

State Support for Scripture in the Public Education System

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I. INTRODUCTION

The issue of how exactly religion and education ought to intersect has been described as ‘probably the most passionate, fundamental and continual ideological conflict in Australian history’.¹ There is much to commend the accuracy and force of this statement. Schools sit in a tectonic hot spot in society, given their status as dominant values-shaping institutions and their positioning at the nexus between the private sphere of the family and the public sphere of the state.²

One battlefield of this public debate that continues to generate considerable controversy is the regulation of the system of Scripture teaching that operates in most public schools in Australia. It is apposite to open discussion of this issue with a brief historical overview of the role of religion in Australian education. This will then be followed by an outline of the current legal and policy foundations of Scripture teaching before concluding with critical analysis arguing that all Australian jurisdictions should retain Scripture teaching under the model used in New South Wales.

II. HISTORY OF RELIGION IN AUSTRALIAN EDUCATION

From the 1780s to the 1820s, the Church of England enjoyed a monopoly on the provision of education in Australia, due to its established status in the early colony of New South Wales.³ This privileged position was formalised through the creation of a government-funded, Anglican institution called the Church and Schools Corporation, which was accomplished by a charter of incorporation authorised by letters patent in 1826.⁴

By the 1830s, confronted with the challenging plurality within colonial society, the government in New South Wales began to move away from support for strict establishment of the Church of England in favour of tolerance for a diversity of Christian denominations.⁵ Following this, the Anglican monopoly on education was soon broken by the abolition of the Church and Schools Corporation and the introduction of denominational schools run by other churches,

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¹ Patrick O’Farrell, *The Catholic Church and Community: An Australian History* (Thomas Nelson, 1977) 138.

² Renae Barker, ‘It Is Not Inevitable: The Future Funding of Faith-Based Schools after Ruddock’ (2020) 97(2) *Australasian Catholic Record* 144.

³ Stephen Chavura, John Gascoigne, and Ian Tregenza, *Reason, Religion and the Australian Polity: A Secular State?* (Routledge, 2019) 11; *Wylde v Attorney-General* (1948) 78 CLR 224, 284 (Dixon J) (‘Wylde’). See also Paul Babie et al, *Religion and Law in Australia* (Kluwer Law International, 2015) 28.

⁴ Babie (n 3) 29; Zehavit Gross and Suzanne D Rutland, *Special Religious Education in Australia and Its Value to Contemporary Society* (Springer, 2021) 29.

⁵ Chavura, Gascoigne, and Tregenza (n 3) 2.

many of which were at least partially funded by the colonial government.⁶ However, further change was on the horizon.

After it became apparent that the denominational system was leading to inefficient allocation of resources and the production of poor educational outcomes, and in response to intense sectarian tensions within Australian society, colonial legislatures one by one introduced government schools and abolished state funding for religious schools.⁷

The colonies started to legislate on government schools in the Australian colonies in the following order: New South Wales (1848),⁸ South Australia (1851), Tasmania (1868), Western Australia (1871), Victoria (1872), and Queensland (1875).⁹ However, the colonies abolished state aid to denominational Christian schools in a different order: South Australia (1851),¹⁰ Victoria (1872),¹¹ Queensland (1881), New South Wales (1883), Tasmania (1885), and Western Australia (1895).¹²

Importantly, there is now a heated contemporary debate over whether or not these secular education Acts were motivated by a desire to purge public education of all trace of religion, such that they fit within a ‘greater secular liberal progress narrative in Australian culture’.¹³ If this was so, then the current maintenance of Scripture teaching in public schools would arguably be a betrayal of the intent behind these legislative developments. However, scholars such as Hastie and Chavura, Gascoigne, and Tregenza have, with considerable force, rebutted the thrust of this argument, claiming that it is motivated by ‘an explicit purpose of validating contemporary ideology’¹⁴ and that it commits the fallacy of ‘retrojecting [scholars’] own contemporary understanding of the secular–sacred distinction onto historic debates’.¹⁵ In place of this ideological liberal view, Hastie and Chavura et al. have argued that the ‘secular’ education these statutes refer to, when read in context, denotes non-denominational Christian

⁶ Babie (n 3) 29; Barker (n 2) 150. The very first Appropriation Act of the NSW Legislative Council provided hundreds of pounds for Presbyterian clergy and Catholic schools (although, it should be noted that it provided *thousands* of pounds for Anglican clergy and Anglican schools): *Appropriation Act 1832* (NSW) s 3.

