

# DRAWING THE LINE

## Moral Conflict and the Fragility of Liberal Tolerance

Peter Kurti



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Analysis Paper 90

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## Executive Summary

Liberal democracies face an unprecedented challenge: how to govern societies where citizens no longer disagree merely about policies, but about the fundamental values that should guide public life. In a liberal democracy, the challenge is not merely to permit difference but to govern it.

In Australia, as elsewhere, moral conflicts over religious freedom, gender identity, free speech and cultural norms have intensified beyond traditional political categories. As they have done so, the foundational ideal of tolerance has come under pressure. These disputes cannot be resolved through procedural neutrality or appeals to shared values because it is the values themselves that are contested.

Drawing the Line argues that Australia's democratic institutions must learn to manage, rather than resolve, deep moral disagreement. Building on the pluralist tradition of Isaiah Berlin, John Gray and Bernard Williams, this report contends that conflict between legitimate but incompatible values is a permanent feature of free societies. It warns against the illusion that political consensus can be achieved through neutrality, proceduralism or abstract ideals alone.

Liberal democracies must instead draw defensible lines — imperfect, contested, but necessary — that allow diverse groups to live together under common rules.

The task, therefore, is not to eliminate such conflict, but to structure it in ways that preserve both democratic legitimacy and civic peace. Drawing the Line examines how liberal institutions can sustain a shared civic life in the face of deep ethical disagreement without retreating into either moral relativism or coercive conformity.

Drawing the Line is a defence of political pluralism, not as a vague celebration of diversity, but as a disciplined practice of managing conflict. It invites policymakers, institutions and citizens to grapple honestly with the moral complexity of liberal democracy, and to accept that drawing lines is not a failure of tolerance, but its condition. In a world where moral conflict is permanent, both the quality of our institutions and our capacity for principled disagreement will determine whether pluralism remains a source of strength or becomes a cause of democratic breakdown.

## Introduction: A new phase of the liberal crisis

### A nation of moral disagreement

The democratic institutions that underpin Australia have evolved since federation in response to an increasingly diverse and plural society. However, our liberal democracy is now confronting profound and often irreconcilable moral disagreement.

No longer limited to differences of language, ethnicity, or religion, our public life is today marked by increasingly stark and irreconcilable moral worldviews. From debates over religious education and gender identity to conflicts over vaccination and speech rights, Australians are finding themselves not just disagreeing on policies,

but on the basic values that should guide our laws, our schools and our shared life.

An earlier paper, *The Ties that Bind*, argued that this more-marked diversity means national identity can no longer be grounded in cultural or ethnic homogeneity.<sup>1</sup> The sustainability of our national life depends not on achieving consensus, but on managing disagreement within a principled institutional framework. This, in turn, requires a new civic conception of national identity that must be grounded in political institutions capable of managing deep moral diversity.

Value pluralism does not entail embracing cultural or moral relativism. Yet in contemporary Australia we are no longer negotiating difference within a broadly agreed moral framework: we are contesting the framework itself. The rise of illiberal populism, resurgent tribalism and institutional distrust reflects this broader unease. Critics of liberalism argue it is failing to resolve or even recognise the scale and seriousness of the moral conflicts that run through contemporary societies.<sup>2</sup>

In this more challenging context, traditional liberal appeals to neutrality, inclusion or shared values often fail to persuade, and in some cases inflame, the very divisions they aim to resolve. And if that is the case, how should liberal institutions respond when fundamental moral disagreement threatens the very terms of coexistence? How can we sustain a free society when we no longer agree on what freedom is for? Whereas the earlier report asked, “What binds us?” this report asks a different question: “What breaks us?” As ethicist Nigel Biggar has observed, the moral consensus of a society will always be contested. This consensus — and the law that reflects it — will change over time. But, as Biggar rightly observes, “the process of change involves a contest and a division between conflicting claims.”<sup>3</sup>

*Drawing the Line* is an enquiry into the actual limits of moral tolerance in a liberal society and how we can — and should — best respond when those limits are breached. It argues that these conflicts cannot be overcome by appeals to abstract norms or neutral procedures alone. Instead, we must learn to ‘draw the line’ in ways that are publicly legitimate, morally defensible and democratically sustainable. This means Australia must develop institutional mechanisms not to resolve moral conflict, but to manage it fairly and predictably.

*Drawing the Line* does not propose a new moral consensus. It does not seek to resolve deep disagreement. Rather, it sets out a framework for managing moral conflict fairly, predictably, and peacefully so that pluralism — instead of becoming a source of fracture — can remain a source of strength. For the success of our liberal democracy will not be measured by whether it resolves every moral conflict, but by whether it can continue to function and flourish in the presence of such conflict.

## The Australian context

Moral pluralism — that is, the recognition that individuals and communities hold incompatible but sincerely-held views of the good life — is not a problem to be solved. It is a permanent condition of modern liberal societies such as our own.

Australia’s approach to pluralism has long depended on a civic compact: people are free to live according to their values so long as they respect the rule of law and do not impose those values on others. The term ‘civic compact’ refers to the foundational agreement between citizens themselves, and between citizens and government, regarding mutual rights, responsibilities and expectations that sustain a democratic society.

In Australia’s multicultural context, the civic compact is the agreement that citizens are free to maintain private cultural and religious traditions in return for observing civic norms, laws and democratic institutions. Thus, the civic compact is grounded not in shared cultural values but in shared *political commitments*. This practical arrangement enables diverse value systems to coexist within a single political framework, focusing on how citizens relate to one another politically rather than requiring moral consensus.

But this model is under pressure. Courts, tribunals and government agencies are increasingly drawn into moral conflicts that have no easy compromises and which these institutions were not designed to adjudicate. The challenge now is to work out how to live with these disagreements without allowing them to undermine civic peace, institutional legitimacy or democratic trust.

This challenge poses some demanding questions: where should liberal democracies like Australia draw the line? Which forms of *moral expression* must be prohibited outright? Which require negotiation and compromise? And which must be protected as part of a genuinely pluralist society? These questions are not merely philosophical; they go to the heart of public policy, legal reform, civic education — and the future of democratic coexistence.



## The drivers of intensification

Several converging forces have transformed the nature and intensity of moral disagreement in contemporary Australia. The decline of shared cultural institutions, particularly mainstream Christianity, which once provided a common moral vocabulary even for non-believers, has left many Australians without familiar reference points for ethical reasoning. Multiculturalism has compounded this challenge by introducing other — and sometimes

incommensurable — moral frameworks that conflict with one another. These factors help to explain why contemporary moral pluralism differs qualitatively from historical religious or ideological conflicts.

Unlike past disagreements that occurred within shared intellectual frameworks (such as where Catholics and Protestants debated theology but shared Christian metaphysics, or where socialists and liberals argued about economics but did so within the framework of Enlightenment rationalism) today's conflicts often involve fundamentally incommensurable worldviews about moral authority.

At the same time, digital technology has accelerated this fragmentation by creating what sociologist Zeynep Tufekci calls "enclaved publics".<sup>4</sup> This describes audiences that are segmented and addressed privately through personalised digital communication rather than open, shared discourse. In enclaved publics, the people one encounters can, primarily, be those who share one's worldview; at the same time, one may be exposed to the most extreme versions of opposing positions.

Social media algorithms reward moral outrage and punish nuance, making compromise appear like betrayal and disagreement feel like an assault on identity itself. When moral claims can no longer appeal to shared religious or traditional foundations, they must compete in a marketplace of values where each position appears equally arbitrary. In addition, the collapse of institutions that have served as 'gatekeepers' of opinion, (mainstream media, established political parties, religious hierarchies) means moral

claims can no longer appeal to widely-recognised and accepted standards of legitimacy.

This creates a significant challenge. Unlike earlier periods in which conflicts eventually resolved through military victory, institutional reformation, or generational change, contemporary pluralism appears to be a permanent condition requiring new forms of democratic management rather than traditional resolution mechanisms.

The result is not simply disagreement about policies, but disagreement about the very sources of moral authority: whether public decision-making should be guided by reason, tradition, lived experience, or the democratic process. Contemporary conflicts can feel so intractable because they are not merely about competing interests, but about incommensurable ways of understanding what it is that makes claims morally legitimate in the first place.

## The three core questions for a pluralist democracy

### 1. Why do liberal institutions struggle to mediate between conflicting moral claims?

Institutions designed to manage diversity through rights, procedures and neutrality are now being asked to resolve disputes over fundamental moral worldviews which they were never built to arbitrate. Liberal proceduralism fails to mediate conflict because it avoids substantive moral engagement. Institutions that once arbitrated between interests are now being asked to resolve disputes over identity, values and meaning.

### 2. What are the limits of appealing to abstract norms in contexts of deep pluralism?

Appeals to shared values, universal rights, or procedural fairness often falter when the very meaning of those terms

is contested. Liberal societies often rely on appeals to abstract norms, such as rights, autonomy and equality, to resolve moral conflict. But in contexts of deep pluralism, such norms become unstable. They are interpreted differently across moral traditions and can conceal rather than resolve value conflicts.

