The Politics of Belief:
The Rise of Religious Freedom in Australia

A dissertation by
ELENIE POULOS

BA (Hons), University of Sydney
BTh, United Theological College (Sydney College of Divinity)
MA, University of Sydney

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Supervisor: **Professor Marion Maddox**, PhD, PhD
Associate Supervisor: **Associate Professor Clare Monagle**, PhD

Department of Modern History, Politics and International Relations
Macquarie University

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Statement of Originality

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

Signed: Date: 5 June 2020

Name: Elenie Poulos

Dedication

This thesis is dedicated to Nicole Mockler, who encouraged, coaxed, challenged, supported, fed and nourished me, through all the years of this project. She read it all. Her suggestions and advice were impeccable and perfectly timed. Of course. She never stopped believing in me and whenever I wondered why I was doing this, she was there to remind me that it mattered. Her love, which has never once dimmed or waned, sustains me every day. I am thankful beyond words.

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Professor Pat Thomson writes a blog called ‘patter’. The blog and her book, *Writing for Peer Reviewed Journals (2013),* co-authored with Professor Barbara Kamler, were the

most useful tools I had during the course of writing this thesis. I turned to them often. Professor Thomson, your blog is an example of academic generosity at its best. Thank you.

Living with a journal editor has provided me with a particular appreciation of the work involved in producing quality academic journals. I am grateful to the editors of the journals that published my papers and the anonymous reviewers whose feedback made the papers so much better than they otherwise would have been.

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Abstract

THE POLITICS OF BELIEF: THE RISE OF RELIGIOUS FREEDOM IN AUSTRALIA

The issue of religious freedom burst into Australian public discourse during the lead-up to marriage equality – or so it seemed when, for more than two years after the announcement in 2017 of a voluntary postal survey on same-sex marriage, religious freedom was an almost daily topic in the media. But religious freedom has been a matter of public debate in Australia since the early to mid 1800s and it is one of the few rights included in the Australian Constitution. While issues relating to religious freedom in Australia are being increasingly addressed by scholars from various disciplines, the discourse of religious freedom has remained largely unexamined.

The constitutional protections for religious freedom are limited, and in the absence of a national human rights instrument, religious freedom (at the time of writing) is addressed in federal law only through a series of exemptions or exceptions in anti-discrimination law. Most of the research about religious freedom in Australia has, therefore, focussed on legal issues such as the Constitution and case law; the operation of religious exemptions in anti-discrimination law; the effect of the exemptions on religious institutions, organisations and communities, and on groups of people targeted by those exemptions, for example, women and LGBTIQ people; and on so-called moral issues such as abortion, euthanasia and sexuality. Research in the fields of politics and sociology attends to such issues as religious demography, religious diversity and social cohesion; and the interaction between religious freedom and other rights. Little attention has been paid in the literature to the construction of the discourse of religious freedom, which has been naturalised in Australian public policy debates, obscuring the fact that it is a construction subject to change for political purposes.

This thesis by publication presents four papers which seek to address this gap by examining the discourse of religious freedom in public debates over a period of 35 years. Under the broad umbrella of critical discourse analysis, each paper uses a different method to analyse a genre of public discourse – church submissions to a public inquiry, parliamentary speeches on same-sex marriage, reports from public inquiries into religious freedom and newspaper editorials.

This thesis has identified three distinct discourses of religious freedom. The first, 'religious diversity', developed in the context of an increasingly pluralistic Australia, casts vulnerable religious minorities as needing improved protection against discrimination. The second discourse, 'balancing rights', developed in the context of expanding LGBTIQ rights and a conservative Christian minority portraying itself as besieged by rising secularism, frames religious freedom and the associated right to freedom of (religious) expression as threatened by an imbalance with 'lesser' equality rights. The third discourse casts belief—a category that had become impervious to challenge and interrogation—as that which religious freedom is meant to free. In the context of marriage equality, the 'freedom of belief' discourse effectively marginalised the voices of minority religious groups in the public discourse of religious freedom as it became a powerful tool used by the conservative right to legitimise ongoing discrimination against LGBTIQ people and undermine progressive social politics.

Contents

Commonly Used Abbreviations

ACL	Australian Christian Lobby
ACBC	Australian Catholic Bishops Conference
ACNC	Australian Charities and Not-for-profits Commission
ACT	Australian Capital Territory
ADA	*Age Discrimination Act 2004 (Cth)*
AHRC	Australian Human Rights Commission (formerly HREOC)
ALP	Australian Labor Party
ALRC	Australian Law Reform Commission
CDA	Critical Discourse Analysis
Cth	Commonwealth of Australia
DDA	*Disability Discrimination Act 1992 (Cth)*
HREOC	Human Rights and Equal Opportunity Commission (now AHRC)
ICCPR	International Covenant on Civil and Political Rights
JSCFADT	Joint Standing Committee on Foreign Affairs, Defence and Trade
LGBTIQ	lesbian, gay, bisexual, trans and gender diverse, intersex, queer
LNP	Liberal-National Party Coalition
LPA	Liberal Party of Australia
NHRC	National Human Rights Consultation (2009)
NSW	New South Wales
NT	Northern Territory
Qld	Queensland
RDA	*Racial Discrimination Act 1975 (Cth)*
SA	South Australia
SDA	*Sex Discrimination Act 1984 (Cth)*
SLCAC	Senate Legal and Constitutional Affairs Committee
SLCARC	Senate Legal and Constitutional Affairs References Committee
SLCALC	Senate Legal and Constitutional Affairs Legislation Committee
SMH	*The Sydney Morning Herald*
SOGII	sexual orientation, gender identity and intersex status
SSCLCA	Senate Standing Committee on Legal and Constitutional Affairs
SSM	same-sex marriage
UDHR	Universal Declaration on Human Rights
UN	United Nations
Vic	Victoria
WA	Western Australia
WPR	*What is the Problem Represented To Be?* methodology

Chapter 1

INTRODUCTION

The nation's most powerful church leaders have united in a bid to scuttle efforts to create a national charter of human rights, warning the Rudd government it could curtail religious freedoms and give judges the power to shape laws on issues such as abortion and gay marriage.

Nicola Berkovic, 'Clergy unite over charter', *The Australian,* 23 October 2009

Catholic Archbishop of Hobart Julian Porteous has urged Scott Morrison to enshrine laws that guarantee the right of faith-based institutions to teach according to religious doctrine [and] safeguard the seal of the confessional... He called on the government to replicate international human rights conventions and implement "positive legal rights" for religious freedom.

Greg Brown, 'Archbishop demands laws to guarantee religious freedom', *The Australian,* 23 August 2019

Background

Australia is not a particularly 'religious' country. Census results over the last four decades have shown a continuing increase in the number of people who identify as having 'no religion' even as the diversity of religious affiliations grows. Successive public inquiries over the same period have concluded that, despite limited protections in law, most Australians do not experience prejudice or discrimination because of their religious affiliation, or limitations on the practice of their religion. Significant exceptions to this include Muslim Australians, especially women who are visible because of their dress, and Indigenous Australians who continue to experience the effects of invasion, colonisation and dispossession, all of which have serious implications for their freedom of religion. Nevertheless, in the years since about 2009, religious freedom, specifically the protection of religious freedom in law, has become a heated topic of public debate. This thesis aims to chart and explore the development of the politics of religious freedom in Australia by examining the discourse of religious freedom across a number of sites which exert influence on the public debate.

Australia is the only western democracy without a national human rights instrument; and the Australian Constitution, a 'how-to' guide for the federation focussed on the relationship between the Commonwealth and the states, provides very little in the way of human rights protections. A number of attempts have been made towards the development of a federal human rights act or charter. These attempts have failed for complex reasons, but the argument that 'we do not want' a US-style bill of rights which gives 'too much power to judges' has proven to be consistently effective, despite its disingenuousness (ignoring as it does the vast differences between the political and legal systems of the two countries). In the absence of a federal bill or charter, a suite of anti-discrimination laws gives effect to some of Australia's international human rights obligations; a separate act covers the formation and operation of the Australian Human Rights Commission (AHRC); all states and territories have anti-discrimination or equal opportunity acts; the Australian Capital Territory (ACT), Victoria and Queensland have adopted their own charters of rights; and governments and statutory bodies regularly hold public inquiries and consultations pertaining to human rights matters, making recommendations to government which are almost always ignored. And when human rights abuses by the Australian government or experiences of discrimination in society

become issues of public concern, and there is no protection or recourse in law, one of the great Australian mythologies—that Australia is the 'land of the fair go'—offers the hope that fairness will triumph in the end (Babie, Neoh, Krumrey-Quinn, & Tsang, 2015; Brennan, Kostakidis, Palmer, & Williams, 2009). For some decades, and until recently, this reliance on the 'fair go' had been considered adequate by both institutional churches and politicians, who showed little appetite for changing the current approach to protecting religious freedom through the provision of a number of exceptions/exemptions to anti-discrimination laws. At the time of writing, however, the Australian government, under the Prime Minister Scott Morrison MP, was preparing a Religious Discrimination Act.[1] The two exposure drafts proved controversial, with the public debate pitting the majority of institutional churches and their leaders, religious groups and conservative politicians against the LGBTIQ community and allies, progressive politicians and even corporations, particularly over clauses widely regarded as privileging 'statements of belief' over freedom from discrimination (for women, LGBTIQ people, people with disabilities and even religious groups themselves).[2]

I began my doctoral research with the aim of examining the human rights advocacy of churches and religious groups in Australia. This was the genesis of the first paper presented in this thesis (Chapter 3) – examining the official church submissions to the 2012 inquiry into draft legislation to consolidate Commonwealth anti-discrimination laws in order to understand how the churches as institutions were advocating for (or against) human rights. As I studied these submissions, I became aware of a contrast between how churches and other religious groups expressed their concerns to this inquiry, and the language that they had used in 2009 when the National Human Rights Consultation (NHRC) was being conducted. Studies of submissions to the NHRC by Nelson, Possamai-Inesedy and Dunn (2012) and Ball (2013) found that many of the submissions made by churches expressed suspicions about human rights law, seemed resistant to any changes to the religious exemptions in anti-discrimination law and articulated opposition

[1] The first draft of the bill (and a package of consequential amendments to other related bills) was released in August 2019 (see https://www.attorneygeneral.gov.au/media/speeches/religious-discrimination-bill-2019-29-august-2019, accessed 28 February 2020). After a public consultation which saw almost 6000 submissions made, the set of second draft bills was released on 10 December 2019 (see https://www.ag.gov.au/Consultations/Pages/religious-freedom-bills-second-exposure-drafts.aspx, accessed 28 February 2020). See Chapter 7 (Postscript) for a fuller discussion.

[2] See for example, https://www.theguardian.com/australia-news/2019/nov/11/religious-freedom-bill-will-sustain-nastiness-and-hostility-michael-kirby-warns and https://www.smh.com.au/politics/federal/the-second-coming-of-religious-freedom-churches-back-significantly-improved-bill-20191221-p53m2s.html, accessed 31 March 2020.

to extending anti-discrimination law protections to LGBTIQ people. By 2012, most Australian church submissions to the consolidation review, while still expressing opposition to the inclusion of sexual orientation and gender identity as protected attributes in law, were calling for the privileging of religious freedom within a 'hierarchy of rights' and raising concerns about the threat to freedom of speech. Rather than eschewing the concept of human rights and human rights discourse, as they had done in the past, the 2012 submissions cited UN human rights instruments to make their case. By November 2017 when I submitted the first paper for publication, religious freedom had gone from a niche public policy issue to the major issue in the debate about how to legislate marriage equality and I had determined to study the politics of religious freedom in Australia.

I am an ordained minister in the Uniting Church in Australia, the country's third largest Christian denomination. During my fifteen years as the director of the Uniting Church's national justice policy and advocacy unit, I had responsibility for the Church's human rights advocacy, including the preparation of submissions to public inquiries and public statements on numerous national public policy issues. In my ecumenical work, I was acutely aware that the Uniting Church was an outlier among churches on matters relating to human rights and anti-discrimination law. The Uniting Church is generally regarded, along with the much smaller Religious Society of Friends (Quakers), as the most progressive mainstream Christian denomination in Australia. As an ordained woman and a member of the LGBTIQ community, I was also acutely aware of the implications of pitting one human right against another in law, a situation that is, arguably, an inevitable result of Australia's complex and incomplete patchwork of confusing, even contradictory, anti-discrimination laws.

Throughout the 2000s, post the 9/11 terrorist attacks and during the so-called 'war on terror', the Uniting Church became increasingly vocal about its concerns about the discrimination, vilification, harassment and abuse being suffered by members of Australia's Muslim community (Cahill, Bouma, Dellal, & Leahy, 2004; Human Rights and Equal Opportunity Commission, 2003) and the likely consequences for them of anti-terror laws that were potentially in breach of Australia's human rights obligations.[3] The

[3] See, for example, 'Uniting Church supports Sydney's Muslim community (20 December 2007), media release, https://unitingjustice.org.au/society-religion-and-politics/news/item/1074-uniting-church-supports-sydney-s-muslim-community, accessed 4 March 2020, and the Uniting Church in Australia submission to the Senate inquiry into the provisions of the Anti-Terrorism (No. 2) Bill 2005, submission, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/

Uniting Church has long been a committed advocate for better religious freedoms protections in law and in 2006 adopted a position in support of a Human Rights Act or Charter, as a way of ensuring that the Australian government might better uphold its international human rights obligations, including the right of all people to be free from discrimination, and the protection of religious freedom.[4] Over a relatively short period of time, however, the debate about religious freedom shifted from issues to do with the protection of minority religious groups *from* discrimination to the freedom of religious bodies and individuals *to* discriminate, largely against LGBTIQ people. This debate reached a crescendo in 2017 during the marriage postal survey and the consequent legalisation of marriage equality in December that year—it was no accident that the bill that legislated marriage equality was called the *Marriage Amendment (Definition and Religious Freedoms) Bill 2017*—and debate continued as the Australian government sought to fulfil the commitment it made to those unsatisfied with the treatment of religious freedom in the Marriage Amendment Bill for a new religious freedom law.

Research Aims and Significance

> *In the contemporary period, the deployments of religious freedom are multiple and contradictory: at times used to identify the virtuous and condemn the oppressor, at times used on behalf of women and minorities, and at others to serve narrow sectarian interests of missionaries, governments, and religious authorities… promoting a right to religious freedom shapes political and religious possibilities in particular ways, though always differently in different contexts.*
>
> Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Saba Mahmood and Peter G. Danchin, 2015

Much of the research on religious freedom in Australia (discussed in Chapter 2) has focussed on the law: how it protects or does not protect religious freedom, and the implications of this for majority religious institutions, organisations and groups; minority

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Completed_inquiries/2004-07/terrorism/submissions/sublist, accessed 4 March 2020. See also https://www.hrlc.org.au/news/human-rights-and-counter-terrorism, accessed 4 March 2020.

[4] See *Dignity in Humanity: A Uniting Church Statement on Human Rights* (2006), https://unitingjustice.org.au/human-rights/uca-statements/item/484-dignity-in-humanity-a-uniting-church-statement-on-human-rights, and *A Uniting Church response to human rights legislation* (2008) which called on the government to develop a human rights charter, https://unitingjustice.org.au/human-rights/uca-statements/item/482-a-uniting-church-response-to-human-rights-legislation, accessed 4 March 2020.

religious communities; women; other groups such as LGBTIQ people; and so-called 'moral' issues such as abortion, euthanasia and sexuality. There has also been considerable research conducted within the field of sociology of religion, much of it about the religious demography of Australia, the impact of religious diversity on social cohesion and the contest between religious freedom and other so-called competing rights. Within this field, however, little attention has been paid to the construction of the *discourse* of religious freedom in Australian public life. (Bouma (2012) for example, explores the discourse that frames religion and social policy but not religious freedom specifically.) This thesis seeks to address this gap, offering a new perspective on the politics of religious freedom in Australia by exploring the 'malleable rhetoric' of religious freedom – as Curtis writes, 'There is no such thing as religious freedom, or at least no one thing. Religious freedom is a malleable rhetoric employed for a variety of purposes' (2016, p. 2).

In examining the discourse of religious freedom in Australia, this research exposes some of the assumptions that underpin public debate in order to demonstrate that the 'problem' of religious freedom in Australia is a political construction subject to change for political purposes. It seeks to answer the following questions:

- How has religious freedom been constructed by policy actors?
- Whose interests are being served?
- What are the consequences and implications of the changing problematisations and discourses?

A Note on Defining 'Religion'

Announcing changes to the widely criticised first draft of the Religious Discrimination Bill on 10 December 2019, Prime Minister Scott Morrison said, 'What people believe in this country, or don't believe when it comes to the big questions of life ([which is] really what religion and faith is all about), is such a personal matter. It's hard to imagine something more personal'.[5] The Prime Minister's understanding of religion as a set of intimately held 'personal' beliefs or 'non-beliefs' about 'the big questions of life' may well speak to his own Pentecostalism, but it also points to a very common understanding

[5] Transcribed from embedded video, https://www.smh.com.au/politics/federal/morrison-releases-new-draft-of-religious-discrimination-bill-20191210-p53iho.html, , accessed 2 March 2020.

of religion in western cultures. Referring to 'the use of "religion" in contemporary popular and academic discussions', Nongbri writes that 'for many modern people, religion represents an essentially private or spiritual realm that somehow transcends the mundane world of language and history' (2013, p. 18). Martin describes the contemporary use of the word 'religion' this way:

> Today people often think of "religions" as special cultural traditions organized around the belief in a god, as well as a set of rituals and communal practices related to that belief. It is often assumed that religion is a matter of individual, personal choice, and a private matter that ought to be kept separate from politics. (2017, p. 4)

Nongbri and Martin's discussions about the common usage of the term 'religion' serve to expose the assumptions that lie at the heart of these widely shared understandings of what religion means – that 'religion' is not particularly complex and that, in context, it is easy to recognise a religious person and identify a religious belief or practice. As Arnal and McCutcheon write, 'Even when we (wisely) refuse to claim we *understand* religion, at the level of commonsense, we are fairly certain that we know at least what counts as religious data' (2013, p. 17). Morrison's gloss on religion reflects Martin's point above about 'individual, personal choice', and what Hurd refers to as an understanding of a religious person as an 'autonomous subject who chooses and enacts beliefs, and a particular notion of the secular state that does not (and cannot) coerce such beliefs' (2015a, p. 49) even though it can and should protect the freedom of the believers. All four papers presented in this thesis demonstrate the privileged place that 'belief' has come to occupy in the public discourse on religious freedom in Australia (see Chapter 2 for a fuller discussion about the construction of the category of 'belief').

While we may share a 'common sense' understanding of religion and take for granted its existence in human society, scholars of religion, on the other hand, understand 'religion', 'religious', and 'religions' as constructed and contested categories. Asad and Keane both offer reminders about why it is important to understand what we mean by religion. Asad writes that, 'When definitions of religion are produced, they endorse or reject certain uses of a vocabulary that have profound implications for the organization of social life and the possibilities of personal experience' (2011, p. 39). Keane writes that 'a great deal turns on what is supposed to make religion distinct, in contrast to other institutions, practices, and domains of social existence' and that it may serve us well 'to recognize religion as

one (if only one) organizing category for efforts to grapple with the limits of instrumental rationality as a full account of what people are up to' (2015, p. 64).

Religion has never been apart from the political, even if contemporary understandings of what religion is, like the one expressed by Scott Morrison, have reified in public discourse the personal interiority of religious belief. Martin succinctly describes how 'religion' came to be at the time of the Reformation in Europe:

> Prior to the Protestant Reformation, the Catholic church was involved in the political affairs of all Western European states. After the Protestant Reformation—when Protestant churches began to secede from the Catholic church—some European kings sided with the Catholics, and others sided with the Protestants… [D]efining religion as a cultural sphere separate from politics and law first served the interests of the Protestants, protecting them from Catholic oppression, and eventually served the interests of everyone who wanted to avoid the wars over these competing political allegiances. (2017, p. 6)

Smith argues that religion is 'not a native category… It is a category imposed from the outside' which from its earliest use, carried 'an implicit universality' (1998, p. 269). Nongbri cautions against assuming the universality of the constructed category of 'religion': 'the isolation of something called "religion" as a sphere of life ideally separated from politics, economics, and science is not a universal feature of human history' (2013, p. 2) and he and other scholars have pointed to the definitional problems caused by religion's modern European invention, not the least of which is its implied universality. It is a cliché in religious studies that a book could be filled with all the definitions of religion proposed by religious scholars, but as Asad warns, 'there cannot be a universal definition of religion, not only because its constituent elements and relationships are historically specific, but because that definition is itself the historical product of discursive processes' (1993, p. 29).

The failure to problematise 'religion' has 'real world' implications. In the field of International Relations, Wilson argues that theory failed to predict the 9/11 terrorist attacks because religion itself, and the relationship between religion and politics, have been conceived of in terms of the western origins of the secular-religion duality without interrogation. This has meant that the 'influence of religious ideas and doctrines, imagery and narratives, religion's role in shaping community identities… have generally been overlooked or downplayed within International Relations scholarship' and that a limited

definition of religion has seen 'the historical relationship that exists between religion and politics' largely ignored (Wilson, 2012, p. 5).

Woodhead offers a way through for religious scholars by making a distinction between definition and concept and suggesting that it is the 'concept' of religion that is most helpful:

> It is not necessary to begin each study with a definition of religion, but it is necessary to have some critical awareness of what concept(s) of religion are in play, and to be able to justify their applicability in different contexts of use. Unlike definitions, which try to single out certain essential characteristics, concepts derive their meaning from the wider frameworks in which they are embedded. These may be theoretical, historical, empirical, methodological, and normative – or more often, all of these. (2011, p. 122)

This approach is consistent with Bacchi's suggestion that the meaning of key terms—notoriously difficult to define—can best be identified 'by an emphasis on the "situated usage" of the term' (2000, p. 46).

Woodhead (2011) proposes five concepts (or categories) of religion – religion as culture, identity, relationship, practice, and power, and each of these can be further described in a number of sub-categories. In the context of this study, the following are the most significant: religion as culture, religion as identity, religion as practice and religion as power.

Religion as culture includes the sub-category of religion as 'belief and meaning', that is, 'that being religious has to do with believing certain things, where that amounts to subscribing to certain propositions and accepting certain doctrines' (Woodhead, 2011, p. 123). This is a distinctly 'modern' understanding of religion 'with a bias towards modern Christian, especially Protestant, forms of religion' (p. 123). As reflected in the title of this thesis, it is 'belief' which has come to define 'religion' in the discourse of religious freedom in Australia. Alongside belief, sits another aspect of religion as culture, that is religion as 'meaning and cultural order', referring to 'an embracing system of meaning which covers the whole of life' (p. 124). It is these two understandings of religion that are evident in Scott Morrison's speech. The other sub-category of religion as culture relevant to this study is religion as values which Woodhead describes as 'the normative dimension of religion… [providing] a well-functioning society with the shared goals

which make it coherent, and which can maintain coherence even in the face of differentiation' (p. 125) – the protection of religious freedom is often claimed as necessary for the promotion of social cohesion within a pluralist society, even as it is also understood to threaten it (Pepper, Powell, & Bouma, 2019).

Woodhead's second concept is religion as identity. The sub-category 'religion as identity-claim' describes how religion is used by 'individuals and groups to define who they are (their "identity")… by asserting both "sameness" and "difference"' (p. 129). This concept of religion is particularly helpful in the context of religious freedom, because it is the claims of religious identity that, in the context of human rights, are set against other identity claims such as gender, gender identity, sexuality and ethnicity, leading to what has become in Australia, a major discourse around 'balancing competing rights'. This thesis demonstrates that the protection of the rights of different groups within society has become, in the context of religious freedom, a politicised and often partisan debate about how rights should be 'balanced' against one another.

The fourth concept, religion as practice, could be assumed to be significant in the discourse of religious freedom; after all, the freedom to practice (manifest) a religion is central to the idea of religious freedom as a human right as it is defined in Article 18 of the *Universal Declaration of Human Rights*:

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his [sic] religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.[6]

The most relevant sub-category of religion as practice is 'religion as ritual and embodiment' which can be described, in part, as 'the social patterning of embodied human action and the training of attention upon certain focal points of the ritual' (Woodhead, 2011, p. 132). The analyses presented in this thesis demonstrate that this conceptualisation of religion was common during the early years of the public conversation about religious freedom in Australia. I will argue that it is religious *belief* (which includes the preaching, teaching and enacting of beliefs in public life) not religious *practice* (for example, worship, and ritual observances such as the wearing of religious

[6] https://www.un.org/en/universal-declaration-human-rights/, accessed 9 April 2020.

dress and religious symbols in public) that has most recently come to mark the politics of religious freedom in Australia.

Religion and power is Woodhead's fifth concept and the one she regards as offering the 'broadest' interpretation of religion and the one 'in urgent need of revival' (p. 123), 'not least because of the influence of secularization theories which emphasized religion's loss of social power' (p. 134). While religious institutions and communities have the capacity to challenge the status quo, especially through critiques of, for example, capitalism, markets and neoliberalism more broadly, Woodhead points to 'a new form of emerging state-religion relationship' developing as a result of government reliance on churches and other religious organisations for 'the provision of development aid, welfare services, and in counter-terrorism activities' (p. 136). In Australia, despite their declining memberships (Maddox & Smith, 2019; Pepper et al., 2019), the power of the mainstream institutional churches has grown through their participation in the increasing privatisation of healthcare, social services and the delivery of education (although non-government church schools have been funded by government since 1963 (Maddox, 2011b)). Oslington (2015) estimates that churches are delivering about half of all social services in Australia, much of that funded by government. As Maddox and Smith point out, this has had consequences for many workers:

> The transfer of substantial quantities of previously government services to religious organisations, which are exempt from aspects of anti-discrimination law, removed a significant proportion of the education, health and welfare workforce from the reach of these protections and raised questions about the use of public money for services that were not provided on a purely non-discriminatory basis. (Maddox & Smith, 2019, p. 465)

As demonstrated in all four papers presented in this thesis, the particular issue of the exemptions in anti-discrimination law which allow religious bodies to lawfully discriminate in employment on the basis of otherwise protected characteristics including gender, marital status, pregnancy and sexual orientation, is one of the major concerns for the leadership of Australian churches. That church leaders have continued to successfully advocate for the broadest possible exemptions in almost all jurisdictions (Tasmania being a notable exception) is an indication of the influence that religious institutions and organisations wield, largely as a result of their participation in the delivery of community services.

Using Woodhead's concepts, the concluding chapter will identify the varying conceptualisations of religion within Australian discourses of religious freedom. Hurd argues that

> While religious practices are an important dimension of human life, the category of religion is too complex and unstable to serve as platform from which to pursue… political ends. The adoption of religion as a legal and policy category helps to create the world it purports to oversee. It naturalizes religious-religious and religious-secular distinctions as the natural building blocks of social order. In presupposing discrete religious identities as the foundation of social order, it produces a legal and political landscape defined and populated by "faith communities" and "religious actors". These become larger than life. (2015b, p. 111)

This thesis will trace how the discourses of religious freedom, reflecting particular meanings and assumptions about the concept of religion, have developed over time to serve and promote particular social (and legal) orders based on the primacy of religious identity claims.

A Note on 'Secular', 'Secularism' and 'Secularisation'

In a lecture on secularism and religion, the Roman Catholic Archbishop of Sydney, Anthony Fisher OP (Fisher, 2018) referred to secularity as the 'Son of Christianity' and liberal democracies as 'in many ways a bi-product [sic] of Christianity'. He described Australia as having had, until recently a 'mild, "keep it quiet" form of secularity' that saw little conversation about religious freedom. But secularity, Fisher said, like the Prodigal Son, 'left home' and, for the sake of religious freedom, it is time to encourage and welcome the return of a 'moderate secularity' which recognises its Christian roots:

> Australian secularity has generally been more respectful than most of both religious and democratic institutions. But today we encounter a more virulent secularism that would exclude faith and the faithful from public life, root out Judeo-Christian heritage from law and culture, and confine faith to an ever-narrowing field of private life. Believers are pressed to renounce their most deeply held beliefs, stay silent about their dirty little secret, or else adopt a kind of dual personality. Secularity may be a child of Christianity, but like an adolescent bucking against its parent, absolutist secularism resents its Christian heritage and is determined to end its influence. (Fisher, 2018)

Religion and the secular have been variously described as 'two sides of the same categorical coin' (Fitzgerald, 2011, p. 4), 'twins' (Asad, 2011, p. 39), 'indelibly

intertwined' (Mahmood, 2016, p. 14) and 'alter egos' or a mutually defining binary pair as Arnal and McCutcheon write:

> our "religious" and "secular", our "sacred" and "profane" do not name substantive or stable qualities in the empirical world, one predating the other or one superior to the other… Instead… they are mutually defining terms that come into existence together—what we might call a binary pair—the use of which makes a historically specific social world possible to imagine and move within, a world in which we can judge some actions as safe or dangerous, some items as pure or polluted, some knowledge as private or public, and some people as friend or foe. (2013, p. 119)

Asad (2003) understands 'the religious' and 'the secular' as constructed but not fixed categories which 'in modern and modernizing states mediate people's identities, help shape their sensibilities, and guarantee their experiences' (Asad, 2003, p. 14). Arnal and McCutcheon, following Asad, write that the 'binary-ness' of the secular and the religious (which allocates the private and sacred to the category of religion, and public and rational to the category of secular) explains nothing essential about either concept. They caution that 'the categories "religion" and "politics", or "sacred" and "secular" should not be assumed to describe 'actual qualities in the real world' (2013, p. 132) and argue that

> such distinctions as church/state, private/public, and sacred/secular…[are] nothing more or less than socio-rhetorical devices that have stayed in our minds because they have continued to prove so useful to a variety of groups over the past several hundred years, all of which have tried to regulate—to divide and rule—their highly competitive economies of signification. (2013, p. 133)

Asad draws the distinction between '"the secular" as an epistemic category and "secularism" as a political doctrine' (2003, p. 1), specifically 'a modern doctrine of the world in the world' (Asad, 2003, p. 15). Along similar lines, Casanova distinguishes between '"the secular" as a central modern epistemic category, "secularization" as an analytical conceptualization of modern world-historical processes, and "secularism" as a worldview' (Casanova, 2009, p. 1049). Wilson describes secularism 'as one form of ideological power among many others… with multiple manifestations and meanings' (2012, p. 30). She identifies 'four moves of secularism': the *distinction* between church and state; the *separatio*n of church and state; the 'sidelining of religion from state and public life'; and 'the positioning of secularization as a central part of modernization and development, to the extent that it implies that religion is premodern and regressive' (Wilson, 2012, p. 43). Mohr defines secularism as 'a means of organizing political, legal and constitutional matters so as to exclude religious considerations and institutions from

public affairs' (2011, p. 34) and argues that it is indelibly marked by and inextricably intertwined with western Christianity, developed as a tool of the (Protestant) church for maintaining power over the people of the church (the majority of the population): 'by establishing a clear demarcation between secular and religious law, the church gained the autonomy to administer canon law within its own jurisdiction' (Mohr, 2011, p. 42).

