



Marriage Law Survey (Additional Safeguards) Act 2017

No. 96, 2017

An Act to provide additional safeguards in relation to the marriage law survey, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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No. 96, 2017

An Act to provide additional safeguards in relation to the marriage law survey, and for related purposes

[Assented to 13 September 2017]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

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

2 Commencement

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

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.	14 September 2017

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Simplified outline of this Act

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

This Act requires certain paid advertisements, printed material, and material intended to affect whether a person provides a response to

the survey or the content of the response, to be clearly authorised. (Matter that is published or printed by the Statistician is not required to be authorised.) Under Division 1 of Part 2, the person who approves the communication is responsible for including particulars relating to the authorisation.

Separate obligations are imposed on broadcasters under Division 2 of Part 2, and Part 3. These obligations are similar to the obligations imposed by the *Broadcasting Services Act 1992*, and by the Commercial Television Industry Code of Practice during an election period. Broadcasters are also required to provide reasonable opportunities to representatives of organisations that hold opposing views in relation to the marriage law survey question to broadcast their views.

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

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

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

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

4 Objects of this Act

The objects of this Act are to promote the following:

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- (a) the integrity of the responses provided to, and of the results of the process conducted by, the Statistician, for the purposes of the *Census and Statistics (Statistical Information) Direction 2017*, relating to whether the law should be changed to allow same-sex couples to marry;
- (b) proper and respectful public comments on marriage law survey matter by ensuring that those making public comments are accountable for them;
- (c) the ability of persons, or groups of persons, to hold and express views in relation to the marriage law survey question without vilification, in order to ensure that the integrity of the responses provided to, and of the results of the process conducted by, the Statistician for the purposes of the *Census and Statistics (Statistical Information) Direction 2017* is not undermined or impaired by the adverse effects of allowing such vilification;
- (d) reasonable opportunities for the broadcasting of views about whether the law should be changed to allow same-sex couples to marry.

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

5 Definitions

In this Act:

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

address of an individual or entity means:

- (a) for an individual—a full street address and suburb or locality at which the individual can be contacted; or
- (b) for an entity:
 - (i) if the entity has a principal office—a full street address and suburb or locality of the office; or

- (ii) if the entity does not have a principal office, but does have premises—a full street address and suburb or locality of the premises; or
- (iii) in the case of any other entity that authorised the communication of marriage law survey matter—a full street address and suburb or locality at which the individual who was responsible for giving effect to the authorisation can be contacted.

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

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

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

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

broadcaster means:

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

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

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

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

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

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

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

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

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

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

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

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

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

Federal Court means the Federal Court of Australia.

limitation period means the period:

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

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

marriage law survey matter means matter of any of the following kinds:

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

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

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

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

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

meeting includes:

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

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

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

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notifying entity has the meaning given by section 6.

officer of the Australian Bureau of Statistics has the meaning given 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.

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

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

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

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

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

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

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

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

- (a) the broadcaster broadcasts matter that vilifies, intimidates or threatens to cause harm to the other person or persons; or

- (b) the carriage service provider supplies the listed carriage service used to communicate such matter.

Part 2—Authorisation of marriage law survey matter

Division 1—Authorisation of marriage law survey matter

Subdivision A—Authorisation of marriage law survey matter

6 Authorisation of marriage law survey matter

- (1) This section applies in relation to marriage law survey matter that is communicated to a person during the limitation period if:
- (a) all of the following apply:
 - (i) the matter is an advertisement;
 - (ii) all or part of the distribution or production of the advertisement was paid for;
 - (iii) the content of the advertisement was approved by a person (the *notifying entity*) (whether or not that person is a person who paid for the distribution or production of the advertisement); or
 - (b) both of the following apply:
 - (i) the matter forms part of a sticker, fridge magnet, leaflet, flyer, pamphlet, notice or poster;
 - (ii) the content of the matter was approved by a person (the *notifying entity*); or
 - (c) the matter is communicated by, or on behalf of, a person (the *notifying entity*), and the matter is intended to affect whether another person provides a marriage law survey response to the Statistician, or the content of such a response.

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

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

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

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

- (2) For the purposes of subsection (1), if:
- (a) marriage law survey matter is communicated by an individual; and
 - (b) the matter is communicated on behalf of another person or entity; and
 - (c) the content of the matter is approved by the other person or entity before the matter is communicated;
- the other person or entity (and not the individual) is the ***notifying entity***. However, if the content of the matter is not approved by the other person or entity before the matter is communicated, the individual (and not the other person or entity) is the ***notifying entity***.

