matter

Section 6

1 Note 4: For the meaning of *communicate* for broadcasters and carriage service
2 providers, see the definition of that term in section 5.

3 (2) For the purposes of subsection (1), if:

4 (a) marriage law survey matter is communicated by an
5 individual; and

6 (b) the matter is communicated on behalf of another person or
7 entity; and

8 (c) the content of the matter is approved by the other person or
9 entity before the matter is communicated;

10 the other person or entity (and not the individual) is the *notifying*
11 *entity*. However, if the content of the matter is not approved by the
12 other person or entity before the matter is communicated, the
13 individual (and not the other person or entity) is the *notifying*
14 *entity*.

15 *Exceptions*

16 (3) However, this section does not apply in relation to marriage law
17 survey matter that forms part of:

18 (a) clothing or any other item that is intended to be worn on the
19 body; or

20 (b) an item whose size or nature makes it impracticable to notify
21 particulars in accordance with this section.

22 (4) This section also does not apply in relation to marriage law survey
23 matter referred to in paragraph (1)(b) or (c) if the matter forms part
24 of:

25 (a) the reporting of news, the presenting of current affairs or any
26 editorial content in news media; or

27 (b) a communication communicated solely for genuine satirical,
28 academic or artistic purposes; or

29 (c) an opinion poll or research relating to intentions of enrolled
30 persons; or

31 (d) a communication communicated for personal purposes; or

32 (e) an internal communication of a notifying entity; or

33 (f) a communication at a meeting of 2 or more persons if the
34 identity of the person (the *speaker*) communicating at the
35 meeting, and any entity on whose behalf the speaker is

- 1 communicating, can reasonably be identified by the person or
2 persons to whom the speaker is speaking; or
3 (g) a live communication of a meeting covered by paragraph (f),
4 but not any later communication of that meeting; or
5 (h) a communication communicated solely for the purpose of
6 announcing a meeting.

7 Note: For the definition of *meeting*, see section 5.

8 *Notifying particulars*

- 9 (5) The notifying entity must ensure that the particulars set out in the
10 following table are notified:
11 (a) at the end of the communication (except if paragraph (c) or
12 (d) applies); and
13 (b) if the communication is a printed communication—in a font
14 size that can be read by a person with 20/20 vision without
15 the use of any visual aid; and
16 (c) for text messages whose particulars are too long to be
17 included in the text message—in a website that can be
18 accessed by a URL included in the text message; and
19 (d) for telephone calls (including bulk voice calls)—at the
20 beginning of the call.
21

Required particulars

Item	If ...	the following particulars are required ...
1	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice or poster authorised by an entity that is not an individual	(a) the name of the entity; (b) the address of the entity; (c) the name of the individual responsible for giving effect to the authorisation
2	the communication is any other communication authorised by an entity that is not an individual	(a) the name of the entity; (b) the relevant town or city of the entity; (c) the name of the individual responsible for giving effect to the authorisation

Section 6

Required particulars

Item	If ...	the following particulars are required ...
3	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice or poster authorised by an individual	(a) the name of the individual; (b) the address of the individual
4	the communication is any other communication authorised by an individual	(a) the name of the individual; (b) the town or city in which the individual lives

1 Note 1: This provision is a civil penalty provision which is enforceable under
2 the Regulatory Powers Act (see section 19 of this Act).

3 Note 2: A person may contravene this subsection if the person fails to ensure
4 that particulars are notified or if the particulars notified are incorrect.

5 Note 3: For the application of this provision to a notifying entity that is not a
6 legal person, see subsection (6).

7 Civil penalty: 120 penalty units.

8 *Application of civil penalty to entities that are not legal persons*

9 (6) For the purposes of this Act and the Regulatory Powers Act, a
10 contravention of subsection (5) that would otherwise have been
11 committed by a notifying entity that is not a legal person is taken to
12 have been committed by each member, agent or officer (however
13 described) of the entity who, acting in his or her actual or apparent
14 authority, engaged in the conduct or made the omission
15 constituting the contravention.

16 *Parliamentary broadcasts*

17 (7) This section does not apply to the broadcasting or re-broadcasting
18 of any proceedings of either House of the Parliament or of a joint
19 sitting under the *Parliamentary Proceedings Broadcasting Act*
20 *1946*.

