



New South Wales

# Anti-Discrimination Amendment (Religious Freedoms) Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Anti-Discrimination Act 1977* as follows:

- (a) to prohibit discrimination on the ground of a person's religious beliefs or religious activities,
- (b) to prohibit public authorities and officials from subjecting faith-based entities to detrimental treatment on the ground of faith,
- (c) to provide that the Act does not affect:
  - (i) the appointment of persons by faith-based entities, the discharge of duties by chaplains or certain other acts or practices of faith-based entities, or
  - (ii) certain conduct by persons who hold the belief or conviction that marriage and family are based on the concept of the union between one man and one woman or that a person can only be one of 2 genders (that is, either male or female),
- (d) to make it clear that the proposed provisions about religion and faith do not give rise to any ground of complaint or appeal in relation to certain land-use planning decisions by local councils.

This Bill also amends the *Education Act 1990* to require that the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions is to be respected by the State and that beliefs and convictions about marriage or gender taught or espoused by a non-government school should not prejudice Ministerial decisions about financial assistance to the school.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

### **Schedule 1      Amendment of Anti-Discrimination Act 1977 No 48**

**Schedule 1 [1]** inserts a definition of *faith-based entity*.

**Schedule 1 [2]** makes it clear that if an act is done for 2 or more reasons, and one of the reasons consists of subjecting a faith-based entity to unlawful detrimental treatment on the ground of faith then, for the purposes of the *Anti-Discrimination Act 1977*, the act is taken to be done for that reason.

**Schedule 1 [3]** inserts a new Part in the *Anti-Discrimination Act 1977* that makes it unlawful to discriminate against a person on the ground of the person's religious beliefs or religious activities in the circumstances described in the Part, which relate to work, education, the provision of goods and services, accommodation, and registered clubs. A contravention of the proposed Part may be the basis of a complaint under the Act.

The new Part generally follows the pattern established in the Act for the other forms of discrimination that are made unlawful by the Act's provisions. However, proposed section 38ZM sets out additional reasons for which the President of the Anti-Discrimination Board may decline a complaint on the ground of religious beliefs or religious activities, either because the complaint is deliberately contrived to create a basis for complaint or to attract criticism to any faith-based entity or because the complaint is otherwise a disingenuous, malicious or dishonest use of the protections provided by proposed Part 3B.

**Schedule 1 [4]** inserts a new Part that prohibits public authorities and officials from subjecting faith-based entities to detrimental treatment on the ground of faith in certain circumstances (namely the provision of government funding, dealing with applications for grants or the provision of goods and services by the government). A contravention of the proposed Part may be the basis of a complaint under the Act.

**Schedule 1 [5]** amends a provision that provides that nothing in the *Anti-Discrimination Act 1977* affects any obligation to comply with any other Act to make it clear that it includes any such obligation arising under legislation about public health, the protection of children and young persons or national security.

**Schedule 1 [6] and [7]** make it clear that the proposed Act does not affect the charitable status of a faith-based entity.

**Schedule 1 [8]–[10]** provide that the *Anti-Discrimination Act 1977* does not affect the appointment of persons by faith-based entities, the discharge of duties by chaplains of private educational authorities or certain other specified acts or practices of faith-based entities.

**Schedule 1 [11]** makes it clear that the amendments made by the proposed Act, and the rest of the *Anti-Discrimination Act 1977*, do not authorise violence, or advocating the use of violence, through any act that purports to be religiously motivated.

**Schedule 1 [12]** inserts provision that provides exemptions from the operation of the *Anti-Discrimination Act 1977* that arise because of:

- (a) the exercise of rights under Article 18 of the *International Covenant on Civil and Political Rights* to the extent that they relate to freedom of religion, and
- (b) beliefs or convictions that marriage and family are based on the concept of the union between one man and one woman, and
- (c) beliefs or convictions consistent with the gender binary.

**Schedule 1 [13]** provides that the amendments made by the proposed Act do not give rise to any cause of action, right to complain or right to appeal in relation to decisions made by a resolution of a local government council, being decisions about development applications or other matters concerning development of land for the purposes of a place of public worship.

**Schedule 1 [14]–[16]** make amendments to procedural requirements. Those amendments are consequential on the establishment of the new ground on which the President of the Anti-Discrimination Board may decline a complaint.

**Schedule 1 [17]** inserts savings and transitional provisions that make it clear that the proposed provisions relating to discrimination on the ground of a person’s religious beliefs or religious activities, or subjecting a faith-based entity to a detriment on the ground of faith, do not apply to acts occurring before the provisions come into force.

## **Schedule 2      Amendment of Education Act 1990 No 8**

**Schedule 2 [1]** modifies one of the principles of the *Education Act 1990* (namely that the education of a child is primarily the responsibility of the child’s parents), to ensure that the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions is to be respected by the State.