Exceptions

- (3) However, this section does not apply in relation to marriage law survey matter that forms part of:
- (a) clothing or any other item that is intended to be worn on the body; or
 - (b) an item whose size or nature makes it impracticable to notify particulars in accordance with this section.
- (4) This section also does not apply in relation to marriage law survey matter referred to in paragraph (1)(b) or (c) if the matter forms part of:
- (a) the reporting of news, the presenting of current affairs or any editorial content in news media; or
 - (b) a communication communicated solely for genuine satirical, academic or artistic purposes; or
 - (c) an opinion poll or research relating to intentions of enrolled persons; or
 - (d) a communication communicated for personal purposes; or
 - (e) an internal communication of a notifying entity; or
 - (f) a communication at a meeting of 2 or more persons if the identity of the person (the ***speaker***) communicating at the meeting, and any entity on whose behalf the speaker is

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

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

Notifying particulars

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

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

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

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

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

Civil penalty: 120 penalty units.

Application of civil penalty to entities that are not legal persons

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

Parliamentary broadcasts

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

Subdivision B—Information-gathering powers

7 Electoral Commissioner may obtain information and documents from persons

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

Matters to which regard must be had before giving notice

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

Content of notice

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

Copying documents—reasonable compensation

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

8 Copies of documents

- (1) The Electoral Commissioner may inspect a document or copy produced under section 7 and may make and retain copies of such a document.
- (2) The Electoral Commissioner may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 7(2)(c).

9 Retention of documents

- (1) The Electoral Commissioner may take, and retain for as long as is necessary, possession of a document produced under section 7.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Electoral Commissioner to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Electoral Commissioner must, at such times and places as he or she thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of the document.

Division 2—Authorisation of marriage law survey matter during broadcasts

10 Authorisation of marriage law survey matter and records of matter broadcast

Authorisation of certain marriage law survey matter

- (1) The following provisions apply, subject to subsection (3), as if references in those provisions to political matter included references to marriage law survey matter:
 - (a) clauses 1 and 4 of Schedule 2, and subclause 24(4) of Schedule 6, to the *Broadcasting Services Act 1992*;
 - (b) section 79A of the *Australian Broadcasting Corporation Act 1983*;
 - (c) section 70A of the *Special Broadcasting Service Act 1991*.

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

- (2) The following provisions apply, subject to subsection (3), as if references in those provisions to political subject included references to marriage law survey matter:
 - (a) clause 5 of Schedule 2 to the *Broadcasting Services Act 1992*;
 - (b) section 79B of the *Australian Broadcasting Corporation Act 1983*;
 - (c) section 70B of the *Special Broadcasting Service Act 1991*.

Broadcasts during the limitation period

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

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

No requirement to lodge annual return

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

ABC and SBS to give a reasonable opportunity to broadcast opposing views

- (4) If, during the limitation period, the ABC broadcasts marriage law survey matter expressing a view in relation to the marriage law survey question, the *Australian Broadcasting Corporation Act 1983* applies as if that Act required the ABC 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.
- (5) If, during the limitation period, the SBS broadcasts marriage law survey matter expressing a view in relation to the marriage law survey question, the *Special Broadcasting Service Act 1991* applies as if that Act required the SBS 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.
- (6) Subsection (5) does not require the SBS to broadcast any matter free of charge.

12 Allowable broadcasting of non-Program matter

Primary commercial television broadcasting service

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

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

Multi-channels

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

Part 4—Offences and civil penalty provisions

13 Bribery

Receiving bribes

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

Penalty: 60 penalty units.

Giving bribes

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

Penalty: 60 penalty units.

Public policy or public action

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

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

14 Threats

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

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

Penalty: 60 penalty units.

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

- (1) After this section commences, a person (the **first person**) must not vilify, intimidate or threaten to cause harm to another person or persons if the first person engaged in the conduct that vilified, intimidated or threatened the other person or persons because of any of the following:
 - (a) the other person or persons have expressed or hold a view in relation to the marriage law survey question;
 - (b) the first person believes that the other person or persons hold a view in relation to the marriage law survey question;
 - (c) the religious conviction, sexual orientation, gender identity or intersex status of the other person or persons.

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.

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

Civil penalty: 60 penalty units.

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

16 Interference with marriage law survey response etc.

Hindering or interfering with marriage law survey response

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

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.

Section 17

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.

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

Civil penalty: 60 penalty units.

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

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

18 Officers not to influence marriage law survey responses

A person commits an offence if:

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

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

Part 4 Offences and civil penalty provisions

Section 18

Penalty: 60 penalty units.