It is often said that secularisation, the process that would see religion eradicated from the public sphere and relegated to the private domain, is dead (Hallward, 2008). Casanova begins his seminal work, *Public Religions in the Modern World,* with the question, 'Who still believes in the *myth* of secularization?' (1994, p. 11, original emphasis). Whether secularisation is now dead or whether it was a myth from the beginning, it remains a contested category in religious studies and in the study of religion and politics. Casanova does not subscribe to the notion that secularisation is a myth. Instead he identifies three 'propositions' for what is generally regarded as a singular theory of secularisation: 'secularization as religious decline, secularization as differentiation, secularization as privatization' (1994, p. 6). He declares that the proposition of decline that assumed an end to religion 'with progressive modernization… has proven patently false'. The 'core of the theory of secularization, the thesis of differentiation and emancipation of the secular spheres from religious institutions and norms, remains valid'. The 'related proposition that modern differentiation *necessarily* entails the marginalization and privatization of religion…[is] no longer defensible' (Casanova, 1994, pp. 6-7, original emphasis) in light of the 'certain reversal of what appeared to be secular trends' (Casanova, 1994, p. 6). This reversal he calls 'deprivatisation'.

It could be a simple and elegant application of Casanova's theory of deprivatisation to describe the increasingly prominent and influential role of religious discourse in Australian political discourse. Maddox urges caution, however, for it is not the consequence of reinvigorated religious voices speaking to a religiously renewed population that has led to what could be called 'deprivatisation' but what she refers to as the 'cancellation of the secularist truce'.[7] Maddox argues that the rise in religious discourse in the public sphere coincided 'with a sharp decline in party differentiation by political ideology' as both Australia's major political parties 'embraced the neoliberal consensus' (Maddox, 2011c, p. 305). One of the few locations for vigorous partisan

[7] A phrase borrowed from Acherberg et al (2009).

distinction became the ‘culture wars’. Fought on values and in public policy debates on issues including history, racism, education (funding and curriculum), and social inclusion and exclusion (especially LGBTIQ rights), ‘ambiguous (and necessarily vague) Christian rhetoric’ (Maddox, 2011c, p. 288) was deliberately used to mark the battlelines. This rhetoric was designed not for the religiously committed, but as language that would appeal to a large proportion of Australians who are mostly unchurched and personally uncommitted to religious beliefs and practices, but who ‘regard Christianity as a benign, if vaguely-conceived, force for some conservatively-understood notion of social good’ (Maddox, 2011c, p. 303). Maddox writes of the period during John Howard’s prime ministership (1996-2007), when he ‘and his senior ministers visited conservative megachurches, made public appeals for more Christian celebrations at Christmas, upbraided schools for not teaching “values” and talked up Australia’s “Judeo-Christian culture”’ (2011c, p. 297). The analyses presented in this thesis demonstrate that these appeals—‘religiously-inflected categories playing to a religiously naïve population’ (Maddox, 2011c, p. 306)—have continued to be used in the highly politicised debates about religious freedom and are a reminder to heed Mahmood’s argument that ‘the modern secular state is not simply a neutral arbiter of religious differences; it also produces and creates them’ (2016, p. 22).

A Preliminary Note on ‘Religious Freedom’

In 2005, Winifred Fallers Sullivan published a ground-breaking book provocatively entitled *The Impossibility of Religious Freedom.* The book is largely a recount of a trial she attended as an expert witness on religion in Boca Raton, Florida. A group of citizens had been required by the state to remove decorative memorials on the graves of their loved ones because they did not comply with cemetery regulations. The citizens sought religious freedom exemptions in order to maintain the memorials. They claimed that the styles of decoration of the graves were expressions of their religious (Catholic, Protestant and Jewish) traditions and that their removal would be a breach of their right to religious freedom.

> For the City, religion was something that had dogmas and rules and texts and authorities. Religion was something you obeyed… religious people were passive agents of their traditions. For the plaintiffs, religion was a field of activity, one in which an individual’s beliefs and actions were the result of a mix of motivations and influences, familial, ecclesiological, aesthetic, and political. (p. 36)

The plaintiffs lost. They could not demonstrate to the Court's satisfaction how their memorials were required by the orthodox doctrines or practices of their religions as determined or described by religious authorities. Their religious practices were deemed too 'cultural' and inadequately 'religious'.

Sullivan concludes, that as a matter of justice, '"religion" can no longer be coherently defined for purpose of American law' (p. 150) and suggests that a focus in the law on equality and difference (together with the existing protections for freedom of the press, freedom of speech and freedom of association) would serve to better protect religious freedom and the ideals of a 'free democratic society' which holds the principle of equality central to its life (p. 149).

Sullivan writes that 'when law claims authority over religion, even for the purpose of ensuring religious freedom, lines must be drawn' (p. 148). The history of religious freedom in Australian law, as it has been in the United States and the United Kingdom and other western democracies, has been about where, in a secular and pluralist country, the lines should be drawn in relation to acceptable and unacceptable religion and/or religious belief, what should be the place of religious institutions in society, and what degree of toleration there should be for religious beliefs and practices that impact on other people. Chapter 2 provides a brief overview of religious freedom in Australian law and explores some of these questions which are also further examined in each of the papers presented in this thesis.

Religious Affiliation in Australia

Australia is one of the most religiously diverse countries in the world, a result of successive waves of migration from around the globe since the 18th century. 'In international comparison, Australia stands out for having three substantial minority religious communities at or above 2% and two at about 0.5%' (Pepper et al., 2019, p. 3) of the population. As Pepper et al. also point out, within each religious group, there exists significant ethnic diversity:

> Muslims have come from over 60 countries, Catholics have been strengthened by Italian, Dutch, Vietnamese, Philippine and other sources. Hinduism, Sikhism, Islam,

> and Buddhism are all increasingly substantial and vibrant religious communities largely due to recent migration from South and Southeast Asia and, for Muslims, earlier migration from the Middle East. (2019, p. 3)

Australia's changing religious profile includes both a growing diversity with over eight percent of the population claiming a religion other than Christian, and a marked increase in people identifying as not having a religion, up to over 30 percent of the population, in 2016 (Table 1).

Table 1. Religious affiliations in the Australian Census.

	1991	**1996**	**2006**	**2011**	**2016**
Population	17,284,036	18,224,767	20,450,966	22,340,024	24,190,907
Christian	74.0%	70.9%	63.9%	61.1%	52.1%
Islam	0.9%	1.1%	1.7%	2.2%	2.6%
Buddhism	0.8%	1.1%	2.1%	2.5%	2.4%
Hinduism	0.3%	0.4%	0.7%	1.3%	1.9%
Sikhism	n/a	n/a	n/a	0.3%	0.5%
Judaism	0.4%	0.4%	0.4%	0.5%	0.4%
Total religion other than Christian	2.6%	3.5%	5.6%	7.2%	8.2%
No Religion	12.9%	16.6%	18.7%	22.3%	30.1%

Source: Australian Bureau of Statistics[8]

Bouma points out that in Australia, the combination of majority Christianity (with the associated influence of Christianity in the development of Australian social and political life since the 18th century) and increasing religious diversity, has led to 'much contestation among those who see themselves winning or losing advantage in the shift' (Bouma, 2012, p. 283).

As discussed in Chapter 3, the earliest public inquiries into religious freedom (from 1984 to 2011) were motivated by the prejudice, harassment and discrimination experienced by people from minority religious groups, and a desire to understand the prejudice and explore solutions, including options for more extensive protections for religious freedom in law. While the religious diversity of the nation has continued to increase, this thesis demonstrates that the more recent public debates about religious freedom rarely address

[8] 1991 figures can be found at https://www.ausstats.abs.gov.au/ausstats/free.nsf/0/792BBD9457634FFECA2574BE00826627/$File/27100_1991_20_Census_Characteristics_of_Australia.pdf, p. 21; 1996 and 2006 figures at https://www.abs.gov.au/ausstats/abs@.nsf/7d12b0f6763c78caca257061001cc588/6ef598989db79931ca257306000d52b4!OpenDocument; the 2011 and 2016 figures at https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Religion%20Article~80, and population figures at https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3105.0.65.0012016?OpenDocument. Accessed 4 March 2020.

this issue. For example, the analysis in Chapter 5 exposes a significant change in positioning on the part of sections of the Christian community: as the truth claims of traditional religious beliefs and moral codes are challenged by progressive social shifts in society and law—often described in terms of 'secularism' (see Chapter 2 for a discussion of religion and secularism and Australia)—the Christian majority becomes the persecuted minority in need of protection.

> Existing legal protections for religious freedom, though once sufficient, are now inadequate. Current exemptions in anti-discrimination legislation do not provide adequate protection for freedom of religion. There is a statutory imbalance in anti-discrimination legislation, because religious freedom is an exception to another right. Furthermore, recent judicial presumptions about Parliament's intended balance between freedom of belief and anti-discrimination are problematic. These trends are reflective of the rising tide of "hard secularism" in Australia that – inadvertently – threatens to undercut the shared civic virtues that have hitherto allowed freedom and tolerance to flourish in Australia. (Standing Committee of the Synod of the Anglican Church Diocese of Sydney, 2018, p. 2)

The 'shared civic virtues' which are now considered by the Anglican Church Diocese of Sydney to be under threat, are of course, the virtues described and prescribed by conservative, patriarchal and colonialist Christian theological and ecclesial traditions. The call for better protections for religious freedom is a call for the assumed influence and control that was historically exercised with majority status.

Thesis Approach and Overview

This thesis by publication is an interdisciplinary work located in the field of politics, drawing on policy studies, discourse studies and the sociology of religion, with a particular focus on the intersection between politics and religion. The foundations of this thesis lie in my previous academic work in linguistics and theology, especially public theology, and a deep commitment to the promotion of social justice. The theoretical and methodological frameworks used in the analyses in the papers presented in Chapters 3 to 6 reflect various poststructuralist and critical social theory approaches to discourse analysis that seek to examine and expose constructions and relationships of power.

The core of the thesis (Chapters 3, 4, 5 and 6) is four papers prepared for publication. Three have been published and the final one has been submitted for publication. They are

presented in the order in which they were written, not published. Each paper takes a slice of public discourse that included, in one way or another, discourse about religious freedom. A different method of discourse analysis is used in each paper to explore how the concept of religious freedom has been constructed (problematised or framed) in the texts, and the political implications of such constructions are examined. Each paper is presented in a chapter with a short introduction that locates the paper in the thesis as a whole and in relation to the other papers, offering additional context where helpful. The papers are:

- 'Protecting freedom/protecting privilege: Church responses to anti-discrimination law reform in Australia' (Paper 1/Chapter 3), published in 2018 in the *Australian Journal of Human Rights*, *24*(1): 117-133.
- 'The power of belief: Religious freedom in Australian parliamentary debates on same-sex marriage' (Paper 2/Chapter 4), published in 2020 in *The Australian Journal of Political Science*, *55*(1): 1-19.
- 'Constructing the problem of religious freedom: An analysis of Australian government inquiries into religious freedom' (Paper 3/Chapter 5), published in 2019 in *Religions 10*, 583 as part of the special issue *Religion in Australian Public Life: Resurgence, Insurgence, Cooption?*
- '"The bell was tolling": The framing of religious freedom in *The Australian* editorials 2015-2019' (Paper 4/Chapter 6), submitted for publication to the *Australian Journal of Human Rights*.

The thesis consists of seven chapters. Following this Introduction, Chapter 2 outlines how freedom of religion is protected in Australian law and describes the theoretical context for the thesis as a whole, locating it within the global studies of the politics of religious freedom. It provides a brief examination of the politics of religious freedom in Australia, focussing on religion, state and secularism and the rise of the religious freedom lobby.

Chapter 3 (Paper 1) explores church responses to one of the most significant reforms of anti-discrimination law ever undertaken by the Australian government. The Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 consolidated all five existing anti-discrimination laws and added religion, gender identity and sexual orientation as new protected attributes. It proved a controversial reform, deeply unpopular

with Australian churches. Using manual discourse coding, the article examines 14 published submissions, representing 24 official institutional bodies across eight Christian denominations, to the inquiry into the draft bill held by the Senate Legal and Constitutional Affairs Committee.

Chapter 4 (Paper 2) uses a corpus assisted analysis to examine the 663 parliamentary speeches made during the parliamentary debates on marriage between 2004 and 2017. Religious freedom was a major topic of the 2017 debate that ended with the passage of legislation to legalise same-sex marriage (SSM).

Chapter 5 (Paper 3) applies the policy methodology *What is the Problem Represented To Be?* (WPR) to the reports from all nine public, parliamentary and statutory body inquiries into religious freedom conducted in Australia and 11 other inquiries which included consideration of religious freedom. As important policy texts, the reports did not merely reflect the discourse of religious freedom at the time of the inquiries, they shaped and influenced the discourse of religious freedom as it developed.

Chapter 6 (Paper 4) is an examination of editorials that addressed the issue of religious freedom, published by *The Australian* newspaper between July 2015 and May 2019. The paper uses a media framing analysis to explore how the newspaper framed religious freedom across the unusually high number of 40 editorials that appeared over this time.

The Conclusion (Chapter 7) presents the findings of the thesis as a whole. It identifies three distinct discourses of religious freedom and contextualises the findings and their implications within the frameworks described in Chapter 2. A summary of the contribution of the thesis is presented and opportunities for further research are identified. Finally, a postscript addresses how two recent, significant events directly related to religious freedom in Australia (the controversy over social media comments made by star rugby union player, Israel Folau, and the drafting of a Religious Discrimination Bill by the Morrison Government) can be understood in relation to the findings of this thesis.

Limits and Boundaries

While much of my professional work was focussed on the protection of human rights and the articulation of human rights within a progressive Christian theological framework (human rights as a discursive and legal tool for the advancement of social, political and economic justice), this thesis does not address the contested nature, history and future of human rights. Samuel Moyn's *The Last Utopia* (2012), a significant exploration of the history and the possible future of human rights, does, however, offer an insight into how a larger picture of the changing nature of the politics of human rights might be reflected in the specific case of the changing discourse of religious freedom in Australia. His argument that: 'Born in the assertion of the "power of the powerless," human rights inevitably became bound up with the power of the powerful' (Moyn, 2012, p. 227) may well describe the broader philosophical and global political context for the recent deployment by conservative Australian churches and politicians of human rights as a political tool in their quest to maintain institutional Christian privilege and undermine progressive social and moral changes. Ratna Kapur's *Gender, Alterity and Human Rights* unpicks the liberal and neoliberal human rights project, which she believes is 'overtly and covertly implicated in… structures of power, laying bare the fallacy of human rights as linked to an external, optimistic pursuit of freedom' (Kapur, 2018, p. 2). As such, she argues, the human rights project has failed to produce communal and individual freedom. Kapur offers not so much an alternative, but, in her words, a 'more mindful and diligent approach' (Kapur, 2018, p. 5) delinking the concept of freedom from human rights and exploring it from 'outside the liberal fishbowl' – from 'non-liberal epistemologies that are available, although not exclusively, in postcolonial spaces' (Kapur, 2018, p. 23). This thesis also does not address the historical relationship between Christianity, human rights and neoliberalism. Jessica Whyte, in her book *The Morals of the Market* (2019), traces the development of 'neoliberal human rights' from the 1940s and, focussing on 'hegemonic conceptions of human rights, rather than uses of human rights by marginalised and subaltern groups' (p. 33), argues that human rights became 'the moral language of the competitive market' (p. 27). Whyte describes how some of the debate about religious freedom during the drafting process of Universal Declaration of Human Rights centred on the freedom to proselytise, with claims (led by the Saudi Arabia delegate, Jamil Baroody) that 'proselytising Christians had historically become the vanguards of political interventions' and that Article 18 (on the freedom of religion)

would amount to a 'right to open up non-western societies for trade and exploitation' (p. 68). Drawing on work by Moyn (2015), she describes how, for early neoliberals such as Friedrich Hayek, 'the Christian emphasis on freedom of conscience provided a foundation for the freedom of individual choice that a market order required' (p. 73).

This thesis does not seek to make a case for or against the protection of religious freedom generally or in Australian law, nor does it seek to offer a way through the difficulties related to its protection in law. The aim is to explore, understand and expose how the discourse of religious freedom has developed in Australia as a political tool of the powerful, to borrow Moyn's language.

One of the most complex aspects of religious freedom in Australia relates to the religious freedom of Aboriginal and Torres Strait Islanders, intimately connected as it is with questions of treaty, sovereignty, truth-telling and reconciliation:

> Indigenous economic, physical, social and emotional wellbeing are interconnected with spiritual wellbeing. Spirituality and culture are not separate entities and an assault on one is likely to impact upon the other. Therefore, freedom of religion and spirituality is threatened if land ownership is not secure, if Indigenous culture and language are not preserved and if good health and wellbeing are not achieved. How this might best be achieved is at the heart of reconciliation in Australia today, both symbolic and practical. (Calma, 2010, p. 326)

The level of examination required to do justice to this is beyond the scope of this thesis and so, other than to highlight the almost complete absence of serious consideration given to this matter in the public debates about religious freedom in Australia, this thesis does not address it in any substantial way. There have been a number of studies that seek to explore the history and the legal issues surrounding the religious freedom of Indigenous Australians, for example, Maddox's (1997) study of the theological debate that led to the South Australian Royal Commission into the so-called Hindmarsh Island Affair which saw a dispute about the sacred sites in the path of a new bridge construction; her essay on the influences of Christian missionaries through the 19th and early 20th centuries (Maddox, 2011a); Grimshaw's (2008) historical study of the case of Aboriginal women making a claim for the freedom to worship in their chosen Pentecostal tradition; Willheim's essay about the failure of Australia's legal system to resolve the conflict between the values of common law and the emphasis on private property on one hand and 'the secret nature of much Aboriginal belief' on the other (2008, p. 214); and Tan's

(2010) legal examination of how ‘sacred place’ is addressed in laws relating to religious freedom and heritage protection in Australia and New Zealand. A discussion paper on religious freedom, cultural rights and Indigenous spirituality prepared for the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) provides an excellent account of traditional Indigenous spirituality and the history of Indigenous spirituality since invasion, and examines ‘the extent to which Aboriginal and Torres Strait Islander people have been able to enjoy the right to freedom of religion historically and currently in Australian society’ (Mikhailovich & Pavli, 2011, p. 3).

Chapter 2

RELIGIOUS FREEDOM IN AUSTRALIA: NOT 'FOUND IN THE WILD'

Australia is the most successful multicultural society in the world. Right at the heart of our success as a free society is freedom of religion. It is a fundamental national value, recognised in the Constitution.

The Hon Malcolm Turnbull MP, Prime Minister of Australia, 14 December 2017

Everyone seems to be for it. But what are they for?

Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Saba Mahmood and Peter G. Danchin, 2015

Introduction

In the days leading up to the passage of same-sex marriage legislation through the Australian parliament, Prime Minister Malcolm Turnbull was working hard to placate the hard right of his conservative coalition government. Opposed to the cross-party bill drafted by one of their colleagues and supported by the majority in the government, opposition and crossbenches, and after failing with their own draft bill, this faction had been publicly agitating for more expansive protections (exceptions) for religious freedom that would, for example, allow individuals to refuse the provision of goods and services to same-sex couples on the basis of religious belief and conscience. Such amendments were doomed to failure and time was running out – the government had committed to passing the legislation before parliament rose for the summer.[1] As a concession, the Prime Minister offered a national inquiry into religious freedom. One week after the bill passed the parliament on 7 December 2017, he announced the terms of reference for that inquiry with an opening declaration that attributed Australia's success as a multicultural society and even as a free nation, to religious freedom. Despite their failure on marriage equality, religious freedom advocates had succeeded at raising religious freedom to an exalted status in a country where it had never been much of an issue. The politics of religious freedom in Australia had been reframed, cast and played.

The subtitle of this chapter is drawn from Arnal and McCutcheon's essay 'They Licked the Platter Clean':

> Unfortunately, the fact that the distinction between religion and politics, between private faith and public action, has been so useful for creating a certain type of social order in the European and North American world over the past several centuries seems to have been forgotten today (a convenient forgetting). In using these distinctions in our scholarship *as if they were neutral descriptors of universal states of affairs found in the wild*, we are overlooking that these concepts are social devices driven by interests and attended by consequences. (Arnal & McCutcheon, 2013, p. 126, emphasis added)

This thesis explores the rise of the politics of religious freedom in Australia. It assumes that 'religion', 'belief' and 'religious freedom' are 'not found in the wild' and that their

[1] https://www.theguardian.com/australia-news/2017/nov/09/conservatives-trying-to-delay-marriage-equality-with-own-bill-entsch, accessed 1 April 2020.

use in public discourse is not neutral but serves various political aims. It examines how what is often understood as that most 'natural' and 'private' of matters, belief, came to occupy its own sacred place in the very public discourse of rights and freedoms, raising the politics of religious freedom to a high-stakes affair with serious implications for people belonging to LGBTIQ and minority religious communities.

This chapter begins with a brief description of how freedom of religion is addressed in Australian law—in the Australian Constitution, Commonwealth anti-discrimination laws and various state and territory laws—and an overview of the legal scholarship on the protection of religious freedom. While Chapters 3 and 5 each provide some background on the legal setting relevant to the issue under examination, a broad and general overview is offered in order to understand how the politics of religious freedom in Australia takes its shape. The second section describes the theoretical context of the thesis and the third section examines the most relevant aspects of the politics of religious freedom in Australia, exploring religion, state and politics in 'secular' Australia and the rise of what I identify as the 'religious freedom lobby'. As a PhD by publication, the theoretical foundations in each paper are necessarily concise and specific. The theoretical heavy lifting required to demonstrate how these theoretical 'fragments' ground and frame the thesis as a whole is largely carried by this chapter, drawing on the definitional notes presented in Chapter 1. The final section articulates the overall contribution of the thesis in light of the research presented in this chapter.

Background: Religious Freedom in Australian Law

The Australian Constitution

Religious freedom is one of the few rights referred to in the *Australian Constitution*. Williams and Reynolds (2017) outline a number of reasons why the guarantee of human rights is largely absent: the Constitution was drafted in the late 19th century at a time when human rights, with the exception of the US Bill of Rights, was not commonly captured in the law; there was trust in the common law and, to a certain extent, in government to uphold human rights; and, significantly, 'the framers sought to give the new federal and state parliaments the power to pass racially discriminatory laws' (p. 91).

Section 116 of the *Australian Constitution* restricts the power of the Commonwealth to make laws that favour or disadvantage particular religions or religious traditions. It is an anti-establishment clause; it limits the powers of the Commonwealth (not the states) to legislate in relation to religion; and it prohibits the Commonwealth from imposing a religious test for public office; but, as Evans points out, it does not 'create a positive obligation on the Commonwealth Parliament to take action to protect religious freedom' (Evans, 2012, p. 73). Section 116 is only one sentence long:

> The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

In his perhaps surprisingly engaging book *Religious Freedom and the Australian Constitution,* Beck (2018) challenges the generally held understanding of s 116—gained by examining the legal operation and effect of the section in law—by seeking to identify a 'constitutive theory of the origins of section 116' (p. 118). Looked at from this perspective, he argues that the point of s 116 is not to ensure the state's 'neutrality' vis a vis religion but rather to 'safeguard against religious intolerance' (p. 118); it is about 'preventing a vice, not imbuing with a virtue' (p. 128).[2] Beck describes how the framers of the Constitution were essentially pragmatic, focussed on the operational matters around the new federation, and not much interested in matters of political philosophy. In an extensive examination of the historical evidence, he identifies the Seventh Day Adventist Church's intense and successful campaign (opposing the New South Wales Council of Churches' campaign) to exclude recognition of God from the Constitution. The Seventh Day Adventists' main concern was to prevent the new Commonwealth from being able to make laws to enforce Sabbath observance (specifically, the Sabbath day as it was for the major Christian denominations). In the end, the Constitutional Convention determined to use the language of the US Constitution 'and added the religious observance clause to cover the principal mischief of Sabbath observance laws' (Beck, 2018, p. 128). One of Beck's arguments in favour of 'the safeguard against intolerance' theory is that it is consistent with Australian constitutionalism which 'did not give

[2] Beck makes the point that tolerance and intolerance are not binary opposites but 'concepts… at either end of a continuum', and drawing on the work of Waldron and Williams (2008) describes religious toleration as generally understood to be 'occurring when the state does not attempt to change or suppress a set of religious beliefs and practices or impose penalties for holding or following them even if the state does not endorse them… intolerance exists when the state attempts to change or suppress a set of religious beliefs and practices or impose penalties for holding or following them' (p. 118).

conceptual primacy to rights' (as Williams and Reynolds (2017) also argue) and displayed an 'essential lack of suspicion of governmental power' (p. 128).

Barker (2019) writes that while there is a substantial legal literature about s 116,

> there are in fact very few High Court cases dealing directly with the provision. This makes understanding the meaning and application of the provision difficult and often a matter of speculation. What does emerge from the small number of cases is a reluctance by the High Court to give Section 116 an expansive application. Instead the provision has been read narrowly with each of its four 'limbs' confined to its own meaning (Barker, 2019, p. 69)

Most of the s 116 cases have centred on the free exercise clause and relevant judgements have consistently found that 'the right to practice a religion is not absolute' (Evans, 2012, p. 79). There has been only one case relating to the non-establishment clause – *Attorney General (Vic) ex rel Black v The Commonwealth,* the Defence of Government Schools Association Case (1981), commonly referred to as the DOGS case,[3] in which 'the five majority justices were in no doubt that the indirect funding of religious schools [Commonwealth funds distributed to the states for allocation] fell far short of what was required for establishment' (Evans, 2012, p. 84). There has also been only one recent case addressing the religious test clause – relating to the school chaplaincy program initiated by the Howard government.[4]

Religious freedom and anti-discrimination laws

With no comprehensive charter or bill of rights at the federal (Commonwealth) level, rights are protected through anti-discrimination laws and the law that relates to Australia's national human rights body, the Australian Human Rights Commission (AHRC). These laws, at the time of writing, are the:

- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *Australian Human Rights Commission Act 1986*

[3] 146 CLR 559

[4] *Williams v Commonwealth (2012)* 248 CLR 156. The court ruled that because the Commonwealth outsourced the employment of chaplains (to the states), it was not in breach of s 116 (Barker, 2019; Beck, 2018).

- *Disability Discrimination Act 1992*
- *Age Discrimination Act 2004*

Protections for religious freedom appear as exceptions or exemptions in these laws, that is, religious organisations and institutions are exempt from certain aspects of anti-discrimination law, allowing them to lawfully discriminate under certain circumstances. These exemptions are captured in s 37 and s 38 of the *Sex Discrimination Act 1984* (SDA), and s 35 of the *Age Discrimination Act 2004* (ADA) which is almost identical to s 37 of the SDA.[5] There are also a limited number of protections under the *Fair Work Act 2009* ensuring that employers cannot discriminate against employees or prospective employees on the basis of religion in taking 'adverse action' (s 351(1)), not paying the award wage (s 153(1)) and terminating employment (s 772(1)(f)).[6] The SDA protects people against discrimination on the basis of their sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy, breastfeeding and family responsibilities. The scope of the protections extends to areas of public life including employment, education and the provision of goods and services. Section 37 of the SDA provides exemptions to these protections for the training and appointment of 'priests, ministers of religion or members of any religious order', the selection of people to perform duties related to religious observances or practices, and also 'any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents to that religion' except in the case of employment in Commonwealth funded aged care. Section 38 of the SDA allows for 'educational institutions established for religious purposes' to discriminate on the basis of otherwise protected attributes—sex, sexual orientation, gender identity, marital or relationship status, pregnancy—in employment (including contract work) and in the provision of services insofar as the discrimination is carried out 'in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed' and done 'in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed'.

[5] *Sex Discrimination Act 1984* (Cth), https://www.legislation.gov.au/Details/C2014C00002. *Age Discrimination Act 2004* (Cth), https://www.legislation.gov.au/Details/C2018C00038. Accessed 5 April 2020.
[6] https://www.legislation.gov.au/Details/C2014C00031, accessed 5 April 2020.

