Statements of Belief as Political Communication

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There is increased interest in legislation that shields some forms of expression not only from the legislature but also from sanctions by powerful private institutions such as social media companies, professional associations, and employers. The Religious Discrimination Bill 2022 (Cth), if passed, would have prohibited 'qualifying bodies' from implementing conduct rules that restrict 'statements of belief' in their effects. Other provisions of the Bill implicitly provided some protection for 'religious speech' within the broader ambit of 'religious belief or activity'. Using the Religious Discrimination Bill as an example, this paper examines laws that restrict private censure of speech with respect to the implied freedom of political communication. It is argued that laws that limit private censorship of political speech may place a burden upon political communication if they are not constructed in a manner that is 'viewpoint neutral'. Such laws can thus only be valid if the criteria of 'compatibility' and 'proportionality' are met (as established in Lange *and its progeny). The power imbalance between individuals and large private institutions may warrant limits on private censorship. However, such limits are best framed so as not to discriminate between viewpoints. Laws that protect the expression of particular ideas, such as those based in religious doctrine, must demonstrate a legitimate reason for differential treatment compared to other foundational beliefs.*

INTRODUCTION

The Religious Discrimination Bill 2022 (Cth) ('Bill') was the focus of a rigorous debate for three years before being shelved by the incoming Labor Government in 2022. The Bill was presented as a measure to address a lacuna in federal discrimination law.[1] In introducing the Bill, the former Prime Minister Scott Morrison encouraged comparisons with the *Sex Discrimination Act 1984* (Cth), the *Racial Discrimination Act 1975* (Cth), the *Disability Discrimination Act 1992* (Cth), and the *Age Discrimination Act 2004* (Cth). The message of these comparisons was clear: the legislation should be understood simply as providing those who hold religious beliefs with the same protections that are afforded in relation to other attributes. If it were so straightforward, the Bill might have had a smoother political path. However, the Bill, taken together with legislation introduced alongside it,[2] proposed measures not found in other discrimination legislation.[3] The Bill's supporters considered these adaptations necessary to provide comprehensive protection for belief. Its detractors claimed

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[1] Commonwealth, *Hansard*, House of Representatives, 25 November 2021, 10811 (Scott Morrison, Prime Minister).

[2] Religious Discrimination (Consequential Amendments) Bill 2022.

[3] See, eg, Renae Barker, Submission to Attorney Generals Department, Parliament of Australia, *Religious Discrimination Bills: Second Exposure Drafts Consultation* (29 January 2020). '[T]he Bill has attempted to respond to potential conflicts and hypothetical cases via specific clauses with no equivalent in other Federal Discrimination laws': at 3.

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the Bill would create special privileges for religious individuals and bodies[4] or even forge a 'right to be a bigot'.[5]

This paper addresses one of these controversial measures — the protection for 'statements of belief'. While the Bill itself is unlikely to be revived in the same form, this provision was an early example of a 'private censorship' law, and so represents an opportunity to consider the implications of the implied freedom of political communication to this growing area of legislative interest.[6]

STATEMENTS OF BELIEF

Statements of belief had a particular legal function in the Religious Discrimination Bill 2022. The Bill was crafted to provide people with a qualified right to make statements that accord with the beliefs they consider to accord with their religion or that relate to the fact that they do not hold a religious belief.

Clause 5 of the Bill defined 'statement of belief' as follows:

> (a) the statement:
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> (i) is of a religious belief held by a person; and
> (ii) is made, in good faith, by written or spoken words or other communication (other than physical contact), by the person; and
> (iii) is of a belief that the person genuinely considers to be in accordance with the doctrines, tenets, beliefs or teachings of that religion; or
>
> (b) the statement:
>
> (i) is of a belief held by a person who does not hold a religious belief; and
> (ii) is made, in good faith, by written or spoken words or other communication (other than physical contact), by the person; and
> (iii) is of a belief that the person genuinely considers to relate to the fact of not holding a religious belief.