1 **Subdivision B—Information-gathering powers**

2 **7 Electoral Commissioner may obtain information and documents**
3 **from persons**

- 4 (1) This section applies to a person if the Electoral Commissioner has
5 reason to believe that the person has information or a document
6 that is relevant to assessing compliance with section 6.
- 7 (2) The Electoral Commissioner may, by written notice given to the
8 person, require the person:
- 9 (a) to give to the Electoral Commissioner, within the period and
10 in the manner and form specified in the notice, any such
11 information; or
 - 12 (b) to produce to the Electoral Commissioner, within the period
13 and in the manner specified in the notice, any such
14 documents; or
 - 15 (c) to make copies of any such documents and to produce to the
16 Electoral Commissioner, within the period and in the manner
17 specified in the notice, those copies.

18 *Matters to which regard must be had before giving notice*

- 19 (3) Before giving a person a notice under subsection (2), the Electoral
20 Commissioner must have regard to the costs, in complying with
21 any requirement in the notice, that would be likely to be incurred
22 by the person.
- 23 (4) Subsection (3) does not limit the matters to which regard may be
24 had.

25 *Content of notice*

- 26 (5) A notice given to a person under this section must set out the effect
27 of sections 137.1 and 137.2 of the *Criminal Code* (false or
28 misleading information or documents).

Section 8

1 *Copying documents—reasonable compensation*

2 (6) A person is entitled to be paid by the Commonwealth reasonable
3 compensation for complying with a requirement covered by
4 paragraph (2)(c).

5 **8 Copies of documents**

6 (1) The Electoral Commissioner may inspect a document or copy
7 produced under section 7 and may make and retain copies of such a
8 document.

9 (2) The Electoral Commissioner may retain possession of a copy of a
10 document produced in accordance with a requirement covered by
11 paragraph 7(2)(c).

12 **9 Retention of documents**

13 (1) The Electoral Commissioner may take, and retain for as long as is
14 necessary, possession of a document produced under section 7.

15 (2) The person otherwise entitled to possession of the document is
16 entitled to be supplied, as soon as practicable, with a copy certified
17 by the Electoral Commissioner to be a true copy.

18 (3) The certified copy must be received in all courts and tribunals as
19 evidence as if it were the original.

20 (4) Until a certified copy is supplied, the Electoral Commissioner
21 must, at such times and places as he or she thinks appropriate,
22 permit the person otherwise entitled to possession of the document,
23 or a person authorised by that person, to inspect and make copies
24 of the document.

1 **Division 2—Authorisation of marriage law survey matter**
2 **during broadcasts**

3 **10 Authorisation of marriage law survey matter and records of**
4 **matter broadcast**

5 *Authorisation of certain marriage law survey matter*

- 6 (1) The following provisions apply, subject to subsection (3), as if
7 references in those provisions to political matter included
8 references to marriage law survey matter:

- 9 (a) clauses 1 and 4 of Schedule 2, and subclause 24(4) of
10 Schedule 6, to the *Broadcasting Services Act 1992*;
11 (b) section 79A of the *Australian Broadcasting Corporation Act*
12 *1983*;
13 (c) section 70A of the *Special Broadcasting Service Act 1991*.

14 *Keeping and retaining records relating to marriage law survey*
15 *matter that is broadcast*

- 16 (2) The following provisions apply, subject to subsection (3), as if
17 references in those provisions to political subject included
18 references to marriage law survey matter:

- 19 (a) clause 5 of Schedule 2 to the *Broadcasting Services Act*
20 *1992*;
21 (b) section 79B of the *Australian Broadcasting Corporation Act*
22 *1983*;
23 (c) section 70B of the *Special Broadcasting Service Act 1991*.

24 *Broadcasts during the limitation period*

- 25 (3) The obligations in subclauses 4(2) and (3) and clause 5 of
26 Schedule 2 to the *Broadcasting Services Act 1992*,
27 subsections 79A(2) and (3) and section 79B of the *Australian*
28 *Broadcasting Corporation Act 1983*, and subsections 70A(2) and
29 (3) and section 70B of the *Special Broadcasting Service Act 1991*,
30 apply in relation to marriage law survey matter only if the matter is
31 broadcast during the limitation period.

Section 10

1 (4) However, subsection (3) does not affect the meaning of *political*
2 *matter* or *controversial matter* in section 79A of the *Australian*
3 *Broadcasting Corporation Act 1983* or section 70A of the *Special*
4 *Broadcasting Service Act 1991*.