With the exception of New South Wales (NSW) and South Australia (SA), Australian states and territories have anti-discrimination or equal opportunity laws that prohibit discrimination on the basis of religion in some circumstances. Definitions of religious discrimination and the extent of the protections vary across jurisdictions (Australian Human Rights Commission, 2018; Evans, 2012; Ruddock, Aroney, Bennett, Brennan, & Croucher, 2018). NSW does not protect religious discrimination other than on the basis of 'ethno-religious origin' and SA has protections against religious discrimination only on the basis of 'religious appearance or dress' in employment and education.[7] The Australian Capital Territory (ACT), Victoria (Vic), and Queensland (Qld) also have human rights charters that protect religious freedom and protect against religious vilification.[8] Tasmania is the only state which includes protection of religious freedom in its constitution and, additionally, its anti-discrimination law protects against discrimination on the basis of religious belief or affiliation and religious activity.[9]

Australian laws, therefore, designed to enable religious freedom and defend against religious discrimination, offer a confusing and incomplete patchwork of protections. A number of public inquiries have examined the operation and effect of these protections and explored solutions for improvement. Chapter 5 presents an analysis of all the reports from these nine religious freedom inquiries (and eleven other inquiries which included consideration of religious freedom). Eight of the nine reports identify the 'problem' of religious freedom as that of weak protection in law. Despite this frequently expressed view that religious freedom is not well protected, the report from the inquiry into religious freedom protection called by Malcolm Turnbull in 2017, concluded that, 'While it could be described as piecemeal, inconsistent and overly static, basic protections are in place and the Panel did not receive sufficient advice that the framework itself was causing significant problems' (Ruddock et al., 2018, p. 46). Whatever is, or is not, happening to people as they seek to live out their religious faith and traditions free from discrimination,

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[7] *Anti-Discrimination Act 1977* (NSW), https://www.legislation.nsw.gov.au/#/view/act/1977/48/full. *Equal Opportunity Act 1984* (SA), https://www.legislation.sa.gov.au/LZ/C/A/Equal%20Opportunity%20Act%201984.aspx. Accessed 5 April 2020.

[8] *Human Rights Act* 2004 (ACT), https://www.legislation.act.gov.au/a/2004-5. *Charter of Human Rights and Responsibilities Act 2006* (Vic), https://www.legislation.vic.gov.au/in-force/acts/charter-human-rights-and-responsibilities-act-2006/013. *Human Rights Act 2019* (Qld), https://www.legislation.qld.gov.au/view/html/asmade/act-2019-005. Accessed 5 April 2020.

[9] *Constitution Act 1934*, Part V, s 46, https://www.legislation.tas.gov.au/view/html/inforce/current/act-1934-094, *Anti-Discrimination Act 1998* (Tas), https://www.legislation.tas.gov.au/view/html/inforce/current/act-1998-046. Accessed 5 April 2020.

from the perspective of legal principles, as discussed below, Australian legal scholars remain divided about whether the law does provide adequate protection for religious freedom.

The study of religious freedom in Australian law

As briefly outlined in Chapter 1, much of the research on religious freedom in Australia is conducted within the field of law. Legal scholars such as Evans (see, for example, Evans, 2008, 2012; Evans & Gaze, 2010; Evans, Hood, & Moir, 2007), Beck (Beck, 2014, 2016, 2018) and Barker (Barker, 2019, 2020) have focussed on how the law does and does not protect religious freedom by variously examining the Constitution, Commonwealth and state anti-discrimination, anti-vilification and equal opportunity laws (where, as discussed above, religious freedom is captured as exemptions or exceptions), and case law from historical, socio-legal and legal philosophical perspectives. Beck argues that a better understanding of the history of s 116 of the Constitution by the High Court would 'provide a pragmatic safeguard against religious intolerance on the part of the Commonwealth' (2018, p. 165). Barker (2019) concludes her legal survey of religion and state having found that 'in every decade since European colonisation the State has had to grapple with at least one important issue in its interaction with religion' (p. 329). She goes on to argue that

> If current demographic trends continue, more and more Australians will identify as having no religion while at the same time the religious diversity of the population will continue to increase. This will pose significant challenges not only for the State but also for religious leaders of Christian denominations who have historically been in the majority. (pp. 329-330)

Sarre (2020), who describes religious freedom in Australian law as 'an array of protections, privileges and practices… that continue to draw law and religion closer together into a range of relationships despite a purported "separation" of church and state' (p. 17), has examined 'the trajectory' of the law (especially in relation to the intersection between religious freedom and anti-discrimination protections) in light of marriage equality and the recommendations of the Ruddock Review. He concludes that 'with some tweaking of current laws, Australians will be able to continue to enjoy freedom of religion and belief, and freedom from religion and belief with or without new legislation' (Sarre, 2020, p. 41). Parkinson, on the other hand, who, as discussed below, has a high profile

within the religious freedom lobby, has written extensively on religious freedom in Australian law (for example, 2007, 2010, 2011). He has long advocated the need for improved protections, even including the extension of them to individual (religious) conscientious objection: 'Making reasonable accommodation for conscientious objection on the grounds of religious belief is essential if Australia is to take its commitment to multiculturalism… [and] to human rights seriously' (2011, p. 299). Babie (2015) has explored the increased interaction between religion and the law and what that might say about the influence of religion in sociolegal understandings about Australia's 'secular political culture' (p. 108). In 2020, he concluded that freedom of religion and belief 'is already articulated and respected—whether the proposed Commonwealth Religious Discrimination Act is enacted or not—by the ethos which I identify in the existing law' (Babie, 2020).

This brief survey of the legal literature demonstrates the breadth of work and variety of positions taken by legal scholars on the state of religious freedom in Australia. This thesis draws on the work of these and other legal scholars as a foundation for understanding both the legal and political claims about religious freedom protections made by policy, media and other actors.

The Politics of Religious Freedom: Theoretical Foundations

This thesis seeks to offer an Australian contribution to an increasingly substantial body of work from international scholars interrogating the concept and the politics of religious freedom. In her examination of the politics of religious freedom in the US, Tisa Wenger (2017) describes the critical concerns of such a study as identifying who is appealing to religious freedom and for what reasons. In the introduction to the book *Politics of Religious Freedom,* the editors, Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Saba Mahmood and Peter G. Danchin, pose a number of questions including 'What exactly is being promoted through the discourse of religious freedom, and what is not?' (Sullivan, Hurd, Mahmood, & Danchin, 2015, p. 1). The diverse essays collected in the volume offer a variety of theoretical and methodological approaches across a wide range of contexts but taken together they demonstrate that 'religious liberty is not a single, stable principle existing outside of history or spatial geographies but is an inescapably context-bound, polyvalent concept unfolding within divergent histories in differing

political orders' (Sullivan et al., 2015, p. 5). Religious freedom, therefore, is not and cannot be a neutral category but it is often treated as such, including in Australian public discourse, where, as shown in Chapter 5 especially, particular understandings of religion, belief and religious freedom (as value-free) have become reified in the Australian public and policy spheres. One of the aims of this thesis is to identify, problematise and interrogate these understandings.

The political constructions of 'religious freedom' and 'belief'

Hand-in-hand with the birth of secularism and secularisation (explored in Chapter 1), the idea of religious liberty or freedom developed in western (Christian) Europe over the course of the 16th and 17th centuries within the context of the birth of the nation state, the Reformation and the consequent conflicts between Protestants and Catholics, and the colonising projects of empire (Casanova, 1994; Martin, 2017; Taylor, 2009; Wenger, 2017). Secularism and religious freedom are so intertwined that they almost serve as guarantors of each other, with Wilson writing that

> describing the West as secular is often used to illustrate the unique circumstances in which religious freedom is guaranteed in the West. Religious freedom is upheld by the separation of church and state through the strict division of the public and private realms and the restriction of religion to the private sphere alone' (2012, p. 32).

Locke's *Letter Concerning Toleration* (2010), written in 1685, established, within liberalism, the principles of the separation of church and state and religious liberty (understood as 'toleration') and these principles were inescapably Protestant (Haefeli, 2015).

> The Toleration of those that differ from others in Matters of Religion, is so agreeable to the Gospel of Jesus Christ, and to the genuine Reason of Mankind, that it seems monstrous for Men to be so blind, as not to perceive the Necessity and Advantage of it, in so clear a Light. (Locke, 2010, p. 11)

Wenger describes how Locke's 'toleration' was inescapably political, describing an English version of colonisation that was both practically and morally superior to the Spanish form of colonisation (Wenger, 2017). Haefli describes toleration as 'one group's recognition and accommodation, or even acceptance—to varying degrees and for different lengths of time—of the existence of another or others' (Haefeli, 2015, p. 106). The concept of religious toleration has, as Haefeli (2015) points out, always been

contextualised within particular socio-political settings, so to 'simply to employ the term without outlining its consequences is to privilege one or another version of tolerance over others' (p. 107).[10] Toleration or tolerance often finds expression in contemporary religious freedom discourse in the concept of (reasonable) accommodation,[11] and like toleration, accommodation too is a partisan concept. Beaman, for example, argues that 'the language of reasonable accommodation reifies the binary between "us" and "them" and displaces equality as a framework for negotiation' (2012, p. 208). In Australian law, accommodation (and/or tolerance) is provided for by the use of religious exceptions or exemptions (as described above), and, as this thesis demonstrates, the discourse of religious exemptions is politically charged within the context of religious freedom, both relying on and producing/reproducing the 'us' and 'them' binary. In his book *The Production of American Religious Freedom,* Curtis argues that it is the 'malleable rhetoric' of religious freedom that ensures its 'potency' – 'its ability to be used for different ends makes it a useful currency for a variety of agendas' (2016, p. 168). He goes on to say that

> While there is no essential difference between religious freedom and other kinds of freedom, classifying conflicts as religious can alter how social and political institutions distribute power. Conventional equations between religious freedom and individual autonomy, however, deflect attention from these social forces. Religious freedom does not liberate people from rules, norms, constraints, and forms of governance… Arguments about religion are arguments about what rules should govern social life and about what kinds of social institutions produce free persons. (Curtis, 2016, p. 168)

In analysing four different forms of public discourse, this thesis exposes how religious freedom has been used to prosecute particular political agendas. Chapter 3 argues that the leaders of the majority of mainline Christian denominations have used the idea of religious freedom (a concept widely held to be self-evidently good, as the analysis of parliamentary speeches on same-sex marriage in Chapter 4 demonstrates) in order to entrench their power to set the rules that govern people's bodies and their behaviour. The 'balancing rights' frame that has come to dominate the public policy discourse of religious freedom, as shown in Chapters 4 and 5, is how Curtis's 'equations between

[10] The terms 'tolerance', 'toleration', 'religious liberty' and 'religious freedom' are often used interchangeably but it is important to heed Haefli's warning that an examination of how they have been defined proves the need for caution: 'their definitions often do not match up – a clear sign that we are not always talking about the same thing after all, even when we try to' (2015, p. 107).

[11] Berger describes tolerance and accommodation as 'twin key tools' in how law is used to operationalise 'a political commitment to multiculturalism' (2012, p. 245).

religious freedom and individual autonomy' play out in Australia, with religious freedom used to block or undermine the claims to freedom and equality made by groups of people who have been demeaned, excluded and marginalised by the content of religious 'beliefs' and the power of religious freedom.

A companion to the religious and the secular, 'belief', too, was formed in western modernity – 'the time when the mystery goes inside, to the inner sanctum, the "core" of the person. It is the time when the holy is privatized' (Sherwood, 2015, p. 32). Tracing the idea of 'belief', Asad describes how in liberal democracy belief came to be 'the essence of religiosity'. Belief was, at first, that which was left after the Protestant stripping away of Catholic (and 'primitive' religion) ritual. But, Asad argues, although later anthropologists worked belief back to the centre of 'an understanding of the repetitive activities classified as rites and ceremonies' (2011, p. 40), the argument was not settled. Locke's theory of toleration shifted the ground on belief. According to Asad the idea that 'belief cannot—in the sense of impossibility—be coerced' is 'the core of Locke's theory of toleration and one part of the genealogy of secularism' (2011, p. 43). But in the context of the development of the nation state and the concurrent development of secularity, Asad argues that,

> although the insistence that beliefs cannot be changed from the outside appeared to be saying something empirical about "personal belief" (its singular, autonomous, and inaccessible-to-others location), it was really part of a political discourse about "privacy", a claim to civil immunity with regard to religious faith that reinforced the idea of a secular state and a particular conception of religion. (2011, p. 44)

From a more philosophical perspective, Sherwood argues that 'belief', created 'in the leftover space to describe that which is not of truth, reason, or philosophy', was handed to 'the religions' in order that the 'deliriously free' (from truth, reason and philosophy) 'maverick force' might be contained as part of the secular compact between the state and the church (Sherwood, 2015, p. 32). What happened to belief after that, Sherwood describes as 'a giddy and bizarre demonstration of the freedom of the concept of belief' (p. 33) – it was not contained but rather extended out to the secular, becoming, in law, 'religion or belief'.

> The phrase "religion or belief" is an awkward response to the imperative of secularization. In being forced to come up with a secular cognate, religion is demoted, humiliated, pluralized, negated—and yet still sovereign. It still functions

> as the key coordinating concept, or at least the concept allowed to reign over the strange shadow state and outland of belief (the land that no other sovereign concept wants to rule). Religion remains the primary reference point for, and guardian of, the category of belief. The very phrase "religion or belief" suggests that a secular belief must meet the high entrance requirements set by religion, and this around that particularly religious assertion "I believe." (Sherwood, 2015, p. 33)

Article 18 is the religious freedom clause in both the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* (ICCPR). Both documents promote the right to freedom of religion *or belief*. In the ICCPR, Article 18 reads:

> 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his [sic] religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
> 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
> 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. (United Nations, 1966)

Asad writes of the modern secular state that it 'is not simply the guardian of one's personal right to believe as one chooses;[12] it confronts particular sensibilities and attitudes, and puts greater value on some than others' (2011, p. 53). This power of the state to enshrine in law the value of some attitudes over others may explain, at least in part, why Christian churches in Australia have historically demonstrated at least wariness, but sometimes, outright hostility, towards human rights discourse (Ball, 2013; Nelson, Possamai-Inesedy, & Dunn, 2012) which articulates a shared set of values claiming religious neutrality. More recently, however, as the analyses in this thesis show, they and other religious groups have moved to embrace Article 18 of the ICCPR, citing it as foundational as they make their arguments for better protections for religious organisations and extended protections for the religious freedom of individuals. But the meaning of religious freedom, thus contextualised within international human rights

[12] This is, according to Asad, the modern version of the argument made by Locke that belief cannot be coerced. This argument is not about the 'impossibility' of coercion, but about how any attempt to coerce belief is an affront to 'the dignity of the individual person' (Asad, 2011, p. 43).

discourse, is always assumed within a western liberal history and rests on the freedom to *believe* (and to be free of coercion to believe). As Hurd describes it,

> The protection of international religious freedom as a universal norm hinges upon, and even sanctifies, a religious psychology that relies on the notion of an autonomous subject who chooses beliefs and then enacts them freely. This understanding of religion normalizes (religious) subjects for whom "believing" is taken as the universal defining characteristic of what it means to be religious, and the right to choose one's belief as the essence of what it means to be free. (2015, p. 48)

This identification in law of religious freedom with belief, denies that which scholars of religion have long understood – that the category 'religion' is not defined or limited by, or contiguous with, the category of belief. The case Sullivan (2005) presented (discussed in Chapter 1) demonstrates just this – while the rituals practised by the plaintiffs were, for them, meaningful, purposive and committed expressions of religious traditions going back generations in their families and communities, they were not understood by the court to be 'religious' because they did not correspond to a set of authorised 'beliefs'. Hurd argues that this understanding of religious freedom

> leaves little room for alternatives in which religion is lived relationally as ethics, culture, and even politics but without, necessarily, belief and, as a matter of command, not freedom. The foreclosure on religion without belief shuts out dissenters, doubters, and those on the margins of or just outside those "faith communities" celebrated by religious freedom advocates, whose voices are subsumed or submerged by the institutions and authorities presumed to speak in their name. It endows those authorities with the power to pronounce on which beliefs deserve special protection or sanction. And it occludes the fundamental instability of the notion of religious belief. Who decides what counts as a religious belief deserving of special protection and legal exemption rather than as some other form of belief? (Hurd, 2015, p. 51)

The politics of religious freedom

The question of 'who decides what counts as a religious belief deserving of special protection' is a critical one within the politics of religious freedom in Australia. In this thesis, I argue that, as demonstrated by the analysis in Chapter 5, the problematisation of religious freedom in policy discourse serves to reify in public discourse an understanding of 'religion' as belief, and 'belief' as personal claims of truth validated by religious authorities and religious texts. These understandings of religion privilege the western

Christian religious tradition and the patriarchal, colonialist institutions of the Christian church as the holders of the sacred texts and the authorising bodies for religious doctrine.

As described earlier in this chapter, individuals are protected in some jurisdictions *from discrimination* because of their religion, but it is religious institutions, bodies and organisations that are granted exemptions to anti-discrimination laws, allowing them *to discriminate* against individuals and particular groups of people as long as the discrimination is based on an authorised *belief* that conforms 'to the doctrines, tenets or beliefs of that religion' or is intended to and 'necessary to avoid injury to the religious susceptibilities of adherents to that religion' (s 37, SDA).

In her examination of the rhetoric of religious freedom being deployed by the United States Conference of Catholic Bishops, Castelli (2015) looks at the report of an investigation into the US Leadership Conference of Women Religious (the organisation that represents that vast majority of Roman Catholic nuns) because of the positions it had expressed on issues of women's rights, women's ordination and homosexuality. She argues that in the report,

> Religious freedom emerges as nothing more than a mode of shoring up the authority of the Magisterium of the Bishops, not a set of values that shelters and protects the acts of conscience undertaken by Catholic women religious in the United States. That is, there is a foundational paradox in the religious freedom enterprise insofar as it privileges the authority of the leadership of religious communities, thereby reinscribing often contested hierarchies and empowering some religious points of view over others. (p. 228)

The politics of religious freedom, then, also involves the politics of religious institutions. The casting of the religious exceptions in Australia's anti-discrimination laws on the basis of acts that are carried out 'in accordance with the doctrines, tenets, beliefs or teaching of a particular religion or creed' (see above) locates power within religious institutional leadership, which in Australia is overwhelmingly conservative and patriarchal. To answer the question whether a religious belief or practice is one that the law can protect, relies on the idea of an authorising discourse and authorised practice (Asad, 1993), the content, definitions and limits of which are determined by a single authority – the institutions of the church. As Jakobsen writes,

> One of the fundamental problems for the realization of these democratic goals ['a society in which differences are recognized with equality' (p. 38)] is that the model of pluralism often presumes clearly delineated "units" of religious difference, most often located in well-recognized institutions of religious tradition with identifiable authorities who speak for the members of said tradition. Thus the model of pluralism can fail to recognize both diversity within religious traditions and forms of religious difference that do not fit this model of organization, for example, those that are not organized around authorities who can act as spokespersons, that are not institutionalized in recognizable (and hierarchical) structures, and that are delineated by practice or land rather than by beliefs about which one might speak. (Jakobsen, 2012, p. 39)

In the context of religious freedom cases in the US, NeJaime and Siegel (NeJaime & Siegel, 2015, 2018) make the distinction between 'free exercise' cases that involve members of religious minorities making claims for 'exemptions based on unconventional beliefs generally not considered by lawmakers when they adopted the challenged laws; the costs of accommodating their claims were minimal and widely shared' (NeJaime & Siegel, 2015, p. 2520) (for example, Sikhs carrying a kirpan) and 'complicity-based' cases which are conscience claims based on 'religious objections to being made complicit in the assertedly sinful conduct of others' (NeJaime & Siegel, 2015, p. 2518). Such claims about behaviour (on the part of people usually assumed to be outside the religious community) which religious traditions identify as sinful (for example, having an abortion or being gay), unlike free exercise claims, have the potential to be harmful to those who are the subject of the claims, for example, by reinforcing social stigma and blocking access to goods and services allowed to others (NeJaime & Siegel, 2018). Complicity-based claims are often made on matters of sexual morality and 'are now asserted by growing numbers of Americans about some of the most contentious "culture war" issues of our day' (NeJaime & Siegel, 2015, p. 2520). In the Australian context, Chapter 6 examines how religious freedom is framed in a politically motivated newspaper campaign to advance the 'culture wars' in Australia.

The language of complicity-based and free exercise religious freedoms claims is not used in the papers presented in this thesis, but as I will describe below and return to in the conclusion (Chapter 7), this language provides a helpful lens for understanding the changing discourse of religious freedom in Australian public debate and the politics of religious freedom in Australia.

The Politics of Religious Freedom in Australia

Religion, state and politics in 'secular' Australia

It is commonly understood that Australia is a secular nation with the separation of church and state sitting within the heart of our democracy and our politics – but the relationships between religion (mostly church) and state, and religion (especially Christianity) and politics, are more complex than is captured by that prosaic description. As Beaman and Sullivan point out, 'The repetition of "we live in a secular state" or "church and state are separated here" acts as a mantra which can distract or obscure other realities' (2013, p. 6). With no established church, the federal parliament still opens with Christian prayer, religious organisations receive tax concessions, governments fund religious schools and chaplaincy in public schools, and recently, prime ministers have become open about sharing and displaying Christian faith.[13] But the complexity is greater than even these characteristics suggest. As Hurd writes, 'religion is not a differentiable quantity that influences society, law and politics "from the outside" but is rather embedded in and often partly constitutive of modern public life, law and politics' (2018, p. 12).

Cahill, Bouma, Dellal and Leahy write that spirituality has always been at the heart of human society on the Australian continent, and that after the European invasion, 'religious faith has been at the core or close to the core of Australian social and political life… Religious groupings have been formative of core social and moral Australian values and of public service, welfare and philanthropic traditions' (2004, p. 11). They describe the relationship between religion and the state in Australia as a 'succession of repositionings' (Cahill et al., 2004, p. 23). Barker calls for a 'nuanced approach' to understanding the relationship (Barker, 2019, p. 33) and Bouma warns that '*separation* is a complete misnomer, since what it refers to is in fact a variety of relationships, none of which is characterised by complete separation' (Bouma, 2015, p. 214).

[13] In October 2006, then Opposition Leader and soon-to-be Prime Minister, Kevin Rudd (2006), wrote a widely read and cited article entitled 'Faith in Politics' arguing for the place of Christianity in the public sphere, especially in advocacy for peace and justice for those most marginalised. Once elected Prime Minister, and when in Canberra, he often spoke to journalists after church on Sunday (Marr, 2010). During his first election campaign as serving Prime Minister, Scott Morrison allowed media into his Pentecostal church during an Easter Sunday worship service and the photograph taken of him by Mick Tsikas singing and with one arm raised to God is often reproduced, see https://www.theguardian.com/australia-news/2019/apr/21/scott-morrison-invites-media-into-pentecostal-church-amid-election-campaign-truce, accessed 10 March 2020

In 1911, in the first census after federation, over 98 percent of those who completed the survey identified themselves as Christian,[14] but this overwhelmingly Christian, majority Church of England, population, had not translated into the establishment of a state church:

> By the 1830s it had become clear to colonial elites that the early aspiration for an established Church of England would be impossible in the antipodean colony with its challenging religious pluralism. And yet, British Enlightenment sentiment rejected the notion of a complete separation between the church and the state, as if religion was unimportant or without 'utility' to an enlightened civilisation. (Chavura, Gascoigne & Tregenza, 2019, p. 2)

As shown in Chapter 1, more than 50 percent (12.5 million) of Australians claimed Christianity as their religious affiliation in the 2016 census. NCLS Research, however, estimates that, in an average week (in 2011) only about 1.6 million attend a church service. Attendance rates have declined since 1991 in Catholic and mainstream Protestant churches, although attendance at Pentecostal churches doubled in that period to just over 200,000 (Powell, Pepper, & Sterland, 2017). The figures are a reflection of what Maddox describes as well known among commentators on religion in Australian society, that 'Australians have historically been less antipathetic to religion than indifferent to it' (2011, p. 291). A significant exception to this ambivalence is the small but significant anti-Muslim sentiment stoked over the years since 9/11 by a number of high-profile conservative politicians. Former Prime Minister John Howard, for example, with 'his portrayal of Muslims as the new 'Them' (Maddox, 2005, p. 175)—forged during the making of an 'asylum seeker crisis' with the Tampa incident in 2001—responded to the 2002 Bali bombings and the highly visible and forceful Australian Security Intelligence Organisation (ASIO) raids on the homes of Australian Muslims that followed by keeping his comments 'brief, ambiguous and elliptical, leaving plenty of room for denials of racism, but also plenty of cracks in which implicitly racist messages could thrive' (Maddox, 2005, p. 177). More recently, in one of the more brazen and now notorious performative acts in parliament, Senator Pauline Hanson, who has a long history of anti-

[14] Census of the Commonwealth of Australia (1911), Vol. 1 Statistician's Report, p. 201, available at https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/2112.01911?OpenDocument, accessed 20 March 2020. Bouma claims that 'no religious group has ever had more than 42 percent of the population' (2015, p. 214) – in 1911, 39.4 percent of the population identified as Church of England and 21.22 percent as Roman Catholic.

Muslim rhetoric, supported her call for a ban on the burqa by wearing one into the Senate chamber for question time on 17 August 2017.[15]

In the study of religion and politics in Australia, scholars have, over the last 20 years, moved beyond identifying and numerating the religious affiliations of politicians and the alignment between Christian denominations and political parties, to examining the complexity of those relationships and identities and how they impact upon and are impacted by, for example: the general indifference to religion of much of the population; the almost 'rusted on' sense among even non-religious Australians that it is a 'Christian country' or at least one historically based on 'Christian values' (which should be maintained); the increasing cultural and religious diversity of the population; the decline of mainstream church membership; the oft-declared rising secularism in and secularisation of Australia; the growth of Pentecostalism; the influence of the conservative Christian lobby; the long-standing bipartisan commitment to the government funding of religious schools; religious advocacy on issues of public policy; the increasing tendency of politicians to refer to their religious heritages and beliefs; and the use and influence of what Maddox calls 'religiously-inflected political discourse, frequently initiated by politicians little (or no) more religiously literate than the population they address' (2011, p. 302), that population being Australians who claim a nominal affiliation to Christianity and who value a vague set of 'Christian values' in their politicians (Maddox, 8 July 2005). There is significant agreement amongst scholars of religion in Australia (see for example, Cahill et al., 2004; Crabb, 2009; Donovan, 2014; Hancock, 2019; Lohrey, 2006; Lynch, 2016; Maddox, 2004, 2005, 2011; McPhillips, 2020; Melleuish, 2010; Stanley, 2015; Warhurst, 2006, 2007; E. Wilson, 2011) that religion has become increasingly visible in Australian public life despite the dwindling numbers of religious adherents.

Propelled by neoliberalism, now the deeply embedded ideological driver of public policy in Australia regardless of which political party is in government, religious institutions, especially Christian ones, have become central to the delivery of health, welfare and education services (see for example, Bouma, 2015; Howe & Howe, 2012; Maddox, 2005, 2011; Maddox & Smith, 2019; McPhillips, 2015; Oslington, 2015). The influence exerted

[15] See https://www.theguardian.com/australia-news/2017/aug/17/pauline-hanson-wears-burqa-in-australian-senate-while-calling-for-ban, accessed 10 March 2020.

by religious organisations through the delivery of education, health and welfare services is, however, not the only expression of the rise of religion in Australian public life. Melleuish (2010) cites, for example, the growth of groups with particular Christian agendas for public policy, influential church leaders,[16] former Prime Minister Kevin Rudd and public concerns about 'radical forms of Islam' (p. 915). This is not to say that, as Melleuish (2010) points out, there has been an identifiable 'Christian vote'. Examining the election that swept Kevin Rudd and the ALP to victory in 2007, Smith argues that there was no evidence of the political success of the Christian right in Australia; and in any case, Rudd's appeal was more sympathetic to progressive religious traditions. The case of the 2019 election of the Liberal-National (LNP) Coalition led by Scott Morrison is more complex, however, with some commentators and even some ALP politicians viewing the ALP loss (against all odds) as the result of voters in marginal electorates with large migrant (and 'religious') populations turning away from the ALP because of their local members' support of same-sex marriage, or towards the Coalition because voters believed that it would better protect religious freedom (see for example, Banger, 22 May 2019; West, 24 May 2019). After an aggressive campaign by Christian Schools Australia encouraging voters to consider the issue of religious freedom as they cast their vote (Patty, 15 May 2019), some church leaders claimed that 'religious freedom was among "sleeper" issues that influenced votes for the Coalition' (Patty, 20 May 2020). Maddox, however, urges caution in assigning Morrison's win to the power of a 'Christian vote' (Maddox, 28 May 2019) and Jakubowicz and Ho conclude that LGBTIQ rights (including same-sex marriage) was only one of a number of issues that swung votes in some critical marginal seats (Jakubowicz & Ho, 4 June 2019).

[16] Melleuish refers specifically to Cardinal George Pell and the former Anglican Archbishop of Sydney Peter Jensen, both arch conservatives. Their successors as the Roman Catholic and Anglican archbishops of Sydney continue to wield significant influence, but they are not alone. The religious freedom debates have seen other conservative Christian church leaders, particularly the bishops of the Maronite Church of Australia and the Coptic Orthodox Church in Australia rise in public prominence.