Under the Bill, those who make statements of belief would have been granted two substantial protections.[7] First, such statements would be exempted from State and Federal discrimination law including, inter alia, the *Racial Discrimination Act 1975* (Cth) and the *Sex Discrimination Act 1984* (Cth). Secondly, 'qualifying bodies', such as professional and trade associations,

[4] Bruce Baer Arnold, Wendy Bonython and Richard Matthews, Submission to Attorney Generals Department, Parliament of Australia, *Religious Discrimination Bills: Second Exposure Drafts Consultation* (3 March 2020).
[5] Luke Beck, Submission to Attorney Generals Department, Parliament of Australia, *Religious Discrimination Bills: Second Exposure Drafts Consultation* (3 March 2020) 7-9. The terminology was in reference to Senator Brandis' arguments for the repeal of s 18C of the *Racial Discrimination Act*: Commonwealth, *Hansard,* Senate, (24 March 2014) 1797 [14:12] - [14:16] (George Brandis, Attorney-General).
[6] Other examples of this form of 'private censorship' legislation proposed in common law jurisdictions include: Social Media (Protecting Australians from Censorship) Bill 2022 (Cth)*;*Texas House Bill No 20 2021 (Texas); Transparency in Technology Act, SB 7072 2021 (Florida).
[7] Commonwealth, *Hansard*, House of Representatives, 9 February 2022, 279 (Paul Fletcher) ('Third Reading Bill') The third reading of the Bill provided exceptions where such statements are 'malicious' and do not '…threaten, intimidate, harass of vilify…' or promote a serious offence under cl 35(1)(b): at cls 12(2) (a)–(c) Religious Discrimination Bill 2022 (Cth).

would be prohibited from imposing conduct rules which limit statements of belief outside of a professional practice context. The initial exposure draft of the legislation went further to provide similar limitations on the employee codes of conduct of organisations with a turnover of more than $50 million.[8] However, in response to criticism, these further provisions were cut from the Bill when it was introduced in Parliament. In the third reading draft, statements of belief do not have special protection in an employment context.[9]

Despite these changes, the third reading draft of the Bill would still provide greater protection for religious believers than non-believers. This is partly due to differential textual treatment. Statements of non-believers are tested to the standard of 'a belief that the person genuinely considers to *relate to* the fact of not holding a religious belief' which is narrower than the standard for believers, 'a belief that the person genuinely considers to be *in accordance* with the doctrines, tenets, beliefs or teachings of that religion'.[10] However, even if the language were harmonised, the provision would not achieve equity because people arrange their identity and morality around what they believe, not around the concepts they reject. For example, pro-choice beliefs are more usually based upon feminism or liberalism than on a considered rejection of Catholic doctrine per se.

The author submits that there is a potential argument that this difference in the treatment of religious and secular positions may have created a distortion in Australian political communication that invites scrutiny under the implied freedom of political communication.

ARE STATEMENTS OF BELIEF POLITICAL COMMUNICATION?

Statements of belief, as defined by the Bill, could cover a very broad range of subject matter ranging from the minutiae of spiritual practice and ritual to broad sweeping statements on what should be prohibited in society. In principle, the Bill was designed to cover both political and apolitical statements. However, adverse action against a person is far more likely to be in response to controversy. Internal disagreement about the idiosyncrasies of worship within a particular faith will rarely attract widespread public attention. In our contemporary secular society, major controversy about religious matters is usually provoked where religious beliefs intersect with broader societal issues or with the rights or legitimacy of communities outside of a faith tradition.

There are prominent examples of controversy at the intersection of religion and politics. Consider the matter of Andrew Thorburn, who resigned from an appointment as Essendon Chief Executive Officer following revelations of his managerial involvement with 'City on the Hill', a church known for sermons on political matters from a highly conservative viewpoint.[11] Or, the dismissal of Israel Folau, whose Twitter posts challenged the morality of homosexuality, and were a catalyst for both the Ruddock Report[12] and later the drafting of the

[8] Religious Discrimination Bill (Second Exposure Draft) 2019 cl 8 (3)(b). Clause 32(6)(b) included caveat for cases where failure to limit statements of belief would result in unjustifiable financial hardship to the employer.
[9] Third Reading Bill (n 7). However some statements may presumably be protected under the ordinary criteria for indirect discrimination: at cl 14.
[10] Beck (n 5) 17 (emphasis added).
[11] Anna Patty and Lachlan Abbot, 'Thorburn Church Pastor Regrets "Sloppy Analogy": Legal Options Against Essendon Grow', *Sydney Morning Herald* (online, 2 October 2022).
[12] Expert Panel, *Religious Freedom Review* (Report, 18 May 2018). This is commonly known as the 'Ruddock Report'.