5 *No requirement to lodge annual return*

6 (5) A person is not required to provide a return for a financial year
7 under section 314AEB of the *Commonwealth Electoral Act 1918*
8 merely because the person incurred expenditure for the purposes of
9 broadcasting marriage law survey matter, in relation to which
10 particulars were required to be announced under subclause 4(2) of
11 Schedule 2 to the *Broadcasting Services Act 1992* (see
12 subparagraph 314AEB(1)(a)(iv) of the *Commonwealth Electoral*
13 *Act 1918*).

Part 3—Obligations on broadcasters**11 Obligations on broadcasters to give reasonable opportunities to broadcast opposing views***Requirement to give reasonable opportunities to broadcast opposing views*

- (1) Clause 3 of Schedule 2 to the *Broadcasting Services Act 1992* applies as if, subject to subclause (2), subclause 3(2) of that Schedule required a broadcaster that, during the limitation period, broadcasts marriage law survey matter expressing a view in relation to the marriage law survey question to give a reasonable opportunity, to a representative of an organisation that holds an opposite view in relation to the question, to broadcast marriage law survey matter during that period.

Exception to requirement

- (2) Subsection (1) does not apply in relation to a broadcaster that:
- (a) has been allocated a community radio broadcasting licence under Part 6 or 6A of the *Broadcasting Services Act 1992*; or
 - (b) holds a class licence determined under Part 8 of that Act (subscription broadcasting and narrowcasting class licence);
- that represents:
- (c) a religious community interest; or
 - (d) a community interest that includes a gay and lesbian community interest.

References to clause 3 of Schedule 2

- (3) Paragraphs 7(1)(j), 8(1)(i), 9(1)(i), 10(1)(i) and 11(1)(d) of Schedule 2, and paragraph 24(1)(a) and subclause 24(4) of Schedule 6, to the *Broadcasting Services Act 1992* apply as if references in those provisions to clause 3 of Schedule 2 to that Act included references to that clause as it applies in relation to the marriage law survey process.

Section 12

- 1 *ABC and SBS to give a reasonable opportunity to broadcast*
2 *opposing views*
- 3 (4) If, during the limitation period, the ABC broadcasts marriage law
4 survey matter expressing a view in relation to the marriage law
5 survey question, the *Australian Broadcasting Corporation Act*
6 *1983* applies as if that Act required the ABC to give a reasonable
7 opportunity, to a representative of an organisation that holds an
8 opposite view in relation to the question, to broadcast marriage law
9 survey matter during that period.
- 10 (5) If, during the limitation period, the SBS broadcasts marriage law
11 survey matter expressing a view in relation to the marriage law
12 survey question, the *Special Broadcasting Service Act 1991* applies
13 as if that Act required the SBS to give a reasonable opportunity, to
14 a representative of an organisation that holds an opposite view in
15 relation to the question, to broadcast marriage law survey matter
16 during that period.
- 17 (6) Subsection (5) does not require the SBS to broadcast any matter
18 free of charge.

19 **12 Allowable broadcasting of non-Program matter**

- 20 *Primary commercial television broadcasting service*
- 21 (1) On any day during the limitation period, in relation to a
22 commercial television broadcasting licensee's primary
23 commercial television broadcasting service, the licensee may
24 schedule, on average, in each hour no more than the following
25 amounts of non-Program matter:
- 26 (a) between 6.00 pm and midnight—14 minutes, provided that
27 on average no more than 13 minutes per hour comprises
28 non-Program matter that is not marriage law survey matter;
- 29 (b) at all other times:
- 30 (i) if the hour includes a news Program—16 minutes,
31 provided that on average no more than 15 minutes per
32 hour comprises non-Program matter that is not marriage
33 law survey matter; and
34 (ii) otherwise—15 minutes.
-

- 1 (2) In any hour during the limitation period, in relation to a
2 commercial television broadcasting licensee's primary
3 commercial television broadcasting service, the licensee may
4 (provided that the averages in subsection (1) are met) schedule the
5 following amounts of non-Program matter:
6 (a) between 6.00 pm and midnight—up to 15 minutes per hour,
7 plus one minute per hour of non-Program matter that is
8 marriage law survey matter;
9 (b) at all other times—up to 16 minutes per hour, plus one
10 minute per hour of non-Program matter that is marriage law
11 survey matter and scheduled in a news Program.

12 *Multi-channels*

- 13 (3) In any hour during the limitation period, in relation to a
14 commercial television broadcasting licensee's multi-channels, the
15 licensee may schedule the following amounts of non-Program
16 matter:
17 (a) between 6.00 pm and midnight—up to 15 minutes per hour,
18 plus one minute per hour of non-Program matter that is
19 marriage law survey matter;
20 (b) at all other times—up to 16 minutes.