The rise of the Australian religious freedom lobby

> *In Australia as well as across the western world, truth in the public square is being attacked and suppressed. The greatest stronghold of truth - Classical Christianity - is being pathologised and blamed for significant harms... To this end, Christian institutions are being undermined. Churches are being pressured by new moral and legal norms. Individuals who speak or live consistent with truth are made a prey. To stand for truth in public as a relentless, unquieted, and effective voice, is a leadership role that is desperately needed. It requires divinely inspired courage, wisdom, and endurance.*
>
> Australian Christian Lobby[17]

The rise of the Christian right in Australia is often associated with the rise of the Australian Christian Lobby (ACL), which was established in 1995. Eschewing the label 'evangelical'—a label not widely used in Australia (Malloy, 2017)—the ACL has sought to both encourage and enhance the political engagement of Australian churches and leverage their size and influence. It describes itself as non-denominational and non-partisan – descriptions which Maddox (2014a) has demonstrated belie both the nature of the organisation ('non-denominational' being a coded word in Australian Christianity for a tradition aligned with the 'ecclesiology of the megachurch world' (p. 134)) and the political connections and 'right-wing' positions for which it advocates (p. 140). It does not claim to be a peak body, but it acts as one, convening gatherings of church leaders to meet with political leaders in pre-election forums, organising joint lobbying activities for church leaders and drawing prime ministers and opposition leaders to its annual conferences (Maddox, 2014a). The major issues listed on its website at March 2020 were, in order, 'gender and sexuality', 'freedoms and public Christianity' (including religious freedom), 'life' (abortion, donor conception and surrogacy, euthanasia), 'family', 'sexualisation of society' (pornography, prostitution and advertising standards), and 'poverty and justice' (including drugs and alcohol, homelessness, overseas aid, gambling and refugees).[18] It has engaged in high profile and politically influential lobbying against anti-discrimination law reform (especially focussed on opposition to improved protections for LGBTIQ rights), marriage equality and religious freedom. On religious freedom, the ACL has been and is most concerned about issues relating to LGBTIQ rights

[17] 'Who we are', Australian Christian Lobby website, https://www.acl.org.au/about, accessed 13 March 2020.
[18] https://www.acl.org.au, accessed 13 March 2020.

and marriage equality (Maddox, 2014a). It has not been alone in that, but it has been a key player in the growth of what might be called a 'religious freedom lobby' in Australia.

The ACL is one significant actor in what Malloy has described as 'a broader "Christian" movement of theological and social conservatives' which includes 'Christian denominations and traditional elites' (2017, p. 412). These elites include the leadership and authoritative bodies within most mainstream Christian denominations: individual Roman Catholic bishops and the Australian Catholic Bishops Conference (ACBC); the Sydney Diocese of the Anglican Church in Australia, which is unique in its theological and social conservatism among Anglican dioceses in Australia; most Baptist churches and the state and national bodies; continuing Presbyterian and Methodist churches (not all congregations within these denominations united in 1977 when the Uniting Church in Australia was formed); Australian Christian Churches (formerly the Assemblies of God in Australia), a 'movement' of Pentecostal churches including Hillsong; and Seventh Day Adventists, among others. The exceptions include the progressively inclined Uniting Church in Australia, many but not all dioceses of the Anglican Church in Australia and the Religious Society of Friends (Quakers).

In 2012, then Managing Director of the ACL, Jim Wallace, and Professor Patrick Parkinson, at that time a Professor of Law at the University of Sydney, wrote to a number of high profile Christian leaders about the formation of Freedom4Faith (now, Freedom for Faith) seeking an annual contribution of at least $10,000 for a seat on the new organisation's Campaign Committee. The letter cited discussions with unnamed Christian leaders over a number of years which had identified threats to religious freedom in Australia as a result of 'an aggressive secular agenda which is increasingly becoming mainstream'. In particular, the letter highlighted moves to remove or limit religious exemptions in anti-discrimination laws and vilification laws which it claimed function to silence 'opinions others may find offensive'.[19] Freedom for Faith describes itself as 'a Christian legal think tank that exists to see religious freedom protected and promoted in Australia and beyond' (Freedom for Faith, 2018, p. 2). As well as making submissions to public inquiries, lobbying parliamentarians and engaging with the media, Freedom for Faith has served as a source of material for the public submissions of numerous churches and others conservative Christian groups. For example, the Freedom for Faith submission

[19] Letter dated 4 June 2012, private correspondence shared with the author.

to the Senate Legal and Constitutional Affairs Committee inquiry into the Draft of the Human Rights and Anti-Discrimination Bill 2012[20] (Freedom 4 Faith, 2012)—the authors of which included Parkinson and Professor Nicholas Aroney who was later appointed to the Expert Panel by the Turnbull Government to inquire into religious freedom (see Chapter 5)—was quoted and explicitly endorsed in four of the authoritative church body submissions while another three used material without acknowledgement (a not uncommon practice among advocacy groups which do not often have the specialist knowledge required to make substantial submissions to legislative inquiries but share the same goals and concerns as ones which do). Its website hosts papers and presentations by a number of conservative lawyers and legal academics, as well as conservative politicians and church leaders. Patrick Parkinson is listed as a Board Member with the Australian Charities and Not-for-profits Commission (ACNC)[21] and its leaders are drawn

> from a range of denominational churches including the Australian Christian Churches, Australian Baptist Church Ministries, the Presbyterian Church of Australia, the Seventh-Day Adventist Church in Australia, and the Anglican Church Diocese of Sydney. It has strong links with, and works co-operatively with, a range of other Churches and Christian organisations in Australia, including the Barnabas Fund which supports Christians that face discrimination or persecution as a consequence of their faith globally. (Freedom for Faith, 2018, p. 2)

Freedom for Faith perceives secularisation (and its associated progressive moral values) as the major threat to the protection of freedom of religion and consequently to Australian society.

> With the rapid secularisation of Australian society, and the growing and overt hostility to people of faith… the absence of protection for fundamental freedoms is a serious deficiency which threatens the cohesion of Australian society. (Freedom for Faith, 2018, p. 5)

Consistent with the ACL's concerns, in its submission to the Ruddock Review, Freedom for Faith (2018) identified four particular threats to religious freedom in Australia: the expansion of anti-discrimination laws to include 'conduct… which contravenes religious moral values' (p. 7); the 'persistent campaign' (p. 7) to remove exceptions in law which allow religious organisations to discriminate against people who are otherwise protected by the law; that religious freedom is no longer 'a shared value' as evidenced by it being

[20] The subject of Chapter 3 of this thesis.
[21] https://www.acnc.gov.au/charity/dbc92857fb12e91c25d1bdf675dbeda3#people, accessed 13 March 2020.

'crushed under the weight of the demands of "equality"' (p. 7); and the 'hatred' and 'intolerance' being experienced around the world by Muslims in response to terrorism, Jews because of resurgent anti-Semitism and Christians because of their 'traditional beliefs' about family, marriage, sexuality, abortion and euthanasia (p. 8). The word 'hatred' is used 13 times and 'hostility' 14 times in the submission in relation to both the experiences of 'people of faith' and the 'secular' responses to the concept of religious freedom itself.

The Human Rights Law Alliance, with Jim Wallace and Martyn Iles (Managing Director, ACL) both listed as Directors with the ACNC,[22] 'exists to provide legal services in the area of freedom of thought, conscience and religion' and is 'training students and practitioners', 'growing an alliance of lawyers and experts' and producing 'resources for faith-based organisations to better protect their freedoms'.[23] Cases described on its website include a student's freedom of speech at university (relating to speech about sexuality), a public school teacher who posted his opposition to marriage equality on social media, street evangelism, employment matters, abortion and a doctor's refusal to refer a couple for IVF treatment. The cases are variously categorised as 'freedom of religion', 'freedom of speech' and 'freedom of conscience'. All are Christian cases.

As the analyses presented in this thesis show, religious schools have been a key issue in the debates about the protection of religious freedom in Australia. Maddox describes how central the values of autonomy and freedom are to these schools (Maddox, 2014b). Regardless of the level of government funding, church and community religious schools expect and demand the most minimal levels of state interference in such matters as the hiring of staff, and the teaching of religious doctrines and the inculcation of religious morals. The intersection between the independence of religious schools and the right of parents to raise their children within their religious traditions has been used to significant effect in the debates about religious freedom, especially in relation to anti-discrimination law reform. Schools have been particularly vocal in relation to marriage equality (an issue that relates to both these matters) – 'schools' emerged as a keyword in the parliamentary speeches made during the 2017 debate (Chapter 4) and a major framing device in the editorials about religious freedom published by *The Australian* (Chapter 6). Two religious

[22] https://www.acnc.gov.au/charity/dbc92857fb12e91c25d1bdf675dbeda3#people, accessed 13 March 2020.
[23] https://www.hrla.org.au/about_us, accessed 13 March 2020.

schools' peak lobby groups have been active through the marriage equality and religious freedom debates. Christian Schools Australia (CSA) is a membership-based association of Christian schools that engages in advocacy work on behalf of its member schools in policy areas including funding and employment.[24] The National Briefings page on its website includes numerous resources on religious freedom and submissions to religious freedom related inquiries.[25] In the lead-up to the 2019 federal election it distributed a flyer to parents under the campaign banner of 'ValueEd Voices' (out of the newly formed Christian Schools Alliance whose spokesperson, Mark Spencer, is CSA's Director of Public Policy[26]) urging them to consider their vote in relation to religious freedom: 'This election will be the most critical for religious freedom in living memory' (Patty, 15 May 2019). The pamphlet highlighted the ALP's intention to remove exemptions from the SDA that allow religious schools to discriminate against staff and students. The Christian Schools Alliance has 329 members (Patty, 15 May 2019). The Australian Association of Christian Schools (AACS) is a national lobby group that advocates for 114 Christian schools around Australia.[27] Until 2004, its membership included CSA.[28]

Conclusion

As demonstrated in this chapter, the politics of religious freedom in Australia plays out in legal arguments about the sufficiency or otherwise of the protection of religious freedom in law, and in debates about the nature of Australian society as 'secular' and the status or extent of the process of secularisation. The politics of religious freedom also plays out in the contested space between the right to religious freedom (for individuals and for religious institutions, organisations and groups) and the rights of people to be free from discrimination, especially on the basis of religion, gender, marital or relationship status and sexuality and gender identity.[29]

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[24] See https://csa.edu.au/download/vision-doc/, accessed 5 April 2020.
[25] https://csa.edu.au/briefings/national/, accessed 5 April 2020.
[26] See https://www.facebook.com/pg/valuedvoicesaus/about/?ref=page_internal and https://csa.edu.au/about/ourteam/national-office/executive-officer-policy/, accessed 5 April 2020.
[27] See https://www.aacs.net.au, accessed 5 April 2020.
[28] See https://www.aacs.net.au/about-us/who-is-aacs.html, accessed 5 April 2020.
[29] This issue is explored in detail Chapters 3 and 5 drawing on the work of political scholars and sociologists, as well as legal scholars, but it is worth noting here the double bind of the state, highlighted by McPhillips (2015) in her study of women's rights in relation to anti-discrimination law and religious exceptions, which, in protecting religious freedom in the way that it does, becomes complicit in the continuing oppression of women, even as it seeks to protect and promote the rights of women in law and social policy. As this thesis demonstrates, the same can be said about the rights of LGBTIQ people in relation to religious freedom.

Sullivan et al argue that 'religious freedom has been naturalized in public discourse worldwide as an indispensable condition for peace in our time, advocated around the world and across the religious and political spectrum' (2015, p. 1). In Australia, religious freedom is understood in exactly such a way – in public debate it is assumed to be good and necessary. Everyone knows what it means, and everyone thinks it is important. The following chapters seek to unsettle this 'naturalisation' of religious freedom and, by using discourse analysis, offer a new perspective on the politics of religious freedom in Australia.

The discourse of religious freedom in Australia is not static and not neutral. In political speeches, policy and media discourses, religious freedom is problematised and framed to achieve particular political outcomes. This thesis charts the shift in the discourse away from issues related to religious diversity and the protection of religious minorities in Australia ('free exercise', to use the language of NeJaime and Siegel as discussed earlier) to issues related to the freedom of religious organisations (mostly Christian) to discriminate against groups of people who would otherwise be protected against discrimination in law ('complicity claims'), especially LGBTIQ people. To return to Woodhead's (2011) concepts of religion from Chapter 1, the understanding of religion represented in the discourse shifted from 'religion as practice' to 'religion as belief' – a shift which privileged modern, conservative, patriarchal, institutional Christianity and marginalised the voices of those seeking protection on the basis of religious practice. NeJaime and Siegel argue that 'complicity claims can provide an avenue to extend, rather than settle, conflict about social norms in democratic contest' (NeJaime & Siegel, 2015, p. 2520). Religious freedom, understood as the 'freedom to believe', a central value of a liberal, democratic and peaceful society, and thus highly resistant to interrogation, was, in a sense, 'freed' (as Sherwood (2015) might have it) to become a vital tool used by the conservative and religious right to prolong the contest about social norms in a context that may have otherwise settled.

Chapter 3

Paper 1

PROTECTING FREEDOM/PROTECTING PRIVILEGE: CHURCH RESPONSES TO ANTI-DISCRIMINATION LAW REFORM IN AUSTRALIA

The Salvation Army supports the protection of those who are disadvantaged and experiencing discrimination, but expresses concern regarding the protection of religious freedoms under the Bill. Under the current construction of the Bill, religious rights and freedoms appear to be secondary to a person's right to be free from discrimination. The Salvation Army calls for amendments to the Bill that will see greater protection of the rights of religious organisations.

The Salvation Army Australia, 2013

Introduction

In 2012, the Gillard Labor Government released an exposure draft of a bill consolidating all four pieces of Australia's federal anti-discrimination law and the Australian Human Rights Commission Act. This paper presents an analysis of the submissions made by Christian church bodies to the Senate inquiry into the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 (Draft Bill). While the need for consolidation was acknowledged across the political spectrum, civil society and business, the draft bill was not well received. Following their significant engagement with the 2009 National Human Rights Consultation, the institutional churches were an important stakeholder group for the government throughout the drafting process and their level of engagement during the inquiry conducted by the Senate Legal and Constitutional Affairs Committee was high.

This was the first paper written for publication as part of this thesis and is the only paper which examines a group of texts from a single point in time. It reflects both the early intention to examine the human rights advocacy of Australian church bodies, in this case, focussing on their responses to what could have been the most significant reform of anti-discrimination law since the first piece of legislation was passed in 1975, and the developing focus of the thesis on the discourse of religious freedom.

Religion is not a protected attribute in Australian Commonwealth law. As described in Chapter 2 and in this paper, it is protected (to a degree) through the use of religious exceptions or exemptions in anti-discrimination law which allow religious organisations to discriminate lawfully against otherwise protected people under certain circumstances. This form of legal solution to the protection of religious freedom has ensured that public and political discourse about religious freedom is always also about anti-discrimination law, and vice versa. One important site in the examination of the discourse of religious freedom in Australia, is, therefore, debate on anti-discrimination law. This slice of discourse was chosen for analysis because the reform project was significant, and public debate extensive. The Draft Bill was not a mere consolidation of existing laws – it maintained almost all the religious exceptions but also added three new protected attributes – religion, sexual orientation and gender identity.

Using manual discourse coding to examine 14 submissions to the inquiry from official church bodies, the analysis found that the addition of religion as a protected attribute did not ease church concerns with the Draft Bill but exacerbated them, with 12 submissions expressing profound concerns about the threat posed by the Draft Bill to both freedom of religion and freedom of speech (firmly intertwined), especially as they related to the inclusion of sexual orientation and gender identity, and religion. The religious exceptions in the Draft Bill ensured that religious organisations (other than Commonwealth funded aged care facilities) would have remained free to discriminate against people on those grounds, yet church bodies explicitly opposed anti-discrimination protections for LGBTIQ people as a threat to religious freedom. Many also explicitly opposed the inclusion of religion as a protected attribute, fearing it would threaten the freedom to express religiously framed positions against other religious traditions. The discourse of 'balancing rights' was prominent in the submissions, the argument being that the proposed legislation was getting the balance wrong: religious freedom was the most important right (in a hierarchy of rights) and the balance needed to be in its favour. In this way, the church submissions deliberately framed the discourse of religious freedom to support their case for the protection and promotion of religious institutional privilege and undermine a progressive reform agenda aimed at improving social equality for LGBTIQ people.

NOTE: This chapter is a published article in the *Australian Journal of Human Rights*. The word limit, referencing style, spelling and formatting reflect the requirements of the journal.

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Chapter 4

Paper 2
THE POWER OF BELIEF: RELIGIOUS FREEDOM IN AUSTRALIAN PARLIAMENTARY DEBATES ON SAME-SEX MARRIAGE

I'm talking about the right of churches, synagogues, mosques and temples to stand up for, stand by and articulate their religion's articles of faith without fear of penalty and without fear of censorship. I'm talking about the same right for pastors, for priests and for ministers of religion to do likewise; for the businesses and services that those religions run; and for the right of faith based charities and organisations also to articulate their faith's values and to ensure that their employees, their services, their goods and whom they provide those to conform with those values. It is the right of any person of faith, I've got to say, to express their values and to live by them authentically.

George Christensen MP, 5 December 2017

Introduction

The issue of LGBTIQ rights in Australian law has been the subject of public debate at state and federal levels for decades. NSW added homosexuality as a protected attribute to anti-discrimination law in 1982 and SA included protections on the basis of sexual orientation in its 1984 Equal Opportunity Act. In Tasmania, it took until 1997 for homosexuality to be decriminalised. In 2007, the Human Rights and Equal Opportunity Commission (HREOC, now the Australian Human Rights Commission (AHRC)) released *Same-Sex: Same Entitlements* – the report of its national inquiry into issues of financial and work-related discrimination against same-sex couples. The following year, acting on the recommendations of the report, the Rudd Labor (ALP) Government amended over 80 laws to remove discrimination against same-sex couples. In December 2011, the ALP National Conference determined to amend party policy in support of marriage equality and in 2013, after the failed project to consolidate anti-discrimination laws, the Labor Government amended the SDA to add sexual orientation, gender identity and intersex status as protected attributes. One of the last remaining legal impediments to equality in law for LGBTIQ people was the definition of marriage in the Marriage Act.

In 2004, the Howard Government changed the definition of marriage in the *Marriage Act 1961* to ensure that marriage was not available to same-sex couples and that same-sex couples married overseas could not have their marriages recognised by the state. In 2017, the majority of Australians voted (79.5%) in a voluntary postal survey in favour of same-sex marriage.[1] On 7 December 2017, the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* allowing same-sex couples to marry, was passed by the parliament. During those 13 years, 20 bills were tabled. The paper presented in this chapter uses a corpus-assisted analysis to examine all 663 parliamentary speeches delivered during debates on those bills. In choosing this set of texts, the aim was to chart when and how politicians began associating religious freedom with marriage equality – how did it happen that the bill which delivered marriage equality also entrenched an oppositional relationship between religious freedom and LGBTIQ rights in political discourse?

The previous chapter demonstrates that in 2012 the discourse of religious freedom was framed by most Australian church leaders around a binary opposition—religious freedom

[1] https://www.abs.gov.au/ausstats/abs@.nsf/mf/1800.0, accessed 22 May 2020.

versus freedom from discrimination. The submissions examined in the chapter demonstrate that Christian religious leaders were not only concerned with protecting the existing freedoms of religious bodies to discriminate against a variety of people who would otherwise be protected by law, they were actively working to halt the advance of LGBTIQ rights, despite the progressive social shift in Australian society, and entrench their own moral code in Australian law. With the discourse of religious freedom being used specifically to challenge the progressive anti-discrimination reform agenda of the ALP, it is not surprising then, that it was also in 2012 that, for the first time, the phrase 'religious freedom' was used by the ALP in the parliamentary debates on amending the Marriage Act, with Stephen Jones MP providing assurance that religious freedom was adequately protected in the marriage amendment bill being tabled.

The analysis in this chapter shows that by 2017, the framing of religious freedom as a right profoundly threatened by marriage equality had become dominant in Australian political discourse pertaining to religious freedom and marriage equality. The oppositional relationship between religious beliefs, held and expressed, and LGBTIQ rights was so entrenched in the parliamentary discourse, that the same-sex marriage bill became a same-sex marriage and religious freedoms bill and, with the bill's passage through the parliament assured after the result of the national postal survey, the subsequent political debate focussed almost entirely on the extent of the religious freedom protections in the bill. While churches and their allies had failed to halt the inclusion of LGBTIQ rights in anti-discrimination law, by 2017 the discourse of religious freedom had become so powerful that it successfully entrenched the social and legal acceptability of the ongoing exclusion of, and discrimination against, LGBTIQ people and couples on the basis of religious belief.

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Chapter 5

Paper 3
CONSTRUCTING THE PROBLEM OF RELIGIOUS FREEDOM: AN ANALYSIS OF AUSTRALIAN GOVERNMENT INQUIRIES INTO RELIGIOUS FREEDOM

The threats to religious freedom in the 21st century are arising not from the dominance of one religion over others, or from the State sanctioning an official religion, or from other ways in which religious freedom has often been restricted throughout history. Rather, the threats are more subtle and often arise in the context of protecting other, conflicting rights. An imbalance between competing rights and the lack of an appropriate way to resolve the ensuing conflicts is the greatest challenge to the right to freedom of religion.

Joint Standing Committee on Foreign Affairs, Defence and Trade, 2017

Introduction

The previous two chapters explore the discourse of religious freedom in the context of public debates about anti-discrimination law reform and marriage equality. The paper presented in this chapter explores the discourse of religious freedom on its own terms, examining the process by which religious freedom was constructed as a policy 'problem' over time in an important setting for the development of public policy – public inquiries and consultations. In 1984, the New South Wales Anti-Discrimination Board released the report of the first public inquiry into religious freedom in Australia. It was to be one of only four religious freedom inquiries conducted over the next 26 years. Over the following eight years, however, from 2011, a further five religious freedom inquiries were held, with three of them conducted in just the two years between 2017 and 2019. This rise in frequency of inquiries into religious freedom reflects the findings in this thesis that the issue of religious freedom gained increased public currency from around 2012 but particularly from 2015. The paper also examines public inquiry reports on other human rights issues that included consideration of religious freedom.

Public inquiry reports are generally assumed to describe problems that exist in society and offer proposals for solutions formed out of research evidence and the various representations of politicians, policy specialists, subject matter experts, civil society organisations and other engaged community stakeholders. All the religious freedom inquiry reports explicitly describe 'the problem' as the lack of protection in law for religious freedom and offer various solutions in the form of recommendations to government and other policy actors. As a policy issue, however, the problem of religious freedom will always be a political construction and needs to be read critically to expose the assumptions, presuppositions, dichotomies, biases, and silences of the problematisations, that like religious freedom itself, do not 'exist in the wild' but are socially, historically and politically constructed.

Using the *What's the Problem Represented To Be?* methodology, this chapter interrogates the reports to chart how the committees or panels (the report authors) constructed the problem of religious freedom. The analysis exposes two dominant problematisations – religious diversity and balancing rights. The early reports, focussing on issues relating to the discrimination, harassment and vilification being experienced by people from

religious minority groups, defined the religious freedom problem as a problem of religious diversity. The policy recommendations offered by these reports included proposals for better managing diversity within society and protecting people from discrimination on the basis of their religion. The 2011 report signalled a shift in the problematisation of religious freedom, and all subsequent religious freedom inquiries cast the religious freedom problem as a problem of 'balancing rights' – the right for people to be free from religiously framed discrimination needing to be balanced against the right of religious freedom itself, cast as the right to express and enact religious beliefs, especially beliefs about gender and gender identity, sexuality and marriage and relationship status. This paper argues that, over time, a particular understanding of religion as 'belief' (as personal claims of truth validated by religious institutions) became reified in the public discourse of religious freedom. Promoted by the leaders of institutional churches (as demonstrated in Chapter 3), and entrenched through the religious freedom inquiry reports, 'belief' became what religious freedom is meant to 'free' and within the 'balancing rights' problematisation of religious freedom, 'belief' became so entwined with the rights of LGBTIQ people (as explored in Chapter 4 in relation to marriage equality) that the rights of LGBTIQ people could no longer be considered without reference to the freedom of religious belief.

NOTE: This chapter is a published article in *Religions*. The word limit, referencing style, spelling and formatting reflect the requirements of the journal.

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Constructing the Problem of Religious Freedom: An Analysis of Australian Government Inquiries into Religious Freedom

Elenie Poulos

Faculty of Arts, Macquarie University, Sydney NSW 2109, Australia; elenie.poulos@hdr.mq.edu.au

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Abstract: Australia is the only western democracy without a comprehensive human rights instrument and has only limited protection for religious freedom in its constitution. It was Australia's growing religious diversity—the result of robust political support for multiculturalism and pro-immigration policies in the post-war period—that led to the first public inquiry into religious freedom by an Australian statutory body in 1984. Responding to evidence of discrimination against Indigenous Australians and minority religious groups, the report detailed the need for stronger legal protections. By 2019, Australia's religious freedom 'problem' was focused almost solely on the extent to which religious organizations should be allowed to discriminate against LGBTIQ people. Using the *What's the Problem Represented To Be?* approach to policy analysis, this paper explores the changing representation of the 'problem' of religious freedom by examining all public, parliamentary and statutory body reports of inquiries into religious freedom from 1984 to 2019. In their framing of the problem of religious freedom, these reports have contributed to a discourse of religious freedom which marginalises the needs of both those who suffer discrimination because of their religion and those who suffer discrimination as a result of the religious beliefs of others.

Keywords: religious freedom; Australia; religion; gender and sexuality; discrimination; equality; religious diversity; public inquiries; WPR (*What Is the Problem Represented To Be?*)

1. Introduction

This paper explores the construction of the problem of religious freedom in Australia from a policy perspective. It uses the *What is the Problem Represented To Be?* (WPR) methodology to analyse the reports from public inquires and consultations on religious freedom conducted between 1984 and 2019 by statutory bodies, parliamentary committees and government-appointed expert panels and committees. Also examined are reports from other human rights inquiries that include consideration of religious freedom. While seeking to address 'the problem' of religious freedom—consistently articulated as a (perceived) lack of protection under Australian law—the reports have actually constructed alternative problematisations of religious freedom that have shaped and influenced the ongoing public policy conversations and debates about religion, law and society.

The major questions of the research project are: how has the problem of religious freedom been constructed over time? and what is the effect of these problematisations? This paper does not make an argument for or against better or fewer protections for religious freedom, but rather seeks to challenge the idea that religious freedom is 'fixed', that it has one 'common sense' meaning everyone understands, and that the 'problem' of religious freedom in Australia is just about how to protect it better. To paraphrase Bletsas, what is being studied is not religious freedom '*as it exists as a problem*', but religious freedom '*as it has come to be constituted as one*' (Bletsas 2012, p. 41, emphases in original).

The construction of the problem of religious freedom has a political history and it is part of this history that this analysis seeks to uncover.

The first inquiry into religious freedom was conducted by the NSW Anti-Discrimination Board over five years from 1978 to 1983, with the report released in 1984. By 2017, in the context of the lead-up to and the legislation of same-sex marriage, religious freedom had become the object of often heated public debate and more public inquiries.

While the protection of religious freedom in Australia has been well studied (see for example Parkinson 2007; Hosen and Mohr 2011; Bouma 2012; Evans 2012; Ball 2013; Babie et al. 2015; Baines 2015; Beck 2018), and there have been a number of studies of submissions to inquiries on religious freedom and human rights law (Dunn and Nelson 2011; Nelson et al. 2012; Poulos 2018), this paper is unique in examining all the reports of religious freedom inquiries and broader inquiries which included consideration of religious freedom. In tracing the problematisation of religious freedom over time in policy documents, this analysis describes for the first time how the eventual dominance of one problematisation over another has entrenched a discourse of religious freedom that has privileged the idea of 'belief' and marginalised the experiences of minority religious groups and those who experience religiously framed discrimination.

This paper is presented in four main parts. Section 2 briefly describes the context for religious freedom in Australia and the methodology. Section 3 gives a brief overview of the reports and Section 4 presents the analysis. Section 5 provides a discussion of the results.

2. Context and Methodology

The nature and place of religion and religious belief in Australia has been, since European invasion, the topic of regular debate and varying degrees of controversy. It was given significant attention during the late nineteenth century constitutional convention debates prior to federation (Barker 2019; Beck 2018) with the arguments settling on the recognition of God included in the Preamble, and a section in the Constitution prohibiting the Commonwealth (not the states) from establishing or prohibiting any religion, imposing religious observance, or making religion a qualification for public office (s 116). Since federation in 1901, this constitutional protection for religious freedom has proven 'far from comprehensive', as Evans has noted, 'and the way[s] in which it has been interpreted allow significant scope for government interference with religious freedom' (Evans 2012, p. 92).

Australia is the only western liberal democracy without a comprehensive national human rights instrument. Instead, many of its international obligations are captured in four pieces of federal (Commonwealth) anti-discrimination law (on race, gender, disability and age)[1] and the *Australian Human Rights Commission Act (1986)* which legislates Australia's federal statutory human rights body, the Australian Human Rights Commission (AHRC). The *Sex Discrimination Act (1984)* (SDA) and the *Age Discrimination Act (2004)* (ADA) contain exemptions or exceptions which allow religious bodies, organisations and educational institutions to lawfully discriminate on the basis of otherwise protected attributes in some circumstances when the acts or practices conform to the doctrine, tenets or beliefs of the religion or when they are necessary to avoid 'injury' to the religious sensitivities or susceptibilities of religious adherents.[2] The *Fair Work Act* 2009 prohibits some forms of discrimination on the basis of religion in employment.

All Australian states and territories have a form of anti-discrimination (or equal opportunity) legislation that, with the exception of New South Wales (NSW) and South Australia (SA), include some protections against religious discrimination and vilification.[3] Victoria, Queensland and the Australian

[1] At the time of writing, the Australian Government was drafting a religious discrimination bill.
[2] SDA s 37 and s 38 and ADA s 35.
[3] NSW prohibits discrimination on the basis of 'ethno-religious origin' and SA prohibits discrimination on the basis of religious dress or appearance.

Capital Territory also have comprehensive human rights charters which include the protection of freedom of thought, conscience, religion and belief.