### 3. How can we think about ethical coexistence without collapsing into relativism or rigid moralism?

A free society cannot enforce a single moral vision, nor can it abdicate all moral judgement. The challenge is to draw principled lines between what must be protected, what can be negotiated, and what cannot be tolerated. The challenge for a pluralist democracy is how to live together across real moral differences without retreating into passive relativism or advancing moral authoritarianism.

## What is 'moral pluralism'? Why liberalism just can't cope

### The nature of moral pluralism

Liberal democracies are founded on the premise that people will disagree but can still live together under common laws, with equal rights and mutual respect. This assumption has underpinned everything from free speech protections to non-discrimination laws and civic education programs. Yet, in recent years, this premise has been tested as the nature of disagreement in liberal societies has shifted from policy preferences to fundamental moral worldviews.

As noted earlier, moral pluralism is the idea that people hold divergent and often incompatible conceptions of the good life, and that these cannot be ranked or resolved by appeal to reason, evidence, or shared values. It does not mean all values are equally valid. Nor does it imply relativism. Rather, it reflects the reality that in a free society, people will continue to hold deeply held, incommensurable beliefs

about how to live, what is right, and what ought to be done.<sup>5</sup>

This idea has been explored most clearly by political theorists such as Isaiah Berlin who argued that many fundamental liberal values, such as liberty, equality, loyalty and justice, may all be legitimate but cannot always be reconciled with one another.<sup>6</sup> Berlin argued that the greatest threat to freedom comes not from disorder but from what he called "rational monism", that is, the belief that all moral questions have a single, correct answer. When political systems claim to embody such truth, they inevitably suppress dissent and difference: "Total liberty for wolves is death to the lambs, total liberty of the powerful, the gifted is not compatible with the rights to decent existence of the weak and less gifted."<sup>7</sup> Liberal pluralism accepts that many values are real, but irreconcilable. Politics is the art of balancing, not resolving, such tensions.



## The failure of liberal neutrality: the philosophical challenge

The problem is that liberalism, as traditionally understood, is now struggling to accommodate this deeper form of pluralism. Hence, across the democratic world, liberalism finds itself in a moment of considerable uncertainty. Classical liberal theory promised neutrality: that the state could govern without taking sides in moral debates, provided it guaranteed rights and procedures. But in practice, liberal institutions are increasingly being asked to take sides – for example, between freedom of religion and freedom from discrimination, between the rights of parents and emerging gender norms, and between freedom of speech and protection from offence.

Critics of liberalism argue that something has gone wrong, but they disagree on what. Is liberalism failing because it has been corrupted, or because it has been true to itself? One critic who holds that liberalism has failed precisely *because* it has been true to itself is US political scientist Patrick Deneen, who argues liberalism has succeeded in becoming what it was always meant to be, and that success is the cause of our civic breakdown.

Deneen, along with other post-liberal critics, sees liberalism as corrosive of tradition, community and moral order. He argues liberalism's claim to neutrality is a myth. Every law, curriculum or rights regime reflects a particular moral vision, even if it pretends otherwise. Deneen maintains that liberalism's commitment to autonomy and neutrality undermines the shared moral framework necessary for meaningful political deliberation.<sup>8</sup> Deneen's is a vital diagnostic voice, but his call for a post-liberal moral order offers no serious framework for coexistence in pluralist democracies.

Another significant critic of liberalism is US political scientist and philosopher Leo Strauss, who was also concerned with liberalism's loss of confidence in its own institutions. However, Strauss's criticism differed in that he argued liberalism had deprived itself of the moral foundations necessary to sustain a just political order because it had abandoned the concept of 'natural right':

When liberals became impatient of the absolute limits to diversity or individuality that are imposed even by the most liberal version of natural right, they had to make a choice between natural right and the uninhibited cultivation of individuality. They chose the latter.<sup>9</sup>

Thus, Strauss believed that liberalism's emphasis on individual autonomy and procedural neutrality risked degenerating into moral relativism or ideological dogmatism. As institutions are drawn into value conflicts that they were never designed to resolve, public trust is likely to decline, and accusations of bias proliferate. For Strauss, the limits of liberalism lie in its reliance on consensus where none, in fact, exists because it lacks a rational foundation.<sup>10</sup>

For Strauss, natural right is not merely a historical tradition but a necessary and objective standard by which laws and institutions can be judged. In his view, the failure to ground liberal principles in nature or reason leaves them vulnerable to manipulation by power or public mood. While Strauss admired the achievements of liberal constitutionalism, he feared that without a shared moral horizon, liberal societies would lack the strength and clarity to defend themselves against tyranny and might even lack the strength to justify their own existence.

## The pluralist alternative: from agreement to coexistence

In adhering to the idea of a natural right as a knowable moral principle, Strauss rejected value pluralism. However, other thinkers who argue liberal neutrality is no longer viable have proposed variations of a constructive pluralist alternative. One position held in common by these key defenders of liberal pluralism is a warning against any return to moral monism. This more practical approach to the impact of pluralism has been adopted by such thinkers as Isaiah Berlin, John Gray and Bernard Williams.

Although their arguments are subtly different, each holds that conflict between values is not a failure of liberalism, but rather its very condition. In particular,

the collapse of consensus is not to be considered a sign of decay, as it is for Strauss, but rather a feature of *freedom* in a pluralist society. They propose not a return to shared metaphysical foundations, but an institutional ethic of restraint, recognition and practical coexistence. This is not relativism. It is a commitment to live with unresolved disagreement without violence or domination.

For each of these thinkers, imposition of universal moral norms ('moral monism') will weaken rather than strengthen a liberal society. Berlin warns that abstract norms when enforced as universal truths risk becoming instruments of coercion. He calls instead for moral modesty and institutional humility: "The notion of the perfect whole, the ultimate solution, in which all good things co-exist, seems to me not merely unattainable — that is a truism — but conceptually incoherent."<sup>11</sup>

In a similar vein, Bernard Williams cautions against the pursuit of universal answers in ethical reasoning. Williams accepts that liberal institutions presume a shared moral framework that appeals to universal principles (such as the moral dignity of every individual person); however, in practice, societies are morally pluralistic. Thus, when faced with irreducible moral disagreement rooted in history, identity or tradition, liberal institutions can struggle. This is because there are no universal answers.

Williams's idea of "moral luck" and context-sensitive judgment underscore the need for practical wisdom in drawing moral boundaries, not abstract theory alone. In a liberal democracy, institutions must foster dialogue and mutual criticism rather than merely applying rules. Williams proposes a notion of "ethical reflection" to allow individuals (and groups) to interrogate and reflect on their own moral practices without dominating other efforts at reflection.<sup>12</sup> Moral judgement depends on understanding one's *own* situation and not applying universal rules.<sup>13</sup>

Considering such criticism, the real challenge facing a liberal society is not the absence of moral or ethical unity, but rather to find the institutional capacity to sustain peaceful coexistence amid deep moral division, and to manage

disagreement without violence or exclusion. As Gray observes, liberal societies are not built on a shared moral vision, but on a *modus vivendi* – a practical agreement to live together despite our moral differences.<sup>14</sup> Gray argues that in a world of permanent moral disagreement, political legitimacy cannot rest on shared moral truth but on negotiated coexistence.

The *modus vivendi* that Gray proposes is not some form of weak compromise, but a realistic basis for peace. On Gray's view, liberal institutions should not aspire to moral finality but to managing conflict without violence or exclusion. In a pluralist society, the mark of a mature institution is not certainty, but restraint. Williams reinforces this by insisting that moral theory cannot deliver final answers, only provisional judgements.

To manage moral pluralism in practice, institutions must shift from seeking *agreement* to enabling *coexistence*. That means recognising when conflicts are irresolvable, distinguishing between what can and cannot be accommodated, and building frameworks that prioritise peaceful negotiation over moral conformity.

### When pluralism is rejected: the anti-pluralist challenge

The pluralist framework developed here assumes that competing moral communities accept, however reluctantly, the principle of living with disagreement under common democratic rules. But liberal democracies must also contend with groups that explicitly *reject* pluralism itself.

These groups might include religious fundamentalists who seek to establish theocratic governance; political movements demanding ideological conformity — whether, for example, about national identity, gender identity or religious identity — or extremist groups promoting ethnic homogeneity as the foundation for legitimate political order.

These 'anti-pluralist' movements present a fundamentally different challenge to that of moral disagreement within pluralist boundaries. The outer limits of liberal tolerance are tested when groups seek to eliminate pluralism rather than participate within it. This creates what Karl Popper

famously described as the 'paradox of tolerance' — unlimited tolerance must lead to the disappearance of tolerance itself, because those who are intolerant will eventually suppress the tolerant:

Unlimited tolerance must lead to the disappearance of tolerance. If we extend unlimited tolerance even to those who are

intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them.<sup>15</sup>

The impact of anti-pluralist groups will be considered further in the course of developing a practical typology of moral conflict in the following section.