Bill itself. The protection for statements of belief in the Bill has even been described as the 'Folau clause'.[13]

Commentary on issues such as access to abortion, euthanasia, same-sex marriage, and responses to religious extremism often blends religion and politics with no clear separation between the two. As McNamara notes in his commentary on a 2006 religious vilification case 'the contemporary political climate ties religion and politics together inescapably …'[14]
Even where religious statements do not expressly refer to politics, positions on morality have a political dimension because persons of faith rely on them in forming an opinion of legislation or executive action. Thus, at least a portion (and arguably a preponderance) of controversial statements of belief comprise political communication.

THE NATURE OF THE IMPLIED FREEDOM

To the extent that statements of belief are a form of political communication, their regulation must be consistent with the implied freedom of political communication, a 'qualified limitation on legislative power to ensure that the people of the Commonwealth may exercise a "free and informed choice as electors".'[15]

In the 1990s, the High Court established a constitutional freedom of political communication as an implication of the Australian Constitution.[16] The Court took notice that the Constitution anticipates a system of representative and responsible government.[17] Such a system, it stands to reason, can only function where there is free and open communication about political matters. Consequently, according to the Court, the Constitution must contain at least some degree of implicit protection for communication about political matters. As articulated by the Court, the implied freedom is also not absolute: the government is entitled to encroach upon political speech by legitimate and proportional legislation. Further, the implied freedom must not be construed as an individual right. Rather, it protects political communication 'as a whole'[18] by limiting legislative and executive power.[19]

The High Court has refined three questions to determine whether a provision is invalid:

1. Does the law effectively burden the freedom in its terms, operation or effect?

[13] See, eg, Michael Koziol, 'Liberal MPs want "Folau's Law" Removed from Religious Discrimination Bill', *Sydney Morning Herald* (online, 25 July 2021); Tom McIlroy, 'What Happens if the Religious Freedom Bill Passes' *Australian Financial Review* (online, 8 February 2022). The label is chiefly in regard to the limitation on employee codes of conduct in the exposure draft.
[14] Lawrence McNamara, '*Catch the Fire Ministries v Islamic Council of Victoria*: Religious Vilification Laws in the Victorian Court of Appeal' (2008) *SSRN* 12.
[15] *McCloy v New South Wales* (2015) 257 CLR 178, 193–4 [2] (French CJ, Kiefel, Bell and Keane JJ), citing *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 560.
[16] *Nationwide News v Wills* (1992) 177 CLR 1.
[17] Relying on ss 7 and 25 as well as the structure of the Constitution itself.
[18] *Comcare v Banerji* (2019) 267 CLR 373, 396 [20] (Kiefel CJ, Bell, Keane and Nettle JJ) citing *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567 (Brennan CJ, Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ). See also George Williams, Sean Brennan and Andrew Lynch, *Blackshield and Williams Australian Constitutional Law and Theory: Commentary and Materials* (Federation Press, 7th ed, 2018) 1344.
[19] *McCloy v NSW* (n 15) 202-3, [29]–[30] (French CJ, Kiefel, Bell and Keane JJ); *Brown v Tasmania* (2017) 261 CLR 328, 360 [90] (Kiefel CJ, Bell and Keane JJ), 407 [258] (Nettle J), 503 [559] (Edelman J).

2. Are the purposes of the law legitimate, in the sense that they are compatible with the maintenance of the constitutionally prescribed system of representative government?
3. Is the law reasonably appropriate and adapted to advance that legitimate object?[20]

A majority of the High Court has further endorsed proportionality analysis as the preferred approach to question three.[21] Proportionality analysis addresses the 'reasonably appropriate and adapted' criterion by reference to three inquiries. It asks whether the impugned provision is:

1. *suitable*— as having a rational connection to the purpose of the provision;
2. *necessary*— in the sense there is no obvious and compelling alternative, reasonably practicable means of achieving the same purpose which has a less restrictive effect on the freedom;
3. *adequate in its balance*— a criterion requiring a value judgement, consistently with the limits of the judicial function, describing the balance between the importance of the purpose served by the restrictive measure and the extent of the restriction it imposes on the freedom.[22]

DOES PROTECTION FOR STATEMENTS OF BELIEF IMPART A BURDEN ON POLITICAL COMMUNICATION?

If 'statements of belief' are political, it may seem counterintuitive to propose that a law that protects their speakers *burdens* political communication. Nevertheless, this conclusion bears consideration for two reasons.