**Schedule 2 [2]** provides that, for the purposes of a provision that authorises the Minister to suspend, reduce or impose conditions on the provision of financial assistance to non-government schools that are “non-compliant”, a non-government school is not a non-compliant school on the grounds only that the school teaches a belief or conviction that marriage and family is based on the concept of a union between one man and one woman, selects as employees people who share that belief or conviction or is established or operated by a body that holds the belief or conviction.



New South Wales

# Anti-Discrimination Amendment (Religious Freedoms) Bill 2018

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New South Wales

# Anti-Discrimination Amendment (Religious Freedoms) Bill 2018

No. , 2018

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## A Bill for

An Act to amend the *Anti-Discrimination Act 1977* to prohibit discrimination on the ground of a person's religious beliefs or religious activities and to prohibit public authorities and officials from subjecting faith-based institutions to detrimental treatment on the ground of faith; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Anti-Discrimination Amendment (Religious Freedoms) Act 2018</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5

<b>Schedule 1</b>	<b>Amendment of Anti-Discrimination Act 1977</b>	1
	<b>No 48</b>	2
<b>[1] Section 4 Definitions</b>		3
Insert in alphabetical order in section 4 (1):		4
<i>faith-based entity</i> means any of the following bodies, orders or association, whether or not incorporated under a law of any jurisdiction:		5
(a) a body established or run by a religious body,		6
(b) a religious order,		7
(c) a body, or association of persons, established to propagate religion,		8
(d) a body, or association of persons, established or operated by, or affiliated with, a religious order or body established to propagate religion,		9
(e) a body, or association of persons, established for, or operating in accordance with, a religious ethos or faith-based mission, objective or ethos,		10
(f) a body, or association of persons, established with objectives that include religious education or evangelisation, regardless of who established or operates the body or how it is affiliated.		11
<b>Note.</b> Any of the following may be a <i>faith-based entity</i> if the requirements of this definition are met:		12
(a) aged care facilities or retirement villages,		13
(b) educational institutions,		14
(c) child care providers,		15
(d) adoption services,		16
(e) welfare providers or public benevolent institutions,		17
(f) hospitals or medical centres,		18
(g) charitable organisations,		19
(h) entities providing accommodation, hospitality or catering services,		20
(i) venues (such as camping grounds and halls) that provide a space for social or educational activities,		21
(j) organisations established to promote culture, such as media platforms and voluntary associations.		22
<b>[2] Section 4A Acts done for more than one reason</b>		23
Insert at the end of the section:		24
(2) If:		25
(a) an act is done for 2 or more reasons, and		26
(b) one of the reasons consists of subjecting a faith-based entity to unlawful detrimental treatment that is prohibited by Part 5A (whether or not it is the dominant or a substantial reason for doing the act), and		27
(c) none of the reasons consists of unlawful discrimination under this Act against a person,		28
then, for the purposes of this Act, the act is taken to be done for the reason of subjecting the faith-based entity to unlawful detrimental treatment.		29

[3] Part 3B	1
Insert after Part 3A:	2
<b>Part 3B Discrimination on the ground of religious beliefs or religious activities</b>	3
	4
<b>Division 1 General</b>	5
<b>38U Definition</b>	6
In this Part:	7
<i>religious beliefs or religious activities</i> includes the following:	8
(a) having a religious conviction, belief, opinion or affiliation,	9
(b) engaging in religious activity, including activity motivated by, or closely or directly connected to, a religious conviction, belief, opinion or affiliation.	10
	11
	12
<b>38V What constitutes discrimination on the ground of religious beliefs or religious activities</b>	13
	14
(1) A person ( <i>the perpetrator</i> ) discriminates against another person ( <i>the aggrieved person</i> ) on the ground of religious beliefs or religious activities if the perpetrator:	15
	16
	17
(a) on the ground of the aggrieved person's religious beliefs or religious activities or the religious beliefs or religious activities of a relative or associate of the aggrieved person, treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the perpetrator treats or would treat a person:	18
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(i) with different religious beliefs or who engages in different religious activities, or	23
	24
(ii) who does not have any religious beliefs or who does not engage in, or refuses to engage in, religious activities, or	25
	26
(iii) who has such a relative or associate with different religious beliefs, or who engages in different religious activities or who does not engage in, or refuses to engage in, religious activities, or	27
	28
	29
(b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who:	30
	31
(i) do not have the same religious beliefs, or do not engage in the same religious activities, or	32
	33
(ii) do not engage in religious activities, or refuse to engage in, religious activities, or	34
	35
(iii) have such a relative or associate who does not have the same religious beliefs, or who does not engage in, or refuses to engage in, religious activities,	36
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comply or are able to comply, being a requirement or condition that is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.	39
	40
	41
(2) For the purposes of subsection (1) (a), something is done on the ground of a person's religious beliefs or religious activities if it is done on the ground of the person's religious beliefs or religious activities, a characteristic that appertains generally to persons with those religious beliefs or who engage in	42
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those religious activities or a characteristic that is generally imputed to persons  
with those religious beliefs or who engage in those religious activities. 1  
2