## Drawing the line: a practical typology of moral conflict

If a liberal democracy such as Australia's is to survive the pressures of moral pluralism, it must be capable of distinguishing between different types of moral conflict. Not all disagreements are equal in kind or consequence. Some demand firm legal boundaries, others require principled negotiation, and still others need to be actively protected as expressions of a genuinely pluralist society.

This section proposes a series of five principles, or 'zones', as a typology that can serve as a practical tool. It is not exhaustive, nor does it offer a definitive answer to enduring conflicts. Rather, it serves as a heuristic to help policy makers, legislators, educators and community leaders recognise the types of conflicts that arise in pluralist societies and consider the institutional mechanisms whereby those conflicts can be managed.

### 1. Zone One: The Harm Threshold — a hierarchy of actionable harm

The first principle is that a liberal democracy may legitimately limit individual or group freedoms to uphold the safety and dignity of all citizens when speech or conduct causes, or is likely to cause, demonstrable harm to others. This includes incitement to violence, targeted harassment, coercive behaviour and vilification that leads to exclusion or persecution. In such circumstances, the state is justified in acting *even if* doing so limits forms of cultural, religious or ideological expression.

However, 'harm' itself requires careful definition to prevent the concept from

expanding to encompass all negative emotional responses while maintaining protection against genuine persecution. A three-tier hierarchy of harm can help clarify when state intervention is justified:

#### **Tier 1: Physical safety and violence:**

this includes direct threats to physical safety, incitement to violence, credible threats of harm to persons or property and systematic intimidation that creates reasonable fear for personal safety. Threats of harm in Tier 1 include hate crimes, terrorist threats and organized campaigns of physical harassment.

One clear instance of a Tier 1 harm is the legal prohibition on incitement to violence or criminal activity. In New South Wales, for example, the *Crimes Act 1900 (NSW)* makes it an offence to incite another person to commit a crime, including acts of terrorism or racial violence (under Section 11.4 and related provisions). These prohibitions reflect a key liberal principle that when speech or conduct poses a real and imminent threat to others, the state is justified in intervening, even at the expense of expressive freedom.

**Tier 2: Systematic exclusion from civic life:** this includes practices that systematically exclude individuals from civic participation, employment, housing, education, or essential services based on protected characteristics. Threats of harm in Tier 2 are likely to involve patterns of discrimination that effectively deny equal citizenship rather than isolated instances of personal prejudice.

One example of a Tier 2 harm is systematic employment discrimination that effectively excludes individuals from economic participation. A second example is Australia's system of mandatory reporting in child protection, whereby professionals are obliged to report suspected abuse to authorities. For example, the *Children and Young Persons (Care and Protection) Act 1998* (NSW) imposes such a legal duty on teachers, doctors, police and others to report suspected child abuse. Here, the law overrides confidentiality and professional discretion to prevent harm to vulnerable individuals. In both cases, tolerance reaches its moral limit where the rights or safety of others are at serious risk.

**Tier 3: Sustained dehumanisation:** this includes organised campaigns that systematically portray targeted groups as being worthy of persecution or being inherently dangerous to society. This form of harm differs from criticism, disagreement, or even harsh political rhetoric because of its systematic nature and dehumanising content.

An example of a Tier 3 harm is provided by sustained campaigns of vilification such as those addressed in the 2025 case of *Wertheim v Haddad* (to be discussed further in Section D below) where systematic antisemitic propaganda was distinguished from legitimate political criticism of Israeli government policy.<sup>16</sup>

**Non-actionable impacts:** The three-tier hierarchy of harm explicitly excludes emotional discomfort from legitimate political debate, ideological disagreement about contested moral questions, offense at contrary religious or cultural viewpoints, hurt feelings from fair criticism, or psychological distress from encountering different ways of life in a pluralist society.

Pluralism does not extend to practices that cross the thresholds of the three-tier hierarchy by violating the basic rights or safety of others. The state must draw clear lines where there is systematic harm that threatens the basic conditions of democratic citizenship.

At the same time, the three-tier hierarchy can help to prevent 'harm' from becoming a catch-all category that justifies restricting any speech that causes negative reactions whilst at the same time maintaining robust protections against genuine persecution. The key distinction lies between systemic patterns that threaten the conditions of democratic citizenship and the inevitable conflicts and discomforts of living in a diverse society.

Anti-pluralist groups may seek to eliminate pluralism rather than participate in it. They could do this by directly advocating for violence against democratic institutions, for systematic oppression of minority groups, or the elimination of constitutional protections. Each of these would clearly cross a line. Liberal democracies must not tolerate movements that explicitly seek to harm others or destroy the conditions of democratic life.

## 2. Zone Two: The Institutional Integrity Zone — preserving the ethos of distinct communities

The second principle recognises that pluralism entails not only the freedom of individuals to live according to their values, but also the freedom of communities and institutions to preserve and express their distinctive, collective ethos. In a liberal democracy, this often includes religious, cultural, or educational bodies, such as schools, that require a degree of autonomy to maintain their distinctive identity and mission. The state may therefore permit certain exemptions from general laws to protect institutional integrity, even if this results in differential treatment or public controversy.

One prominent example is the contested right of religious schools to make staffing decisions in accordance with their doctrines. In 2021, Covenant Christian School in Sydney dismissed teacher Steph Lentz after she came out as gay, citing the school's belief that staff must uphold its Christian ethos. However, her dismissal was lawful under existing religious exemptions in anti-discrimination law and was not challenged in court.<sup>17</sup> Even so, the case generated public hostility and reignited national debate over whether

existing religious exemptions under anti-discrimination law strike an appropriate balance between institutional freedom and individual rights. Religious bodies, including the Australian Christian Lobby, the Anglican Diocese of Sydney and the Australian Catholic Bishops Conference, defended such autonomy as essential to maintaining their moral and theological identity.<sup>18</sup>

A second example concerns employment practices within faith-based welfare, aged care and health service providers. Federal protections, such as those in the *Fair Work Act 2009* (Cth), enable religious organisations to make employment decisions in line with doctrine provided this is done in good faith and linked to job requirements or organisational mission. In addition to federal protections, certain state laws also provide for religious exemptions. In New South Wales, section 56 of the Anti-Discrimination Act 1977 (NSW) permits religious bodies to make employment decisions in accordance with their doctrines. In Victoria, recent reforms have narrowed similar exemptions, but faith-based organisations may still impose belief-based requirements where they are reasonably necessary to uphold religious integrity.<sup>19</sup>

Under these frameworks, faith-based organisations may prioritise co-religionists for key leadership roles or require staff to adhere to codes of conduct aligned with religious values. These practices are sometimes challenged under anti-discrimination law but have generally been upheld where they are directly tied to the organisation's mission. In both educational and welfare contexts, the law attempts to manage the tension between pluralism and equality through carefully defined exemptions and procedural safeguards.

Pluralism does not require all institutions to conform to a uniform public morality. A liberal society must allow space for distinctive communities to organise around shared convictions albeit within limits that prevent abuse or exclusion from the public sphere. However, those who do hold anti-pluralist views cannot use their claim to institutional autonomy to prepare for political overthrow or to undermine democratic participation by members of their communities.

The challenge always is to draw the line in a way that respects institutional autonomy while upholding basic democratic standards. Tolerance in the 'institutional integrity zone' means accepting difference even when it diverges sharply from prevailing norms.

### **3. Zone Three: The Civic Compact Zone — regulating the public sphere**

The third principle recognises that a pluralist society requires not only legal tolerance of difference, but also a shared civic framework that governs how people interact in public life. In a liberal democracy, individuals may disagree deeply on moral, religious, or cultural questions, but there still need to be common norms that ensure peaceful coexistence, respect for institutions and freedom from intimidation or coercion. These norms define the boundaries of legitimate public conduct and sustain the integrity of democratic discourse.

One example is the regulation of public protest and political assembly. In March 2023, controversy erupted outside Victoria's State Parliament at a women's rights rally featuring British activist Kellie-Jay Keen-Minshull. The rally was disrupted by counter-protesters, including members of the National Socialist Network, who performed Nazi salutes and displayed extremist banners on the parliamentary steps. Political and community leaders condemned these protests prompting the Victorian government to consider banning Nazi symbols and gestures in public spaces.<sup>20</sup> The episode illustrated the need for procedures, such as permits, police oversight and codes of conduct that enable appropriate management of competing claims to free speech and public order.

A second example concerns codes of conduct in democratic institutions, including parliaments and local councils. In recent years, several councils across Australia, such as Barossa Council in South Australia, have adopted or revised their codes to address harassment, verbal abuse and discriminatory language, particularly towards women and minority councillors.<sup>21</sup> At the federal level, the introduction of



an Independent Parliamentary Standards Commission (IPSC) in 2023 was a response to growing concerns about misconduct and incivility in public life.<sup>22</sup> These measures reflect a broader societal expectation that while elected representatives may hold strongly opposing views, they must still uphold the norms of respectful deliberation.