The first public inquiry into religious freedom was held in the context of an increasingly diverse society (linguistically, culturally and religiously),[4] with a shrinking number of people identifying in the triennial national census as Christian and a growing number identifying as 'no religion'.[5] Between 1984 and 2008, there were four religious freedom inquiries and two inquiries on other human rights matters that also addressed religious freedom. The next 11 years (until mid-2019) saw five religious freedom inquiries and nine others considering religious freedom within broader terms of reference. It is important to note that the abuse of religious freedom that was perpetrated on Indigenous Australians by invasion and colonisation, and which continues in the absence of a treaty and as a result of entrenched systemic and structural racism, has only occasionally been the subject of public debate.

In western liberal democracies such as Australia, public inquiries play a significant role in the public conversation about policy, reporting on the community's concerns as expressed in written submissions and oral testimonies, and recommending policy solutions to governments. The three forms of public inquiries considered in this study are those conducted by federal parliamentary committees, federal or state statutory bodies and federal government appointed external panels or committees.

Banks writes that public inquiries usually take place at 'the front end of the policy cycle' providing 'policy-relevant information and advice . . . on a take-it-or-leave-it basis' (Banks 2014, p. 113). That advice is defined by its '"publicness", responding to public terms of reference, drawing on public submissions, and, ultimately, reporting publicly' (Banks 2014, p. 113). He identifies three motivations for governments establishing a public inquiry[6]: to 'vindicate or substantiate a policy course already being followed or intended'; to 'determine how preferred policy directions should be framed or designed'; and/or to 'help establish what the policy approach in a specific area should be, whether by reviewing existing policies . . . or addressing a "new" issue' (Banks 2014, pp. 113–14). In a review and analysis of the literature on public inquiries, Marier found that public inquiries can serve one or more of 'three broad aims: to learn, to adjudicate and to fulfil political motives' (Marier 2017, p. 172).

Assessed against Banks's six forms of contribution to improving 'the politics of policy change' (Banks 2014, p. 116) and Marier's three broad aims, the inquiries in this study have variously served to: add the credibility of outside experts to the government's policy agenda (the religious freedom inquiries conducted by government-appointed expert panels); cool divisive public debate and gain time to develop a response (the inquiries initiated in the shadow of the same-sex marriage debates); and/or provide an opportunity for governments to learn how people are responding to salient issues (some of the inquiries conducted by the AHRC).

In contrast to external committee and statutory body inquiries, parliamentary committee inquiries are located within the executive and bureaucratic arms of government. They can be held at various points in the policy-making process and serve three main roles: 'scrutiny and review; investigative inquiries; and legislative appraisal' (Marsh and Halpin 2015, p. 140).

The work of Banks, Marier, and Marsh and Halpin identifies public and parliamentary committee inquiries as potentially significant processes in the making of public policy. For this reason, the WPR methodology was chosen as an appropriate methodology for examining the problematisation of religious freedom in the inquiry reports. Within the field of critical policy studies, Carol Bacchi

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[4] See for example this commentary by Prof. Andrew Jakubowicz, http://www.multiculturalaustralia.edu.au/library/media/Timeline-Commentary/id/115.The-Blainey-debate-on-immigration-.

[5] The proportion of Australians identifying as Christian dropped from 88 percent in 1966 to 52 percent in 2016; 'no religion' increased from 19 percent in 2006 to 30 percent in 2016; other religions grew from 0.7 to 8.2 percent between 1966 and 2016 (https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~{}2016~{}Main%20Features~{}Religion%20Data%20Summary~{}70, accessed 16 August 2019).

[6] Statutory bodies such as the Australian Human Rights Commission and the Australian Law Reform Commission receive referrals from government and also have the authority to undertake public inquiries on matters relevant to their mandates without government referral.

(including Bacchi 2009, 2012a, 2012b; Bacchi and Goodwin 2016) developed the WPR methodology for examining policy texts from a poststructural critical discourse perspective. The WPR methodology challenges the assumption that the objects of public policy are readily observable and objectively identifiable problems in society. Drawing on the notion of 'problematisation' in the work of Freire and more extensively from Foucault, Bacchi (Bacchi 2012b) understands policy problems and solutions as always politically framed—they are politically constructed discourses in need of critical readings which expose the biases, assumptions, dichotomies, presuppositions, history and silences that lie within the representation of a problem:

> policies and policy proposals give shape and meaning to the 'problems' they purport to 'address'. That is, policy 'problems' do not exist 'out there' in society, waiting to be 'solved' through timely and perspicacious policy interventions. Rather, specific policy proposals 'imagine' 'problems' in particular ways that have real and meaningful effects. (Bacchi and Eveline 2010, p. 111)

WPR understands policy as 'discourse' constructed in the social, historical and political contexts that give it meaning: 'policy must be recognised as a cultural product: it is context-specific. More than this, policy is involved in constituting culture by making meaning: as well as making problems and solutions, *policy discourses make "facts" and make "truths"*' (Goodwin 2012, emphasis added).

Through the application of a series of six questions (with a seventh reflexive prompt for the researcher suggesting a reapplication of the questions to the researcher's own problematisations), WPR enables the researcher to expose how policy problems are represented in a given policy text so that we might better understand how we are governed:

> Rather than accepting the designation of some issue as a 'problem' or a 'social problem', we need to interrogate the kinds of 'problems' that are presumed to exist and how these are thought about. In this way we gain important insights into the thought (the 'thinking') that informs governing practices. (Bacchi 2009, p. xiii)

The six questions are:

WPR1 'What's the problem … represented to be in a specific policy or policies?'

WPR2 'What deep-seated presuppositions or assumptions … underlie this representation of the "problem" (*problem representation*)?'

WPR3 'How has this representation of the "problem" come about?'

WPR4 'What is left unproblematic in this problem representation? Where are the silences? Can the "problem" be conceptualized differently?'

WPR5 'What effects (discursive, subjectification, lived) are produced by this representation of the "problem"?'

WPR6 'How and where has this representation of the "problem" been produced, disseminated and defended? How has it been and/or how can it be disrupted and replaced?' (Bacchi 2018, p. 5).

Public inquiries are generally understood to have the task of 'describing' an identified problem and offering potential policy solutions. They are, therefore, powerful 'problematising activities' (Bacchi 2009, p. xi)—making 'facts' and 'truths' (as per the Goodwin quotation above) as they set the representation/s of the problem in the policymaking process. As policy texts, inquiry reports are, therefore, 'productive or constitutive' and 'through their representations of "problems", produce and reinforce categories of people' (Bacchi and Eveline 2010, p. 112).

To conduct the analysis, each text was read against the six questions to identify the most salient answers. The answers were then compiled into a matrix and every article re-examined (manually, including the use of the coding program NVivo) in order to highlight common themes and differences. This study sought to apply all six questions to each of the reports but because of where most of these inquiry reports are positioned in the policymaking process, questions WPR5 and WPR6 proved most useful in developing a 'historical' reading of the representation of the problem of religious freedom when applied to the cumulative effect of all the reports and are addressed in the Discussion.

3. The Reports

The nine inquiries into the protection of religious freedom and the 11 inquiries into other human rights matters which included consideration of religious freedom are shown in Table 1. Of those 11, five were inquiries on matters related to the protection of LGBTI people (sexual orientation, gender identity and intersex status (SOGII) rights), four were inquiries or consultations on human rights protections more broadly, and two were focussed on race discrimination.

Table 1. The Religious Freedom Inquiry Reports.

Date	Author	Report
1984	NSW Anti-Discrimination Board	*Discrimination and Religious Conviction* (DRC)
1998	Human Rights & Equal Opportunity Commission (HREOC)	*Article 18: Freedom of Religion and Belief* (Article 18)
2000	Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT)	*Conviction with Compassion: A report on freedom of religion and belief* (CWC)
2008	HREOC	*Combating the Defamations of Religions* (CDR)
2011	Australian Human Rights Commission (AHRC, formerly HREOC)	*Freedom of Religion and Belief in 21st Century Australia* (FRB21)
2015	AHRC	'Religious Freedom Roundtable' (RFR)
2017–2019	JSCFADT	*Status of the Freedom of Religion or Belief* (1st & 2nd Interim reports) (SFRB)
2018	Expert Panel (Philip Ruddock, Chair)	*Religious Freedom Review* (Ruddock Review)
2018	Senate Legal and Constitutional Affairs References Committee (SLCARC)	'Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff' (School Exemptions)
Other inquiries that included consideration of freedom of religion or belief		
2003	HREOC	*Isma—Listen: National Consultations on Eliminating Prejudice against Arabs and Muslim Australians*
2008	Senate Standing Committee on Legal & Constitutional Affairs (SSCLCA)	'Effectiveness of the *Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equality'
2009	National Human Rights Consultation Committee (Frank Brennan, Chair)	*National Human Rights Consultation Report*
2011	AHRC	*Addressing Sexual Orientation & Sex and/or Gender Identity Discrimination*
2013	Senate Legal & Constitutional Affairs Legislation Committee (SLCALC)	'Report of the inquiry into the exposure draft of the Human Rights and Anti-Discrimination Bill 2012'
2013	SLCALC	'Report on the inquiry into the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013*'
2015	AHRC	*Rights and Responsibilities Consultation Report*
2015	AHRC	*Resilient Individuals: Sexual Orientation, Gender Identity and Intersex Rights*
2015	AHRC	*Freedom from Discrimination: Report on the 40th Anniversary of the* Racial Discrimination Act (2016).
2015	Australian Law Reform Commission (ALRC)	*Traditional Rights and Freedoms—Encroachment by Commonwealth Laws*
2017	Senate Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill	'Report on the Commonwealth Government's Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill'

Although recommending the inclusion of religion as a protected attribute in the NSW Anti-Discrimination Act, *Discrimination and Religious Conviction* (DRC) outraged most of the mainstream Christian churches. Accusations included 'bias against mainstream Christian churches' and 'failing to address the crucial issue of the balancing of conflicting rights' (Anglican Church of Australia Diocese of Sydney 1984, p. ii). The Government shelved the report; NSW still lacks legal protection against religious discrimination in law. The next inquiry into religious freedom by HREOC was 14 years later, in 1998. HREOC/AHRC held three more inquiries into religious freedom.[7]

Two parliamentary inquiries considering Australia's domestic and international contributions to the promotion and protection of religious freedom were conducted by the Human Rights Sub-committee of JSCFADT in 2000 and 2017–2019.[8] The latter overlapped with the Australian Government's high-profile Expert Panel (Ruddock) Review in 2018. The Prime Minister at the time, Malcolm Turnbull, established the review as a concession to the right wing of his Liberal party, which had unsuccessfully agitated for extensive amendments for so-called religious freedom protections to the same-sex marriage bill (Hutchins 2017; Grattan 2017). The Senate inquiry into the SDA exemptions allowing religious schools to discriminate against teachers, staff and students on the basis of sexual orientation, gender identity and other protected attributes, was held in response to the significant public concern about the exemptions which emerged after the Ruddock Review recommendations were leaked to the *Sydney Morning Herald* (the Government had been refusing to release the Report). The public outcry indicated that these exemptions were not generally known or understood in the Australian community.[9]

Of the 11 reports from inquiries on other matters that included consideration of religious freedom, five were produced by the AHRC. The first considered racial and religious discrimination against Arab and Muslim Australians post 9/11 and the second, marking the 40th anniversary of the RDA, was broader in scope. The AHRC also held two inquiries on sexual orientation, gender identity and intersex status (SOGII) rights and one on the general protection of human rights in Australia. Four parliamentary inquiries (all by Senate committees), one inquiry by the ALRC and one major national consultation on human rights conducted by a government appointed panel chaired by Fr Frank Brennan SJ, all included consideration of religious freedom.

4. Analysis

Eight of the nine inquiries into religious freedom identify Australia's 'problem' of religious freedom as the (arguably) weak protection for religious freedom in law.[10] It has been a 'problem' that successive Australian governments have been disinclined to solve, even as they continued to establish inquiries to recommend solutions. All nine religious freedom reports include at least some explanation of the protection of religious freedom under international human rights law, outline Australia's obligations as a signatory to the relevant international treaties and conventions, describe religious freedom protections in Australian law[11] and explore, by drawing on previous research, submissions and oral statements, how Australian laws fall short. The application of WPR1, however, exposes two deeper problematisations—the problem of Australia's *religious diversity* and the problem of *balancing competing rights*—and it is these, rather than inadequate legal protection, which shape the discourses constructed in the reports and the policy recommendations offered to government. The inadequate

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7 HREOC/AHRC is a Commonwealth statutory body established in 1986 as Australia's national human rights institution.

8 The Committee released two interim reports (2017 and 2019, counted as one for this study) but did not complete its work before a general election was called for May 2019, and recommended that the inquiry be continued by the next parliament (Joint Standing Committee on Foreign Affairs Defence and Trade 2019).

9 See, for example, https://www.sbs.com.au/news/morrison-says-religious-schools-should-not-expel-gay-kids-as-ruddock-recommendations-leaked.

10 The 2018 School Exemptions report acknowledged the lack of positive protection for religious freedom but did not frame its report around this problem.

11 In the case of the 2017–2019 JSCFADT inquiry, this forms the entire First Interim Report (Joint Standing Committee on Foreign Affairs Defence and Trade 2017).

legal protection of religious freedom is better understood as an assumption or presumption (WPR2) rather than a problematisation—it is where the inquiries start, most of them, literally. Where they finish depends on which of the two problem representations, 'religious diversity' or 'balancing rights' is dominant in framing the report (Table 2). It is important to note that, as described below, both problematisations are present in the political and public conversations surrounding all these inquiries and in the submissions and evidence presented to them: the dominance of one problematisation over the other reflecting the interests at stake in framing the problem in a particular way in order to achieve a particular outcome. This paper identifies that the shift in the dominance of one problematisation over the other in the inquiry reports has had implications for whose voices and experiences are raised to prominence in the consideration of religious freedom as an object of public policy.

Table 2. The dominant problematisation in the religious freedom reviews.

Religious Freedom Reviews		Religious Diversity	Balancing Rights
1984	*Discrimination and Religious Conviction*	✓	
1988	*Article 18: Freedom of Religion and Belief*	✓	
2000	*Conviction with Compassion*	✓	
2008	*Combating the Defamation of Religions*	✓	
2011	*Freedom of Religion & Belief in 21st Century Australia*	✓	✓
2015	'Religious Freedom Roundtable'		✓
2017–2019	*Status of the Freedom of Religion or Belief*		✓
2018	*Religious Freedom Review*		✓
2018	School Exemptions		✓

4.1. Religious Diversity

From 1984 to 2011, the dominant problematisation of religious freedom was 'religious diversity'. The context for the first inquiry into religious freedom in Australia, DRC, was described in the report as increasing migration, growing cultural and religious diversity, fewer people identifying as Christian and increasing numbers of people identifying as not religious (New South Wales Anti-Discrimination Board 1984). This description of the changing nature of Australia's religious identity, usually accompanied by census statistics, remained constant over the years and was central to how this problematisation was framed (WPR3): in an increasingly diverse society, people from minority religious groups were experiencing discrimination, vilification and prejudice, often fed by media hostility and exacerbated by inadequate or counter-productive policy responses from government and low levels of religious literacy in the community and in government, including police forces.

HREOC was motivated to conduct its first religious freedom inquiry, Article 18, in part,[12] by complaints of religious discrimination against members of minority religious groups:

> Australians face the continuing challenge of creating a society in which everyone is truly free to hold a religion or belief of his or her choice and in which cultural and religious diversity is a source of advantage, benefit and good rather than a cause of disharmony and conflict. (Human Rights and Equal Opportunity Commission 1998, p. 2)

The report recommended the development of a federal Religious Freedom Act to protect the freedom of those from minority religious groups, a proposal that HREOC/AHRC has not repeated but which, more recently, has been advocated by conservative religious groups and politicians but rejected by the Ruddock Review as unnecessary.

Two years later, *Conviction with Compassion: A report on freedom of religion and belief* (CWC) framed Australia's growing diversity as causing problems, despite the success of multiculturalism as a policy:

[12] The other reason for the review was the government declaring in 1993 that the UN *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* 'a "relevant international instrument" for the purposes of the HREOC Act' (Human Rights and Equal Opportunity Commission 1998, p. 3).

> Minority religious groups within a nation can find themselves in a very difficult position, even in a society as nominally 'tolerant' as Australia. This is especially so for those with beliefs and practices that can be seen as 'strange'. The consequences for the exercise of freedom of religion and belief can be serious. (Joint Standing Committee on Foreign Affairs Defence and Trade 2000, p. 128)

The representation of the religious diversity problem assumes (WPR2) that prejudice arises not only in the *context* of a pluralistic society but as a *direct result* of religious diversity, contributed to by a lack of religious literacy in the community. One of the most common recommendations in the review reports is for more and/or improved education.

The early religious freedom reports defined the problem as religious diversity because they were focussed on the experiences of prejudice, harassment, vilification and discrimination being suffered by people from minority religious groups, exacerbated for Muslims in the aftermath of the 9/11 terrorist attacks in 2001 (WPR3) (Human Rights and Equal Opportunity Commission 2008). The recommendations to government in the reports were about how to better protect people from discrimination on the basis of religion.

While *Freedom of Religion and Belief in 21st Century Australia* (FRB21) included a chapter dedicated to the religious demographics of Australia, the 2011 report signalled a shift in the discourse of religious freedom to the concerns of those from the 'Christian majority' threatened by support for the rights of various other minority groups:

> The role of Australian governments in managing diversity was often expressed in submissions and consultations in terms of 'the majority', 'the minorities', and their respective rights. Minority faiths called for accommodations for practices that were within common law, and for equality in all matters; the majority expressed concerns about the rights of minorities competing with the rights of the majority.

> The majority is generally a Christian majority … *Managing and/or balancing minority and majority rights* was frequently raised in submissions and consultations, and it was suggested that governments need to be wary of accommodating the rights of minorities at the risk of encroaching on the rights of the majority. (Bouma et al. 2011, p. 53, emphasis added)

The most recent reports to include the religious diversity problematisation are the AHRC 'Religious Freedom Roundtable' (RFR)—little more than a cursory acknowledgement emphasising the need for mutual respect and improved education for religious literacy (Australian Human Rights Commission 2015c); and the Ruddock Review which struggled with a lack of evidence on the extent of discrimination against people from minority religious groups including Indigenous peoples (Ruddock et al. 2018). The lack of attention in these reports to religious discrimination reflects the shift in the problematisation of religious freedom.

In addressing WPR4, DRC was identified as the only report to problematise or interrogate the privilege of Christianity in Australia and how institutional and political power intersect with religious freedom. One of the deep-seated presuppositions that underlies the problem representation (WPR2) in DRC but which is absent in the other reports is that power exercised at the intersection of the religious and the political can negatively affect people who are marginalised in society. The report's starting point for this was with the experiences of Indigenous peoples (a concern that was picked up by HREOC in Article 18 and JSCFADT in CWC and but largely ignored in later reports):

> In the beginning, there were the people, the law and the land, and so it remained for 40,000 years. Then Australia was colonised by an aggressive, white, Protestant civilisation, which had a devastating impact on the intricate web of relationships between Aboriginal men and women and their land. (New South Wales Anti-Discrimination Board 1984, p. 34)

DRC is also unique among the reports in drawing attention to how majority or mainstream religious groups are spared the discrimination suffered by minority religious groups for not dissimilar beliefs and practices:

> Even though mainstream religious groups are regularly accused of "getting away with murder", an expression of resentment about their power, it is the minority religious groups on whom these attitudes principally rebound. They are often castigated for beliefs and practices for which parallels can be easily found in major religious organisations. (New South Wales Anti-Discrimination Board 1984, p. 193)

This is a matter that is left unproblematised in future reports, as is the privileging in the language of law of a Christian understanding of religion, and the law itself which 'allows too much leeway in supporting institutional power under current interpretations of the establishment clause' (New South Wales Anti-Discrimination Board 1984, p. 5).

4.2. Balancing Rights

The first significant recasting of the problem of religious freedom as one of balancing (competing) rights was in 2011 but the seeds for this were sown in the earliest two reports. DRC devoted considerable attention to religion and education, including parents' and children's rights, which were described as

> the thorniest problems . . . for it is in education that we find the most contention about such apparent paradoxes in *determining which rights take priority over others*: parents' rights to have their children educated in the beliefs of their choice or no belief at all, religious groups' rights to perpetuate traditions and beliefs by passing their culture on to the next generation, and the right children have to receive an education that adequately prepares them for the world. (New South Wales Anti-Discrimination Board 1984, p. 290, emphasis added)

The Board supported exceptions to anti-discrimination law that allowed religious schools to discriminate in student admissions (on religious grounds) but was concerned about teachers being fired 'because their personal lives and opinions did not reflect orthodox Church practices in such matters as marriage, divorce, abortion and homosexuality' (New South Wales Anti-Discrimination Board 1984, p. 425).

Article 18 was the first religious freedom report to use the notion of 'competing rights'—in relation freedom of expression and freedom from vilification in the section entitled 'Finding the *balance* in Australia law' (Human Rights and Equal Opportunity Commission 1998, p. 132, emphasis added).[13] The majority of the chapter on discrimination addressed the problem of 'reasonable accommodation' in employment, that is, to what extent should employers accommodate the religious practices of their employees, but also the extent to which religious organisations should be able to discriminate against others (on the basis of sexual orientation, gender, marital status and other attributes). In this report, 'accommodation' in employment was not represented as the need to *balance* competing rights (this would come later) but as the need to define the limits to religious freedom *for* the protection of others:

> This inquiry illustrates the importance of limiting the scope of exemptions for religious organisations under anti-discrimination law and in particular of not allowing absolute exemptions which have the potential to encourage prejudice and unfair treatment not related to any relevant belief. (Human Rights and Equal Opportunity Commission 1998, p. 110)

Both DRC and Article 18 stressed the need to limit religious exemptions in order to protect people from discrimination, especially on the basis of sexual orientation.

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[13] CDR contains a single reference to balancing the rights of free speech and freedom from racial vilification in its description of the Race Discrimination Act: 'The RDA, nevertheless, recognises that there is a need to balance rights and values, between the right to communicate freely ('freedom of speech') and the right to live free from racial vilification' (Human Rights and Equal Opportunity Commission 2008, p. 13).

During the 2000s, the balancing rights problematisation developed (WPR3) in the context of proposed and actual anti-discrimination law reform. By that time, the Australian Christian Lobby (ACL) which had formed in 1995 (Maddox 2014) had gained significant political power.[14] While the conservative Howard Government amended the ambiguously worded *Marriage Act 1961* in 2004 to ensure that same-sex marriages would not be legal, the better protection of LGBTIQ people was on the law reform agenda. In 2007, the AHRC released its *Same-Sex: Same Entitlements Report*[15] and 2008 saw a Senate Committee inquiry into the effectiveness of the SDA. As well as recommendations for strengthening and extending protections for women, the Senate Committee also recommended that HREOC conduct an inquiry into 'replacing the existing federal anti-discrimination acts with a single Equality Act' and report on 'what additional grounds of discrimination, such as sexual orientation or gender identity, should be prohibited under Commonwealth law' (Senate Standing Committee on Legal and Constitutional Affairs 2008, p. xviii). In 2009, the Rudd Labor Government amended over 80 laws to remove discrimination against same-sex couples.

In FRB21, in 2011, came the shift from religious freedom being about the right to be free from discrimination *because* of one's religion, to being about the 'right' *to* discriminate against others *in the name of* one's religion; a 'right' threatened by the 'trends' to strengthen anti-vilification laws to better protect religious minorities including Muslims and reform anti-discrimination law to better protect people on the basis of sexual orientation and gender identity (WPR3). FRB21 found significant *conservative* Christian opposition to changing anti-discrimination legislation, especially any watering down of existing religious exemptions as a result of increasing protections granted to other groups in society[16]:

> Across all research data, calls to maintain current exemptions were strongly iterated by faith groups, particularly by Christian churches and organisations. Many participants in consultations identified feeling 'under siege' from those with a secular agenda, and expressed concern about anti-discrimination legislation, proposed changes to current exemptions, and the right to proselytise. (Bouma et al. 2011, p. 34)

While FRB21 presented both representations, the balancing rights problematisation came to dominate future religious freedom review reports. The AHRC's 'Religious Freedom Roundtable', for example, barely addressed issues of discrimination against minority religious groups and further set the language of 'balancing' and 'competing' rights (WPR3):

> Like other human rights it [religious freedom] must be exercised with a mindfulness of the rights of others, and has the potential to intersect and at times compete with other human rights such as equality before the law and government, and the freedoms of those without faith. The role of law should be to seek accommodation of competing rights and enlarge the freedom for all. Care must be taken to balance rights so that neither religious freedom nor any right with which it may intersect is granted an imbalanced privileging so as to permanently impair the enjoyment of the other. (Australian Human Rights Commission 2015a, p. 5; 2015b, p. 2)

The balancing rights problematisation assumes that the granting of equality rights will always be a threat to religious freedom (WPR2). In the earlier reports, these rights included rights for women and people who are divorced. In the later reports it was LGBTIQ rights which are assumed to be incompatible with the right to religious freedom.

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[14] Maddox notes that by 2012, ACL Managing Director, Jim Wallace, had been ranked by *The Power Index* website 'as Australia's third-most influential religious voice on public policy, after Catholic Cardinal George Pell and Sydney's Anglican Archbishop Peter Jensen' (Maddox 2014, p. 133).

[15] https://www.humanrights.gov.au/sites/default/files/content/human_rights/samesex/report/pdf/SSSE_Report.pdf, accessed 16 August 2019.

[16] The inquiry conducted 24 consultations (focus groups) with religious leaders and representatives from various atheist, secularist and rational humanist groups. The ACL organised some of the these consultations (Bouma et al. 2011, p. 9).

The Ruddock Review, set up in the context of the divisive public and political debates about marriage equality but with broad terms of reference, included both problematisations but the 'balancing rights' frame was dominant. The chapter 'Manifestation and Religious Belief' does not cover many of the issues addressed in the earlier reports, for example religious dress, the building of sites of worship, medical and health issues. It focusses entirely on issues that related to the freedom of organisations, especially schools, and individuals (freedom of conscience), to discriminate against others on the basis of sexual orientation, gender identity and relationship status. The majority of the 20 recommendations were proposed solutions to the balancing rights problem—five related to the exemptions in anti-discrimination law allowing religious schools to discriminate and four related to marriage equality, including one that addressed the fears that religious charities would not be able to advocate for 'traditional marriage' without losing their charitable status. Nevertheless, the report failed to appease many conservative Christians, largely by not promoting religious freedom above other rights, especially equality rights (Koziol 2018).

The divisiveness of the balancing rights problematisation in the context of marriage equality is captured in the report of the SLCARC into exemptions for religious schools which includes a 'Dissenting Report of the Coalition Senators' and 'Additional Comments from the Australian Greens'. Just how entrenched the balancing rights problematisation had become is demonstrated by the wording of the recommendation for the improved protection of religious freedom: 'that consideration be given to inserting in law a positive affirmation and protection of religious freedom in Australia that is appropriately *balanced with other rights*' (Senate Legal and Constitutional Affairs References Committee 2018, p. vii).

The JSCFADT inquiry into the status of religious freedom or belief was conducted over the period of the marriage equality debates and the Ruddock Review. The Committee was chaired by one of the conservative government's most well-known Christian conservatives, the Hon. Kevin Andrews MP, who wrote in the Foreword:

> the threats to religious freedom in the 21st century are arising not from the dominance of one religion over others, or from the State sanctioning an official religion, or from other ways in which religious freedom has often been restricted throughout history. Rather, the threats are more subtle and often arise in the context of protecting other, conflicting rights. An imbalance between competing rights and the lack of an appropriate way to resolve the ensuing conflicts is the greatest challenge to the right to freedom of religion.
>
> This is most apparent with the advent of non-discrimination laws which do not allow for lawful differentiation of treatment by religious individuals and organisations. It is also manifested in a decreasing threshold for when religious freedom may be limited . . . While religious exemptions within non-discrimination laws provide some protection, these place religious freedom in a vulnerable position with respect to the right to non-discrimination, and do not acknowledge the fundamental position that freedom of religion has in international human rights law. (Joint Standing Committee on Foreign Affairs Defence and Trade 2017, p. viii)

Balancing rights the wrong way is identified, not merely as an Australian problem, but as the most significant *universal* threat to religious freedom.

4.3. The Other Eleven Inquiries

Eleven inquiries into other human rights issues included consideration of religious freedom. Unsurprisingly, the two race discrimination inquiry reports represented the religious freedom problem as one of religious diversity (Figure 1). Both reports strongly connect discrimination based on race and on religion. Of the four reports of broad-based human rights inquiries, the 2009 National Human Rights Consultation (Brennan et al. 2009) and the 2015 Traditional Rights and Freedom Inquiry (Australian Law Reform Commission 2015) included the religious diversity problematisation. Significantly, the 2013 inquiry report into the draft bill to consolidate anti-discrimination law only

addressed religious freedom as a balancing rights problem (Senate Legal and Constitutional Affairs Legislation Committee 2013). This draft bill was strongly opposed by the majority of churches which regarded 'the perceived failure of the state to properly balance freedom of religion and freedom of speech [in their favour] against the right of individuals to be free from unjust discrimination' as 'a profound threat' (Poulos 2018, p. 130). That all five inquiry reports into LGBTIQ rights would represent the problem as the law needing to balance the rights of LGBTIQ people against the right to religious freedom, demonstrates how entrenched is the thinking and the discourse that religious freedom is threatened by LGBTIQ rights.