1 **Part 4—Offences and civil penalty provisions**
2

3 **13 Bribery**

4 *Receiving bribes*

- 5 (1) A person commits an offence if:
6 (a) after this section commences, the person:
7 (i) asks for, receives or obtains; or
8 (ii) offers or agrees to ask for, or receive or obtain;
9 any property or benefit of any kind for the person or any
10 other person; and
11 (b) the person does so on an understanding that the person's
12 decision as to whether to provide a marriage law survey
13 response to the Statistician, or the content of such a response,
14 will be influenced or affected.

15 Penalty: 60 penalty units.

16 *Giving bribes*

- 17 (2) A person commits an offence if:
18 (a) after this section commences, the person:
19 (i) gives or confers; or
20 (ii) promises or offers to give or confer;
21 any property or benefit of any kind to another person; and
22 (b) the person does so intending to influence or affect the other
23 person's decision as to whether to provide a marriage law
24 survey response to the Statistician, or the content of such a
25 response.

26 Penalty: 60 penalty units.

27 *Public policy or public action*

- 28 (3) This section does not apply in relation to property or a benefit that
29 is a declaration of public policy or a promise of public action.

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

3 **14 Threats**

4 A person (the *first person*) commits an offence if:

- 5 (a) after this section commences, the first person makes a threat
6 to another person (the *enrolled person*) to cause detriment to
7 the enrolled person or any other person; and
8 (b) the first person does so intending to influence or affect the
9 enrolled person's decision as to whether to provide a
10 marriage law survey response to the Statistician, or the
11 content of such a response.

12 Penalty: 60 penalty units.

13 **15 Vilification etc. as a result of expressing views etc. in relation to** 14 **the marriage law survey question**

15 (1) After this section commences, a person (the *first person*) must not
16 vilify, intimidate or threaten to cause harm to another person or
17 persons if the first person engaged in the conduct that vilified,
18 intimidated or threatened the other person or persons because of
19 any of the following:

- 20 (a) the other person or persons have expressed or hold a view in
21 relation to the marriage law survey question;
22 (b) the first person believes that the other person or persons hold
23 a view in relation to the marriage law survey question;
24 (c) the religious conviction, sexual orientation, gender identity or
25 intersex status of the other person or persons.

26 Note 1: This provision is a civil penalty provision which is enforceable under
27 the Regulatory Powers Act (see section 19 of this Act).

28 Note 2: For the geographical application of this section, see section 20.

29 Note 3: For when a broadcaster or carriage service provider does not vilify,
30 intimidate or threaten to cause harm, see the definition of *vilify*,
31 *intimidate or threaten to cause harm* in section 5.

32 Civil penalty: 60 penalty units.

Section 16

- 1 (2) The first person does not engage in the conduct referred to in
2 subsection (1) by reason only of the expression of his or her views
3 about the marriage law survey question.
- 4 (3) Subsection (1) does not apply if the conduct is done reasonably and
5 in good faith and is:
6 (a) the reporting of news, the presenting of current affairs or any
7 editorial content in news media; or
8 (b) the communication of matter solely for genuine satirical,
9 academic or artistic purposes; or
10 (c) the communication, distribution or dissemination of any
11 matter consisting of a publication that is subject to a defence
12 of absolute privilege in proceedings for defamation.
- 13 Note: A person who wishes to rely on subsection (3) in proceedings for a
14 civil penalty order bears an evidential burden in relation to a matter in
15 that subsection (see section 96 of the Regulatory Powers Act).
- 16 (4) In proceedings for a contravention of subsection (1), it is not
17 necessary to prove that:
18 (a) a specific person or group has expressed or holds a view in
19 relation to the marriage law survey question; or
20 (b) the first person believes that a specific person or group holds
21 a view in relation to the marriage law survey question.

22 **16 Interference with marriage law survey response etc.**

23 *Hindering or interfering with marriage law survey response*

- 24 (1) A person must not, after this section commences, hinder or
25 interfere with any person in providing a marriage law survey
26 response.

27 Note 1: This provision is a civil penalty provision which is enforceable under
28 the Regulatory Powers Act (see section 19 of this Act).