Pluralism does not mean the absence of constraints of public behaviour. A liberal democracy depends on a civic compact — the implicit shared understanding by which members of a liberal democracy affirm their shared commitment to institutions and norms that enable diverse individuals and communities to live together peacefully. Even so, anti-pluralist groups may nonetheless participate in democratic politics, advocate for their vision of society and seek electoral success; but they cannot use democratic processes to eliminate democracy itself.

In the ‘civic compact zone’, drawing the line means protecting the conditions of public reason: the expectation that citizens and institutions will argue, protest and campaign without resorting to violence, intimidation or abuse. The civic compact includes an implicit commitment to accept electoral defeat and to respect constitutional limits on majority power. The challenge is to maintain a public culture in which disagreement can be fierce, but never destructive.

#### **4. Zone Four: The Private Sphere — wide latitude for divergent belief and conduct**

The fourth principle affirms that a liberal democracy grants wide latitude for individuals and families to live in accordance with their moral, religious, or cultural convictions in the private sphere. While public institutions are subject to shared civic norms and anti-discrimination rules, the private sphere — home life, voluntary association and religious observance — is protected by strong presumptions against state interference. In this zone pluralism is expressed most freely, even when the beliefs or practices in question diverge sharply from dominant norms.

One clear example is the legal protection of private religious observance and

family-based worship. Individuals are constitutionally and statutorily free to practise their religion at home or in private gatherings, including prayers, dietary rules, dress codes, or Sabbath observance. These protections are underpinned by Section 116 of the Australian Constitution (which prevents the federal parliament from enacting laws that would establish or restrict religious practices) and are reinforced by anti-discrimination statutes that generally do not apply to private conduct within domestic settings.<sup>23</sup>

Another example concerns home schooling; something a growing number of Australian families choose for religious or philosophical reasons. In all states and territories families may apply to home school their children in accordance with their personal principles and convictions, provided they meet minimum curriculum and registration requirements. For example, the *Education Act 1990* (NSW) permits home schooling where parents demonstrate they can provide a satisfactory standard of education.<sup>24</sup> In practice, this allows for wide variation in pedagogy and religious instruction. While oversight exists to prevent neglect or educational failure, authorities generally avoid intrusive regulation of personal belief. Critics occasionally raise concerns about ideological insularity or gendered teachings in some home-schooling environments, but the legal framework clearly remains firmly tilted toward parental autonomy.

Pluralism does not require state neutrality on all values, but it does require state restraint in the private lives of citizens. Citizens remain free to hold anti-pluralist beliefs, to raise their children according to such beliefs and to form voluntary associations based on the rejection of moral diversity. But private conviction, however strong, must not translate into public authority.

In this ‘private sphere’ zone, the presumption is in favour of freedom of conscience, of association and of religion unless serious harm is likely to occur. The challenge is to maintain vigilance without intrusion, that is, to guard against abuse or coercion within private settings while upholding the liberal promise of personal and communal self-determination.



## 5. Zone Five: The Contestable Frontier — emerging conflicts and unsettled cases

The fifth principle acknowledges that not all moral conflicts in a pluralist society are capable of resolution. There are contestable areas where social norms, legal principles and institutional expectations are in flux. In these cases, a liberal democratic society faces the difficult task of drawing provisional lines amid uncertainty to balance competing rights, evolving values and shifting public sentiment. Here, the challenge is not simply tolerating difference but discerning what the bounds of legitimate disagreement should be.

A significant example involves employment clauses in faith-based aged care, health and disability service providers receiving public funding. Under the federal Religious Discrimination Bill 2021 (now shelved), faith-based organisations, including hospitals, aged care facilities, disability services and religious accommodation providers, were explicitly permitted to prioritise employment of people sharing their religious beliefs, provided the conduct complied with a publicly available policy and was done in good faith.<sup>25</sup>

Commentators pointed out that these provisions would allow Christian, Catholic, Jewish or Muslim aged-care providers to require staff to uphold religious principles and values, even when serving the broader public rather than just members of the same faith. They raised concerns that such hiring practices could adversely affect LGBTQI+ workers, for example, and might disadvantage employees whose religious views diverged from institutional doctrine and teaching.<sup>26</sup> As the Bill was never enacted, these moral-belief clauses must be considered 'legally aspirational', but they demonstrate how contested boundaries can emerge when institutional autonomy extends to service delivery that is publicly funded.

In this 'contestable frontier' zone, pluralism alone cannot resolve the conflict. What is needed is institutional caution, procedural fairness and public deliberation. Legislators and community leaders must recognise that social and moral meaning is not fixed, and that premature or heavy-handed regulation can inflame rather than resolve division.

The boundaries between legitimate political advocacy and illegitimate threats to democratic order may often be unclear. Anti-pluralist groups that explicitly reject pluralism but operate within legal boundaries do not demand immediate suppression; but they do require careful monitoring. Such groups can be accommodated so long as they do not cross from advocacy to action, from private belief to public coercion, or from political participation to institutional sabotage.

Drawing the line at the contestable frontier requires care, caution and a willingness to revise judgments. While no resolution will satisfy all moral intuitions, a presumption in favour of tolerance must always yield to the preservation of the very constitutional order that makes tolerance possible. Drawing the line requires vigilance without paranoia and firmness without authoritarianism.

These five zones, ranging from clearly prohibited harm to morally-fuzzy frontiers, illustrate the range of institutional judgments that any liberal democracy must make in managing value pluralism. Value pluralism does not dissolve disagreement, but structures how we live with it. Each of the five zones demonstrates the fragility of tolerance, the difficulty of pluralism and, above all, the ethical seriousness of democratic life.

Under conditions of moral pluralism, line-drawing will always be a contestable act. But it need not be arbitrary. By recognising the different contexts in which conflicts occur — and the different tools available for managing them — a liberal society can avoid both authoritarian overreach and naive relativism.

As Berlin observed, there is no world in which all good things are simultaneously possible. A paraphrase of his central argument in *Two Concepts of Liberty* (1958) and *The Pursuit of the Ideal* (1988), where he emphasises the tragic, inescapable conflicts between plural and incompatible human values.<sup>27</sup> The task of drawing the line is, therefore, not only a legal or political responsibility; it is the ethical work of a pluralist democracy that aims to endure.

# When tolerance frays: five case studies in the Australian context

Moral pluralism is not a theoretical construct. It is playing out across Australia in courtrooms, classrooms, parliaments, and in public discourse. In these arenas, the key liberal principle of tolerance is being stretched to its limits. The challenge is no longer how to tolerate diversity of background; rather, it is how to handle direct clashes between moral worldviews.

The following case studies illustrate how Australia's institutions currently struggle without clear principles for distinguishing between different types of moral disagreement. Each demonstrates the dilemma at the heart of liberal tolerance: when every political claim is framed in moral terms, how are liberal institutions to determine which to accommodate, which to negotiate and which to resist? They also show how public trust in fairness is threatened when institutional commitment to neutrality breaks down.

Each case will be analysed through the lens of the five-zone typology to show how a more systematic approach could produce better outcomes than our current ad hoc responses.

## Case Study 1: Religious schools and employment rights

The right of faith-based schools to employ staff who uphold their religious ethos became a flashpoint during debates over the Morrison government's Religious Discrimination Bill (2019-22). Clause 11 would have allowed religious schools to preference staff whose beliefs and conduct conformed to their faith's tenets.<sup>28</sup> Religious freedom advocates argued this was essential to maintaining educational integrity, while LGBTQ+ advocacy groups argued the Bill risked enshrining discrimination based on sexuality and gender identity.

The tension culminated in February 2022 when five moderate Liberal MPs crossed the floor to support LGBTQ+ student protections. Facing internal division and community resistance, Morrison withdrew the Bill. The Albanese government has

yet to introduce replacement legislation, leaving religious institutions in legal uncertainty while community divisions persist.

This exemplifies a broader institutional problem: when organizations serve diverse publics while retaining distinct moral identities, conflicts become inevitable. Lawmakers can no longer act as neutral umpires but must draw substantive boundaries around which values merit legal protection, a task that inevitably privileges some moral worldviews over others.

## Framework analysis: Institutional Integrity vs. Civic Compact

This conflict sits primarily in Zone 2 (Institutional Integrity) with Zone 3 (Civic Compact) implications. Religious institutions should retain autonomy over employment decisions that are identity-defining, but with clear procedural safeguards.

A systematic approach would distinguish between core religious roles (chaplains, religious education teachers) deserving full autonomy, general teaching positions requiring public justification for exemptions and administrative roles with minimal exemptions. This graduated approach would provide certainty while acknowledging that some conflicts require ongoing negotiation rather than final resolution.

## Case Study 2: Religious exemptions and public norms

Legal exemptions permitting religious institutions to act according to their beliefs, even when this contravenes anti-discrimination law, have become focal points for broader cultural disputes about fairness, equality and public authority limits in pluralistic societies.

