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Commonwealth of Australia

THE SENATE

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COVID-19 Vaccination Status (Prevention of Discrimination) Bill 2021

No. , 2021

(Senator Hanson)

A Bill for an Act to prevent discrimination in relation to COVID-19 vaccination status, and for related purposes

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A Bill for an Act to prevent discrimination in relation to COVID-19 vaccination status, and for related purposes

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *COVID-19 Vaccination Status (Prevention of Discrimination) Act 2021*.

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.	

Note: This table relates only to the provisions of this Act as originally enacted.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 Definitions

In this Act:

authority:

(a) of the Commonwealth—includes a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*); and

(b) of a State or Territory—includes a local council.

business includes a not-for-profit business.

COVID-19 means the coronavirus commonly known as COVID-19 (including any subsequent variants of that coronavirus).

COVID-19 vaccination means a vaccine approved by the Therapeutic Goods Administration for the purpose of immunising persons against COVID-19 infection.

discriminates: see section 4.

employment includes:

(a) part-time and temporary employment; and

(b) work under a contract for services.

premises includes:

(a) stadiums and other sporting facilities; and

(b) theatres, concert halls and other performance venues; and

(c) places of business

provision of goods or services includes:

(a) the provision of accommodation, including:

(i) residential accommodation (but not including the provision of residential 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); and

(ii) business accommodation; and

(b) the provision of education at a school, university or other institution; and

(c) the provision of goods or services whether for reward or otherwise.

services includes the following:

(a) services relating to banking, insurance and the provision of grants, loans, credit or finance;

(b) services relating to entertainment, recreation or refreshment;

(c) services relating to transport or travel;

(d) services of the kind provided by the members of any profession or trade;

(e) services of the kind provided by a government, a government authority or a local government body.

voluntary body means:

(a) an association or other body (whether incorporated or unincorporated) the activities of which are not engaged in for the purpose of making a profit; or

(b) without limiting paragraph (a)—a volunteer firefighting service, volunteer emergency service or similar organisation.

4 Meaning of *discriminates*

Discrimination by requiring proof of COVID-19 vaccination

(1) Without limiting when a person ***discriminates*** against another person on the basis of whether the other person has received a COVID-19 vaccination, the first person ***discriminates*** against the other person on that basis if the first person:

(a) requests or requires the other person to produce proof of having received a COVID-19 vaccination; or

(b) discriminates against the other person on the basis of whether the other person has proof of having received a COVID-19 vaccination.

Discrimination by unfavourable treatment

(2) Without limiting when a person ***discriminates*** against another person on the basis of whether the other person has received a COVID-19 vaccination, a person (the ***first person***) ***discriminates*** against another person (the ***second person***) if the first person treats the second person less favourably than, in circumstances that are the same or are not materially different, the first person treats or would treat a person who has received a COVID-19 vaccination.

Discrimination on multiple bases

(3) A reference in this Act to discriminating against a person on the basis of whether the other person has received a COVID-19 vaccination includes a reference to discriminating against the other person on 2 or more bases that include that basis, whether or not that basis is the dominant or substantial reason for the doing of the act.

5 Binding the Crown

This Act binds the Crown in each of its capacities.

6 Extension to external Territories

This Act extends to external Territories.

Part 2—Prohibition on discrimination on basis of vaccination

7 Commonwealth must not discriminate on basis of COVID-19 vaccination

(1) The Commonwealth must not discriminate against a person on the basis of whether the person has received a COVID-19 vaccination.

(2) The Commonwealth must not:

(a) enter into an agreement with a State, Territory, business, or voluntary body; or

(b) fund a State, Territory, business or voluntary body (including by means of a grant); or

(c) grant a licence, permit, authorisation, authority or other permission (however described) to a State, Territory, business or voluntary body;

if the State, Territory, business or voluntary body is reasonably likely to discriminate against a person (whether or not in connection with the agreement, funding, licence etc.) on the basis of whether the person has received a COVID-19 vaccination.

(3) The Commonwealth must not:

(a) enter into an agreement with a State, Territory, business, or voluntary body; or

(b) fund a State, Territory, business or voluntary body (including by means of a grant); or

(c) grant a licence, permit, authorisation, authority or other permission (however described) to a State, Territory, business or voluntary body;

on the condition that the State, Territory, business or voluntary body require persons to receive a COVID-19 vaccination.