The first and most straightforward reason is that the protection of statements of belief for individuals operates as a restriction upon the rights of qualifying bodies to express their own positions. For many professions, qualifying bodies perform roles outside of facilitating or authorizing professionals. They may be involved in advertising, advocacy on behalf of their members, or commentary on policy or law that is relevant to their role in society. Some forms of accreditation are accepted to indicate that a person possesses expertise, and thus tend to support their arguments. The censure of a member communicates the position of the qualifying body, and without it, a single member could undermine the position of the qualifying body as a whole. Granted, it is a relevant consideration that there are other ways for organizations to communicate beyond censuring non-conforming members.[23] However, this fact is not necessarily ruinous to the argument that statements of belief legislation pose a burden on organisations, as it may be plausibly argued that a political message exercised through action may be more credible and impactful than words alone.[24]

The second reason is that rendering protection selectively for religious statements creates an imbalance in the marketplace for political ideas upon which our democracy depends. As noted above, Australia is distinct in that constitutional free speech is expressed not as an individual

[20] *Clubb v Edwards* [2019] HCA 11, [5] (Kiefel CJ, Bell and Keane JJ) .
[21] *McCloy v New South Wales* (n 15). For a discussion of the growth of proportionality analysis see Anthony Gray, 'Proportionality in Australian Constitutional Law: Next Stop Section 116?' (2022) 1 *Australian Journal of Law & Religion* 116-17.
[22] *McCloy v New South Wales* (n 15) (emphasis in original) (citation omitted).
[23] See, eg, *Clubb v Edwards* (n 20) [251] (Nettle J).
[24] *Brown v Tasmania* (n 19) 367 [117] (Kiefel CJ, Bell and Keane JJ).

right but as a protection on Australian political communication as a whole. Public debate is fundamental to effective political communication. In *Re Alberta Legislation* (1938), two members of the Supreme Court of Canada commented on the nature of the parliament anticipated by the *British North America Act 1867* (Imp):

> [Parliaments] derive their efficacy from the free public discussion of affairs, from criticism and answer and counter-criticism, from attack upon policy and administration and defence and counter-attack, from the freest and fullest analysis and examination from every point of view of political proposals.[25]

A public debate is best approached by advocates on even ground in the hope that the merit of ideas will be decisive. An unjustified advantage to one side or detriment to the other distorts this process. The High Court has usually been tasked with ruling upon the validity of laws which have disadvantaged some people or perspectives in the debate. However, there is no authority for the proposition that laws that distort political communication by conferring a advantage to a favoured class or political position cannot also attract the scrutiny of the implied freedom. What matters is that the integrity of political communication as a whole is maintained, not whether individual 'rights' have been infringed upon.

In *Australian Capital Television*,[26] a majority of the High Court rejected a scheme that advantaged a select minority of speakers (such as incumbent political candidates) and disadvantaged others. Mason CJ and McHugh J each found the discriminatory nature of the scheme highly salient. Chief Justice Mason stated that the 'discriminatory effect'[27] of provisions that favoured incumbent electoral candidates in the provision of free time was 'the principle reason for the invalidity of the regulatory scheme'.[28]

Similarly, Justice McHugh commented:

> [S]ome members of the electorate will be able to get their ideas, policies, arguments and comments before radio and television audiences, [but] it does not follow that those wishing to put the opposite point of view will necessarily be able to do so.[29]

Thus from the outset, it has been acknowledged that laws that discriminate between ideas or viewpoints warrant particular scrutiny when compared with content-neutral limits on modes of communication.[30]

The question of whether provisions impose a 'discriminatory burden' or are 'viewpoint neutral'[31] continues to be a relevant heuristic in the reasoning of the Court. In *Brown v Tasmania,* Gageler J explains:

> Because it is a factor which bears on the degree of risk that political communications unhelpful or inconvenient or uninteresting to a current majority

[25] *Re: Alberta Legislation* (1938) 2 DLR 81, 107 (Duff CJC and Davis J) quoted with approval in *Nationwide News v Wills* (1992) 177 CLR 1 [19]: Deane and Toohey JJ [20] and Mason CJ [19].
[26] *Australian Capital Television v The Commonwealth of Australia* (1992) 177 CLR 106.
[27] Ibid [56-58] (Mason CJ).
[28] Ibid.
[29] Ibid [32] (McHugh J).
[30] Ibid [143] (Mason CJ).
[31] *Clubb v Edwards* (n 20) [123] (Keifel CJ, Bell and Keane JJ).

