

The marriage equality survey is won, but the battle against discrimination continues

Written by Timothy W. Jones, Senior Lecturer in History, La Trobe University

The polls are in and Australians have signalled their strong support for same-sex marriage. The only stumbling block to marriage legislation passing into law is disagreement about what [extensions](#) to protections of religious freedom are needed.

It is becoming increasingly clear, however, that the “protections” conservatives are arguing for are not protections of religious belief or practice. Rather, they want to significantly extend the capacity of religious organisations and individuals to discriminate against others on the basis of sex.

Religious freedom is not under threat

Freedom of thought, belief and practice (religious or not) is a human right. It is [recognised in Australia](#) and enforced through legislation at state and federal levels.

But no conceivable marriage equality legislation in Australia threatens anyone’s freedom of thought, belief or religious practice.

Amendments to the Marriage Act cannot change people’s thoughts or beliefs. And consent is a necessary part of a valid marriage, so no one opposed to same-sex marriage could be forced to marry someone of the same sex.

[Read more: *If Australia says ‘yes’, churches are still free to say ‘no’ to marrying same-sex couples*](#)

Clergy currently have the powers to decline to officiate at any wedding, for any reason, at their own discretion. No additional legislation is required to protect their freedom of religious practice.

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Additionally, [Dean Smith's bill](#) includes the creation of a new category of marriage celebrant. This "religious celebrant" would be able to decline to officiate at same-sex weddings.

This bill, while creating a new exemption from sex-discrimination legislation, has the support of Labor and the Greens, and would likely pass the upper house.

So what religious 'freedoms' need protecting?

The two domains that the "no" campaign has consistently declared as being threatened by marriage equality are the education of children and individuals' capacity to refuse service to homosexuals.

The introduction of marriage equality would change nothing about the current position of religion, parental authority, and children's education.

Church and state marriage law have [been at odds for 160 years](#), ever since remarriage after divorce was made accessible in the British world in 1857 (leaving aside Henry VIII's reasons for founding the Church of England). Parents whose views of marriage differ from state law have thus been communicating these differences to their children without obstruction for 160 years.

The idea that children in religious families should need new "protections" from knowledge of contemporary marriage law is concerning. Parents will continue to have the freedom to teach their children why the law is contrary to their moral or religious beliefs.

But withholding knowledge of the law regarding the protected characteristics of sex and gender from children potentially constitutes a harm.

The "no" campaign also argues that the protection of religious freedom requires that religious individuals should be exempt from sexual discrimination legislation, where that is in tension with their beliefs.

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Religious organisations currently have significant exemptions from anti-discrimination legislation. State laws [currently permit](#) religious bodies to discriminate on the basis of sex, where such discrimination conforms with the “doctrines, beliefs or principals of the religion” or is necessary “to avoid injury to the religious sensitivities of adherents to the religion”.

For example, under current laws churches could refuse to hire out church halls for the wedding reception of a lesbian couple. And religious schools could [terminate the employment](#) of a male teacher who married another man.

Under current law, it is only religious bodies that have such exemptions from discrimination legislation. Leading “no” campaigners are arguing that these exemptions should be extended to individuals.

Read more: [As Australians say ‘yes’ to marriage equality, the legal stoush over human rights takes centre stage](#)

Such extensions would involve a massive, categorical readjustment of the relationship between religious freedom and sexual discrimination in Australia. As law professor Carolyn Evans [argue](#) [S](#), there are good reasons for limiting extensions to exemptions from discrimination legislation. Such extensions would make every individual a law unto themselves.

Scratch the surface, and the fundamental homophobia behind individual exemptions to sex discrimination law becomes obvious. For it is only the allowance of discrimination in the provision of services to people with different religious convictions about sexuality that is being proposed.

Bakers, party planners, florists and caterers have had no problem up to this point providing services to people with different religious convictions. Christian florists have so far raised no objection to providing flowers to Muslim weddings, Jewish bar mitzvahs, or anyone with different

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religious convictions.

Arguing that religious sensitivities only need protecting with regard to sexuality, and no other area of religious conviction, suggests that this is not about freedom of religion, but about legitimising homophobia.

Their end game all along?

It is conceivable that “no” campaigners never believed their views would prevail in public opinion. It is possible that, all along, the end game of their fear-based campaign has been to categorically extend religious exemptions to sex discrimination legislation from organisations to individuals.

We are at an historical moment when churches’ [capacity to evade liability](#) for sexual harm has been [brought into the spotlight](#) more starkly than ever before.

It is worth asking why, in proposing amendments to marriage legislation, we should increase churches’ and religious individuals’ capacity to discriminate on the basis of sex, inflicting more sexual harm.

Timothy W. Jones receives funding from the Australian Research Council and the Australian Research Theology Foundation Incorporated..

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