**Division 2      Discrimination in work** 3

**38W    Discrimination against applicants and employees** 4

- (1) It is unlawful for an employer to discriminate against a person on the ground  
of religious beliefs or religious activities: 5  
6
- (a) in the arrangements the employer makes for the purpose of determining  
who should be offered employment, or 7  
8
  - (b) in determining who should be offered employment, or 9
  - (c) in the terms on which the employer offers employment. 10
- (2) It is unlawful for an employer to discriminate against an employee on the  
ground of religious beliefs or religious activities: 11  
12
- (a) in the terms or conditions of employment which the employer affords  
the employee, or 13  
14
  - (b) by denying the employee access, or limiting the employee's access, to  
opportunities for promotion, transfer or training, or to any other benefits  
associated with employment, or 15  
16  
17
  - (c) by dismissing the employee or subjecting the employee to any other  
detriment. 18  
19
- (3) It is unlawful for an employer to discriminate against an employee on the  
ground of religious beliefs or religious activities by refusing the employee  
permission to carry out a religious practice during work hours, being a  
practice: 20  
21  
22  
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- (a) of a kind recognised as necessary or desirable by people of the same  
religious beliefs or religious activities as that of the employee, and 24  
25
  - (b) the performance of which during working hours is reasonable having  
regard to the circumstances of the employment, and 26  
27
  - (c) that does not subject the employer, another employee of the employer,  
a customer of the employer, or any other person involved in the ordinary  
course of the employer's business, to unreasonable detriment. 28  
29  
30
- (4) It is unlawful for an employer to discriminate against an employee on the  
ground of religious beliefs or religious activities by refusing the employee  
permission to wear any religious symbol or any religious clothing other than  
clothing that covers the face during work hours, being a symbol or clothing: 31  
32  
33  
34
- (a) of a kind recognised as necessary or desirable by people of the same  
religious beliefs or religious activities as that of the employee, and 35  
36
  - (b) the wearing of which during working hours is reasonable having regard  
to the circumstances of the employment, and 37  
38
  - (c) that does not subject the employer, another employee of the employer,  
a customer of the employer, or any other person involved in the ordinary  
course of the employer's business, to unreasonable detriment. 39  
40  
41
- (5) Subsections (1) and (2) do not apply to employment: 42
- (a) for the purposes of a private household, or 43
  - (b) by a private educational authority, or 44
  - (c) by a faith-based entity. 45

- (6) Nothing in subsection (1) (b) or (2) (c) renders unlawful discrimination by an employer against a person on the ground of the person's religious beliefs or religious activities if, taking into account the person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of his or her religious beliefs or religious activities:
- (a) would be unable to carry out the inherent requirements of the particular employment in a manner that is consistent with, or complies with, the intended cultural framework of the faith-based entity concerned, or
  - (b) would, in order to carry out those requirements, require services or facilities that are not required by persons with different religious beliefs, or who engage in different religious activities, or who do not engage in, or refuse to engage in, religious activities, and the provision of which would impose an unjustifiable hardship on the employer, another employee of the employer, a customer of the employer, or any other person involved in the ordinary course of the employer's business.
- (7) In determining what constitutes unjustifiable hardship for the purposes of this section, all relevant circumstances of the particular case are to be taken into account including:
- (a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned, and
  - (b) the effect of the religious beliefs or religious activities of any such person concerned, and
  - (c) the financial circumstances and the estimated amount of expenditure required to be made, or revenue foregone, by the person claiming unjustifiable hardship.
- 38X Discrimination against commission agents**
- (1) It is unlawful for a principal to discriminate against a person on the ground of religious beliefs or religious activities:
- (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent, or
  - (b) in determining who should be engaged as a commission agent, or
  - (c) in the terms on which the principal engages the person as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of religious beliefs or religious activities:
- (a) in the terms or conditions which the principal affords him or her as a commission agent, or
  - (b) by denying him or her access, or limiting his or her access, to opportunities for promotion, transfer or training, or to any other benefits associated with his or her position as a commission agent, or
  - (c) by terminating his or her engagement or subjecting him or her to any other detriment.
- (3) It is unlawful for a principal to discriminate against a commission agent on the ground of religious beliefs or religious activities by refusing the commission agent permission to carry out a religious practice during work hours, being a practice:

- (a) of a kind recognised as necessary or desirable by people of the same religious beliefs or religious activities, as that of the commission agent, and 1  
2  
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  - (b) the performance of which during working hours is reasonable having regard to the circumstances of the engagement of the commission agent, and 4  
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  - (c) that does not subject the principal, another commission agent of the principal, a customer of the principal, or any other person involved in the ordinary course of the principal's business, to unreasonable detriment. 7  
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- (4) It is unlawful for a principal to discriminate against a commission agent on the ground of religious beliefs or religious activities by refusing the commission agent permission to wear any religious symbol or any religious clothing other than clothing that covers the face during work hours, being a symbol or clothing: 11  
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- (a) of a kind recognised as necessary or desirable by people with the same religious beliefs or religious activities as that of the commission agent, and 16  
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  - (b) the wearing of which during working hours is reasonable having regard to the circumstances of the engagement of the commission agent, and 19  
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  - (c) that does not subject the principal, another commission agent of the principal, a customer of the principal, or any other person involved in the ordinary course of the principal's business, to unreasonable detriment. 21  
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23  
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- 38Y Discrimination against contract workers** 25
- (1) It is unlawful for a principal to discriminate against a contract worker on the ground of religious beliefs or religious activities: 26  
27
- (a) in the terms on which the principal allows him or her to work, or 28
  - (b) by not allowing him or her to work or continue to work, or 29
  - (c) by denying him or her access, or limiting his or her access, to any benefit associated with the work in respect of which the contract with his or her employer is made, or 30  
31  
32
  - (d) by subjecting him or her to any other detriment. 33
- (2) It is unlawful for a principal to discriminate against a contract worker on the ground of religious beliefs or religious activities by refusing the contract worker permission to carry out a religious practice during work hours, being a practice: 34  
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- (a) of a kind recognised as necessary or desirable by people of the same religious beliefs or religious activities as that of the contract worker, and 38  
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  - (b) the performance of which during working hours is reasonable having regard to the circumstances of the engagement of the contract worker, and 40  
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  - (c) that does not subject the principal, another contract worker of the principal, a customer of the principal, or any other person involved in the ordinary course of the principal's business, to unreasonable detriment. 43  
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(3)	It is unlawful for a principal to discriminate against a contract worker on the ground of religious beliefs or religious activities by refusing the contract worker permission to wear any religious symbol, or any religious clothing other than clothing that covers the face during work hours, being a symbol or clothing:	1
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(a)	of a kind recognised as necessary or desirable by people of the same religious beliefs or religious activities as that of the contract worker, and	6
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(b)	the wearing of which during working hours is reasonable having regard to the circumstances of the engagement of the contract worker, and	8
		9
(c)	that does not subject the principal, another contract worker of the principal, a customer of the principal, or any other person involved in the ordinary course of the principal's business, to unreasonable detriment.	10
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<b>38Z</b>	<b>Partnerships</b>	14
(1)	It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of religious beliefs or religious activities:	15
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(a)	in the arrangements made for the purpose of determining who should be offered a position as partner in the firm, or	19
		20
(b)	in determining who should be offered a position as partner in the firm, or	21
		22
(c)	in the terms on which the person is offered a position as partner in the firm.	23
		24
(2)	It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of religious beliefs or religious activities:	25
		26
(a)	by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm, or	27
		28
(b)	by expelling the partner from the firm, or	29
		30
(c)	by subjecting the partner to any other detriment.	30
<b>38ZA</b>	<b>Discrimination by local government councillors</b>	31
	It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of religious beliefs or religious activities.	32
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<b>38ZB</b>	<b>Industrial organisations</b>	36
(1)	It is unlawful for an industrial organisation to discriminate against a person who is not a member of the industrial organisation on the ground of religious beliefs or religious activities:	37
		38
		39
(a)	by refusing or failing to accept the person's application for membership, or	40
		41
(b)	in the terms on which it is prepared to admit the person to membership.	42
(2)	It is unlawful for an industrial organisation to discriminate against a person who is a member of the industrial organisation on the ground of religious beliefs or religious activities:	43
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(a)	by denying the person access, or limiting the person's access, to any benefit provided by the industrial organisation, or	46
		47

(b)	by depriving the person of membership or varying the terms of the person's membership, or	1 2
(c)	by subjecting the person to any other detriment.	3
<b>38ZC</b>	<b>Qualifying bodies</b>	4
	It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of religious beliefs or religious activities:	5 6 7 8 9
(a)	by refusing or failing to confer, renew or extend the authorisation or qualification, or	10 11
(b)	in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification, or	12 13
(c)	by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.	14 15
<b>38ZD</b>	<b>Employment agencies</b>	16
	It is unlawful for an employment agency to discriminate against a person on the ground of religious beliefs or religious activities:	17 18
(a)	by refusing to provide the person with any of its services, or	19
(b)	in the terms on which it offers to provide the person with any of its services, or	20 21
(c)	in the manner in which it provides the person with any of its services.	22
<b>38ZE</b>	<b>Exception—genuine occupational qualification</b>	23
	Nothing in this Division applies to or in respect of any work or employment where that work or employment involves any one or more of the following:	24 25
(a)	participation in any way in any ritual or custom in a capacity for which the services of a person of a particular religious association, affiliation or belief are required for reasons of authenticity, cultural sensitivity or other religious, ethical or moral requirements or for adherence to any principle of religious injunction,	26 27 28 29 30
(b)	participation in any way in any artistic performance in a capacity for which the services of a person of a particular religious association, affiliation or belief are required for reasons of authenticity, cultural sensitivity or other religious, ethical or moral requirements or for adherence to any principle of religious injunction,	31 32 33 34 35
(c)	working in a place in which food or drink is, whether or not for payment, provided to and consumed in circumstances in which the services of a person of a particular religious association, affiliation or belief are required for reasons of authenticity, cultural sensitivity or other religious, ethical or moral requirements or for adherence to any principle of religious injunction,	36 37 38 39 40 41
(d)	providing persons of a particular religious association, affiliation or beliefs with services for the purpose of promoting their welfare in circumstances where those services can be most effectively, efficiently or appropriately provided by a person with the same religious associations, affiliations or beliefs as the intended recipient of that welfare.	42 43 44 45 46 47