Australia's anti-discrimination laws provide religious exemptions under state and federal legislation. The *Sex Discrimination Act 1984* (Cth) allows religious educational institutions to discriminate "in good faith to avoid injury to religious susceptibilities

of adherents.”<sup>29</sup> Similar provisions exist in state laws, enabling religious schools to preference staff upholding their faith’s tenets.

However, these exemptions face intense scrutiny. Religious stakeholders argue exemptions protect their ability to sustain moral and theological identity because staff who reject institutional ethos actively undermine organizational mission.<sup>30</sup> Critics view such exemptions as state-sanctioned prejudice violating equal treatment principles.

This creates regulatory patchwork. Victoria significantly narrowed exemptions, requiring religious organizations to demonstrate conformity with doctrine is an inherent job requirement and discrimination is reasonable and proportionate.<sup>31</sup> NSW maintains broader exemptions, though reviews continue. The federal *Religious Discrimination Bill* remains unpassed, with progress blocked by disputes between faith groups and LGBTQ+ advocates over inadequate protections versus insufficient religious autonomy.<sup>32</sup>

Tensions emerge in “grey zones”<sup>33</sup> where religious practices challenge social norms without clearly violating law: halal/kosher slaughter,<sup>34</sup> vaccine refusal on religious grounds<sup>35</sup> and school chaplaincy programs. Each practice may be legal, but tests public tolerance boundaries.<sup>36</sup> This centres on moral legitimacy rather than power or resources. Religious institutions see doctrinal discrimination as integral to identity and witness; critics view exemptions as violating equal treatment in public life.

Like the religious schools controversy (Case Study 1), this Case Study reveals a pattern: institutions struggle when they lack clear principles for balancing competing moral claims rather than making ad hoc decisions that appear politically motivated.

The core issue is whether liberal democracies can accommodate institutional moral disagreement, particularly when institutions serve public functions like education, healthcare, or welfare. This isn’t simply legal, but cultural and philosophical, involving courts — as public reason, whose norms are authoritative, and what

pluralism requires are all disputed.

If pluralism is to mean more than passive coexistence, it must accommodate forms of life that dissent from prevailing social values, not because they are above the law, but because they embody alternative moral visions of the good life. Whether this dissent can be reconciled with equal dignity and non-discrimination commitments remains a central liberal democratic challenge.

### **Framework analysis: Navigating the ‘Grey Zone’**

Religious exemptions occupy multiple zones simultaneously. Private religious practice in the Private Sphere (Zone 4) deserves broad protection, while publicly funded service delivery which falls within the Civic Compact Zone (Zone 3) requires greater justification for differential treatment.

The framework clarifies that exemptions are not automatically illegitimate but must be proportionate to the institutional mission; publicly justified rather than assumed; and subject to review as social norms evolve. For example, the amendments to Victoria’s *Equality Opportunity Act 2010* require that discrimination is reasonable and proportionate rather than allowing blanket permissions or prohibitions.

However, Australia’s state-by-state approach to this issue can create regulatory confusion because there are no overarching and consistent principles to determine when religious autonomy must yield to what can be described as ‘public equality norms’. Rather than treating this issue as an irresolvable culture war, the typology helps identify which aspects of religious exemptions deserve protection, which require negotiation, and which cannot be sustained in a pluralist democracy.

### **Case Study 3: Hate speech, offence and freedom of expression**

Democratic pluralism’s central tension involves protecting communities from hate speech while upholding freedom of expression. In Australia, this is frequently negotiated through Section 18C of the *Racial Discrimination Act 1975* (Cth), which prohibits speech likely to ‘offend, insult,

humiliate or intimidate' based on race or ethnicity. However, the framework analysis reveals a structural problem with Section 18C.

### **The Section 18C problem: a threshold set too low?**

Critics argue Section 18C's wording is overly broad, risking suppression of legitimate political expression. By prohibiting speech that is likely to "offend, insult, humiliate or intimidate," the provision effectively captures speech that really belongs in Zone 5 (Contestable Frontier) rather than Zone 1 (Harm Threshold). Political commentary about group identity, such as Andrew Bolt's articles questioning fair-skinned Aboriginal identity, may create offence and disagreement, but doesn't necessarily constitute the systematic dehumanization that justifies legal restriction.

Clearly, inclusion of 'offend' and 'insult' in the statutory threshold means that Section 18C could capture legitimate political debate that should be protected in a pluralist democracy. The Bolt case illustrates this problem: while his articles were factually problematic and caused genuine offence to some, they represented contested political commentary rather than systematic vilification designed to exclude Aboriginal people from civic life.<sup>37</sup>

The Bolt case can be contrasted with *Wertheim v Haddad* (2025) where the Federal Court found systematic antisemitic vilification that clearly crossed the harm threshold. The defendant's lectures and sermons included systematic dehumanization of Jewish people, Holocaust denial and organized promotion of hatred that went far beyond political disagreement about Middle Eastern politics. The Court carefully distinguished between anti-Zionism as permissible political criticism and overt antisemitism as actionable vilification.

Public opinion remains divided. Supporters argue 18C provides essential safeguards for vulnerable communities, affirming respectful public discourse boundaries. A 2017 Galaxy Research poll showed majority Australian support for amending or repealing 18C to strengthen free speech.<sup>38</sup> Yet after events like the Christchurch

massacre or rising online antisemitism following October 7 attacks, appetite for relaxing hate speech laws has waned. Community groups increasingly call for stronger responses: tougher hate-crime laws, rigorous social media content moderation, institutional accountability.<sup>39</sup>

Beyond 18C, freedoms of expression are tested elsewhere. Religious groups face hate speech accusations for preaching traditional sexuality and gender doctrines. Archbishop Julian Porteous faced anti-discrimination complaints for distributing marriage booklets to Catholic families, though complaints were withdrawn.<sup>40</sup> Israel Folau's dismissal by Rugby Australia for posting that gay people would go to hell highlighted tensions between religious conscience and public morality.<sup>41</sup> University speech codes, 'cancelled' speakers, and 'offence-based' regulations intensify free-expression erosion concerns. The stakes involve not just speech legality but whether the state should prioritise emotional safety or robust public contestation.

The fundamental dilemma remains: how to distinguish between speech that merely offends and speech that causes real harm? In morally diverse societies, disagreements about identity, belief, and belonging are inevitable, as are conflicting judgements about acceptable speech.

Liberal institutions increasingly resolve disagreements that procedural neutrality alone cannot settle. Tolerance frays when people perceive systems as partial or blind to their moral concerns. Yet institutions cannot avoid adjudicating these disputes — they must do so while preserving freedom and promoting mutual respect. This requires recognizing free speech and anti-discrimination protections aren't inherently opposed: both uphold dignity, social cohesion and civic compact through different mechanisms. Rather than zero-sum framing, policymakers should consider how legal standards, institutional norms and cultural expectations can coexist, encouraging respectful disagreement.

The distinction between legitimate political criticism and harmful vilification parallels the religious exemption debates (Case Study 2). Both require nuanced management of the zones rather than blanket permissions or prohibitions.

## Framework analysis: Clear Harm vs. Contested Offence

Section 18C cases reveal why liberal institutions struggle with hate speech: they lack clear principles for distinguishing legitimate but contestable speech in the Contestable Frontier (Zone 5) and speech that amounts to actionable harm and crosses the Harm Threshold Zone 1). Although the framework suggests Section 18C works best when applied to clear cases of targeted vilification rather than broader political debates about identity, it does nonetheless suggest several reforms that would better align Section 18C with the three-tier harm hierarchy:

- Remove 'offend' and 'insult': focus the provision on 'humiliate' and 'intimidate' as indicators of systematic harm that threatens dignity and civic participation rather than mere disagreement.
- Require systematic patterns: demonstrate broader campaigns of dehumanization rather than isolated incidents of offensive speech, ensuring the law addresses genuine vilification rather than one-off controversies.
- Strengthen Section 18D protections:<sup>42</sup> provide clearer safeguards for good faith political debate, academic discussion, and artistic expression to prevent the chilling of legitimate discourse.
- Contextual assessment: require courts to consider whether speech contributes to systematic exclusion or merely reflects disagreement within reasonable democratic debate.

This reformed approach would maintain protection against genuine vilification while creating more space for the robust political disagreement that democracy requires. Rather than treating all offensive speech identically, it would distinguish between systematic dehumanization (Zone 1), contested political commentary (Zone 5), and democratic debate conducted within civic norms (Zone 3).

The distinction between legitimate — but harsh — criticism and actionable vilification

parallels other framework applications. Like religious exemption debates, it requires nuanced zone management rather than blanket permissions or prohibitions. Treating all offensive speech identically, without regard to context, intent or the systemic nature of harm, demonstrates a failure to navigate the contestable and the actionable. The goal is not to eliminate offence from political discourse — an impossible and undesirable objective — but to prevent systematic campaigns that threaten the civic equality necessary for democratic participation.