29 Note 2: For the geographical application of this section, see section 20.

30 Civil penalty: 60 penalty units.

Discrimination on basis of donation

- (2) A person must not discriminate against another person on the ground of the making by the other person of a donation to a notifying entity:
- (a) by denying the other person access to membership of any trade union, club or other body; or
 - (b) by not allowing the other person to work or to continue to work; or
 - (c) by subjecting the other person to any form of intimidation, coercion or other detriment that causes, was likely to cause, or could be reasonably expected to cause, serious harm to the other person.

Note 1: This provision is a civil penalty provision which is enforceable under the Regulatory Powers Act (see section 19 of this Act).

Note 2: For the geographical application of this section, see section 20.

Civil penalty: 60 penalty units.

17 Misleading matter etc. in relation to completing the marriage law survey

- (1) A person contravenes this subsection if:
- (a) after this section commences, the person:
 - (i) prints, publishes or distributes; or
 - (ii) causes, permits or authorises to be printed, published or distributed;
 any matter or thing (including by radio, television, internet or telephone); and
 - (b) the printing, publication or distribution occurs during the limitation period; and
 - (c) the matter or thing is likely to mislead or deceive an enrolled person in relation to the provision of a marriage law survey response to the Statistician.

Note 1: This provision is a civil penalty provision which is enforceable under the Regulatory Powers Act (see section 19 of this Act).

Note 2: For the geographical application of this section, see section 20.

Section 18

- 1 Note 3: Examples for paragraph (1)(c) include a matter or thing that leads an
2 enrolled person:
3 (a) to believe that a particular response in the person's marriage law
4 survey response has an effect, and that effect is the opposite of
5 the effect the person wishes it to have; or
6 (b) to believe that not providing a marriage law survey response to
7 the Statistician counts as being in favour or not in favour of the
8 law being changed to allow same-sex couples to marry; or
9 (c) to believe that the period for providing a marriage law survey
10 response to the Statistician is longer than the actual period for
11 providing a response.

12 Civil penalty: 60 penalty units.

- 13 (2) Subsection (1) does not apply if:
14 (a) the person did not know, and could not reasonably be
15 expected to have known, that the matter or thing was likely to
16 mislead or deceive an enrolled person; or
17 (b) the person could not reasonably be expected to have
18 confirmed the details of the matter or thing before it was
19 printed, published or distributed.

20 Note: A person who wishes to rely on subsection (2) in proceedings for a
21 civil penalty order bears an evidential burden in relation to that matter
22 (see section 96 of the Regulatory Powers Act).

23 **18 Officers not to influence marriage law survey responses**

24 A person commits an offence if:

- 25 (a) the person is the Statistician or an officer of the Australian
26 Bureau of Statistics; and
27 (b) after this section commences, the person engages in conduct
28 while exercising powers or performing functions or duties in
29 relation to the marriage law survey; and
30 (c) the person does so with the intention of influencing the
31 content of a marriage law survey response provided to the
32 Statistician.

33 Note: There are other similar limitations and obligations on the Statistician
34 and officers of the Australian Bureau of Statistics under the *Public*
35 *Service Act 1999*, the *Census and Statistics Act 1905*, the *Australian*
36 *Bureau of Statistics Act 1975* and the *Recommendation of the OECD*
37 *Council on Good Statistical Practice*.

1

Penalty: 60 penalty units.

1 **Part 5—Miscellaneous**
2

3 **19 Application of the Regulatory Powers Act**

4 *Application of Parts 4 and 6*

5 (1) Sections 6, 15, 16 and 17 are enforceable under Parts 4 and 6 of the
6 Regulatory Powers Act.

7 Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to
8 be enforced by obtaining an order for a person to pay a pecuniary
9 penalty for the contravention of the provision. Part 6 of that Act
10 creates a framework for accepting and enforcing undertakings relating
11 to compliance with provisions.

12 *Authorised applicant and relevant court*

13 (2) For the purposes of Parts 4 and 6 of the Regulatory Powers Act,
14 but subject to subsection (3) of this section:

15 (a) for Part 4, the following persons are authorised applicants:

16 (i) the Electoral Commissioner;

17 (ii) a person approved under subsection (4) of this section to
18 bring an application in relation to a particular
19 contravention of section 6, 15, 16 or 17 of this Act; and

20 (b) for Part 6—the Electoral Commissioner is an authorised
21 person; and

22 (c) for Parts 4 and 6—the Federal Court is a relevant court;
23 in relation to sections 6, 15, 16 and 17 of this Act.

24 (3) In relation to section 15, a person must not take any action under or
25 in relation to Part 4 or 6 of the Regulatory Powers Act without the
26 consent of the Attorney-General.