<b>38ZF</b>	<b>Exception—employment intended to provide training in skills to be exercised outside New South Wales</b>	1 2
	Nothing in this Division applies to or in respect of anything done by an employer in or in connection with the employment in New South Wales of a person not ordinarily resident in New South Wales where that employment is intended to provide the person with training in skills to be exercised by the person wholly outside New South Wales.	3 4 5 6 7
<b>38ZG</b>	<b>Exception—employment on ship or aircraft</b>	8
	Nothing in this Division applies to or in respect of the employment of a person on a ship or an aircraft in New South Wales if that person was engaged for that employment outside New South Wales.	9 10 11
	<b>Division 3 Discrimination in other areas</b>	12
<b>38ZH</b>	<b>Education</b>	13
(1)	It is unlawful for an educational authority to discriminate against a person on the ground of religious beliefs or religious activities:	14 15
(a)	by refusing or failing to accept the person’s application for admission as a student, or	16 17
(b)	in the terms on which it is prepared to admit the person as a student.	18
(2)	It is unlawful for an educational authority to discriminate against a student on the ground of religious beliefs or religious activities:	19 20
(a)	by denying the student access, or limiting the student’s access, to any benefit provided by the educational authority, or	21 22
(b)	by expelling the student or subjecting the student to any other detriment.	23
(3)	Nothing in this section applies to or in respect of a private educational authority.	24 25
<b>38ZI</b>	<b>Provision of goods and services</b>	26
(1)	It is unlawful for a person who provides (whether or not for payment) goods or services to discriminate against another person on the ground of religious beliefs or religious activities:	27 28 29
(a)	by refusing to provide the person with those goods or services, or	30
(b)	in the terms on which the other person is provided with those goods or services.	31 32
(2)	It is unlawful for a person who provides (whether or not for payment) goods or services to subject a faith-based entity to a detriment on the ground of faith:	33 34
(a)	by refusing to provide the faith-based entity with those goods or services, or	35 36
(b)	in the terms on which the faith-based entity is provided with those goods or services.	37 38
(3)	In this section: <i>subject a faith-based entity to a detriment on the ground of faith</i> has the same meaning as in section 53A.	39 40 41
<b>38ZJ</b>	<b>Accommodation</b>	42
(1)	It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of religious beliefs or religious activities:	43 44

(a)	by refusing the person's application for accommodation, or	1
(b)	in the terms on which the person offers the person accommodation, or	2
(c)	by deferring the person's application for accommodation or according the person a lower order of precedence in any list of applicants for that accommodation.	3 4 5
(2)	It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of religious beliefs or religious activities:	6 7
(a)	by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person, or	8 9
(b)	by evicting the person or subjecting the person to any other detriment.	10
(3)	Nothing in this section applies to or in respect of the provision of accommodation in premises if the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises.	11 12 13 14
<b>38ZK</b>	<b>Registered clubs</b>	15
(1)	It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of religious beliefs or religious activities:	16 17 18
(a)	by refusing or failing to accept the person's application for membership, or	19 20
(b)	in the terms on which it is prepared to admit the person to membership.	21
(2)	It is unlawful for a registered club to discriminate against a person who is a member of the registered club on the ground of religious beliefs or religious activities:	22 23 24
(a)	by denying the person access, or limiting the person's access, to any benefit provided by the registered club, or	25 26
(b)	by depriving the person of membership or varying the terms of the person's membership, or	27 28
(c)	by subjecting the person to any other detriment.	29
(3)	Nothing in subsection (1) or (2) applies to or in respect of a registered club if the principal object of the registered club is to provide benefits for persons with specified religious beliefs or religious activities.	30 31 32
(4)	In determining whether the principal object of a registered club is as referred to in subsection (3), regard must be had to:	33 34
(a)	the essential character of the registered club, and	35
(b)	the extent to which the affairs of the registered club are so conducted that the persons primarily enjoying the benefits of membership are of the religious beliefs, or engage in the religious activities, specified in the principal object, and	36 37 38 39
(c)	any other relevant circumstance.	40
<b>Division 4</b>	<b>Miscellaneous</b>	41
<b>38ZL</b>	<b>Special needs programs and activities</b>	42
	Nothing in this Part applies to or in respect of anything done in affording persons of a particular religious beliefs or religious activities access to	43 44