## Case Study 4: Gender-affirming care and professional disagreement

Gender-affirming care for minors has become a flashpoint involving parental rights, children's autonomy, and medical ethics. Australia's legal framework evolved rapidly from requiring court approval for all treatments to allowing parental consent for most interventions, while international reviews like the UK's Cass Review (2024) have questioned rapid medical intervention for gender-distressed youth.<sup>43</sup> Australian policymakers are developing new guidelines, with federal reviews announced in 2025.<sup>44</sup>

Until 2013, Australian law required court approval for minors accessing Stage 2 treatment (cross-sex hormones), even with parental consent. The *Re Jamie* (2013) Family Court ruling changed this: if no dispute exists between parents, child and clinicians, court involvement is unnecessary.<sup>45</sup> However, disagreements between parents or between child and parent still require judicial review.

*Re Imogen* (2020) reaffirmed judicial oversight for contested cases, finding competence insufficient to override unresolved disagreements.<sup>46</sup> While transgender advocates see this as care barriers, opponents regard it as necessary safeguards given long-term, often irreversible consequences.

Victoria's Change or Suppression (Conversion) Practices Prohibition Act 2021 has created legal uncertainty for clinicians who adopt exploratory rather than affirming approaches to treatment.<sup>47</sup> Others decline



participation due to conscientious objection, raising professional responsibility questions. More than 100 Australian clinicians signed open letters in 2025 calling for intervention halts; citing insufficient evidence, while transgender advocates see such restrictions as barriers to necessary care.<sup>48</sup>

These disputes are particularly intractable because they involve moral conflicts over competing visions of human flourishing rather than conventional healthcare access questions. Legal frameworks struggle to resolve fundamental disagreements about identity, truth, and the nature of the good life that cannot be settled through procedural fairness alone.

### **Framework analysis: when professional ethics meets moral disagreement**

While Australia has not yet adopted comprehensive national protocols, there have been notable moves toward imposing uniform approaches — such as Victoria’s 2021 Act — that risk constraining legitimate professional disagreement. At the federal level, the National Health & Medical Research Council (NH&MRC) announced development of national clinical practice guidelines for trans and gender diverse youth in 2025, though these remain under development.<sup>49</sup>

Gender-affirming care occupies the Contestable Frontier (Zone 5) where medical, legal and ethical frameworks are evolving rapidly. The professional judgment of medical clinicians needs to be protected (Zone 2) and attempts to impose uniform protocols before professional consensus emerges (Zone 3) need to be resisted. This is to prevent ideological capture of medical protocols by either progressive or conservative activists.

The framework suggests protecting space for conscientious professional disagreement, maintaining judicial oversight for contested cases, and avoiding criminalisation of exploratory approaches while maintaining ethical safeguards. The concern is not that professional standards are unnecessary, but that premature codification of protocols before robust evidence emerges risks transforming what should be evolving medical judgment into ideologically-driven orthodoxy.

Legislative responses, such as Victoria’s conversion therapy law, risk criminalising legitimate professional disagreement by treating exploratory approaches as inherently harmful rather than recognising this as an evolving area requiring institutional caution. Such attempts to impose uniformity through legislation or centralized guidelines exemplify the Zone 3 overreach the framework warns against, subordinating professional discretion to political or activist pressure before the medical community has reached genuine consensus on best practice.

### **Case Study 5: Religious exemptions in publicly funded services**

Faith-based aged care, health and disability service providers face competing demands to uphold their religious identity while serving diverse publics with government funding. The shelved Religious Discrimination Bill 2021 would have allowed such organisations to prioritise employment of co-religionists even when serving the broader public. This, in turn, raised concerns about possible discrimination against those whose religious and ethical views diverge from institutional doctrine, such as LGBTQI+ workers.

This creates tension between institutional autonomy and the expected norms of public equality when government-funded services are provided by religious organisations beyond their own communities. Critics argue that public funding should require adherence to public anti-discrimination standards, while religious stakeholders contend that such requirements would force them to abandon their distinctive mission and identity.<sup>50</sup>

The absence of clear principles for balancing these competing claims has left both religious organisations and affected workers in uncertainty, while policymakers struggle to develop frameworks that satisfy competing moral intuitions about fairness, religious freedom, and public accountability.

### **Framework analysis: private practice vs public service delivery**

This occupies multiple zones simultaneously. Private religious practice (Zone 4) deserves broad protection, while



justification is required for differential treatment in

publicly-funded service delivery (Zone 3). The framework suggests exemptions must be proportionate to institutional mission, publicly justified rather than simply assumed, and always subject to review as social norms evolve. Rather than treating this as an irresolvable culture war, the typology helps identify which aspects deserve protection, which require negotiation, and which cannot be sustained in a pluralist democracy.

## Lessons from the case studies

These five case studies disclose several challenges that Australia's institutions face when contending with moral conflict:

- **Institutional inadequacy:** Courts, tribunals and government agencies are being asked to resolve disputes over fundamental moral worldviews using tools designed for interest-based conflicts. Legal frameworks that work well for procedural disputes prove inadequate for resolving competing visions of human flourishing.
- **The neutrality fiction:** Attempts to maintain institutional neutrality

often disguise substantive moral judgments, undermining public trust when different communities perceive bias in supposedly neutral processes. The pretence of neutrality may be more damaging than acknowledged moral reasoning.

- **Ad hoc responses:** Without clear principles for distinguishing between different types of moral conflict, institutions make reactive decisions that often appear arbitrary or politically motivated. This further erodes confidence in institutional fairness and democratic legitimacy.
- **Zone confusion:** Many conflicts involve a number of zones at the same time. Such cases require careful analysis rather than the blanket application of single principles. Success depends on recognizing which aspects of complex disputes belong in which zones.

The typology provides a systematic approach for categorizing conflicts and selecting appropriate institutional responses. Rather than eliminating moral disagreement, it structures how we live with it by clarifying which conflicts require legal resolution, which need political judgement, and which demand ongoing negotiation between competing moral communities.

## Institutional limits and democratic legitimacy

A critical challenge in managing moral pluralism lies in the institutional mismatch between legal structures designed for rights adjudication, and moral conflicts that require political judgement. Human rights commissions, tribunals and courts operate within legal paradigms that structure disputes as binary rights violations rather than complex exercises in balancing competing moral claims and social goods.

For example, when a religious school employment case reaches a human rights commission, it arrives as a discrimination complaint under specific statutory

provisions, not as a request to balance institutional autonomy against equality norms. The legal framework predetermines how the conflict will be understood, what evidence is relevant and which outcomes are permissible. This creates several problems that threaten both the effectiveness of conflict resolution and the legitimacy of democratic governance.

1. **Democratic legitimacy:** when quasi-judicial bodies make substantive moral judgements under the guise of legal interpretation, they risk appearing to usurp the

role of elected representatives. Courts and commissions lack the democratic mandate necessary for resolving contested moral questions where reasonable people disagree about fundamental values. Their authority derives from legal expertise and procedural fairness, not from popular sovereignty or democratic deliberation.

**2. Institutional overreach:** institutions designed for legal adjudication lack the deliberative processes, consultation mechanisms and, especially, political accountability necessary for resolving moral conflicts. They cannot easily weigh competing social goods, assess evolving community standards, or accommodate the kind of provisional, revisable judgments that moral conflicts often require.

**3. Public trust and perceived bias:** when institutions claim procedural neutrality while making substantive moral judgements, communities may lose confidence in their fairness. Thus, religious groups may regard anti-discrimination tribunals as imposing secular progressive values whereas progressive groups may see religious exemptions as institutionalising prejudice. Both perceptions undermine institutional legitimacy.

**4. Category confusion:** legal frameworks require clear categories: discrimination or no discrimination; lawful or unlawful conduct. By contrast, moral conflicts often involve legitimate but incompatible claims that cannot be resolved through categorical thinking. The attempt to force such conflicts into legal categories may distort both the nature of the conflict and the quality of the resolution.

## A path forward: institutional humility and democratic responsibility

The framework's value lies not in providing quasi-judicial bodies with better decision-making tools, but in helping

democratic institutions recognise which conflicts require political rather than legal resolution. This suggests several principles for institutional reform:

**1. Legislative clarity:** responsibility for drawing moral boundaries must lie with parliaments. These decisions should not be delegated to courts through vague statutory language. If society prohibits certain forms of discrimination, the legislature should specify the scope and limits of that prohibition rather than leaving fundamental moral questions to administrative interpretation.

**2. Judicial restraint:** courts should acknowledge situations when cases involve contested moral questions that exceed their institutional competence. Rather than stretching legal concepts to resolve moral conflicts, they should recognise when democratic political processes are better suited to address competing claims.

**3. New deliberative mechanisms:** Australia may need new institutions specifically designed for moral conflicts. Such new institutions might include citizen assemblies for contested ethical questions; parliamentary committees with extended consultation processes; or deliberative forums that bring competing moral communities into structured dialogue.