⁷ Barker (n 2) 149–50; David Hastie, ‘The Latest Instalment in the Whig Interpretation of Australian Education History: Catherine Byrne’s JORH Article “Free, Compulsory and (not) Secular”’ (2017) 41(3) *Journal of Religious History* 386, 387 (‘Whig Interpretation’); Gross and Rutland (n 4) 32.

⁸ The *National Education Board Act 1848* (NSW) incorporated the Board of Commissioners for National Education to administer funds dedicated to establishing public non-denominational schools based on the Irish example (designated as ‘Lord Stanley’s National System of Education’). The *Appropriation Act 1847* (NSW) was then the first Appropriation Act to provide funds ‘towards establishing Schools to be conducted under Lord Stanley’s National System of Education’. Lord Stanley was a British politician who famously devised a proposal for public schooling in Ireland via a letter written in 1831.

⁹ *State Education Act 1875* (Qld); *Education Act 1851* (SA); *Public Schools Act 1868* (Tas); *Education Act 1872* (Vic); *Elementary Education Act 1871* (WA).

¹⁰ *Education Act 1851* (SA). Whilst this Act does not explicitly abolish funding to private schools, it did seem to shift all government expenditure to public schools. The next education Act in South Australia explicitly allowed funding of only non-denominational private schools where public schools could not be established: *Education Act 1874* (SA) s 10.

¹¹ *Education Act 1872* (Vic) s 10 provided a process of phasing out support over a maximum of five years.

¹² *Public Instruction Act 1880* (NSW) s 28; *State Education Act 1875* (Qld) s 13; *Education Act 1885* (Tas) s 5; *Assisted Schools Abolition Act 1895* (WA) s 2.

¹³ Hastie, ‘Whig Interpretation’ (n 7) 391. See this view propounded in Marion Maddox, *Taking God to School: The End of Australia’s Egalitarian Education?* (Allen & Unwin, 2014) (‘*Taking God to School*’); Catherine Byrne, ‘Free, Compulsory and (Not) Secular: The Failed Idea in Australian Education’ (2013) 27(1) *Journal of Religious History* 20.

¹⁴ Hastie, ‘Whig Interpretation’ (n 7) 390.

¹⁵ Chavura, Gascoigne, and Tregenza (n 3) 4–5.

education, not religion-free education. As a result, nineteenth-century public schools are said to have operated along Christian lines, although admittedly to varying degrees.¹⁶

A close examination of the legislation in question indicates that non-sectarian Christian education was indeed part and parcel of early government schools in at least the states of New South Wales, South Australia, Tasmania, and Western Australia. The South Australian Act claimed that its aim was ‘to introduce and maintain good secular instruction, based on the Christian Religion; apart from all theological and controversial differences on discipline and doctrine, and that no denominational catechism be used’.¹⁷ The New South Wales Act similarly explicitly provided that government schools’ ‘teaching shall be strictly non-sectarian but the words “secular instruction” shall be held to include general religious teaching as distinguished from dogmatical or polemical theology’.¹⁸ Further, the Tasmanian Act clarified its concept of ‘secular education’ by stating that all ‘teaching shall be strictly non-sectarian’, and the Western Australian Act only permitted catechisms to be used that were not ‘distinctive of any particular denomination’.¹⁹ Whilst the Queensland and Victorian Acts did not contain explicitly Christian definitions of ‘secular education’, Chavura, Gascoigne, and Tregenza argue that, in practice, the government schools in these colonies still incorporated non-denominational Christianity into their teaching.²⁰

Moreover, although all colonies arguably incorporated elements of Christian teaching within their general curricula, they split evenly on whether denominational Scripture classes could occur within ordinary class hours and whether parents had to specifically opt-out to prevent their children’s enrolment in them. New South Wales, Tasmania, and Western Australia provided an opt-out system within ordinary school hours,²¹ whereas South Australia, Victoria, and Queensland provided an opt-in system outside of ordinary school hours.²²

With this historical background established, the modern system of Scripture regulation that has subsequently emerged can now be considered.

III. CURRENT LEGAL AND POLICY FOUNDATIONS OF SCRIPTURE TEACHING

A. General ‘Secularity’ of Public Schools

Notably, the modern public education statutes of today²³ have, for the most part, changed surprisingly little in their traditional commitment to non-sectarian secularity. Tasmania, Victoria, South Australia, and the Australian Capital Territory are fairly standard and simple in their requirement for ‘non-sectarian and secular education’ and their corresponding prohibition on promoting ‘any particular religious practice, denomination or sect’.²⁴ On the

¹⁶ Hastie, ‘Whig Interpretation’ (n 7) 387; Chavura, Gascoigne, and Tregenza (n 3) 102, 119.