27 (4) The Attorney-General may approve a notifying entity, or a
28 member, agent or officer (however described) of a notifying entity,
29 to apply for a civil penalty order under Part 4 of the Regulatory
30 Powers Act in relation to a particular contravention of sections 6,
31 15, 16 and 17 of this Act.

Time limit for making an application

- (5) Despite subsection 82(2) of the Regulatory Powers Act, an application may be made under section 82 of that Act within 3 months (and not 4 years) of a person contravening a civil penalty provision of this Act.

Administrative Decisions (Judicial Review) Act 1977 does not apply

- (6) The *Administrative Decisions (Judicial Review) Act 1977* does not apply in relation to a decision under subsection (3) or (4) of this section.

20 Extended geographical application of sections 6, 15, 16 and 17

- (1) A person does not contravene section 6, 15, 16 or 17 unless:
- (a) the conduct constituting the alleged contravention occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
 - (b) the conduct constituting the alleged contravention occurs wholly outside Australia and a result of the conduct occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
 - (c) the conduct constituting the alleged contravention occurs wholly outside Australia and at the time of the alleged contravention, the person is:
 - (i) an Australian citizen; or
 - (ii) a resident of Australia; or
 - (iii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
 - (d) all of the following conditions are satisfied:
 - (i) the alleged contravention is an ancillary contravention of section 6, 15, 16 or 17;
 - (ii) the conduct constituting the alleged contravention occurs wholly outside Australia;

Section 21

- 1 (iii) the conduct constituting the primary contravention of
2 section 6, 15, 16 or 17, or a result of that conduct,
3 occurs, or is intended by the person to occur, wholly or
4 partly in Australia or wholly or partly on board an
5 Australian aircraft or an Australian ship.

6 *Exception—foreign entities engaging in legal conduct wholly in*
7 *foreign countries*

- 8 (2) A person does not contravene section 6, 15, 16 or 17 if:
9 (a) the conduct constituting the alleged contravention occurs
10 wholly in a foreign country, but not on board an Australian
11 aircraft or an Australian ship; and
12 (b) for an ancillary contravention of section 6, 15, 16 or 17—the
13 conduct constituting the primary contravention of that
14 section, or a result of that conduct, occurs, or is intended by
15 the person to occur, wholly in a foreign country, but not on
16 board an Australian aircraft or an Australian ship; and
17 (c) the person is neither:
18 (i) an Australian citizen; nor
19 (ii) a body corporate incorporated by or under a law of the
20 Commonwealth or of a State or Territory; and
21 (d) there is not a law creating an offence or contravention that
22 corresponds to section 6, 15, 16 or 17 in force in the foreign
23 country, or the part of the foreign country, where:
24 (i) the conduct constituting the primary contravention
25 occurs; or
26 (ii) for an ancillary contravention of section 6, 15, 16 or
27 17—a result of the conduct constituting the primary
28 contravention occurs.

29 **21 Injunctions**

30 *Restraining injunctions*

- 31 (1) If a person has engaged, is engaging or is proposing to engage in
32 any conduct that constituted, constitutes or would constitute a
33 contravention of, or an offence against, this Act or any other law of
34 the Commonwealth in its application to the marriage law survey

1 process, the Federal Court may, on the application of an applicant
2 referred to in subsection (5), grant an injunction:

- 3 (a) restraining the person from engaging in the conduct; and
4 (b) if in the opinion of the Federal Court it is desirable to do so—
5 requiring the person to do any act or thing.

6 Note: See also sections 22 (notice to Attorney-General in relation to
7 injunction proceedings) and 23 (intervention by Attorney-General).

8 *Performance injunctions*

9 (2) If:

- 10 (a) a person has refused or failed, is refusing or failing, or is
11 proposing to refuse or fail, to do an act or thing; and
12 (b) the refusal or failure was, is, or would be, a failure to comply
13 with, or an offence against, this Act or any other law of the
14 Commonwealth in its application to the marriage law survey
15 process;

16 the Federal Court may, on the application of an applicant referred
17 to in subsection (5), grant an injunction requiring the person to do
18 that act or thing.