> might be unduly impeded, the extent to which the legal operation or practical effect of a law might be capable of being seen to be discriminatory — against communications, against political communications, or against political communications expressing particular political viewpoints — bears correspondingly on where within that spectrum the level of scrutiny appropriate to be brought to bear on that law is located.[32]

In *Unions NSW v New South Wales,* a lower spending cap for third-party electoral campaigns imposed by s 29(10) of the *Electoral Funding Act 2018* (NSW) was found to be invalid, with a majority citing the discriminatory nature of the legislation in privileging the communication of electoral candidates.[33] And while the majority in *McCloy* upheld provisions singling out the donations of property developers in the *Electoral Funding, Expenditures and Disclosures Act 1981* (NSW), Nettle J delivered a strong dissent that underlined the gravity of *discriminatory* burdens:

> [A]n impugned law which restricts the ability of some sections of the electorate to engage in a significant aspect of the political process while leaving others free to do so as they choose mandates an inequality of political power which strikes at the heart of the system.[34]

In other matters, viewpoint neutrality has been prominent in submissions. In *Clubb v Edwards*,[35] much of the appellants' argument was framed around the position that a 'law that burdens one side of a political debate, and thereby necessarily prefers the other, tends to distort the flow of political communication.' [36] However the Court found that there was no discrimination against anti-abortion perspectives in the impugned legislation — the limitation on protest within safe access zones applied to those on all sides of the controversy, and thus was 'viewpoint and subject matter neutral'.[37]

The Religious Discrimination Bill would have privileged religious viewpoints over secular viewpoints by selectively protecting statements of belief. Is the importance of 'viewpoint neutrality' great enough to attract the scrutiny of the implied freedom even where no individual's speech is restricted? The idea is likely to encounter some resistance. In *Brown v Tasmania,* Kiefel CJ, Bell and Keane JJ emphasised that 'a law effecting a discriminatory burden is [not] for that reason alone invalid …'[38]

Nevertheless, it bears contemplation. The importance of government neutrality toward the regulation of private speech is mature in American First Amendment jurisprudence, which accepts a strong presumption that public institutions cannot regulate speech on the basis of its content or viewpoint.[39] This is so even where regulation conveys a selective benefit, rather than

[32] *Brown v Tasmania* (n 19) 390 [202] (Gageler J).
[33] *Unions NSW v New South Wales* (2019) 264 CLR 595, 614 [40] (Kiefel CJ, Bell and Keane JJ), 661 [180] (Edelman J), 628 [84] (Gageler J dissenting on this point).
[34] *McCloy* (n 15) 273-7 [271] (Nettle J dissenting).
[35] *Clubb v Edwards* (n 20).
[36] Ibid (Keifel CJ, Bell and Keane JJ) [54].
[37] Ibid [123], [54] (Keifel CJ, Bell and Keane JJ), [296] (Nettle J), [364] (Gordon J).
[38] *Brown v Tasmania* (n 19) 361 [92] (Keifel CJ, Bell and Keane JJ).
[39] See *Police Department of Chicago v Mosley*, 408 US 92, 96 (1972); *Boos v Barry*, 485 US 312 (1988); *Congregation Lubavitch v City of Cincinnati*, 923 F 2d 458 (6th Cir, 1991).

a restriction upon speakers. In *Rosenberger v University of Virginia*,[40] for example, the petitioner sought $5,800 from a University of Virginia subsidy scheme to publish a periodical that presented a Christian perspective on university life. University policy was not to subsidise material which promoted religious views. A 5:4 majority of the Supreme Court held that the policies of the public university comprised viewpoint discrimination in violation of the First Amendment. If a public university promotes speech it must do so in a manner that promotes all forms without discrimination.[41]

A comparable broadening of 'viewpoint neutrality' in Australia would not appear to offend any established principle. Further, it would be consistent with the purpose of the implied freedom as a means to ensure electors can exercise a free and informed choice. If legislation creates a partisan imbalance in our political discourse, does it matter whether it uses a shield or a sword to do so?