(4) For the purposes of subsection (2), a State, Territory, business or voluntary body that has discriminated on the basis mentioned in that subsection in the past is taken to be reasonably likely

discriminate on that basis in the future unless the contrary is proved.

Commonwealth authorities

(5) A reference in this section to the Commonwealth includes a reference to an authority of the Commonwealth.

8 States must not discriminate on basis of COVID-19 vaccination

(1) A State must not discriminate against a person on the basis of whether the person has received a COVID-19 vaccination.

(2) Subsection (1) does not apply to discrimination against an officer or employee of the State concerned.

State authorities

(3) A reference in this section to a State includes a reference to an authority of a State.

9 Territories must not discriminate on basis of COVID-19 vaccination

(1) A Territory must not discriminate against a person on the basis of whether the person has received a COVID-19 vaccination.

(2) A Territory must not:

(a) enter into an agreement with a State, other Territory, business or voluntary body; or

(b) fund a business or voluntary body (including by means of a grant); or

(c) grant a licence, permit, authorisation, authority or other permission (however described) to a business or voluntary body;

if the State, other Territory, business or voluntary body is reasonably likely to discriminate against a person (whether or not in connection with the agreement, funding, licence etc.) on the basis of whether the person has received a COVID-19 vaccination.

(3) For the purposes of subsection (2), a State, Territory, business or voluntary body that has discriminated on the basis mentioned in that subsection in the past is taken to be reasonably likely discriminate on that basis in the future unless the contrary is proved.

Territory authorities

(4) A reference in this section to a Territory includes a reference to an authority of a Territory.

10 Other entities

Employment

(1) A person must not discriminate against another person, in relation to the first person employing the other person, on the basis of whether the other person has received a COVID-19 vaccination.

Penalty: 100 penalty units.

Businesses

(2) A business must not discriminate against a person, in relation to any of the following, on the basis of whether the person has received a COVID-19 vaccination:

(a) providing goods or services to the person;

(b) giving the person access to business premises.

Penalty: 1,000 penalty units.

Voluntary bodies

(3) A voluntary body must not discriminate against a person, in relation to any of the following, on the basis of whether the other person has received a COVID-19 vaccination:

(a) the person's membership of the voluntary body;

(b) permitting the person to participate in the activities of the voluntary body;

(c) providing goods or services to the person;

(d) giving the person access to premises of the voluntary body.

Penalty: 100 penalty units.

11 This Part overrides other laws

This Part has effect despite any other law of the Commonwealth, a State or a Territory (whether passed or made before or after the commencement of this section) that requires or permits discrimination on the basis of whether a person has received a COVID-19 vaccination.

Part 3—Miscellaneous

12 Constitutional basis of this Act

(1) This Act gives effect to Australia's international obligations, particularly under:

(a) the International Covenant on Economic, Social and Cultural Rights, particularly article 12; and

(b) the International Covenant on Civil and Political Rights, particularly articles 7, 17 and 26.

(2) In this Act:

International Covenant on Civil and Political Rights means the International Covenant on Civil and Political Rights, done at New York on 16 December 1966, as in force for Australia from time to time.

Note: The Covenant is in Australian Treaty Series 1980 No. 23 ([1980] ATS 23) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

International Covenant on Economic, Social and Cultural Rights means the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966, as in force for Australia from time to time.

Note: The Covenant is in Australian Treaty Series 1976 No. 5 ([1976] ATS 5) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

13 Additional operation of sections 8 and 10

(1) In addition to section 12, sections 8 and 10 also have effect as provided by this section.

Trade and commerce

(2) Sections 8 and 10 also have the effect they would have if a reference to discrimination were expressly confined to discrimination undertaken in the course of:

(a) trade or commerce between Australia and places outside Australia; or

(b) trade or commerce among the States; or

(c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories.

Communications

(3) Sections 8 and 10 also have the effect they would have if a reference to discrimination were expressly confined to discrimination undertaken using a service to which paragraph 51(v) of the Constitution applies.

Insurance

(4) Sections 8 and 10 also have the effect they would have if a reference to discrimination were expressly confined to discrimination undertaken in the course of insurance to which paragraph 51(xiv) of the Constitution applies.

Corporations

(5) Sections 8 and 10 also have the effect they would have if a reference to discrimination were expressly confined to discrimination undertaken by a corporation to which paragraph 51(xx) of the Constitution applies.

Territories

(6) Sections 8 and 10 also have the effect they would have if a reference to discrimination were expressly confined to discrimination undertaken in a Territory.