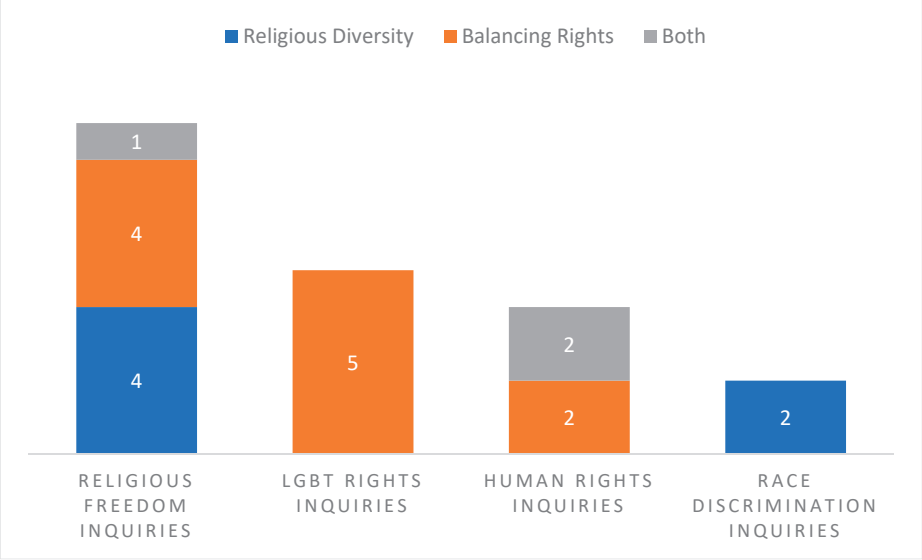

Figure 1. The dominant problem by topic of inquiry.

5. Discussion

In describing the post-structuralist ontology that underlies the WRP approach, Bletsas argues (using the example of poverty) that how we think about policy problems

> is a product of *how we think* far more than it is a product of something enduring in the nature of poverty . . . It is this insight . . . that the "WPR" approach, with its wider poststructuralist premises, is concerned with. It creates a space from which it becomes possible to ask, quite simply, how have taken-for-granted "problems"—whether they are policy problems or conceptual problems such as the structure/agency debate itself—come to be taken for granted? (Bletsas 2012, p. 43, emphasis in original)

The majority of reports examined for this study entrench a way of thinking and talking about religious freedom, and even the nature of religion itself, in policy and public discourse. Applying the WPR methodology to the texts exposes an understanding of religion (individualised, privatised, institutionalised, a set of (otherworldly) beliefs expressed in rituals and codes of behaviour) that is assumed rather than articulated.

Other than identifying the long-understood difficulty of defining 'religion' and offering examples from Australia case law and scholars of religion, none of the reports interrogated the *idea* of religion itself—a constructed category see for example, (Arnal and McCutcheon 2013; Fitzgerald 2011; Smith 1998)—or the notion of 'belief'. FRB21 was the only report to come close, identifying the dominance of the 'Christian and Protestant assumptions about religion' and suggesting that 'considering the changing demographic profile and social character of Australia, new measures are needed as many identify with a religion culturally, not necessarily practising that faith in its organised and official contexts' (Bouma et al. 2011, p. 81). Neither did the reports explore the meaning of 'freedom' or

'religious freedom' and why it is important, other than to articulate the assumptions that: religious beliefs, when they are held, are a fundamental aspect of an individual's identity; religious diversity is (mostly) good for society; religious freedom is important (in a liberal democracy and for individuals) and needs to be protected; and that an individual's decision to *not* hold a religious belief must be respected to the degree that it is protected in law (WPR2, WPR4).

In the very act of assuming shared, common sense understandings of religion, belief, and religious freedom, the reports reify, in the public and policy spheres, historically constructed categories of socio-cultural meaning that promote a particular understanding of belief—that is, as personal claims of truth validated and 'supported by religious authorities and mandated by mainstream (qualifying and ancient) religious texts' (Sherwood 2015, p. 43). And it is those claims to truth which mark the dead immovable weight of 'belief' in human rights discourse and law, setting the ground for inevitable conflict when balancing rights becomes the problematisation of religious freedom.

Sherwood describes the development of the conception of 'belief' as an essential inner (privatised) core of a person's identity as an enterprise of modernity along with and interdependent with the construction of the categories of 'religious' and 'secular', categories which Arnal and McCutcheon describe as 'alter egos':

> mutually defining terms that come into existence together—what we might just as well call a binary pair—the use of which makes a historically specific social world possible to imagine and move within, a world in which we can judge some actions as safe or dangerous, some items as pure or polluted, some knowledge as private or public, and some people as friend or foe. (Arnal and McCutcheon 2013, p. 119)

Sherwood writes that 'belief' became where the holy resides, separate to science, philosophy and reason—the 'instruments of public reason' (Sherwood 2015, p. 33). Then, framed in western democratic law and human rights discourse, paired with 'religion' and set alongside gender, race, ethnicity, disability, age etc., even as it retained its unique sense of intangibility and vulnerability, it became something more solid, more nonnegotiable, with 'a privileged relationship to essence' (Sherwood 2015, p. 35):

> As a term of nonnegotiation (unlike an "opinion"), the obvious correlate for age, pregnancy, or sexuality in the realm of ideas is belief. Exceptionally and anomalously, religious belief is defined as a mode of thinking that is not, in a sense, chosen. It insists that it must be understood as defining or exceeding the individual . . . Believing is understood as a form of agency that, paradoxically, takes us beyond decision to the point where it becomes that from which I cannot dissociate myself, that which cannot be wrenched apart from me except by violence—and hence a given, like sexuality or race . . . . (Sherwood 2015, p. 35)

It is in light of these circumstances that the law, Sherwood argues, allows religious believers 'to be in conflict with the rights of others' (Sherwood 2015, p. 41) and in particular, because the movement for LGBTIQ rights is the youngest liberation movement, the

> conflict between religion and sexuality (and particularly homosexuality) has become an incendiary cultural flashpoint and a stage for the trial of competing freedoms because *religious belief and (homo)sexuality are more insecure and vulnerable than age, maternity, disability, or race.* (Sherwood 2015, p. 41, emphasis in original)

With the increasing legal protections afforded to women and especially to LGBTIQ people, most religious groups in Australia are seeing their traditional beliefs and moral codes eroded by society and contradicted in law (WPR6). In the balancing rights problematisation, the privileged Christian majority (as identified by the loci of Christian institutional power) becomes the persecuted minority because the truth claims of its beliefs have been challenged in law (WPR6). This reflects what has happened in the US. Tebbe writes,

> Although the campaign for LGBT rights is ongoing … its achievements to date have affected the relationship between the government and those who adhere to certain traditional theologies on questions of sexuality. Expansion of equality law has contributed to a sense among some religious traditionalists that there has been an inversion. They feel they are now the minorities who require protection from an overwhelming liberal orthodoxy. (Tebbe 2017, p. 1)

Over time, the 'belief' (claims of truth) part of 'religion' has become privileged over what is often named the 'expression' of belief (rituals and dress, for example) and over the experiences of marginalisation suffered by those whose lives are regarded as contrary to ('sinful') or inconsistent with those truth-claims (WPR5). Religious freedom becomes defined as the space contested by those who are persecuted by religious believers and religious belief itself as the place where the holy resides, flimsy, fragile, in need of protection and solid, incontestable as the essence of a person.

6. Conclusion

The WPR analysis of the reports from public inquiries into religious freedom has demonstrated that, until recently, the religious freedom 'problem' in Australia was largely understood as caused by the religious diversity that results from immigration—first by invasion and colonisation and then successive waves of immigration bringing to the country a hitherto unexperienced (and beneficial) diversity of religious beliefs, but which unfortunately unleashes religious prejudice and discrimination, necessitating legal (and other) protection. The audible voices were those of the religiously persecuted minorities—Muslims, Jews, Hindus, Jehovah's Witnesses etc. However, in response to the claims made by women and others, but predominantly by LGBTIQ people, for equal treatment under the law, and the readiness of lawmakers to reform laws for that purpose, those voices, and the stories they told of violence, exclusion and harassment, were largely lost. The problem of religious freedom was recast as a 'balancing rights' problem and the voices of persecution were those whose hitherto privileged beliefs were being challenged and undermined by a progressive moral shift in society.

In this problematisation, the religious belief in the 'sinfulness' of people who identify as LGBTIQ, understood to be held by *the majority religion*, is untested precisely because it is a belief of the religion of the majority (defined as such by the religious authorities who determine 'doctrine' on behalf of the state for the practice of the law), unlike, for example, the beliefs that are expressed in the wearing of certain forms of religious dress by people in minority religious groups which are tested every day in Australian society. The democracy's commitment to religious freedom demands, according to this problematisation, that the Christian majority religious believers and institutions (now cast as a religious minority, even with the retention of institutional power) be granted what Sherwood refers to as 'controversial opt-outs on religious grounds from legislation concerning gender and sexual orientation' (Sherwood 2015, p. 41). These religious institutions must be allowed to 'practice' their religious beliefs precisely because they *are* religious beliefs. The 'balancing rights' problematisation, with its foundation in the institutional power of Australian churches, ensures that the rights of LGBTIQ people are tied to the idea of religious freedom, while religious freedom itself remains free from interrogation.

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Chapter 6

Paper 4
‘THE BELL WAS TOLLING’: THE FRAMING OF RELIGIOUS FREEDOM IN *THE AUSTRALIAN* EDITORIALS 2015-2019

Must churches employ spouses in same-sex marriages? Must religious agencies place children for adoption with same-sex couples? Will church institutions be penalised by losing government support and tax exemptions? Will religious schools be penalised if they teach their own beliefs about marriage, contradicting the state views?

The Australian, editorial, 8 August 2015

Introduction

Having examined the public discourse of religious freedom in public inquiry submissions, parliamentary speeches and public inquiry reports, the fourth and final paper that forms the core of this thesis analyses media texts, specifically editorials in Australia's major daily national broadsheet newspaper, *The Australian*. News media are important actors in the framing of public policy issues, and *The Australian*, as described in this chapter, is both a highly influential newspaper and a campaigning one, with the ability to sway public and political discourse.

The original intention was to collect editorials which addressed the issue of religious freedom from all major Australian newspapers, but the search yielded very few editorials from other papers compared to the number published by *The Australian*. The sheer number of editorials focussed on religious freedom, their frequency, and the timing of their publication from 2015 to 2019, is evidence of an orchestrated campaign which appeared to be in support of better legal protections for religious freedom. However, the news framing analysis of the 40 religious freedom editorials demonstrates that while religious freedom was the subject of the campaign, the object of attack was the progressive left more broadly. Religious freedom was framed as being under profound threat from marriage equality, a cause assumed to be that of the left. By raising the cause of religious freedom in the context of marriage equality, the newspaper was able to undermine claims to marriage equality without explicitly opposing it, portraying marriage equality and LGBTIQ rights advocates, symbols of the progressive left, as threatening bullies, intent on both undermining religious freedom and silencing opposition to marriage equality.

Many of the discourse framing devices used to construct the discourse of religious freedom in the texts examined in the earlier chapters are evident in the editorials:

- the 'balancing rights' frame which serves to advance religious freedom within a hierarchy of rights;
- the intertwining of religious freedom with freedom of speech and freedom of conscience;

- the threat to religious schools and other religious bodies posed by the advancement of LGBTIQ rights, and the reliance on the discrimination case against the Catholic Archbishop of Hobart, Julian Porteous, and vaguely worded references to cases in overseas jurisdictions to underscore this threat; and
- the importance attached to the freedom of organisations and individuals to 'living out' their religious ethos when it comes to their religious beliefs about sexuality, gender identity and marriage.

Religious freedom was *not* framed as an issue relating to the discrimination experienced by people from minority religious groups. This paper, therefore, provides evidence for one of the arguments of this thesis that by 2015, in Australian public discourse, concerns about the need to better protect religious freedom in law were focussed on the freedom of religious institutions and, increasingly religious individuals (mostly Christian), to lawfully discriminate, on the basis of their beliefs, against groups of people who would otherwise be protected against discrimination. The politics of belief, born out of religiously framed opposition to the advancement of equality rights, became so powerful in the public discourse that it served as a tool to legitimate the ongoing discrimination against LGBTIQ people and, at the same time, marginalise the needs of people from minority religious groups for improved protections against religious discrimination.

NOTE: The article in this chapter is reproduced as it was submitted to the *Australian Journal of Human Rights* (with some minor editorial revisions). The word limit, referencing style, spelling and formatting reflect the requirements of the journal.

POSTCRIPT: The article, with revisions, has been accepted for publication by the Australian Journal of Human Rights.

‘The bell was tolling’:
The framing of religious freedom in *The Australian* editorials 2015-2019

Abstract

The Australian is one of the country’s most politically influential newspapers. Between 2015 and 2019 it ran a campaign, supported by an unusually large number of editorials, which raised the profile of the issue of religious freedom in public debate. This article uses media framing analysis to examine the 40 editorials that addressed religious freedom published during this period. Religious freedom was framed by *The Australian* as a right under profound threat which could have significant consequences for Australian society. The analysis also shows, however, that the framing of religious freedom—and the intertwined freedoms of speech and conscience—was deliberately constructed not in order to protect and promote these rights, but to undermine the progress of LGBTIQ rights, and marriage equality in particular. In the clash between *The Australian’s* avowed libertarian principles and its politically conservative policy agenda, the newspaper used its framing of religious freedom to continue its longstanding campaign against the progressive left.

Keywords

religious freedom; same-sex marriage; media framing; *The Australian* newspaper; lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ) rights; Australia

Introduction

This paper seeks to offer a new perspective to existing studies on religious freedom in Australia by analysing how *The Australian*, one of Australia's most politically influential newspapers (Lidberg, 2019; Waller & McCallum, 2016), framed religious freedom in its editorials during a time when the issue was the subject of significant public debate – debate which eventually led to the drafting of a Religious Discrimination Act by the Liberal-National Coalition (LNC) Government under the leadership of Scott Morrison MP.[1]

The Australian, one of the News Corp Australia mastheads, is the country's major national daily newspaper. During the heated and polarised public debate on religious freedom in Australia ahead of the legalisation of same-sex marriage (SSM) and in its immediate aftermath, the newspaper gave voice to the politically, socially and religiously conservative, public commentators, politicians, church leaders, and religious lobbyists arguing that religious freedom was under threat. This apparent concern for religious freedom was bolstered by an unusually large number of editorials addressing the issue. Drawing on an opinion piece by the editor-at-large Paul Kelly entitled 'The same-sex marriage debate and the right to religious belief' (11 July 2015), *The Australian* positioned itself as a conditional supporter of SSM and a staunch defender of religious freedom in the face of the threat it posed:

> In supporting individual rights and freedom, The Australian would endorse same-sex marriage, if a majority of MPs, guided by their consciences, voted for it. Equally importantly, however, religious freedom and the consciences of churches, institutions and individuals who hold fast to the traditional view of marriage need to be safeguarded. ("A deeper debate," 13 July 2015)

This conditional support for marriage equality rested on the granting of increased legislative protections for religious freedom; and the robust defence against the 'calculated assault on the freedom of religious liberty' ("Debate with ramifications," 30

[1] The first draft of the bill (and a package of consequential amendments to other related bills) was released in August 2019 (see https://www.attorneygeneral.gov.au/media/speeches/religious-discrimination-bill-2019-29-august-2019, accessed 28 February 2020). After a public consultation which saw almost 6000 submissions made, the set of second draft bills was released on 10 December (see https://www.ag.gov.au/Consultations/Pages/religious-freedom-bills-second-exposure-drafts.aspx, accessed 28 February 2020).

November 2015) marked *The Australian's* position on marriage equality up to and beyond its legislation on 7 December 2017. So intent was it on raising the issue in that context, that between August and December 2017 it published 11 editorials addressing religious freedom, five in September alone. The analysis presented here demonstrates that the framing of religious freedom served not to promote and protect religious freedom itself, but to undermine LGBTIQ rights and attack the progressive left.

The Australian is well-known as a 'campaigning' newspaper – Cryle refers to it as a 'crusading right-wing paper' (2008, p. xi) and Manne as 'a remorseless campaigning paper' (2011, p. 3). Despite its relatively small readership, it wields significant political influence with the capacity to sway public and political discourse, and even public policy (Cryle, 2008; Lidberg, 2019; Manne, 2011; Paltridge, Mayson, & Schapper, 2014; Sparrow, 2018; Taylor & Collins, 2012; Waller & McCallum, 2016; Young, 2015). This makes its editorials particularly significant (Manne, 17 September 2011; Richardson & Lancendorfer, 2004). According to Le, not only are editorials sites for framing and agenda setting—defined by McCombs as 'the transmission of salience… [how] news media influence the salience or prominence of that small number of issues that come to command public attention' (McCombs, 1997, p. 433)—but 'they might even be one of their most overt manifestations' (Le, 2010, p. 3).

A number of studies have examined the framing of religion-related issues in Australian media, mostly Islam and Muslims, and often in the context of terrorism (Ewart, 2012; Kabir, 2006; Possamai, Turner, Roose, Dagistanli, & Voyce, 2013; Rane, Ewart, & Martinkus, 2014), but there have been no studies of how religious freedom is framed in the Australian press. And although the media framing of marriage equality has been well studied in other countries (see for example, T. Johnson, 2012; O'Connor, 2017), very little research has been done on how marriage equality has been represented in Australian media (Nguyen, 2015). This study is unique in its analysis of the media framing of religious freedom in the editorials of *The Australian*. In light of the influence the newspaper wields in politics and public policy debates and how baldly its position is stated in the editorials, this research offers a significant new perspective on the study of the politics of religious freedom in Australia.

The first section presents the theoretical basis for media framing analysis and describes the methodology. The second section gives a brief overview of the context for the editorials and the third explains how the data set was collected. The fourth section presents the analysis and is followed by a discussion of the analysis and the conclusion.

Media Framing

Framing is the representation of issues or events that results from deliberate choices to include and exclude information and present it in particular ways in order to influence how people receive, respond to, remember and understand issues (Entman, 1993, 2007; Goffman, 1974). Frames 'manifest themselves in a number of different sites and across a number of domains: policy, journalistic, and public' (Reese, 2010, p. 17). Because framing works to develop public attitudes about matters of policy (Boulus & Dowding, 2014; Iyengar, 1990), frames are 'critical tools in the exercise of political power' (Entman, 2007, p. 165). The journalistic or media domain frames issues to serve particular agendas including 'serving as conduits for *partisan* frames developed by politicians and activists who advocate specific issue positions' (Brewer & Gross, 2010, p. 159). Framing analysis serves 'to reveal media content biases… patterns of slant that regularly prime audiences, consciously or unconsciously, to support the interests of particular holders or seekers of political power' (Entman, 2007, p. 166). On any single policy issue there may exist 'competing packages' (Gamson & Modigliani, 1989, p. 2) and as Reese (2010) points out, framing contests can be won or lost (in public opinion), thereby influencing the development of public policy.

This paper uses the 'signature matrix' developed by Gamson and Lasch (1983) to examine how *The Australian* framed religious freedom and to what effect. 'Every [framing] package has a *signature* – a set of elements that suggest its core frame and position in a shorthand fashion' and the signature is identified through the use of 'framing and reasoning devices' (Gamson & Lasch, 1983, p. 399). The framing devices used in the editorials are metaphors, exemplars, catchphrases and depictions; and the reasoning devices, used to construct a justification for the position taken, are roots, consequences and appeals to principle.

The Context

This section describes the major events which impacted on the public conversation about religious freedom over the years during which the editorials were published and which are referred to in the editorials. Among the most significant was the growing public support for SSM (Carson, Ratcliff, & Dufresne, 2017) and the increasingly vocal pushback from Australian churches and Christian lobby groups, especially in relation to the intersection between equality rights and religious exemptions in anti-discrimination

law (C. Johnson & Maddox, 2017; McPhillips, 2015; Nelson, Possamai-Inesedy, & Dunn, 2012; Poulos, 2018).

In 2010, the Safe Schools program, designed to address bullying of LGBTIQ students, was introduced into schools. It came to the attention of a number of conservative MPs and Christian lobby groups who claimed the content was inappropriate for children. After sustained criticism, the federal government reviewed the program in 2016, and despite changes being made, it remains controversial.[2]

In late 2013, the Abbott Government appointed Tim Wilson, a strong critic of the Australian Human Rights Commission (AHRC) during his time as policy director for the conservative think tank, the Institute of Public Affairs, as Human Rights Commissioner to progress a 'freedom agenda'.[3] In his second major speech in the role, he described religious freedom as one of 'the forgotten freedoms' (Wilson, 2014).[4]

In 2014, the Victorian Court of Appeal ruled that Christian Youth Camps had breached Victoria's anti-discrimination laws by refusing to allow Cobaw Community Health Service to run a program for a group of same-sex attracted youth at their camp site (known as the Cobaw case) (Murphy, 2016).[5] In 2015, the High Court rejected an application from Christian Youth Camps for an appeal, prompting calls, as *The Australian* reported, for a better 'balance between anti-discrimination law and freedom of religion' (Towers, 20 March 2015).

On 11 August 2015, conservative Prime Minister Tony Abbott announced a plebiscite on SSM.[6] The following month a complaint was lodged with Tasmania's Anti-Discrimination Commissioner against the Catholic Archbishop of Hobart, Julian Porteous (the Porteous case), after he distributed a booklet describing the Roman Catholic understanding of marriage, *Don't Mess With Marriage*, to all Catholic schools

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[2] https://www.education.vic.gov.au/about/programs/Pages/safeschools.aspx. See also, for example, https://www.abc.net.au/news/2016-03-24/donnelly-criticising-safe-schools-doesnt-make-you-homophobic/7272932 and https://theconversation.com/factcheck-does-the-safe-schools-program-contain-highly-explicit-material-87437. Accessed 1 March 2020.

[3] See https://www.theguardian.com/world/2013/dec/17/thinktank-diector-tim-wilson-appointed-human-rights-commissioner, accessed 8 February 2020. Wilson served two years before resigning to seek federal Liberal Party preselection. He has been the member for Goldstein since 2016 and an advocate for marriage equality and freedom of speech. He is referenced in seven of the editorials analysed in this paper, including two after his election to parliament.

[4] Available https://www.humanrights.gov.au/about/news/speeches/forgotten-freedoms-freedom-religion, accessed 29 January 2020. His first speech, delivered earlier that month, referred to the Cobaw case. (https://www.humanrights.gov.au/about/news/speeches/forgotten-freedoms, accessed 29 January 2020).

[5] Christian Youth Camps Limited v Cobaw Community Health Service Limited & Ors [2014] VSCA 75, http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSCA/2014/75.html, accessed 8 February 2020.

[6] https://www.smh.com.au/politics/federal/tony-abbott-flags-plebiscite-on-samesex-marriage-in-bid-to-defuse-anger-20150811-giwyg1.html, accessed 27 January 2020.

in the state.[7] The complaint was withdrawn on 5 May 2016. The legislation required to enact the plebiscite on SSM was defeated in the parliament in November 2016 (McKeown, 2018) and in its place, a non-compulsory postal survey on SSM was conducted (September-November 2017). Almost 80% of the eligible population voted, with 61.6% voting 'yes' to allow SSM.[8] The *Marriage Amendment (Definition and Religious Freedoms) Bill 2017* was passed on 7 December 2017. The hard-right faction of the LNC government had been pushing unsuccessfully to extend the religious freedom protections in the bill. As a concession ahead of the vote, Prime Minister Malcolm Turnbull established an expert panel (chaired by former Liberal Party MP and Attorney General, Philip Ruddock) to inquire into the protection of religious freedom. The *Religious Freedom Review* report (commonly known as the Ruddock Report) was delivered to the government on 18 May 2018 but not released until 13 December, well after it had been leaked to the *Sydney Morning Herald* which published the report's recommendations (Topsfield, 9 October 2018).[9]

The Editorials

Using the online Factiva database, a search was conducted of *The Australian* newspaper between January 2002 and May 2019 using the terms 'religious freedom' or 'freedom of religion' or 'religious liberty', the region limiter 'Australia' and the subject limiter 'Commentaries/Opinions'. The editorials were then identified by the lack of byline, the length (generally around 500-600 words, almost always less than 1000) and the stance, which could be described as argumentative (Ansary & Babaii, 2005; Le, 2010) and position-taking, sometimes indicated by use of 'we' or 'this newspaper'. No editorials were found before 2015 and three were later excluded on the basis that they referred to religious freedom only in passing and without comment. The final list of 40 editorials from 13 July 2015 to 11 May 2019 is shown in Table 1. This is a significant number compared to the total of 13 published across all (state-based) capital city daily newspapers during that same period.[10]

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[7] https://www.theguardian.com/australia-news/2015/sep/28/catholic-anti-gay-marriage-booklet-condemned-as-immeasurably-harmful, accessed 27 January 2020.
[8] https://www.abs.gov.au/ausstats/abs@.nsf/mf/1800.0, accessed 27 March 2020.
[9] The report and the government response is available at https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Freedom-of-Religion.aspx, accessed 8 February 2020.
[10] *The Sydney Morning Herald* published eight and *The Age* published five. The capital city dailies are *The Sydney Morning Herald* and *Daily Telegraph* (Sydney), *The Age* and *Herald Sun* (Melbourne),

The date range selected for study spans the 2002 appointment of Chris Mitchell as editor—an appointment which saw *The Australian's* editorial direction change from progressive to neo-conservative (Manne, 2011; Taylor & Collins, 2012)—and the federal election held on 18 May 2019.[11] Under the leadership of Prime Minister Scott Morrison, the Liberal Party went to the election promising a religious discrimination act (J. Kelly, 13 December 2018). In order to avoid *The Australian's* response to any specific legislative proposals and enable a focus on how religious freedom *itself* was framed by the paper, only the editorials published before this election are included in the analysis.

Analysis

The editorials were manually coded using NVivo, beginning with the identification of positioning statements and framing and reasoning devices. A preliminary set of codes was then developed and refined over a number of iterations as frames began to emerge. The frames were tested through further iterations of coding. The corpus analysis software AntConc (Anthony, 2018) was used to generate word frequency lists, concordances, word cluster identification and collocations as a form of triangulation against the manual coding. The packages were then set within a provisional signature matrix and the coding was re-run and further refined. This analysis identified four dominant framing packages: 'same-sex marriage' (P1); 'religious bodies and schools' (P2); 'speech and conscience' (P3); and 'the progressive left' (P4). Each of these packages was evident in at least 25 editorials, and 12 editorials contained all four (Table 1).

Table 1. Editorials.

	Date	Title	Packages			
			1	2	3	4
1	13/7/15	A deeper debate on marriage	✓	✓	✓	
2	8/8/15	Balancing rights and freedoms	✓	✓	✓	
3	13/8/15	Same-sex marriage reform must be handled carefully	✓		✓	✓
4	15/8/15	Marry in haste, repent at leisure	✓			✓

Courier Mail (Brisbane), *West Australian* (Perth), *Advertiser* (Adelaide), *Canberra Times* (Canberra), *Hobart Mercury* (Hobart) and *Northern Territory News* (Darwin). The other national daily, *The Australian Financial Review,* also did not publish any editorials during this period.

[11] Between 1997 (when *The Australian* first appears in Factiva) and 2002 when Mitchell took over the newspaper, seven editorials referred to religious freedom issues and the stance was socially progressive, for example, calling for more respect for Muslim Australians post-9/11.

5	19/11/15	Before Australians vote ‘I do’	✓	✓	✓	
6	30/11/15	Debate with ramifications beyond same-sex marriage	✓	✓	✓	
7	24/12/15	The Christmas message of hope in challenging times			✓	
8	29/2/16	Howard’s defence of free speech hits the right note	✓	✓	✓	✓
9	7/3/16	Gay marriage a distraction Turnbull doesn’t need	✓	✓	✓	
10	29/3/16	Islamist ideology poses a threat to other faiths				✓
11	23/5/16	Identifying the real bullies		✓		✓
12	20/6/16	Shorten pitches a return to big-spending Gillard era	✓			✓
13	24/3/17	Labor’s assault on free speech	✓	✓	✓	✓
14	14/8/17	Changing the Marriage Act could change the country	✓	✓	✓	✓
15	14/8/17	Jews must not pay for jihadism				
16	23/8/17	Labor leader getting away with glib lines and spin				✓
17	4/9/17	Yes, thought police bullies dominate same-sex debate	✓	✓	✓	✓
18	8/9/17	High Court verdict affirms our robust democracy	✓	✓	✓	✓
19	12/9/17	Hypocrisy and vulgarity undermine Yes case	✓			✓
20	19/9/17	Same-sex marriage vote is occurring without details	✓	✓		
21	21/9/17	When accepting the status quo can cost you your job	✓		✓	✓
22	2/10/17	Parties must respect both sides	✓		✓	✓
23	6/10/17	Activists muzzling free speech	✓	✓	✓	
24	13/11/17	Turnbull’s support melts amid citizenship crisis	✓	✓	✓	
25	16/11/17	Gay marriage vote allows moment of reconciliation	✓	✓		✓
26	21/11/17	Politicians should run for parliament, not from it	✓	✓	✓	✓
27	8/12/17	Marriage legislation puts religious freedom in doubt	✓	✓	✓	✓
28	11/12/17	Crocodile tears on freedom	✓	✓	✓	✓
29	23/12/17	Christmas message of hope	✓			✓
30	7/7/18	Defending religion’s place in the public square	✓	✓	✓	✓
31	14/7/18	Anti-church standover not on	✓	✓	✓	✓
32	13/10/18	Protecting faith-based schools	✓	✓		✓
33	1/11/18	Religious freedoms are at stake in school selections	✓	✓		✓
34	19/11/18	Perils of activist intolerance	✓	✓	✓	✓
35	27/11/18	Time to protect religious belief	✓	✓	✓	✓
36	28/11/18	Turnbull’s moderates blow up a centrist government		✓		✓
37	6/12/18	Bipartisanship scores a win over bluffs and biffo		✓		✓
38	14/12/18	Scott Morrison’s big ideas and the problem of detail	✓	✓	✓	
39	7/1/19	Helping persecuted Christians				
40	11/5/19	Resist encroaching censorship		✓	✓	✓
		TOTALS	**31**	**28**	**25**	**28**

The Same-Sex Marriage Framing Package (P1)

The Australian frames religious freedom as under threat from SSM (core frame), and that as a consequence, the religious freedoms of people, businesses, institutions and organisations need to be protected (core position). Quoting the Human Rights Commissioner Tim Wilson, two editorials present the spectre of SSM as a 'Trojan horse for legally enforced anti-religious secularism' ("Balancing rights and freedoms," 8 August 2015; "Before Australians vote," 19 November 2015). Two years later, the perceived failure to better protect religious freedom in the SSM legislation was described as a 'bell tolling' for religious freedom ("Crocodile tears," 11 December 2017).[12]

The main exemplars used to build this packaging frame are cases where the expression of religiously framed opposition to marriage equality resulted in negative consequences. Citing the case of '18-year-old Christian contractor Madeline', dismissed by her employer after a social media post,[13] *The Australian* opined, 'This episode is an almost perfect test case for the bizarre tensions and legal uncertainties playing out in this debate… If such widespread and traditional views can cost you your job, what else do we need to fear?' ("When accepting the status quo," 21 September 2017). The Porteous case is the most often used, appearing in nine editorials. The case became a shorthand for the threat posed by SSM to religious freedom, and to religious bodies and schools (P2) and freedoms of speech and conscience (P3).