19 *Injunctions relating to sections 6, 15 and 16—carriage service
20 providers*

21 (3) Without limiting subsection (1), if:

- 22 (a) an injunction could be granted under subsection (1) or (2) in
23 relation to a contravention or proposed contravention by a
24 person (the *relevant person*) of section 6, 15 or 16 in relation
25 to matter; and
26 (b) a carriage service provider supplies, or is to supply, a listed
27 carriage service to the relevant person; and
28 (c) the listed carriage service is to be used solely for making bulk
29 voice calls or sending bulk text messages;

30 the Federal Court may, on the application of an applicant referred
31 to in subsection (5), grant an injunction restraining the carriage
32 service provider from supplying the listed carriage service to the
33 relevant person.

Section 21

1 *Injunctions relating to sections 6, 15 and 16—broadcasters*

- 2 (4) Without limiting subsection (1), if an injunction could be granted
3 under subsection (1) or (2) in relation to a contravention or
4 proposed contravention by a person (the *relevant person*) of
5 section 6, 15 or 16 in relation to matter, the Federal Court may, on
6 the application of an applicant referred to in subsection (5), grant
7 an injunction restraining a broadcaster from broadcasting the
8 matter.

9 *Applicants for injunctions under this section*

- 10 (5) Each of the following persons (the *applicant*) may apply for an
11 injunction under this section:
12 (a) the Electoral Commissioner;
13 (b) a notifying entity;
14 (c) a member, agent or officer (however described) of a
15 notifying entity.

16 *Interim injunctions*

- 17 (6) If an application is made to the Federal Court for an injunction
18 under subsection (1), (3) or (4), the Federal Court may, if in the
19 opinion of the Federal Court it is desirable to do so, before
20 considering the application, grant an interim injunction restraining
21 a person from engaging in conduct of the kind referred to in
22 subsection (1), or restraining the carriage service provider or
23 broadcaster as referred to in subsection (3) or (4), pending the
24 determination of the application.

25 *Discharging and varying injunctions*

- 26 (7) The Federal Court may discharge or vary an injunction granted
27 under this section.

28 *Court not required to consider past and future conduct*

- 29 (8) If an application is made to the Federal Court for the grant of an
30 injunction under subsection (1) restraining a person from engaging
31 in conduct of a particular kind, the power of the Federal Court to
32 grant the injunction may be exercised:

Section 21

- 1 (a) if the Federal Court is satisfied that the person has engaged in
2 conduct of that kind—whether or not it appears to the Federal
3 Court that the person intends to engage again, or to continue
4 to engage, in conduct of that kind; or
- 5 (b) if it appears to the Federal Court that, in the event that an
6 injunction is not granted, it is likely that the person will
7 engage in conduct of that kind—whether or not the person
8 has previously engaged in conduct of that kind and whether
9 or not there is an imminent danger of substantial damage to
10 any other person if the person engages in conduct of that
11 kind.
- 12 (9) If an application is made to the Federal Court for the grant of an
13 injunction under subsection (1) or (2) requiring a person to do a
14 particular act or thing, the power of the Federal Court to grant the
15 injunction may be exercised:
- 16 (a) if the Federal Court is satisfied that the person has refused or
17 failed to do that act or thing—whether or not it appears to the
18 Federal Court that the person intends to refuse or fail again,
19 or to continue to refuse or fail, to do that act or thing; or
- 20 (b) if it appears to the Federal Court that, in the event that an
21 injunction is not granted, it is likely that the person will
22 refuse or fail to do that act or thing—whether or not the
23 person has previously refused or failed to do that act or thing
24 and whether or not there is an imminent danger of substantial
25 damage to any other person if the person refuses or fails to do
26 that act or thing.
- 27 (10) If an application is made to the Federal Court for the grant of an
28 injunction under subsection (3) or (4) restraining a carriage service
29 provider or broadcaster as referred to in that subsection, the power
30 of the Federal Court to grant the injunction may be exercised:
- 31 (a) if the Federal Court is satisfied that the relevant person has
32 contravened section 6, 15 or 16—whether or not it appears to
33 the Federal Court that the relevant person intends to
34 contravene or continue to contravene that section; or
- 35 (b) if it appears to the Federal Court that, in the event that an
36 injunction is not granted, it is likely that the relevant person

Section 22

1 will contravene section 6, 15 or 16—whether or not the
2 relevant person has previously contravened that section.

3 *No undertakings as to damages*

4 (11) If an applicant referred to in subsection (5) makes an application to
5 the Federal Court for the grant of an injunction under this section,
6 the Federal Court may require the applicant, or any other person, as
7 a condition of the granting of an interim injunction, to give any
8 undertakings as to damages, but only if the Federal Court is
9 satisfied that such undertakings are appropriate in all the
10 circumstances.