facilities, services or opportunities to meet their special needs or to promote equal or improved access for them to facilities, services and opportunities.	1 2
<b>38ZM Additional basis on which President may decline complaint</b>	3
(1) The President may decline a complaint involving a contravention of this Part if, at any stage of the President's investigation of the complaint, the President is satisfied that:	4 5 6
(a) the conduct of the complainant was deliberately contrived to create a basis on which to make a complaint against, or to generate criticism of, any faith-based entity or any individual with particular religious beliefs or religious activities, or	7 8 9 10
(b) the complaint is otherwise a disingenuous, malicious or dishonest use of the protections established by this Part so as to generate criticism of any faith-based entity or any individual with particular religious beliefs or religious activities.	11 12 13 14
(2) On declining a complaint under subsection (1), the President is to advise the complainant, by notice in writing, of:	15 16
(a) the reason for declining the complaint or part of the complaint, and	17
(b) the rights of the complainant under sections 93A and 96.	18
(3) The regulations may make provision for or with respect to matters that may be taken into consideration by the President in making a decision under this section.	19 20 21
(4) This section does not limit the operation of section 92 (1).	22
<b>[4] Part 5A</b>	23
Insert Part 5:	24
<b>Part 5A Detrimental treatment of faith-based entities</b>	25
<b>53A Meaning of subjecting a faith-based entity to a detriment on the ground of faith</b>	26
For the purposes of this Part, a faith-based entity is <i>subjected to a detriment on the ground of faith</i> if:	27 28
(a) it is obligated by a public authority or public official to comply with a requirement or condition that would conflict with the religious or faith-based doctrines, tenets, teachings or beliefs of that entity's mission, purpose or ethos, after having made it known to the relevant public authority or official that complying with the requirement or condition would conflict with the religious or faith-based doctrines, tenets, teachings or beliefs of its mission, purpose or ethos, being a requirement or condition that is not reasonable having regard to the circumstances of the case, or	29 30 31 32 33 34 35 36 37
(b) it is obligated by a public authority or public official to comply with a requirement or condition with which a substantially higher proportion of bodies or persons who do not have the religious or faith-based doctrines, tenets, teachings or beliefs of that entity's mission, purpose or ethos comply or are able to comply, being a requirement or condition that is not reasonable having regard to the circumstances of the case, or	38 39 40 41 42 43



(c)	on the ground of its religious or faith-based convictions, the faith-based entity is treated less favourably than in the same circumstances, or in circumstances that are not materially different, a body with different religious or faith-based convictions, or no religious or faith-based convictions, would be treated.	1 2 3 4 5
<b>53B</b>	<b>Provision of government funding</b>	6
	A public authority or official is not to:	7
(a)	deny, or threaten to deny, government funding to a faith-based entity on the basis of the entity's faith-based mission or purpose or its advancement of that mission or purpose or on a basis that includes that basis, or	8 9 10 11
(b)	deny, or threaten to deny, government funding to a faith-based entity as a consequence of, or in relation or reference to, the entity's faith-based mission or purpose or its advancement of that mission or purpose, or	12 13 14
(c)	otherwise subject a faith-based entity to a detriment on the ground of faith in relation to the provision of government funding.	15 16
<b>53C</b>	<b>Dealing with applications for grants</b>	17
	A public authority or official is not to:	18
(a)	reject, or fail to consider, an application for a grant made by a faith-based entity on the basis of the entity's faith-based mission or purpose or its advancement of that mission or purpose or on a basis that includes that basis, or	19 20 21 22
(b)	reject, or fail to consider, an application for a grant made by a faith-based entity as a consequence of, or in relation or reference to, the entity's faith-based mission or purpose or its advancement of that mission or purpose, or	23 24 25 26
(c)	otherwise subject a faith-based entity to a detriment on the ground of faith in relation to the provision of a grant.	27 28
<b>53D</b>	<b>Provision of goods, services or benefits by government</b>	29
	A public authority or official is not to:	30
(a)	reject, or fail to consider, an application or other request by a faith-based entity for goods, or for a service or other benefit, provided by the government or by a public authority on the basis of the entity's faith-based mission or purpose or its advancement of that mission or purpose or on a basis that includes that basis, or	31 32 33 34 35
(b)	reject, or fail to consider, an application or other request by a faith-based entity for goods, or for a service or other benefit, provided by the government or by a public authority, as a consequence of or in relation or reference to, the entity's faith-based mission or purpose or its advancement of that mission or purpose, or	36 37 38 39 40
(c)	otherwise subject a faith-based entity to a detriment on the ground of faith in relation to the provision of goods, services and other benefits provided by the government or by a public authority.	41 42 43
<b>[5]</b>	<b>Section 54 Acts done under statutory authority</b>	44
	Insert “, including, but not limited to, any Act concerning public health, the protection of children and young persons or national security” after “this Act” in section 54 (1) (a).	45 46