**4. Referral powers:** quasi-judicial bodies should have explicit authority to refer conflicts back to political processes when they involve moral questions beyond their institutional competence. This would acknowledge their limitations while ensuring democratic resolution of genuinely political questions.

The framework succeeds not by resolving moral conflicts through better administrative procedures, but by clarifying which institutions have legitimate authority to address which types of disagreement. Some conflicts require legal resolution. Others require political judgement. Still others require ongoing negotiation between competing moral communities. Institutional

humility about these distinctions is essential for maintaining both effective conflict resolution and democratic legitimacy.

This analysis does not diminish the important role of legal institutions in protecting rights and enforcing constitutional principles. Rather, it acknowledges that when moral worldviews

clash over fundamental questions, legal institutions alone cannot provide sustainable resolution. Democratic politics, with all its messiness and imperfection, remains the only legitimate mechanism for drawing provisional lines around contested moral questions. This underlines the heightened importance of safeguarding the democratic centre.

## **Safeguarding the democratic centre: institutional responses and policy implications.**

In a liberal democracy shaped by value pluralism, it is not consensus that enables stable coexistence, but the institutional management of conflict. Yet the conditions for that institutionally-managed stability are fragile. As moral disagreement intensifies and social trust declines, the institutions of the democratic centre must do more than mediate disputes. They must actively cultivate the civic habits, constitutional boundaries and normative expectations that make tolerance sustainable.

### **Federalism as pluralist governance**

One underappreciated strength of Australia's democratic infrastructure is its federal system, which enables a form of what might be called 'competitive governance'. In a pluralist society where communities hold divergent moral convictions, it is neither realistic nor desirable for all public conflict to be resolved at the national level. Rather than imposing uniform national solutions on diverse moral communities, federalism allows different states and territories to experiment with different approaches to contested issues. The current state-by-state variation in religious exemptions (as seen in Victoria's narrower approach versus NSW's broader protections) demonstrates this principle in action.

Thus, federalism allows for jurisdictional variation in response to moral disagreement: what one state prohibits,

another may permit. This institutional pluralism enables citizens to form and sustain political communities that reflect their values without requiring the entire polity to conform.<sup>51</sup> Rather than seeking to eliminate diversity through national uniformity, a pluralist approach to governance recognises the value of allowing multiple jurisdictions to manage conflict differently. Such variation should not be seen as incoherence, but as an institutional expression of moral pluralism itself.

Nor does this mean abandoning all coordination; but it does suggest that in a genuinely pluralist society, some moral questions are better resolved through democratic diversity than enforced uniformity. The challenge is distinguishing between issues that require national consistency (such as fundamental rights) and those where reasonable variation serves pluralist democracy. This means it is important to identify the principal institutional responses that can help reinforce the shared civic ground on which pluralism depends, but which pluralism alone cannot guarantee.

## Box 2: What tolerance can and cannot bear

Not all disagreements are created equal. In liberal democracies shaped by value pluralism, distinguishing between different kinds of moral conflict is essential. Institutions must know where to draw the line, when to mediate, and when to say “no.” This typology offers a conceptual map.

### 1. Non-negotiables

These are practices or beliefs that violate the foundational norms of liberal democracy. They involve serious harm, coercion, or the denial of basic rights and are rightly subject to prohibition. Prohibiting these is not intolerance; it is a defence of liberal order.

Examples include:

- Female genital mutilation (FGM)
- Child marriage
- Incitement to violence or hatred
- Practices that dehumanise or deny autonomy

### 2. Grey zones

These are morally-charged areas where rights and values collide and often in ways that defy clear resolution. The harms are contested, intuitions on both

sides are strong and public consensus is fragile. These require negotiation, compromise, and institutional sensitivity. They cannot be resolved through ideology or absolutism without deepening social division.

Examples include:

- Religious exemptions from anti-discrimination laws
- Gender identity and sports participation
- Vaccine mandates vs. freedom of conscience

### 3. Negotiable disagreements

These are disagreements that fall within the bounds of acceptable democratic pluralism. They include competing visions of the good life, cultural preferences, and policy trade-offs. Such conflicts are not threats but expressions of democratic vitality. Liberal societies thrive when they can disagree on these matters without descending into hostility or moral panic.

Examples include:

- School curricula content
- Immigration levels
- Taxation priorities

## 1. Reaffirming the moral limits of pluralism

Pluralism does not imply moral relativism or an unbounded tolerance. A liberal democratic society must retain both the right and the responsibility to draw lines of acceptability and requires its institutions to be equipped to:

- **Uphold liberal democratic norms as non-negotiables:** These include prohibitions on incitement to violence, coercion, or systemic dehumanisation. The legitimacy of liberal democracy requires defending the conditions under which disagreement itself remains possible.

- **Develop clearer public guidance on ‘grey zone’ conflicts:** In areas such as religious exemptions, freedom of expression, and identity-based claims, institutions should articulate not just legal boundaries but the ethical reasoning behind them, encouraging moral literacy and public deliberation.

This is not a task for courts and parliaments alone. It requires a wider civic infrastructure capable of distinguishing between genuine pluralism and nihilism masquerading as inclusion.

## 2. Strengthening the civic institutions of democratic deliberation

When the liberal centre is under strain, democratic resilience depends on the vitality of its institutional intermediaries:

**Independent statutory bodies** (for example, human rights commissions) must be robust, intellectually plural and publicly accountable and must not be captured by ideological monocultures.

- **Universities, schools, and media** must be actively supported as spaces for rational debate rather than ideological conformity. This includes resisting the drift towards censorious or managerial cultures that suppress contestation under the guise of safety, diversity or efficiency.
- **Civil society organisations** should be recognised as essential buffers against political polarisation capable of mediating moral conflict without collapsing into partisanship.

These institutions do not merely enforce pluralism but shape the conditions under which a plural society can be governed in ways to maximise the liberty of every citizen.

## 3. Educating for pluralism, not dogma

The long-term health of a liberal democracy rests not only on its laws but on the capacity of its citizens to tolerate what they disapprove of. This requires an education system oriented toward:

- **Civic formation, not just social cohesion:** school programs in civics education can teach young people how to live with disagreement rather than suppressing it through conformity or resolving it through force.
- **Moral complexity, not simplification:** students need to be trained in ethical reasoning that acknowledges competing goods rather than imposing an orthodoxy under the guise of inclusion, diversity or decolonisation.

- **Constitutional literacy:** citizens must understand the moral foundations and institutional design of liberal democracy, including the rationale for rights, the limits of power and the importance of reasoned dissent.

Education needs to emphasise that pluralism is not a slogan to be used to mask moral relativism but is a civic virtue that needs to be cultivated and practised by all citizens.

## 4. Promoting institutional integrity and democratic restraint

Moral conflict is bound to arise in a liberal democracy. Efforts to eliminate such controversy will be counter-productive; rather, it is important to ensure that no side is tempted to win it all. This requires:

- **Restraint from political actors:** weaponisation of legal or cultural power to enforce orthodoxy corrodes the very pluralism that democratic legitimacy depends on. This applies equally to populists who attack minorities and to progressives who suppress dissent in the name of 'diversity' and 'inclusion'.
- **Institutional humility:** policymakers and public institutions must acknowledge the limits of their moral authority. Institutions that present themselves as morally infallible provoke resistance and thereby undermine legitimacy.
- **Defence of constitutional norms:** rules matter most when citizens are tempted to break them. Political leaders and civil society must resist the temptation to override constitutional boundaries for the sake of expediency or moral certainty.

The centre cannot hold by standing still. It must be continually reconstructed through principled moderation, institutional integrity and moral clarity.

## From framework to practice: institutional restraint and democratic responsibility

Rather than providing quasi-judicial bodies with new decision-making tools, the framework's primary value lies in helping political institutions recognize the appropriate limits of legal solutions to moral conflicts. The goal is not better administrative management of moral disagreement, but clearer allocation of institutional responsibility for different types of conflict.

### Legislative clarity over administrative discretion

Parliaments should specify which moral boundaries require legal enforcement rather than delegating fundamental decisions to administrative bodies through ambiguous statutory language. The current approach, using broad anti-discrimination provisions with poorly defined exemptions, forces administrators to make essentially political judgements about competing moral claims.

Rather, legislation should explicitly address contested areas, such as: which religious practices deserve protection? What constitutes actionable vilification as opposed to protected speech? When does institutional autonomy override equality norms? Democratically elected representatives, not unelected administrative officials, should make these foundational moral judgements through transparent legislative processes all of which must be subject to electoral accountability.

### Judicial recognition of institutional limits

Rather than stretching legal concepts to encompass essentially political conflicts, courts need to acknowledge when cases involving contested moral questions exceed their institutional competence.

The Re Jamie progression in gender-affirming care cases illustrates both the problem and a potential solution: courts initially developed complex jurisprudence around children's capacity and parental rights, but increasingly recognise

fundamental questions about medical ethics and childhood development require broader democratic deliberation.