11 *This section does not limit other powers of the Federal Court*

12 (12) The powers conferred on the Federal Court under this section are
13 in addition to, and not in derogation of, any other powers of the
14 Federal Court, whether conferred by this Act or otherwise.

15 **22 Notice to Attorney-General in relation to injunction proceedings**

16 (1) If an application is made under section 21 by a notifying entity, or
17 a member, agent or officer of a notifying entity, it is the duty of the
18 Federal Court not to continue the proceedings unless and until the
19 Federal Court is satisfied that:

- 20 (a) notice of the proceedings has been given to the
21 Attorney-General, specifying the nature of the proceedings;
22 and
23 (b) a reasonable time has elapsed since the notice was given to
24 the Attorney-General of the question of intervening in the
25 proceedings.

26 (2) The Federal Court:

- 27 (a) may adjourn any proceedings under section 21 for any time
28 as it thinks necessary and may make any order as to costs in
29 relation to such an adjournment as it thinks fit; and
30 (b) may direct a party to give notice in accordance with
31 subsection (1) of this section; and
32 (c) may continue to hear evidence and argument concerning
33 matters severable from the application under section 21.
-

- 1 (3) A notice in relation to proceedings:
2 (a) is taken to have been given to the Attorney-General if steps
3 have been taken that, in the opinion of the Federal Court,
4 could reasonably be expected to cause the matters to be
5 notified to be brought to the attention of the
6 Attorney-General; and
7 (b) is not required to be given to the Attorney-General if he or
8 she or the Electoral Commissioner is a party to the
9 proceedings.
- 10 (4) The Attorney-General may authorise the payment by the
11 Commonwealth to a party of an amount in respect of costs arising
12 out of the adjournment of proceedings because of this section.
- 13 (5) Nothing in subsection (1) prevents the Federal Court from
14 proceeding without delay to hear and determine proceedings, so far
15 as they relate to the grant of urgent relief of an interlocutory nature,
16 if the Federal Court thinks it necessary in the interests of justice to
17 do so.

18 **23 Intervention by Attorney-General**

- 19 (1) The Attorney-General may, on behalf of the Commonwealth,
20 intervene in proceedings under section 21 that are brought by a
21 notifying entity, or a member, agent or officer of a notifying entity.
- 22 (2) If the Attorney-General does so:
23 (a) the Federal Court may make any order in the proceedings as
24 to costs against the Commonwealth as the Federal Court
25 thinks fit; and
26 (b) for the purposes of instituting and prosecuting an appeal from
27 a judgment in the proceedings, the Attorney-General is taken
28 to be a party to the proceedings.
- 29 (3) If the Attorney-General institutes an appeal from a judgment given
30 in proceedings in which the Attorney-General has intervened under
31 this section, the court hearing the appeal may make any order as to
32 costs against the Commonwealth as the court thinks fit.

Section 24

1 **24 Evidence of authorisation of material**

2 In proceedings for a contravention of a civil penalty provision in
3 this Act, a communication of marriage law survey matter that
4 includes a statement that it was authorised by a specified person is
5 admissible as evidence of that fact.

6 **25 Administration of Act**

7 The Electoral Commissioner has the general administration of this
8 Act (except sections 10, 11, 12, 15 and 16).

9 **26 Delegation by the Electoral Commissioner**

10 (1) The Electoral Commissioner may, in writing, delegate all or any of
11 the Commissioner's powers, duties or functions under this Act to
12 any officer (within the meaning of the *Commonwealth Electoral*
13 *Act 1918*) of the Australian Electoral Commission, or any other
14 member of staff of the Commission referred to in section 29 of that
15 Act.

16 (2) In exercising any powers or performing any duties or functions
17 under the delegation, the delegate must comply with any directions
18 of the Commissioner.

19 **27 Sunset provision**

20 This Act is repealed immediately after the end of the limitation
21 period.

22 **28 Rules**

23 (1) The Electoral Commissioner may, by legislative instrument, make
24 rules prescribing matters:

25 (a) required or permitted by this Act to be prescribed by the
26 rules; or

27 (b) necessary or convenient to be prescribed for carrying out or
28 giving effect to this Act.

29 (2) To avoid doubt, the rules may not do the following:

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- 1 (a) create an offence or civil penalty;
- 2 (b) provide powers of:
 - 3 (i) arrest or detention; or
 - 4 (ii) entry, search or seizure;
- 5 (c) impose a tax;
- 6 (d) directly amend the text of this Act.