<b>[6] Section 55 Charities</b>	1
Insert “or by reference to the person being, or not being, a faith-based entity within the meaning of this Act” after “Act” in section 55 (1) (a).	2 3
<b>[7] Section 55 (1A)</b>	4
Insert after section 55 (1):	5
(1A) Without limiting subsection (1), nothing in Part 3B or 5A affects whether or not the purpose of a trust is to be treated as being a charitable purpose for the purposes of the <i>Charitable Trusts Act 1993</i> and the general law relating to charitable trusts.	6 7 8 9
<b>[8] Section 56 Religious bodies and faith-based entities</b>	10
Insert after section 56 (b):	11
(b1) the discharge by a chaplain employed or appointed by, or exercising duties as a volunteer of, a private educational authority of official duties of the office of chaplain in accordance with the faith-based mission of the private educational authority,	12 13 14 15
<b>[9] Section 56 (c) and (d)</b>	16
Omit “body established to propagate religion” wherever occurring.	17
Insert instead “faith-based entity”.	18
<b>[10] Section 56 (d)</b>	19
Insert “, tenets, teachings and beliefs” after “doctrines”.	20
<b>[11] Section 56 (2)–(4)</b>	21
Insert at the end of section 56:	22
(2) Subsection (1) does not operate so as to exclude from the operation of this Act any act or practice (whether or not referred to in that subsection) that:	23 24
(a) purports to be religiously motivated, and	25
(b) involves, or advocates, the use of violent force or unlawful coercion against, for whatever reason, an individual or group of individuals, or another faith-based entity, or the property of any such individual, group or entity.	26 27 28 29
(3) For that purpose, an act or practice <i>purports to be religiously motivated</i> if the person who carried out the act or practice:	30 31
(a) purports to be inspired by or to act in the name of any religious belief or conviction or any organisation purporting to be faith-based or organised around a religious principle, or	32 33 34
(b) purports to be inspired by or to act in accordance with any principle of religious injunction or pursuant to any religious doctrine of any organisation purporting to be faith-based or organised around a religious principle.	35 36 37 38
(4) It is not the intention of the Parliament of New South Wales that the operation of subsection (2) or (3) should censor, stifle or stultify academic or public debate that is sincere or in good faith, including critical debate, concerning religious and associated matters.	39 40 41 42

<b>[12] Sections 56A–56C</b>	1
Insert after section 56:	2
<b>56A Freedom of religion</b>	3
(1) Nothing in this Act affects the right of any person to exercise the person’s rights under Article 18 of the <i>International Covenant on Civil and Political Rights</i> to the extent that they relate to the person’s freedom of religion.	4 5 6
(2) In particular, a person does not unlawfully discriminate by reason only of anything done, or omitted to be done, in the course of exercising the person’s rights under that Article, to the extent that they relate to the person’s freedom of religion.	7 8 9 10
<b>56B Beliefs or convictions about the nature of marriage and family</b>	11
(1) Nothing in this Act affects the right of any person who holds a belief or conviction that marriage and family is based on the concept of a union of one man and one woman to manifest, teach or comply with that belief or conviction in practice, worship or observance, whether in public or private.	12 13 14 15
(2) In particular, a person does not unlawfully discriminate by reason only of anything done, or omitted to be done because of the person’s belief or conviction that marriage and family is based on the concept of a union of one man and one woman.	16 17 18 19
(3) A person who holds a belief or conviction that marriage and family is based on the concept of a union of one man and one woman is not obliged by anything in this Act to participate in or provide a service in relation to a marriage or marriage-related ceremony or service:	20 21 22 23
(a) between people of the same sex, or	24
(b) otherwise between people who intend to form a union that is not a union of one man and one woman,	25 26
unless the non-participation or non-provision of the service by that person would make it impossible for that ceremony to occur.	27 28
<b>56C Beliefs in the gender binary</b>	29
(1) Nothing in this Act affects the right of any person who holds a belief or conviction that a person can only be one of 2 genders (that is, either male or female) to manifest that belief, teach that belief, or comply with that belief in practice, worship or observance, whether in public or private.	30 31 32 33
(2) Nothing in this Act authorises any employer, principal or other person or entity to discriminate against a person on the ground that the person holds a belief or conviction that a person can only be one of 2 genders (that is, either male or female):	34 35 36 37
(a) in the arrangements the employer, principal or other person or entity makes for the purpose of determining who should be offered employment, engaged as a commission agent or allowed to work, or	38 39 40
(b) in determining who should be offered employment, engaged as a commission agent or allowed to work or continue to work, or	41 42
(c) in the terms on which the employer, principal or other person or entity offers employment, engages the person as a commission agent or allows the person to work, or	43 44 45