Finally, public policy favors embracing viewpoint neutrality. Human beliefs are informed by a broad range of philosophies. Many people, including the devout, place great value on ideologies, spiritualities, and sciences that do not accord with organised religion.[42] Treating statements grounded in faith on an even basis with those grounded in natural science or secular ideology maintains the integrity of public discourse.[43] There is much that can be gained by the sharing of ideas on equal footing, as Pope John Paul II noted: 'science can purify religion from error and superstition; religion can purify science from idolatry and false absolutes.'[44]

LEGITIMACY AND PROPORTIONALITY

It has been argued here that a selective protection for religious statements may constitute a burden upon political communication. It must be acknowledged that this is necessary but not sufficient to demonstrate constitutional invalidity. If a burden is demonstrated, the validity of law will turn on whether its purposes are 'compatible with the maintenance of the constitutionally prescribed system of representative government'[45] and whether it is 'reasonably appropriate and adapted to advance that legitimate object'.[46]

The balancing exercise of proportionality ('structured' or otherwise) includes a value judgement on the part of the decision maker. There is little benefit in attempting to make a definitive prediction of what the members of the Court would decide if protection for 'statements of belief' were tested.

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[40] 515 US 819 (1995) ('*Rosenberger*'). See also *Lamb's Chapel v Center Moriches Union Free School District* 508 US 384 (1993).
[41] *Rosenberger* (n 41).
[42] See, eg, Jeremy Patrick, '"A La Carte" Spirituality and the Future of Freedom of Religion' in Paul T Babie, Neville G. Rochow, and Brett G. Scharffs (eds), *Freedom of Religion or Belief: Creating the Constitutional Space for Fundamental Freedoms* (Elgar, 2020) 58-91.
[43] See also, Katy Barnett, Submission to Attorney Generals Department, Parliament of Australia, *Religious Discrimination Bills: Second Exposure Drafts Consultation* (2020) ('The Israel Folau Situation': at 1).
[44] Pope John Paul II, 'Letter of his Holiness John Paul II to Reverend George V Coyne SJ Director of the Vatican Observatory', *John Paul II* (Letters, 1 June 1988) <https://www.vatican.va/content/john-paul-ii/en.html>. See also Pope Francis, 'Video Message of the Holy Father to Mark International Meeting "Science for Peace"', *Holy See* (Video Message, 2 July 2021) <https://www.vatican.va/content/francesco/en/messages/pont-messages/2021/documents/20210702-videomessaggio-scienza-pace.html>.
[45] *Clubb v Edwards* (n 20) [5] (Kiefel CJ, Bell and Keane JJ).
[46] Ibid.

However, it is reasonable to suggest the Bill may be compared with a hypothetical drafting of the provision which equally protects both secular and religious beliefs to see if the latter comprises an 'obvious and compelling alternative.'[47] This approach would draw upon the ongoing debate on whether differential treatment of religious institutions is warranted in contemporary society.[48] Full detail of this debate cannot be done justice here. However, arguments that would be available to the Commonwealth include the recognised importance of religious belief, as evidenced by its inclusion within the Australian Constitution[49] and international treaties that Australia has ratified[50] along with an argument that citizenship is grounded in both the rational and the transcendental.[51]

CONCLUSION

The protection for statements of belief in the Religious Discrimination Bill aims to strike a balance between the rights of persons to express religious beliefs and the rights of qualifying bodies to sanction their members for misconduct. In a liberal society, there is merit in a law that limits powerful private entities from sanctioning individuals for statements about matters which are fundamental to their identity, morality, and values. Religious beliefs frequently meet this description, but this description is not necessarily particular to religious beliefs. Most people form sincere and deeply held positions not only on religious considerations, but also on the basis of guides such as secular morality, science, and political ideology. Our democratic political discourse is best protected where our tools for understanding the world are placed on equal footing, and the implied freedom of political communication could be applied to maintain such balance. Although the 2022 version of the Religious Discrimination Bill and its protection for statements of belief has effectively lapsed, the controversy over the private organizational regulation of individual speech is just beginning.

[47] *Unions NSW v NSW* (n 33) 616 [44] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).
[48] See, eg, Brian Leiter, *Why Tolerate Religion* (2013, Princeton University Press); Micheal W McConnell, 'Religion and its Relation to Limited Government' (2013) 33 *Harvard Journal of Law and Public Policy* 943; Anthony Ellis, 'What is Special About Religion?' (2006) 25 *Law and Philosophy* 219.
[49] Australian Constitution s 116; Commonwealth of Australia Constitution Act 1900 (Imp) (preamble).
[50] See, eg, *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), Art 18; *International Covenant on Economic, Social and Cultural Rights,* opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) Arts 2 & 13; *International Covenant to Eliminate all forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) Art 5(d)(vii).
[51] See, eg, Alex Deagon 'The Name of God in a Constitution: Meaning, Democracy and Political Solidarity' (2019) 8(3) *Oxford Journal of Law and Religion* 473.