> There is more to maintaining religious freedoms, however, than allowing different faiths to maintain their traditions by not expecting them to conduct same-sex weddings. Important issues relating to free speech and freedom of conscience — such as the right of church schools to teach students their traditional doctrines on marriage — need to be protected. Claims that the Australian Catholic Bishops' moderate, respectful statement [*Don't Mess with Marriage*] on the issue breached anti-discrimination law flagged the potential for conflict. ("Gay marriage a distraction," 7 March 2016)

[12] In an opinion piece referenced in three editorials during 2015, Kelly wrote: 'The central issue in any Australian recognition of same-sex marriage remains almost invisible – whether the state's re-definition of civil marriage will authorise an *assault* on churches, institutions and individuals who retain their belief in the traditional view of marriage' (11 July 2015, emphasis added).

[13] See https://www.news.com.au/finance/work/at-work/canberra-teen-sacked-for-opposing-samesex-marriage-says-young-people-fear-being-bullied-for-voting-no/news-story/4ef4ea6cf3f56db96fc6b64a3c51dc16, accessed 5 February 2020.

In his study of the arguments used against marriage equality in the British press, Jowett found that 'traditional marriage' is 'used as a euphemism for heterosexual marriage, presenting heterosexual privilege and the exclusion of same-sex couples from the institution of marriage as a part of our cultural heritage and something to be preserved for future generations' (Jowett, 2013, p. 43). On this basis, 'traditional marriage' (including 'traditional understanding' or 'traditional view' of marriage) has been identified as a catchphrase. It appears 23 times in 17 editorials. When associated with the need to protect those who 'believe' in it, it becomes a powerful depiction within the frame: '… religious freedom and the consciences of churches, institutions and individuals who hold fast to the traditional view of marriage need to be safeguarded' ("A deeper debate," 13 July 2015).

The other significant depiction in P1 is of marriage equality advocates, portrayed as hypocrites and bullies, abusive and intolerant of those who would disagree with them, and ideologically framed as 'activists', even 'hard-core activists' ("Perils of activist intolerance," 19 November 2018). Demonstrating how tightly interwoven the four framing packages are, this depiction is also used in P2 and P3. LGBTIQ rights advocates intent on imposing their beliefs on others and society (P1, P2) are enemies of free speech (P1, P2, P3). A number of editorial titles illustrate these depictions: 'Yes, thought police bullies dominate same-sex debate' (4 September 2017), 'Hypocrisy and vulgarity undermine yes case' (12 September 2017), 'Activists muzzling free speech' (6 October 2017), 'Anti-church standover not on' (14 July 2017) and 'Perils of activist intolerance' (19 November 2018), and relating only to P3, 'Identifying the real bullies' (23 May 2016). This depiction is one of the devices that exposes the framing of religious freedom as a tool for prosecuting a case against progressive social policy.

The most frequently deployed (23 editorials) appeal to principle in P1 is that, ahead of the proposed plebiscite and then the voluntary postal survey, people should know what they are voting for. Calling for details of the legislation to be made known, and then expressing concern that this did not happen, works to highlight the inherent threat marriage equality poses to religious freedom: 'Before they vote, Australians are entitled to know what safeguards, if any, will be enacted to protect freedom of speech and religion in the event of a Yes result' ("High court verdict," 8 September 2017).

Over the course of the editorials, using the 'consequences' reasoning device, often together with exemplars, *The Australian* builds a picture of the harm that will be suffered by religious people and institutions as a result of marriage equality: 'In the US,

religious universities have been prosecuted for not providing married accommodation to same-sex couples. Christian and Jewish organisations have been challenged to employ same-sex spouses' ("A deeper debate," 13 July 2015). Without increased protections for religious freedom we risk increases in social conflict, litigation and anti-discrimination complaints against religious organisations and individuals, and boycotts against businesses; a rise in anti-religious secularism; and, although not clear about how or in what sense this would happen, 'Changing the Marriage Act could change the country', as the title of one editorial declared (14 August 2017).

One year after marriage equality, with little evidence of the country being changed, the newspaper was maintaining its long-standing opposition to anti-discrimination laws—even while they were being identified as a possible solution for stronger religious freedom protections—by raising concerns about 'social harmony' at the hands of 'identity politics':

> It's not absurd to worry that conflict of a religious kind might increase, encouraged by anti-discrimination institutions. True, protection of religious freedom is being offered as a corrective to same-sex marriage triumphalism following the successful plebiscite, but it is a corrective within an anti-discrimination regime open to abuse at a time of hardline identity politics. ("Scott Morrison's big ideas," 14 December 2018)

Table 2. Signature matrix of the issue culture of religious freedom

Package	Core Frame (the issue)	Core Position	Framing Devices				Reasoning Devices		
			Metaphors	Exemplars	Catch-phrases	Depictions	Roots	Consequences	Appeals to Principle
P1 Same-sex marriage	Same-sex marriage poses a threat to religious freedom.	The religious freedom of people, businesses, institutions and organisations must be protected against the threats posed by same-sex marriage.	'Trojan horse'; bell tolling	Julian Porteous; cases in overseas jurisdictions; targeted attacks on traditional marriage campaigners & supporters; boycotts	traditional marriage	religious freedom is something which needs protection; same-sex marriage advocates are hypocrites, bullies, intent on silencing opposition	anti-religious culture; intolerance of progressives; political correctness	social conflict, litigation, sectarianism & anti-religious secularism; SSM could change the country; potential for consumer boycotts & intimidation of businesses; individuals against SSM become vulnerable to abuse, in employment & through human rights bodies	people should know what they're voting for; civilised debate needed to prevent bullying; rights must be balanced
P2 Religious bodies & schools	The freedom of religious bodies to express their mission & ethos is under threat.	Religious bodies & schools need to be protected against LGBTIQ rights & the legalisation of same-sex marriage so they can live & teach according to their ethos without penalty.	*none*	overseas religious organisations & schools; Porteous case; Cobaw case; Safe Schools	*none*	equality advocates are intolerant bullies, ideologues, activists, zealots, anti-democratic, oppressing through PC; the 'silent majority'; religious leaders & TM advocates are 'reasonable' 'moderate' & respectful'; exercising their rights	Christian persecution; anti-religious culture; intolerant progressives; political correctness; misreporting by Fairfax media	autonomy (to employ) threatened; 'prerogative' of Christians to express traditional morals lost; defunding, deregistered as charities; litigation & complaints; parents lose control of children's education	religious bodies must be able to give expression to their beliefs, especially through the hiring of staff; rights must be balanced

Package	Core Frame (the issue)	Core Position	Framing Devices				Reasoning Devices		
			Metaphors	Exemplars	Catch-phrases	Depictions	Roots	Consequences	Appeals to Principle
P3 Speech & conscience	Freedom of speech and freedom of conscience are under threat.	The 'gay agenda' & political correctness are stifling freedom of speech & freedom conscience.	freedoms being crimped, crushed, stifled; 'thought police' 'secularist caliphate'	Porteous case; boycotts; discrimination complaints; overseas cases against religious leaders	political correctness	equality rights advocates are intolerant bullies seeking to impose their views, intent on silencing dissent & advancing laws that will penalise those with different views	political correctness; gay agenda	discrimination complaints & litigation; people afraid to express their beliefs; public debate stifled; religion banished from the public square	libertarian philosophy; religious people & churches have a right to be heard; rights must be balanced
P4 The progressive left	The progressive left cannot be trusted to protect religious freedom.	The ALP, The Greens and other media support the 'gay agenda' over religious freedom.	'crocodile tears'	opposition to marriage plebiscite; leak of the Ruddock Review; support for Safe Schools & LGBTIQ advocates	culture wars	'out of touch'; anti-democratic; untruthful; anti-Christian; willing to play politics with religious freedom; biased in favour of gay agenda	political correctness; gay agenda	gay agenda will be imposed; schools & religious orgs will be penalised for their beliefs; parents lose right to educate their children	the left cannot be trusted to protect mainstream institutions or Australians

The 'Religious Bodies and Schools' Package (P2)

According to the editorials, the religious freedom of religious schools, charities, community service agencies and institutional church bodies is under threat (core frame). Religious bodies need to be protected from the threats posed by LGBTIQ rights and marriage equality so that they can live out their religious ethos—especially in relation to sexuality, gender and marriage—without penalty (core position). This includes being able to teach these beliefs and employ people who share them or dismiss people who do not.

Three editorials include slightly different versions of a set of questions listing the threats (first articulated by Paul Kelly in his article 'The same-sex marriage debate and the right to religious belief (11 July 2015)):

> Must churches employ spouses in same-sex marriages? Must religious agencies place children for adoption with same-sex couples? Will church institutions be penalised by losing government support and tax exemptions? Will religious schools be penalised if they teach their own beliefs about marriage, contradicting the state view? ("Balancing rights and freedoms," 8 August 2015)

The framing devices used to construct this package include a number of exemplars, in particular the Safe Schools program, the Porteous and Cobaw cases and (often unspecified) references to cases from other countries where religious agencies and educational institutions were forced to accommodate same-sex couples or penalised for not doing so: 'In the UK, adoption agencies unwilling to place children with same-sex couples have closed. In Canada, graduates of a Christian university were refused teacher registration on the grounds they might discriminate against LGBTI students' ("Changing the Marriage Act," 14 August 2017).

The root of this threat is presented in an editorial which sets the loss of the teaching of Christian heritage in Australian schools within the global 'jihadist' persecution of Christians now 'taking root in the West' and takes aim at one of the newspaper's favourite targets, the Victorian Labor government of Daniel Andrews:

> … the Labor government banned "praise music" in schools, effectively ending the tradition of hymns and Christmas carols. The school curriculum has become less inclusive of Christianity, omitting its foundational role in Western civilisation and the Australian nation. The Brussels and Lahore terrorist attacks have put the West on notice to… guard against growing Christian

> persecution. We should… teach schoolchildren the Christian origins of secular statehood, freedom of speech and formal equality; guard against anti-Christian prejudice in politics and the media; and defend religious freedom. ("Islamist ideology," 29 March 2016)

It is not surprising then, that LGBTIQ rights advocates are represented not only as a threat to schools but also to Australian democracy. In an editorial addressing the Safe Schools program in Victoria, *The Australian* depicts them as quasi-religious zealots wanting to impose their beliefs on others ("Identifying the real bullies," 23 May 2016). Religious leaders, principals of religious schools, and Christian school lobby groups, on the other hand, are portrayed as 'moderate and 'respectful' ("Gay marriage a distraction," 7 March 2016).

The consequences of not properly protecting religious bodies from the threat of SSM include destroying their 'autonomy' ("Identifying the real bullies," 23 May 2016) and undermining their freedom to express and enact their moral values or codes. They need to be protected to ensure 'a more inclusive society' ("Balancing rights and freedoms," 8 August 2015). The threat to schools extends to parents who have a right to expect that the religious schools they have chosen for their children will be free to live out their ethos and religious beliefs ("Time to protect religious belief," 27 November 2018). Also, parents should be free to withdraw their children from classes which do not represent their (religious) values in relation to gender, sexuality and marriage ("Crocodile tears," 11 December 2017). A few days after the legislation of marriage equality, an editorial reminded readers of the penalties that could result for religious bodies and schools: 'Churches, hospitals, schools and charitable welfare agencies must not stand in fear of losing their funding or charitable status for upholding their basic beliefs, or be hauled in front of state or federal human rights bodies because of them' ("Crocodile tears," 11 December 2017). The highlighting of dire consequences to key institutions within society serves to undermine marriage equality without the need to explicitly oppose it.

Nine of the 28 editorials that included P2 were responding to the leak of the Ruddock Review recommendations and the public outrage that followed after many Australians realised for the first time that an existing exemption in anti-discrimination law allowed religious schools to dismiss teachers and expel students on the basis of their marital status or sexual orientation. The claim that religious schools were seeking to expel gay students and dismiss gay staff was described in four editorials as a 'furphy': 'The recruitment of teachers who share the values of the school is the crucial issue; expulsion of gay pupils already has been exposed as an alarmist furphy' ("Turnbull's moderates," 28 November 2018).

The most often cited principles (eight editorials) were that rights must be balanced against each other and that religious bodies should be free to set their own ethos, especially through the hiring of staff who share their beliefs.

The 'Speech and Conscience' Package (P3)

The third framing package holds that freedoms of speech and conscience are under threat (core frame), being stifled by the 'gay agenda' (which includes marriage equality) and 'political correctness' (core position). Freedom of speech most often refers to the right to express *religious* beliefs, and freedom of conscience is often specifically related to the right to *act* on religious beliefs. The editorials present these three freedoms as intertwined and interconnected – a threat to one is a threat to the others. 'Freedom of religion is not just about what happens inside churches, synagogues or mosques. The free exercise of religion, a longstanding right valued by Australians, is about freedom of conscience, freedom of association and freedom of speech' ("Changing the Marriage Act," 14 August 2017).

Metaphors are used to build the image of freedoms being unceremoniously quashed: SSM could 'ride roughshod' over freedom of conscience ("Same-sex marriage reform," 13 August 2015); freedom of speech is being crimped ("Labor's assault," 24 March 2017), crushed ("Anti-church standover," 14 July 2018; "When accepting the status quo," 21 September 2017) and 'stifled' by political correctness ("Yes, thought police bullies dominate," 4 September 2017).

The exemplars used in P3 again include the Porteous case, cases in 'Europe' where 'rabbis and bishops have been condemned for "hate speech" for stating their faith traditions' ("A deeper debate," 13 July 2015), and in Australia where individuals such as the young Christian contractor Madeline who lost her job (see above), have been also accused of 'hate speech' ("When accepting the status quo," 21 September 2017).

In an editorial entitled 'Howard's defence of free speech hits the right note' that reflected, in part, on an interview *The Australian* published with former conservative Prime Minister John Howard, the threats to religious freedom from SSM, the 'pernicious anti-religious culture imposed on Victorian state schools', the Safe Schools program 'inappropriately pushing a LGBTI "social agenda"' and the failure of Abbott government to

remove section 18C of the Racial Discrimination Act are all drawn together,[14] rooted in the rise of 'the oppressive political correctness pervading the West':

> Civil society was being undermined by a growing intolerance towards those who did not adhere to a range of progressive views. As a result, there was "almost a fear" among people to speak their minds out of concern they would "offend our multicultural ethos" or be "branded as intolerant" dissenters. ("Howard's defence," 29 February 2016)

The 'balancing rights' principle is used in this package to pit marriage equality against the freedoms of religion and speech ("Before Australians vote," 19 November 2015), as is the appeal to the libertarian principles of personal liberty and freedom of choice, the goodness of which are assumed, never explained or defended.

The consequences of not adequately protecting freedoms of speech and conscience will impact people of religious belief – religious leaders will suffer discrimination complaints, litigation will increase, and people will be afraid to speak their minds, that is, express their beliefs. Religion will be banished from the public square and public debate will be stifled. The consequences for Australia's democracy could be dire: 'A genuinely pluralist, secular democracy cannot banish religious-based opinion from public debate. To do so, as Sydney's Catholic Archbishop Anthony Fisher has warned, would be tantamount to a "secularist caliphate"' ("Debate with ramifications," 30 November 2015).

The devices used to frame this package all draw attention to the threat posed by a progressive social agenda which takes no account of the need for 'balance' and is prepared to 'ride roughshod' over precious personal liberties.

The 'Progressive Left' Package (P4)

The Australian is often charged with running partisan campaigns against progressive politicians and political parties (the Australian Labor Party (ALP) and the Australian Greens), and a constant critique of the public broadcaster (the Australian Broadcasting Corporation (ABC)) for left-wing bias (McNair, Flew, Harrington, & Swift, 2017). In the editorials

[14] Section 18C defines racial discrimination as including conduct that 'offends', 'insults', 'humiliates' or 'intimidates' on the basis of their race. The Abbott government sought but failed to remove the section after right-wing commentator Andrew Bolt was found to have acted in breach of the Act. See https://theconversation.com/explainer-what-is-section-18c-and-why-do-some-politicians-want-it-changed-64660, accessed 17 February 2020.

analysed in this paper, the ALP, The Greens and even the moderate faction of the Liberal Party, in particular Malcolm Turnbull (before and during the time he was Prime Minister), and the Murdoch press's main newspaper competition, *The Sydney Morning Herald* (SMH) and *The Age* (former Fairfax media publications now owned by Nine Entertainment Co) are framed as not to be trusted on the protection of religious freedom (core frame) because they support the 'gay agenda' over religious freedom (core position). That this package is so clearly identifiable in the religious freedom editorials speaks to what is actually *The Australian's* major concern – undermining the advance of LGBTIQ rights as a cause of the progressive left.

The ALP and the Greens are depicted as pushing the 'gay agenda' at the expense of religious freedom as part of their 'culture war'.

> In their relentless push to inflict "gender fluidity" on the young, the Greens and some within Labor have generated a bizarre philosophical subtext to the election race. At stake are the rights of parents to educate their children in keeping with their own beliefs and Australia's worthwhile tradition of religious freedom. ("Identifying the real bullies," 23 May 2016)

The editorial describes the Labor Premier of Victoria as having 'embraced "gender fluidity" with the zeal of a soapbox preacher'. Over a number of editorials, the ALP is framed as not to be trusted on the protection of religious freedom: 'On gay marriage and concerns about religious freedom, Mr Shorten had a… "trust me" approach' ("Labor leader getting away with glib lines and spin," 23 August 2017). A few days after the legalisation of marriage equality, an editorial appeared which drew together the need to address the protection of religious freedom with parents' rights to withdraw children from 'gender fluidity programs' in schools. The editorial, 'Crocodile tears on freedom', criticised the ALP Opposition Leader Bill Shorten for writing to religious leaders about religious freedom after having demonstrated 'scant regard for religious freedom when Labor MPs voted en bloc against all amendments that would have built vital protections into the same-sex marriage legislation' (11 December 2017).

The ALP is also depicted as out of touch with ordinary people or middle Australians and underestimating them by opposing a plebiscite on marriage on the grounds that it would provide a platform to people who hold homophobic views ("Identifying the real bullies," 23 May 2016; "Shorten pitches a return," 20 June 2016), while supporting the 'LGBTI agenda': 'Bill Shorten was anything but measured in branding Liberal Senator Cory Bernardi a

“homophobe” for opposing the [Safe Schools] program. As Mr Howard said, that comment showed how out of touch the Opposition leader is with middle Australia’ ("Howard’s defence," 29 February 2016); and ‘sections of the ALP are bending over backwards to embrace the lesbian, gay, bisexual, transgender and intersex agenda’ ("Identifying the real bullies," 23 May 2016). Former moderate Liberal Party MP and Prime Minister, Malcolm Turnbull was criticised, along with the ALP’s Penny Wong, for not supporting a ‘libertarian outcome of a free Coalition vote’ on marriage equality ("Marry in haste," 15 August 2015). Even as Prime Minister, Turnbull did not escape criticism:

> Unfortunately, the government’s poor preparation and lukewarm commitment, at best, to freedom of religion, conscience and belief have produced an unsatisfactory outcome. Malcolm Turnbull’s declaration in mid-September that he believed in religious freedom “even more strongly” than in same-sex marriage is now looking hollow. That will not endear him to socially conservative Coalition voters. ("Marriage legislation puts religious freedom in doubt," 8 December 2017)

On free speech, opposing the reform of the Racial Discrimination Act was an example of the ALP’s predilection for ‘culture wars’: ‘Section 18C of the Racial Discrimination Act is a proven enemy of free speech. Far from reforming it, Labor’s culture war instinct is to entrench the problem’ ("Labor’s assault," 24 March 2017).

Fairfax Media and the ABC are portrayed as ‘activists’ in their opposition to a plebiscite on marriage:

> The lead-up to a popular vote should allow a full range of views to be put and tested, including expert opinion on how to reconcile same-sex marriage with religious freedom. So, it’s odd to witness the wailing and gnashing of teeth over at Fairfax Media and the ABC; The Age’s jaundiced headline yesterday was “‘Tricky’ Abbott kills gay marriage push”… Surely activists confident of the case for change should welcome such an opportunity. ("Same-sex marriage reform must be handled carefully," 13 August 2015)

They are, together with the ‘same-sex marriage lobby’, condemned for not denouncing one of their commentators, ‘gay activist’ Benjamin Law, after he posted a number of tweets expressing his concern about the effects of the postal survey campaign on LGBTIQ people in ‘crude and hateful language’ ("Hypocrisy and vulgarity," 12 September 2017). Fairfax Media also came under sustained attack in three editorials over October and November 2018 in for

its ‘shamefully misleading’ and ‘politically motivated’ reporting of the Ruddock report recommendations ("Protecting faith-based schools," 13 October 2018).

Discussion

Over the course of four years and 38 editorials, *The Australian* explicitly framed religious freedom, intertwined with freedom of speech and freedom of conscience, as a right under threat from marriage equality and the advancement of gay rights, encouraged by intolerant and bullying gay activists, political correctness, and the out-of-touch political left. But media framing analysis is not only about what is written – it is also about what is not written: ‘The bits of information that are not emphasized may be as important as those that are, and the consequences may be great when information is excluded’ (Ryan, 2004, p. 365). For all the newspaper’s concern for religious freedom, only one editorial raised the issue of discrimination against minority religious groups (a property development case in which an application to build a new synagogue was rejected ("Jews must not pay," 14 August 2017)), despite Australian Muslims, for example, regularly experiencing harassment, vilification and abuse (Iner, 2016, 2019).[15] With only passing references to ‘Muslims and others who may oppose gay marriage’ in one editorial ("Same-sex marriage vote is occurring without details," 19 September 2017) and the global persecution of Christians in two others ("Helping persecuted Christians," 7 January 2019; "Islamist ideology poses a threat," 29 March 2016), the newspaper’s concerns about religious freedom were confined to the *possibility* that Christians, and Christian churches, schools and agencies, may suffer for expressing their religiously based opposition to marriage equality and gender identity rights. It is significant that no other specific religious belief was referred to in the editorials – the threat to religious freedom was cast solely in terms of opposition to religious beliefs about sexuality and gender identity.

The other telling omission from the editorials was any recommendation for how religious freedom might be better protected in law. Three editorials, did however, draw attention to the difficulties of legislating religious freedom protections ("Balancing rights and freedoms," 8 August 2015; "Politicians should run for parliament, not from it," 21 November

[15] This contrasts with four (of the seven) religious freedom editorials published between 1997 and 2002 raising concerns about the treatment of Muslims in Australia and calling for an end to the abuse and discrimination and greater respect and understanding, for example, ‘Get to know the Muslims among us’ (26 September 2001) and ‘Let’s respect religious difference’ (22 November 2002).

2017; "Scott Morrison's big ideas," 14 December 2018), largely focussed on the risks of freeing 'bad' religion.

The repeated use of the Porteous case (and only once did *The Australian* point out that this claim had been withdrawn ("Labor's assault," 24 March 2017)) and unspecified and vaguely articulated references to cases in overseas jurisdictions, and the focus on the behaviour of local marriage equality advocates during the postal survey campaign, are reflective of how few actual claims of religious discrimination *The Australian* had to draw on. While the framing works to paint a picture of evidence, it is, in fact, the amplification of the *feared and potential* consequences of marriage equality that serves to undermine the case for marriage equality.

The Australian brings a self-confessed libertarian perspective to its stance on public policy, a stance which would, therefore, assume support for marriage equality as a matter of personal freedom, but marriage equality was a cause of the left, therefore raising a dilemma for the newspaper. It is no accident, then, that the appearance of religious freedom as an issue of concern for *The Australian* came immediately before the Abbott Government's announcement of its decision to deal with the long-running issue of marriage equality by announcing it would hold a plebiscite after the election (Ireland, 11 August 2015). Eight editorials stated a position on marriage equality, six of them that the newspaper 'did not oppose' SSM. Of these, four made the point that it was because of its libertarian principles that it took this position, and two presented it as dependent on the protection of religious freedom, also a libertarian principle (see for example, "Balancing rights and freedoms," 8 August 2015).

The depiction of LGBTIQ rights and SSM advocates (politicians, media and high profile individuals) as intolerant bullies intent on silencing dissent, together with the use of the catchphrases 'traditional marriage' and 'political correctness'—a term 'widely known as a derogatory label' (McKnight, 2010, p. 703; see also Sparrow, 2018)—serves to ideologically frame LGBTIQ rights and SSM advocates as anti-religious ideologues outside the mainstream of Australian society. Not one editorial referred to cases of LGBTIQ people being harassed, abused or bullied by proponents of the 'no' case and people supportive of same-sex marriage precisely *because* of their religious beliefs were also ignored.

Conclusion

Consistent though it was with the newspaper's libertarian principles, but inconveniently promoted by the progressive left, *The Australian* expressed only lukewarm and conditional support for marriage equality. This conditionality allowed it to continue to prosecute its case against the progressive left by casting marriage equality as a significant danger to Australian society because it threatened religious freedom. This analysis has demonstrated that *The Australian* was more interested in undermining the progress of LGBTIQ rights than supporting the better protection of religious freedom. Examples of how people from minority religious groups are discriminated against in Australia were absent and no proposals were offered for how their freedoms might be better protected. Religious freedom became a tool for the amplification of a conservative social agenda, 'fear-driven politics' and the 'hyper-partisanship' that characterises *The Australian's* reporting on a number of issues (Lidberg, 2019, p. 17). By focussing on religious freedom almost exclusively with reference to marriage equality, *The Australian* constructed the perceived threat to religious freedom not to promote the cause of religious freedom but to serve as a weapon in its long-standing campaign against a progressive social agenda.

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Chapter 7

CONCLUSION

…both religion and religious freedom are modern inventions, with complex histories and constantly shifting consequences, and… like other human constructs they are inevitably implicated in relations of power.

Tisa Wenger, 2017

Introduction

This thesis is about the politics of religious freedom in Australia, once a niche affair, now a hot potato of a public policy issue. Its theoretical foundations draw on the work of international scholars who have been interrogating religious freedom from within such diverse fields as law, sociology, political science, international relations, philosophy and anthropology. Consistent with this significant body of work, the premise that underlies this thesis is that both religion and religious freedom are constructed categories with political implications. The meanings of these concepts develop over time in context and are subject to change. Religious freedom does not exist as a value-neutral principle with one meaning – its discursive constructions are varied and serve to promote certain interests at the expense of others. Religious freedom is a political discourse with consequences for people's lives. I make no claim about the value of the right to religious freedom and do not seek to answer whether the protection of religious freedom in Australian law is adequate or effective or in need of improvement.

This thesis by publication offers a new perspective on the politics of religious freedom in Australia by analysing the changing public discourse of religious freedom and examining the implications of those discourses. Applying methodologies from within critical discourse analysis, I have examined how policy actors in a number of different contexts have constructed (problematised and framed) the concept of religious freedom.

This concluding chapter brings together the findings of the four papers that form the core of the thesis, contextualised by the definitional and theoretical frameworks described in the papers and in Chapters 1 and 2, to answer the three overarching research questions articulated in Chapter 1:

- How has religious freedom been constructed by policy actors in Australia?
- Whose interests are being served?
- What are the consequences and implications of the changing problematisations and discourses?

This chapter concludes with a summary of the contribution of the research to the study of the politics of religious freedom and identifies some potential areas for further

investigation. A postscript briefly examines two recent issues generating considerable debate about religious freedom in Australia and suggests how they could be read in light of the findings presented in this thesis.

The Shifting Discourse of Religious Freedom

In this thesis, I have examined the public discourse of religious freedom in 14 public inquiry submissions (Chapter 3), 663 parliamentary speeches (Chapter 4), 20 public inquiry reports (Chapter 5) and 40 media texts (Chapter 6). These texts represent various policy actors, and span 35 years from 1984 to 2019. Taken together, the findings described in the four papers suggest three discourses emerging over three phases:

- the 'religious diversity' discourse – phase 1 (1984-2010);
- the 'balancing rights' discourse – phase 2 (2011-2014); and
- the 'freedom of belief' discourse – phase 3 (2015-2019).

All three discourses are present to varying degrees across the three phases and bleed into one another to some extent, particularly in and out of Phase 2 which functions almost like a transitional phase, but one discourse clearly dominates in each phase. Three sub-discourses have also been identified, each of these present in all three major discourses:

- threat;
- protection; and
- freedom.

The major discourses are identified, in part, by the answers to the questions that define each sub-discourse: what is the threat? whom do we need to protect? and (to borrow from Webb Keane (2015)) what is being freed?