Courts can protect constitutional principles and individual rights without resolving every moral conflict through legal interpretation. Judicial restraint in politically contested areas may actually strengthen, rather than weaken, legal institutions by preserving their authority for genuinely legal questions.

### New deliberative mechanisms for moral conflicts

Australia may need new institutions specifically designed for moral conflicts that don't fit existing legal or political categories. These might include:

- **Citizen assemblies for ethical questions:** these might comprise randomly selected citizens deliberating on specific moral conflicts with access to expert testimony and structured dialogue with affected communities. Ireland's successful use of citizen assemblies for abortion and same-sex marriage provides a model for democratic deliberation on contested moral questions.
- **Parliamentary ethics committees:** these can serve as specialised committees with extended consultation powers, representation from affected communities and explicit responsibility for recommending legislative responses to emerging moral conflicts before they reach crisis levels.
- **Structured dialogue forums:** these could provide regular opportunities for competing moral communities to engage directly with each other rather than only through institutional intermediaries. These forums might address specific conflicts (such as, religious freedom and LGBTQ+ rights) or general principles (such as the scope of parental authority, or the limits of institutional autonomy).



## **Referral powers and democratic accountability**

Quasi-judicial bodies need to be granted explicit authority to refer conflicts back to political processes when they involve fundamental moral questions beyond the limits of their institutional competence. Rather than forcing legal resolution of essentially political conflicts, this would acknowledge institutional limits while ensuring democratic resolution of contested questions.

Such referrals would not represent institutional failure but institutional wisdom, recognising that some conflicts require political rather than legal resolution. This approach would reduce pressure on legal institutions to resolve irresolvable moral conflicts while ensuring democratic accountability for fundamental moral boundaries.

## **Federalism as competitive governance**

As noted earlier, Australia's federal system of government enables different approaches to contested moral questions without requiring national uniformity on every issue. Rather than treating state-by-state variation as regulatory failure, the framework recognises jurisdictional diversity as potentially valuable for a pluralist democracy.

Some moral conflicts might be better managed through democratic experimentation across different jurisdictions rather than through imposed national solutions. This would allow different moral communities to find political homes without requiring the entire polity to conform to a single moral vision, provided that fundamental constitutional rights remain protected.

## **Monitoring and review rather than resolution**

Implementation of this framework should emphasise ongoing monitoring and periodic review rather than permanent resolution of moral conflicts. Social norms evolve, moral communities change and new conflicts emerge. Institutional responses must remain provisional and revisable rather

than claiming final authority over contested moral questions.

This suggests regular parliamentary review of religious exemptions, sunset clauses for experimental policies, and systematic evaluation of how different approaches to moral conflicts affect social cohesion and democratic legitimacy. The goal is not to solve moral pluralism but to manage it fairly and democratically over time.

This proposed framework can succeed by clarifying which conflicts require legal resolution, which need political judgement, and which demand ongoing negotiation between competing moral communities. Institutional humility about these distinctions is essential for maintaining both effective governance and democratic legitimacy in a pluralist society.

## Conclusion: drawing the line with confidence and modesty

The success of Australia's liberal democracy will not be measured by whether it resolves every moral conflict, but by whether it can continue to function and flourish in their presence. We are no longer simply a society of diverse backgrounds or beliefs. We are a society of divergent moral convictions which are often irreconcilable, deeply felt and, at the same time, fiercely defended.

In historical terms, many Western societies have long experienced what the ethicist Biggar has described as the empirical fact of 'multiculturalism' (a term he uses in place of 'multiculturalism', which he considers political theory):

I see our present multicultural societies as standing in a long, historical continuum. The issue has not been to choose between monoculturality and multi-culturality, but how much of the latter can be accommodated and how to accommodate it. My view is that the recent, popular ideology/theory of multiculturalism has overestimated the degree of tolerable multiculturality and underestimated the degree of necessary cultural consensus.<sup>52</sup>

Accordingly, pluralism is not a temporary condition to be fixed. Value pluralism is both a fact and a moral achievement, and one that brings with it certain tensions and limits. Given that it is a permanent feature of a liberal democracy, the challenge, as Biggar remarks, is working out how to accommodate and live with it.

This report has argued that liberal democracy does not survive by accommodating everything, nor by asserting one truth to rule them all. It survives when citizens and institutions can draw lines and recognise that others will draw lines differently whilst not giving up on the shared project of civil peace. Safeguarding the democratic centre means creating conditions under which pluralism does not become paralysis, and disagreement does not become enmity. That task is neither neutral nor easy. But it is the work of freedom.

And this is the challenge of liberal pluralism. It is also the task of a confident, mature democracy. *Drawing the Line* does not propose a new moral consensus. It does not seek to resolve deep disagreement. Rather, it sets out a framework for managing moral conflict fairly, predictably, and peacefully so that pluralism, instead of becoming a source of fracture, can remain a source of strength.

### Addressing the critics: beyond false alternatives

This framework will inevitably face criticism from defenders of traditional liberal neutrality who argue that procedural fairness and rights-based reasoning remain sufficient for managing moral conflict. Such critics might contend that abandoning the aspiration to neutrality opens the door to arbitrary power and partisan capture of institutions. Yet this objection misunderstands both the current crisis and the proposed response.

Liberal neutrality has not failed because it was improperly applied, but because the conditions that made it workable, that is, a broadly shared moral vocabulary and common institutional trust, no longer exist.

The five-zone framework does not abandon liberal principles but acknowledges their limits while preserving core insights about human dignity and democratic legitimacy. Rather than arbitrary power, the framework offers principled distinctions that can be publicly debated and democratically refined. The alternative is not restored neutrality but continued institutional paralysis as courts, policymakers and parliaments are forced to make substantive moral judgements while pretending they are merely procedural.

Conversely, some critics will hold that the only solution to the crisis with liberal democracy is promotion of deeper cultural or religious renewal: that institutional tinkering cannot address what is fundamentally a spiritual or moral collapse. Post-liberal critics like Deneen, or traditionalist conservatives, might argue

that managing pluralism merely postpones the inevitable reckoning with liberalism's inherent contradictions.

While acknowledging the force of these criticisms, *Drawing the Line* does not accept the premise that Australians must choose between liberal collapse and cultural restoration. In a society as diverse as contemporary Australia, no single moral tradition commands sufficient allegiance to serve as the foundation for public life, nor should any attempt to impose such unity be welcomed by those who value freedom.

Rather, what is argued for is the creation of institutional mechanisms that allow different moral communities to coexist without requiring them to surrender their deepest convictions. This is not capitulation to relativism but recognition that sustaining any moral tradition — including the tradition of liberal democracy itself — requires protecting the space for conscientious disagreement.

Some conflicts may be genuinely irresolvable — not because institutions are ill-equipped to handle them, but because they reflect incompatible ways of understanding human nature, the good life and the ultimate source of moral obligation. Even so, the task before us is

not to overcome moral disagreement, but to manage it with integrity and fairness.

This requires clear distinctions between what can be tolerated, what must be protected, and what cannot be accepted. It demands institutions that are trusted not because they take sides, but because they manage conflict impartially. It asks citizens to engage across difference — not to convert or conquer, but to live together under shared rules.

If Australia is to hold together as a free, fair, and democratic society, we must draw these lines deliberately, publicly, and with courage. Not to silence dissent, but to sustain peace. Not to erase pluralism, but to make it liveable. We cannot afford to let our civic compact erode under the pressure of moral absolutism. Nor can we retreat into passive relativism. Instead, we must cultivate institutions capable of holding the line not by enforcing sameness, but by enabling coexistence in a world where disagreement is here to stay.

Pluralism is not a problem to be solved. It is a fact to be managed — and a strength to be sustained. Drawing the line wisely is not the end of freedom, but the condition of its endurance.

## Endnotes

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Liberal democracies face a crisis: citizens no longer merely disagree about policies, but about the fundamental values that should guide society. In Australia and beyond, conflicts over religious freedom, free speech and cultural norms have fractured traditional political consensus, placing the ideal of tolerance under unprecedented strain.

*Drawing the Line* argues that democratic institutions must learn to manage and not resolve deep moral disagreement. Drawing on the pluralist tradition of Isaiah Berlin, John Gray, and Bernard Williams, this report contends that conflict between legitimate but incompatible values is a permanent feature of free societies. It challenges the illusion that consensus can be achieved through procedural neutrality or abstract ideals alone.

Instead, liberal democracies must draw defensible lines that allow diverse groups to coexist under common rules. The task is not to eliminate moral conflict, but to structure it in ways that preserve democratic legitimacy and civic peace without retreating into relativism or coercive conformity. The need to draw lines is not a failure of tolerance, but rather is its condition. Our capacity for principled disagreement will determine whether pluralism remains democracy's strength or becomes its undoing.



## About the Author

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## Related Works

Peter Kurti, Damien Freeman, Jonathan Cole, Bryan Turner: *The Future of Australian Multiculturalism* (Centre for Independent Studies: Sydney NSW, 2025).

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