Part 5—Miscellaneous

19 Application of the Regulatory Powers Act

Application of Parts 4 and 6

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

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

Authorised applicant and relevant court

- (2) For the purposes of Parts 4 and 6 of the Regulatory Powers Act, but subject to subsection (3) of this section:
- (a) for Part 4, the following persons are authorised applicants:
 - (i) the Electoral Commissioner;
 - (ii) a person approved under subsection (4) of this section to bring an application in relation to a particular contravention of section 6, 15, 16 or 17 of this Act; and
 - (b) for Part 6—the Electoral Commissioner is an authorised person; and
 - (c) for Parts 4 and 6—the Federal Court is a relevant court; in relation to sections 6, 15, 16 and 17 of this Act.
- (3) In relation to section 15, a person must not take any action under or in relation to Part 4 or 6 of the Regulatory Powers Act without the consent of the Attorney-General.
- (4) The Attorney-General may approve a notifying entity, or a member, agent or officer (however described) of a notifying entity, to apply for a civil penalty order under Part 4 of the Regulatory Powers Act in relation to a particular contravention of sections 6, 15, 16 and 17 of this Act.

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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;

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

Exception—foreign entities engaging in legal conduct wholly in foreign countries

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

21 Injunctions

Restraining injunctions

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

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

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

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

Performance injunctions

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

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

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

- (3) Without limiting subsection (1), if:
 - (a) an injunction could be granted under subsection (1) or (2) in relation to a contravention or proposed contravention by a person (the *relevant person*) of section 6, 15 or 16 in relation to matter; and
 - (b) a carriage service provider supplies, or is to supply, a listed carriage service to the relevant person; and
 - (c) the listed carriage service is to be used solely for making bulk voice calls or sending bulk text messages;

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

Injunctions relating to sections 6, 15 and 16—broadcasters

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

Applicants for injunctions under this section

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

Interim injunctions

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

Discharging and varying injunctions

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

Court not required to consider past and future conduct

- (8) If an application is made to the Federal Court for the grant of an injunction under subsection (1) restraining a person from engaging in conduct of a particular kind, the power of the Federal Court to grant the injunction may be exercised:
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Section 21

- (a) if the Federal Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Federal Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Federal Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (9) If an application is made to the Federal Court for the grant of an injunction under subsection (1) or (2) requiring a person to do a particular act or thing, the power of the Federal Court to grant the injunction may be exercised:
 - (a) if the Federal Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Federal Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the Federal Court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.
- (10) If an application is made to the Federal Court for the grant of an injunction under subsection (3) or (4) restraining a carriage service provider or broadcaster as referred to in that subsection, the power of the Federal Court to grant the injunction may be exercised:
 - (a) if the Federal Court is satisfied that the relevant person has contravened section 6, 15 or 16—whether or not it appears to the Federal Court that the relevant person intends to contravene or continue to contravene that section; or
 - (b) if it appears to the Federal Court that, in the event that an injunction is not granted, it is likely that the relevant person

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

No undertakings as to damages

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

This section does not limit other powers of the Federal Court

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

22 Notice to Attorney-General in relation to injunction proceedings

- (1) If an application is made under section 21 by a notifying entity, or a member, agent or officer of a notifying entity, it is the duty of the Federal Court not to continue the proceedings unless and until the Federal Court is satisfied that:
- (a) notice of the proceedings has been given to the Attorney-General, specifying the nature of the proceedings; and
 - (b) a reasonable time has elapsed since the notice was given to the Attorney-General of the question of intervening in the proceedings.
- (2) The Federal Court:
- (a) may adjourn any proceedings under section 21 for any time as it thinks necessary and may make any order as to costs in relation to such an adjournment as it thinks fit; and
 - (b) may direct a party to give notice in accordance with subsection (1) of this section; and
 - (c) may continue to hear evidence and argument concerning matters severable from the application under section 21.

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

23 Intervention by Attorney-General

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

24 Evidence of authorisation of material

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

25 Administration of Act

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

26 Delegation by the Electoral Commissioner

- (1) The Electoral Commissioner may, in writing, delegate all or any of the Commissioner's powers, duties or functions under this Act to any officer (within the meaning of the *Commonwealth Electoral Act 1918*) of the Australian Electoral Commission, or any other member of staff of the Commission referred to in section 29 of that Act.
- (2) In exercising any powers or performing any duties or functions under the delegation, the delegate must comply with any directions of the Commissioner.

27 Sunset provision

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

28 Rules

- (1) The Electoral Commissioner may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:

Section 28

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

*[Minister's second reading speech made in—
Senate on 13 September 2017
House of Representatives on 13 September 2017]*

(203/17)