The concepts 'religion' and 'religious freedom' are rarely defined in the public discourse; their meaning is assumed and their importance frequently highlighted. Using Woodhead's (2011) concepts of religion (outlined in Chapter 1), the assumptions carried in the discourse about the nature of religion and the implications of those understandings for the politics of religious freedom have been explored.

The different discourses are identified by how religious freedom has been framed and problematised in the texts, but there is an assumptive thread underlying all of them that remains consistently free of challenge or interrogation by policy actors – that religious freedom is a good thing. Although never defined beyond its representation in human rights law, religious freedom is understood as a core value of a liberal democratic society; a necessary condition of a peaceful and harmonious pluralistic society; important for individuals as a matter of human dignity; and important for religious institutions, organisations and groups as locations where religious communities are formed and religious beliefs are expressed and lived out, especially in service of society to those in need ('good' religion (Hurd, 2015)). The only exception to this is the occasional mention of 'bad' religion, usually in the context of ensuring that religious freedom protections do not provide a shield for religiously-motivated terrorism or religiously-framed practices such as child marriage.

That religious freedom is one of the very few rights referred to in the Australian Constitution is generally regarded as particularly significant, even if it is minimalist in approach and limited in effect. Also, the obligation to protect and promote religious freedom is understood as a matter of international law requiring Australia to capture it, somehow, in domestic law. The assumptive 'problem' of religious freedom articulated in the texts is that, as a human right, religious freedom is not well protected in Australian law, although whether and to what extent this needs to be fixed, either as a matter of principle or to improve the lives of certain groups of people, is contested. Advocates for the development of a national human rights instrument, for example, argue that none of the human rights expressed in the treaties and conventions ratified thus far are appropriately protected in law, and that we must move away from anti-discrimination legislation to 'positive' protections for religious freedom and other human rights in a human rights act or charter. This would offer equal treatment under law for all human rights. Religious freedom advocates have, on the other hand, more recently, been calling for the development of a religious *freedom* act (which would make it the only human right protected in this way) or (at least) a religious *discrimination* act to add to the existing suite of anti-discrimination laws. At the time of writing, the Australian Government is drafting a Religious Discrimination Bill (see the postscript, below). Successive drafts released for consultation have provoked significant controversy because of the privilege

they give to religious freedom and freedom of (religious) speech above other rights. Rather than 'balancing' perceived conflicting rights, the right to express religious belief (a much looser, less institutionally tied understanding of religious belief than is expressed in other anti-discrimination laws) is promoted over other rights to the extent that belief seems to be almost sacralised within the secular (this would be a fruitful issue for further research).

The 'Religious Diversity' Discourse

During the period 1984 to 2010, the dominant discourse of religious freedom was 'religious diversity'. Religious freedom was conceived of as the right people had to practice and express their religious traditions and beliefs. The early reports from public inquiries into religious freedom and other inquiries that included consideration of religious freedom, identified experiences of harassment, vilification and discrimination being suffered by people from religious minorities. People's rights were seen to be compromised by the inadequate protection of religious freedom in law and religious prejudice and ignorance in society. Muslims in Australia were particularly at risk in the aftermath of the 9/11 terrorist attacks and during the so-called 'war on terror'. In this accounting, the abuse of religious freedom is understood as a threat to Australia's social cohesion and a risk to the successful policy of multiculturalism.

In this discourse, the threat to religious freedom is identified as that posed by the emergence of an increasingly pluralistic society with a majority population lacking any religious literacy beyond that gained by a nominal identification with, and a vague sense of Christianity and Christian values (see Chapter 2). This ignorance of religion left a large proportion of the population vulnerable to deliberately stoked misunderstanding and fear, especially after the 9/11 terror attacks. The mainstream Christian churches are envisioned as part of the solution to this religious freedom problem, being encouraged to model the building of positive and constructive inter-faith relationships and offer broad-based and inclusive religious education. In this discourse, both social cohesion and vulnerable religious minorities are cast as subjects in need of protection. Improving the protection of people from minority groups in law (capturing and enabling 'free exercise' claims (NeJaime & Siegel, 2015, 2018)) and improving the provision of education about religion

across society are understood as necessary for the ongoing success of multiculturalism in Australia.

Receiving some, but far less, attention in this discourse of religious diversity, were issues of equality rights but especially LGBTIQ rights. This discourse sets the protection of religious freedom as one necessary feature of a diverse and socially cohesive society; it is not necessarily an end in itself. In relation to LGBTIQ rights, therefore, what is at stake is the extent to which religious freedom supports or threatens the advancement of those rights. In a diverse and socially cohesive society, LGBTIQ people should be free to live without religiously framed prejudice, discrimination and fear; and the protection of LGBTIQ people is cast as dependent on where the line is drawn in limiting or accommodating religious freedom when it has the potential to cause harm, for example, in employment matters. Chapter 5, for example, describes the response of the Sydney Diocese of the Anglican Church of Australia to this issue as it was raised in the 1984 report, *Discrimination and Religious Conviction* (New South Wales Anti-Discrimination Board), expressung concern about the lack of attention being paid to the 'balancing of conflicting rights' (1984, p. ii). This anticipates the development of the next phase of religious freedom discourse. It is significant that, as discussed in Chapter 4, during the early years of the parliamentary debates on proposed same-sex marriage legislation from 2004-2010, religious freedom was not raised as a relevant issue by opponents or supporters. Also, the newspaper which was to run a major campaign on religious freedom in relation to marriage equality *after* 2015, *The Australian*, published no editorials on the issue during this time.[1] During this phase, religious freedom, understood as religious diversity, did not bleed into the public discourse on marriage equality, even during the later years of the phase when the public discourse on marriage equality had picked up steam.

Despite being addressed in *Discrimination and Religious Conviction* in 1984, through the rest of this first phase of religious freedom discourse, Indigenous Australians were largely invisible, and were to remain so.

[1] The search for editorials (Chapter 6) in *The Australian* about religious freedom in Australia, uncovered a number of articles and comment and opinion pieces published between 1996 and 2014, most making only passing reference to religious freedom, many in the context of multiculturalism.

The conceptualisations of religion that underpin the religious diversity discourse of religious freedom are religion as culture (specifically religion as values) and religion as ritual and embodied practice (Woodhead, 2011). Religion, understood as both normative (in terms of how values help shape a society) and embodied practice (for example, the gathering of communities to worship, or the wearing of religious symbols or clothes), becomes an expression of commitment to a pluralistic society in which acceptance of and toleration for religious minorities (although not without limit) is regarded as essential for social cohesion. In this discourse, where the voices and the experiences of people in minority religious groups are raised as a matter of public policy, it is religion as it is manifested and embodied that is offered protection. Religious freedom, extended beyond the members of the majority religion to include the members of the minority religions in society, is one answer to how we might live together in our religious and cultural diversity.

The 'Balancing Rights' Discourse

The years 2011-2014 saw the emergence of the second discourse of religious freedom. This was the period during which the AHRC (HREOC as it was then) released its first major report into SOGII rights, the Safe Schools Program was introduced to address the bullying of LGBTIQ students, polling was revealing majority public support for marriage equality, the ALP changed its party platform to support marriage equality, and Freedom for Faith was formed out of the ACL, which had grown in political influence since it was formed in 1995. The ACT passed a marriage equality bill in 2013 which was successfully challenged by the Commonwealth in the High Court the following year. In 2013, after failing with its anti-discrimination law consolidation project, the ALP government amended the SDA to include sexual orientation, gender identity and intersex status as protected attributes.

In 2011, the AHRC released the report from a major inquiry into religious freedom, *Freedom of Religion and Belief in 21st Century Australia* (Bouma, Cahill, Dellal, & Zwartz, 2011). While the 'religious diversity' discourse is evident throughout the report, the analysis presented in Chapter 5 identifies a second major religious freedom discourse captured by the report's authors and arising out of the responses from many Christians and Christian organisations. Centred on what was being experienced as a threat from a

secular agenda that included excessive accommodations for religious and sexual minorities (Bouma et al., 2011), religious freedom was framed within a 'balancing rights' discourse. The threats to appropriately 'balanced' rights were argued by conservative Christian leaders and others to include changes and potential changes to: anti-discrimination law and religious exemptions aimed at improving protections for minority groups, especially LGBTIQ people; and anti-vilification laws – regarded as a serious threat to freedom of speech as it related to both the freedom to proselytise and to express beliefs about other religions. In the balancing of competing rights, the argument was made that the religious freedom rights of the majority religious group (Christians) were being sacrificed for the rights of minorities and in need of expanded protections. While the policy makers were, as could be seen in the public inquiry reports, trying to hold together the new and emerging equality rights with the existing privileges of the churches, it was the sub-discourses of threat and protection constructed by conservative Christian advocates that privileged religious freedom over other rights in the balancing rights discourse, arguing that the expanding rights of minorities must be limited in order to maintain the more significant right to religious freedom.

In the parliamentary debates on marriage equality, the phrase 'religious freedom' was used for the first time in 2012, when the ALP member responsible for tabling the first marriage equality bill offered by the Labor Party provided assurances that ministers of religion would not be forced to solemnise a same-sex marriage (Chapter 4). This dates the association of religious freedom and marriage equality as potentially competing rights.

Also in 2012, as described in Chapter 3, Australian church denominations responding to proposed anti-discrimination law reform argued for a hierarchy of rights with freedom of religion at the top (above equality rights) and drew together freedom of religion and freedom of speech as intertwined rights, each one dependent on the other. This is particularly significant because it is in this context that religious *belief* gains special currency – freedom of speech matters, according to the submissions, because it provides permission and protection for the expression of religious beliefs, regardless of any offence or hurt. Churches and religious lobby groups began to reposition themselves, even from just a year earlier, by claiming minority status in the context of growing secularism and the shrinking religious affiliation of the population. They also began to argue in explicit

terms that protecting religious freedom meant ensuring that religious bodies could lawfully discriminate *against* people on the basis of gender, marital or relationship status, pregnancy or potential pregnancy, religion, sexual orientation and gender identity. There remained, however, opposition to the positive protection of religious freedom in law.

By 2015, as shown in Chapters 3 and 5, religious freedom had been framed as one side of the balancing rights equation against equality rights, in particular the rights of LGBTIQ people. Lending weight and political firepower to religious freedom in this discourse, freedom of speech was cast as its twin, effectively raising the status of 'belief' in religious freedom discourse, and thereby largely replacing the *manifestation* of religion as what mattered. In this context, the sub-discourses of 'threat', 'protection' and 'freedom' related to Christian institutions, organisations and individuals. As demonstrated in Chapter 3, the majority of Christian churches expressed concerns that their religious freedom was threatened by the state's failure to properly balance both religious freedom and freedom of speech against the right of individuals to be free from discrimination. It was the religious freedom of Christian churches, institutions and individuals that was in need of protection. And it was the expression of religious beliefs (even those beliefs that others might find offensive) in speech and in organisational matters such as employment, that needed to be freed.

In the construction of the balancing rights discourse of religious freedom, conceptualising religion as 'identity-claim' (Woodhead, 2011) becomes critical. In this way, a particular conservative Christian identity can be set in opposition to both other religious identities (for example, Muslim) and other identity claims, especially those related to gender identity and sexual orientation. It is here also, that, the concept of religion is understood as 'belief and meaning' (Woodhead, 2011) – it is what one 'believes' that identifies a person as belonging to a particular group. This understanding of religion is, as Woodhead describes it, a result of 'the "confessionalization" of religion in the post-Reformation period' sharpened by 'many forms of evangelical and fundamentalist Protestantism… making assent to a set of propositions a test of orthodoxy' (2011, p. 123). By naturalising both the idea of opposing identities and the weighing up of rights claims around religion, this discourse sets up religious identity as 'the foundation of social order' (Hurd, 2015) and provides the groundwork for the next phase of the politics of religious freedom in Australia.

The 'Freedom of Belief' Discourse

It was in 2015 that religious freedom became a major topic of public debate and it was not by accident that it came hand-in-hand with the push for marriage equality. After having reconstructed the discourse of religious freedom from a 'religious diversity' frame to a 'balancing rights' frame and raising the profile of 'belief' in understanding religion, conservative politicians and religious leaders and lobby groups were ready when, in August, after months of pressure and speculation, conservative LNP Prime Minister Tony Abbott announced that the government would seek to hold a plebiscite (a compulsory vote) on same-sex marriage. *The Australian* began publishing what would be an unusually large number of editorials addressing religious freedom, including three over the course of that one week of Abbott's announcement – the first one anticipating the announcement with the headline 'Balancing rights and freedoms'. Tim Wilson, the Human Rights Commissioner, had, a few months before that, held a 'Religious Freedom Roundtable' which, as discussed in Chapter 3, barely referred to issues of religious discrimination against people from minority religious groups, instead focussing almost entirely on balancing the competing rights of religious freedom and equality rights.

In Chapter 5, I describe the 'balancing rights' problematisation of religious freedom as the dominant one in the public inquiry reports from 2011 through to 2019 – the reports conceive the policy *problem* of religious freedom in terms of balancing the rights of religious freedom and equality rights. But as discussed, that is not all that was happening. The influential Ruddock Review report, for example, included a chapter titled 'Manifestation and Religious Belief' which was entirely about the freedom of religious bodies to manifest their *beliefs* in ways that would discriminate against people on the basis of sexual orientation, gender identity and relationship status, by denying them employment or excluding them from or withholding the provision of various health and social welfare services. The voices of those from minority religious groups were almost completely absent and any consideration of the need to protect people from prejudice or discrimination directed at them because of their religious affiliation was subsumed by this new discourse focussed on the privileges of the religious majority. All five inquiry reports into LGBTIQ rights, three of which were released between 2008 and 2013, problematised religious freedom within this balancing rights discourse. As I argue in that chapter, the effect of this was to entrench in policy discourse the idea of LGBTIQ rights as a threat to

religious freedom because they were contrary to religious *beliefs*—ignoring the presence of alternative progressive theologies and religious traditions—and an offence to the sensibilities of religious believers (a situation which the laws relating to religious exemptions had already determined should be guarded against).

In the parliamentary speeches and *The Australian* editorials, marriage equality was assumed, even by its supporters, to be a threat to religious freedom. Freedom of speech and freedom of conscience were also threatened by marriage equality (it is not just the 'religious' who *believe* that marriage equality is wrong) and were so closely intertwined in the sub-discourses of threat and protection that it was taken for granted that any protections for religious freedom would also serve to protect the freedoms of speech and conscience. The progress of LGBTIQ rights in law and the gradual acceptance and inclusion of LGBTIQ people in society, seen as symbols of the rising tide of aggressive secularism and most potently expressed in marriage equality, were threats to all people and organisations who *believed* that diverse sexualities and genders were expressions of sinfulness. These complicity claims were supported by the presentation of a small number of exemplars that were repeatedly used in the texts as evidence and reminders of the grave threats: religious organisations (especially charities) and schools might be forced to employ, teach or act in ways contrary to their beliefs and ethos; parents could lose their right to educate their children according to their religious beliefs; and anyone else could be forced to act against their conscience or face abuse or discrimination claims because they spoke publicly about their belief in 'traditional' marriage and families or chose to deny people access to goods and services on the basis of their sexual orientation or gender identity.

While the equality claims made by LGBTIQ people were gradually being accepted in society and granted in law, the conservative pushback hinged on the extent to which the privileged status of belief had been accepted by policy makers and reflected in the public discourse. The analyses of parliamentary speeches, public inquiry reports and the editorials of *The Australian* demonstrate that in this third discourse of religious freedom, 'belief' is the primary object of claims for religious freedom protections, religion is conceptualised almost solely in terms of belief (the sub-category of 'belief and meaning' in Woodhead's first concept of religion as culture, and understood as personal claims of truth validated and supported by religious institutions and their leaders, traditions and

sacred texts) and religious people are identified as those who hold a particular set of moral and ethical beliefs. In Australian public discourse, belief has been set free – framed in law and human rights discourse as both uniquely vulnerable and entirely solid, non-negotiable and free from interrogation (Sherwood, 2015).

Contribution to the Study of the Politics of Religious Freedom

Grounded in the definitional and theoretical frameworks outlined in Chapters 1 and 2, this research began with two core assumptions: that 'religion' and 'religious freedom' are constructed categories; and that in public discourse, oppositional binaries such as religious freedom and equality rights are also constructions designed to achieve political aims. By studying religious freedom as a discourse, this thesis makes a unique contribution to the growing body of work examining the politics of religious freedom in Australia and internationally, offering both methodological and conceptual contributions to the field.

As discussed in Chapter 2, despite it having become a significant public policy issue with serious implications for a number of marginalised groups in Australia, there has been little analysis of the discourse of religious freedom. The category 'religious freedom' is reified in the public debate, naturalised as a core democratic value and indispensable for peace in our world, thereby immunising it from interrogation and effectively neutralising it as a political construct. In applying four methods of critical discourse analysis to a variety of examples of public discourse over 35 years of public debate, this research provides, for the first time, an in-depth analysis of the discourse of religious freedom in Australia. The four papers presented in this thesis have explored how four different sets of policy actors have constructed the idea of religious freedom and applied it to achieve certain political outcomes. Taken as a whole, these papers offer a comprehensive understanding of the shifting discourse of religious freedom in Australia, exposing it as a powerful political construction subject to change for political purposes. This thesis demonstrates how religious freedom has gone from a being a discourse used in support of an inclusive social agenda to one opposing it. With the rise of 'belief' as an unassailable category of the human condition, one that ought to be protected at all costs, religious freedom is now wielded by the leaders and spokespeople of conservative Christianity to legitimate in law discrimination against LGBTIQ people. This political and legal permission for prejudice threatens to undermine the gains of the movement for LGBTIQ

rights, even as marriage equality was won. It has also effectively silenced the concerns of minority religious groups who continue to face prejudice and discrimination because of their religious affiliation and their religious practices.

In the application of discourse analysis and the identification of three distinct discourses, this thesis contributes to the international research on religious freedom by exposing the politics of religious freedom in a new way. While this study has necessarily been Australian, it is hoped that the methodological approach might be useful for international scholars working to understand the how the construction of religious freedom develops in different contexts. This methodology is useful for charting how policy actors construct religious freedom in particular contexts over time and, significantly, this research demonstrates that the methodology can shed light on how such constructions gain political and broader public influence. This thesis has unpicked the naturalised discourse of religious freedom that Sullivan, Hurd, Mahmood and Danchin have identified (2015) and is a contribution to the project to better understand what they refer to as the 'complex' life of the concept of religious freedom.

Opportunities for Further Research

The four genres chosen for analysis have provided a rich source of data for analysing the shifting discourse of religious freedom in Australia. With the rise of the politics of religious freedom, there would be significant value in applying critical discourse analysis to other varieties of public discourse or extending the analyses presented here. There is evidence in the analyses, for example, that the Roman Catholic and Anglican churches (the Sydney Diocese in particular) in Australia have played significant roles in constructing how religious freedom is seen and understood. Detailed analysis of their public statements and other documents could provide an important insight into how 'religion as power' (Woodhead's fifth concept of 'religion' (Woodhead, 2011)) is expressed in Australia. The same approach could usefully be taken with documents from organisations identified as the 'religious freedom lobby' (Chapter 2), for example, ACL and the Christian schools lobby groups, and an importantly different perspective could be gained by examining the work of secular and humanist organisations. The thesis has demonstrated that a significant shift took place in the years between about 2009 and 2012. Research focussing in detail on the discourse of religious freedom during this period would add depth to that presented here.

In positing the existence of an identifiable religious freedom lobby in Australia, my research raises questions about its roots, significance and influence. There are, for example, groups and organisations not referenced in this thesis that may be included in a fuller study, for example, the Ambrose Centre for Religious Liberty, the PM Glynn Institute within the Australian Catholic University, and specialist staffed units within the Institute of Public Affairs and the Centre for Independent Studies. My research also raises questions about whether and to what extent these groups and the broader lobby borrow strategies, tactics and language from similar groups in the US. The corpus assisted analysis of the parliamentary speeches on same-sex marriage showed significant common frames in the arguments made against marriage equality by opponents in the UK, Canada, the US and Australia. Examining if the discourse of religious freedom has followed similar trajectories in other jurisdictions may be another fruitful area of research.

Postscript

Over the course of the last three years there were two religious freedom matters which, while falling beyond the plan and scope of this thesis, cast a powerful shadow over my research.

On 13 September 2017, Australian rugby union superstar and 'fundamentalist' Christian, Israel Folau tweeted his opposition to marriage equality. He did this the day after the Australian national team (of which he was a member) officially declared their support.[2] In April 2018, he posted a cartoon-like image on Twitter and Instagram which compared an individual's plan for their life to God's plan for their life. In response to a question about what he thought God's plan was for the life of gay people, Folau replied 'HELL… Unless they repent of their sins and turn to God' (Newman, 4 April 2018). The code's governing body, Rugby Australia, issued a statement clarifying that it did not agree with his views and that they were contrary to the organisation's inclusion policy (Newman, 4 April 2018). While he deleted his comment, the controversy over his opinion persisted. Less than two weeks later, after a meeting with Rugby Australia leadership, he stood by his comments. He defended himself against claims he was homophobic, saying that he

[2] https://www.abc.net.au/news/2017-09-13/israel-folau-backs-no-vote-a-day-after-aru-supports-yes/8942766, accessed 20 May 2020.

refused to compromise his faith or his beliefs and indicated that he was prepared to walk away from his lucrative contract.[3] In a post on the blog *Athletes Voice*, Folau wrote:

> I don't expect everyone to believe what I believe… You are always trying to reconcile the truth from the Bible with things you feel inside. But I have faith that God's path is the right one and that path is outlined in the Bible. I will keep sharing that…
>
> At times, you can feel alone and down. But Jesus told us that when you stand up for Him in this world, you can expect backlash. I find peace in that.
>
> As testing as it can be standing up for what you believe in, the Bible tells us it will be worth it in the end. (Folau, 16 April 2018)

True to his word, one year later on 10 April 2019, Folau again stood up for his beliefs with another controversial social media post, this time posting a warning to 'drunks', 'homosexuals', 'adulterers', 'liars', 'fornicators', 'thieves', 'atheists' and 'idolaters' that hell awaited them unless they repented of their sin and turned to Jesus.[4] Social and traditional media erupted in response. Rugby Australia appointed an independent panel to conduct a hearing and consequently sacked Folau for breaching the organisation's code of conduct. Folau then took Rugby Australia to the federal Fair Work Commission claiming unfair dismissal because of his religious beliefs and after an unsuccessful mediation, in August 2019 launched court action seeking $14 million in damages.[5] The story continued to run hot in the media until the case was settled out of court for an undisclosed amount in December.[6] A joint statement which contained mutual apologies included the following declaration:

> The Social Media Post reflected Mr Folau's genuinely held religious beliefs, and Mr Folau did not intend to harm or offend any person when he uploaded the Social Media Post. Mr Folau wants all Australians to know that he does not condone

[3] https://www.abc.net.au/news/2018-04-17/israel-folau-is-prepared-to-walk-away-from-rugby/9665850 and https://www.abc.net.au/news/2018-04-19/israel-folau-analysis-will-he-walk-away-from-australian-rugby/9676800, accessed 20 May 2020.
[4] https://www.smh.com.au/sport/rugby-union/unacceptable-fresh-posts-put-folau-on-collision-course-with-rugby-australia-20190410-p51czx.html, accessed 20 May 2020.
[5] https://www.abc.net.au/news/2019-08-01/israel-folau-court-action-against-rugby-australia-waratahs/11372714, accessed 20 May 2020.
[6] https://www.theguardian.com/sport/2019/dec/04/israel-folau-and-rugby-australia-settle-unfair-dismissal-claim-over-social-media-post, accessed 20 May 2020. Also keeping media interest piqued and public debate alive was Folau's fundraising efforts. In June, Folau (whose contract was worth $4 million) started a GoFundMe crowdfunding campaign to raise $3 million for his legal costs. After a significant public backlash, GoFundMe closed down the campaign, but not before it had raised over $750,000 in a week. The Australian Christian Lobby (ACL) took over the fundraiser and suspended the campaign once donations reached $2 million (https://www.theguardian.com/sport/2019/jun/27/israel-folau-donations-soar-past-2m-as-australian-christian-lobby-cashes-in, accessed 21 May 2020).

> discrimination of any kind against any person on the grounds of their sexuality and that he shares Rugby Australia's commitment to inclusiveness and diversity.[7]

Making his claim to the Fair Work Commission, Folau had argued that 'no Australian of any faith should be fired for practising their religion'.[8]

The public debate about the Folau case ranged across a number of issues including workplace contract law and the enforceability of codes of conduct but much of it was focussed on issues relating to religious freedom, especially the intersections between religious freedom and employment and religious freedom and societal values. In this debate, religion was often framed as a set of (personally held) beliefs,[9] religious practice framed as speaking beliefs into the public sphere, and religious freedom often equated with the right to articulate a religious belief regardless of its consequences on others. In an opinion piece published by *The Australian*, Kel Richards, former journalist and conservative Christian author, for example, wrote:

> The attack on Folau provoked an unexpected reaction: many Aussies were unhappy. They flooded open-line radio with calls in support of the right of Folau to hold and express his faith… There was a distinct unease about the possibility of losing at least some degree of freedom of speech, freedom of conscience, freedom of belief and freedom of religion in this wide, brown land…
>
> Some politicians will say, "Well, we have to balance the rights of Christians to speak their faith aloud with the right of homosexuals not to be offended." But from the words of Jesus it is clear that telling Christians they are not permitted to speak their faith aloud is telling them they are not permitted to be Christian.
>
> Which brings us to the second question: why should the rights of one group trump all other rights? In this case it appears that the right of homosexuals not to be offended trumps the right of Christians to be as Christian as Jesus intended. It is especially interesting to note that Folau included eight groups in his post none of the others has complained. (Richards, 1 June 2019)

[7] https://australia.rugby/news/2019/12/04/if-joint-statement-dec, accessed 21 May 2020.
[8] https://www.theguardian.com/sport/2019/jun/06/israel-folau-launches-legal-action-against-rugby-australia, accessed 21 May 2020.
[9] Folau was often referred to as a 'fundamentalist' Christian, but the orthodoxy of his beliefs and those espoused by his church (an independent church founded by his father) was another issue of debate, see for example, https://www.eternitynews.com.au/opinion/israel-folaus-problem-with-the-trinity/, accessed 21 May 2020.

In a statement after the settlement, the Managing Director of the ACL, Martyn Iles said,

> We look forward to the federal government producing reforms that prevent taxing and drawn-out legal processes like this in future… People of all faiths need clear protections to speak openly about their beliefs. It is wrong for them to be silenced by the fear of litigation or lawsuits by activists. (Australian Christian Lobby, 4 December 2019)

Iles refers here to the draft religious discrimination bill being prepared by the Government. In 2019, after the Ruddock Report was finally released by the Morrison Government and ahead of a general election, Morrison announced that should the LNP win government, it would proceed to legislate a Religious Discrimination Act. The first package of the Religious Freedom Bills was released for public consultation in August 2019.[10] The Attorney-General's Department received about 6000 submissions at the end of the consultation period. A second set of exposure drafts was released on 10 December 2019, this time receiving over 6000 submissions.[11] The bill has proved extremely controversial and, at the time of writing, its progress has stalled, a likely result of the crisis caused by the novel coronavirus, COVID-19. The controversies largely rest on the expansion of the religious exemptions that currently exist in anti-discrimination law, especially the freedom to make a statement of religious belief (more broadly and loosely defined than in existing law[12]) regardless of any limitations that exist in any other law, including the law of the states (Beck, 2020; Hilkemeijer, 2020). Another clause in the draft bill makes it unlawful for large employers (defined as those with an annual revenue of more than $50 million) to apply a code of conduct that restricts or prevents employees from making a statement of religious beliefs (outside work). This clause has caused significant controversy and has been dubbed 'the Folau clause'.

[10] See https://www.ag.gov.au/Consultations/Pages/religious-freedom-bills.aspx, accessed 21 May 2020.
[11] See https://www.ag.gov.au/Consultations/Pages/religious-freedom-bills-second-exposure-drafts.aspx, accessed 21 May 2020.
[12] Section 5 of the draft bill defines 'a statement as a statement of belief if: (a) the statement: (i) is of a religious belief held by a person (the first person); and (ii) is made, in good faith, by written or spoken words by the first person; and (iii) is of a belief that a person of the same religion as the first person could reasonably consider to be in accordance with the doctrines, tenets, beliefs or teachings of that religion'. The SDA, by comparison, describes religious exemptions as lawful under some circumstances if the discrimination is carried out 'in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed' and is done 'in good faith in order to avoid injury to the religious susceptibilities of adherents of the religion or creed' (s 38). See Chapter 2 for a discussion on current protections for religious freedom.

The public debates on both the Folau case and the draft Religious Freedom Bill centre on the extent of freedom people have to express religious beliefs that may otherwise be unlawful, and which may harm or offend others. Both cases lend weight to my argument that the dominant discourse of religious freedom in Australia is now 'freedom of belief', and what was hinted at in my analysis, that this discourse is developing in such a way as to free belief from its institutional setting. It may, strangely, be a democratising of religious belief (freeing it from its institutional boundaries), but it also privileges the right to express a religious belief above all the other rights currently protected in law. In the public debate, channelling attention to belief, this discourse offers nothing to people living with the harms caused by religious prejudice – to the woman on a train spat on because she is wearing a hijab or First Nations people fighting for ownership of their sacred sites. The turn to belief, then, not only obscures other conceptualisations of religion and alternative discursive constructions of religious freedom, it appears to be erasing them, thereby making invisible religious freedom claims from anything other than a doxastically-focussed tradition. It is interesting to note that opponents of the draft bill appear to be using the 'balancing rights' discourse to make their case, with religious freedom and belief having both become immune to challenge on their own terms. Whether the 'balancing rights' discourse maintains any political and policy muscle against the 'freedom of belief' discourse remains to be seen.

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