(d)	in the terms or conditions of employment or any contract that the employer, principal or other person or entity affords the employee, commission agent or contract worker, or	1 2 3
(e)	by denying the employee, commission agent or contract worker access, or limiting the employee's, commission agent's or contract worker's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment or a position as commission agent or contract worker, or	4 5 6 7 8
(f)	by dismissing the employee, commission agent or contract worker or subjecting the employee, commission agent or contract worker to any other detriment.	9 10 11
(3)	A person who holds a belief or conviction that a person can only be one of 2 genders (that is, either male or female) is not obliged by anything in this Act to do, say or teach any thing in the course of the person's work as a teacher in a school of any kind, or participate in or provide a service in the course of that work, that is inconsistent with that belief of the person.	12 13 14 15 16
<b>[13] Section 58</b>		17
	Insert after section 57:	18
<b>58 Local government actions relating to places of public worship</b>		19
(1)	For the avoidance of doubt, this section makes provision about the effect of Parts 3B and 5A on certain resolutions made by councils.	20 21
(2)	Nothing in Part 3B or 5A gives rise to, or can be taken into account in, any civil cause of action against a council in relation to resolutions made by the council about:	22 23 24
(a)	any application for the development of land for the purposes of a place of public worship, or	25 26
(b)	any application for a certificate or permit relating to the erection, alteration, occupation, safety or use of any place of public worship, or	27 28
(c)	any other matter relating to a particular place of public worship.	29
(3)	Without limiting the generality of subsection (2), nothing in Part 3B or 5A:	30
(a)	operates to create in any person any right of complaint, or any legal right, against a council, being a right that was not in existence before the commencement of those Parts, or	31 32 33
(b)	affects the validity, or provides grounds for review of, or appeal to the Land and Environment Court or any other court of, any decision or action supported by a resolution of a council in relation to development for the purposes of places of public worship made by a resolution of the council, including any decision or action under the <i>Environmental Planning and Assessment Act 1979</i> or the <i>Local Government Act 1993</i> , or any instrument made under either of those Acts, or	34 35 36 37 38 39 40
(c)	affects the validity, or provides grounds for review, of any judicial or administrative act or omission in relation to a decision or action supported by a resolution of a council in relation to development for the purposes of places of public worship.	41 42 43 44
(4)	If a council is required by another law to consider particular matters, or to comply with particular requirements, in the exercise of its functions, nothing in Part 3B or 5A is to be taken to require the council to act consistently or inconsistently with that law.	45 46 47 48

(5)	In this section:	1
	<i>development</i> has the same meaning as in the <i>Environmental Planning and Assessment Act 1979</i> .	2
	<i>place of public worship</i> means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.	3
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		7
[14]	<b>Section 91A Resolution of complaint by conciliation</b>	8
	Omit “section 92” from section 91A (1). Insert instead “section 38ZM or 92”.	9
[15]	<b>Section 93A Referral of complaints to Tribunal at requirement of complainant</b>	10
	Omit “section 87B (4)” from section 93A (1). Insert instead “section 38ZM, 87B (4)”.	11
[16]	<b>Section 102 Tribunal may dismiss complaint</b>	12
	Omit “section 92 (1) (a) (i) or (ii) or (b)”.	13
	Insert instead “section 38ZM or 92 (1) (a) (i) or (ii) or (b)”.	14
[17]	<b>Schedule 1 Savings and transitional provisions</b>	15
	Insert after Part 8:	16
	<b>Part 9 Anti-Discrimination Amendment (Religious Freedoms) Act 2018</b>	17
		18
25	<b>Operation of amendments</b>	19
(1)	Parts 3B and 5A, and sections 56 (b1) and (2)–(4), 56A, 56B and 58 (as inserted by the amending Act) do not apply to or in respect of anything done or omitted to be done before the commencement of the amending Act.	20
		21
		22
(2)	This Act continues to apply to anything done or omitted to be done before the commencement of Part 3B as if that Part had not been enacted. In particular, the insertion of Part 3B by the amending Act does not affect any complaint lodged on a ground of unlawful discrimination before the commencement of the amending Act.	23
		24
		25
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		27
(3)	In this clause:	28
	<i>the amending Act</i> means the <i>Anti-Discrimination Amendment (Religious Freedoms) Act 2018</i> .	29
		30

<b>Schedule 2</b>	<b>Amendment of Education Act 1990 No 8</b>	1
<b>[1]</b>	<b>Section 4 Principles on which this Act is based</b>	2
	Omit section 4 (b). Insert instead:	3
	(b) the education of a child is primarily the responsibility of the child's parents, whose liberty to ensure the religious and moral education of their children in conformity with their own convictions is to be respected by the State,	4 5 6 7
<b>[2]</b>	<b>Section 83E Financial assistance to schools may be suspended, reduced or made subject to conditions</b>	8 9
	Insert after section 83E (4):	10
	(5) For the avoidance of doubt, a school is not a non-compliant school on the grounds only that the school:	11 12
	(a) teaches a belief or conviction that marriage and family is based on the concept of a union between one man and one woman, or	13 14
	(b) selects as employees people who share the belief or conviction that marriage and family is based on the concept of a union between one man and one woman, or	15 16 17
	(c) is established or operated by a body that holds the belief or conviction that marriage and family is based on the concept of a union between one man and one woman.	18 19 20