¹⁷ *Education Act 1851* (SA) s 2.

¹⁸ *Public Instruction Act 1880* (NSW) s 7.

¹⁹ *Education Act 1885* (Tas) s18; *Elementary Education Act 1871* (WA) s 23.

²⁰ Chavura, Gascoigne, and Tregenza (n 3) 117–18.

²¹ *Public Instruction Act 1880* (NSW) ss 17–18 (see predecessor in *Public Schools Act 1866* (NSW) s 6); *Education Act 1885* (Tas) ss 19–20; *Elementary Education Act 1871* (WA) s 22(2).

²² *State Education Act 1875* (Qld) s 118; *Education Act 1874* (SA) s 9; *Education Act 1872* (Vic) s 12.

²³ *Education Act 2004* (ACT); *Education Act 1990* (NSW); *Education Act 2015* (NT); *Education (General Provisions) Act 2006* (Qld); *Education and Children’s Services Act 2019* (SA); *Education Act 2016* (Tas); *Education and Training Reform Act 2006* (Vic); *School Education Act 1999* (WA).

²⁴ *Education Act 2004* (ACT) s 28(1); *Education and Children’s Services Act 2019* (SA) s 7(4)(g); *Education Act 2016* (Tas) s 125(1); *Education and Training Reform Act 2006* (Vic) ss 1.2.2(2)(a)(i), 2.2.10(1).

other hand, New South Wales, Queensland, and Western Australia sit apart in their more overt allowance for a non-denominational Christian ethos in public education. New South Wales, for instance, has word-for-word retained its historical insistence that ‘secular instruction’ still allows for ‘general religious education as distinct from dogmatic or polemical theology’.²⁵ Most surprisingly, non-denominational Bible lessons can still technically be taught in ordinary public primary school classes in Queensland, and ‘prayers, songs and other material based on religious, spiritual or moral values’ can still form part of the general school environment in Western Australia.²⁶ Lastly, the Northern Territory is *sui generis* in its replacement of terminology relating to secularism and non-sectarianism with the more modern-sounding guiding principle that ‘learning environments should be culturally appropriate and reflect the diversity of the Territory’.²⁷

This general ‘secularity’ noted, every jurisdiction still permits some form of denominational religious education in public schooling, known variously as ‘religious instruction’ (Queensland, Tasmania, Northern Territory), ‘special religious instruction’ (Victoria), ‘religious education’ (Australian Capital Territory), ‘special religious education’ (New South Wales and Western Australia), and ‘religious and cultural activities’ (South Australia). Due to the wide variation of terminology, I will continue to refer to the program simply by its colloquial title, ‘Scripture’.

Each State and Territory regulates Scripture teaching through its own mix of statutes, delegated legislation, and government policies. As will become apparent below, although there are broad similarities in how Scripture lessons are administered, there are also significant differences that have a material impact on the uptake and prominence of Scripture classes within each state and territory.

B. Operation of Scripture Classes

In all jurisdictions bar New South Wales,²⁸ provision of Scripture classes is not guaranteed and is instead contingent upon factors such as principals’ discretion,²⁹ availability of Scripture teachers,³⁰ and demand from parents.³¹

Where it is provided, it takes the form of 30 to 60 minute lessons conducted no more than once per week in nearly every state and territory except Victoria,³² which has placed an upward limit

²⁵ *Education Act 1990* (NSW) s 30.

²⁶ *Education (General Provisions) Act 2006* (Qld) ss 76(2), 76(4); *School Education Act 1999* (WA) s 68(2)(b).

²⁷ *Education Act 2015* (NT) s 4(g).

²⁸ See *Education Act 1990* (NSW) s 32(1).

²⁹ See, eg, *Education and Children’s Services Act 2019* (SA) s 82(1).

³⁰ See, eg, *Education (General Provisions) Act 2006* (Qld) s 76(1).

³¹ See, eg, *Education Act 2004* (ACT) s 29(1).

³² In New South Wales, it is ‘at least 30 minutes, but no more than one hour’: NSW Government, ‘Special Religious Education and Special Education in Ethics Procedures’, *Education* (Web Page, 10 May 2024) cl 2 <<https://education.nsw.gov.au/policy-library/policies/pd-2002-0074-01>> (‘NSW Procedures’). In Queensland and Western Australia, it is a period not exceeding one hour: *Education (General Provisions) Act 2006* (Qld) s 76(1); *School Education Act 1999* (WA) s 69(2). In the Australian Capital Territory, it is ‘no more than 40 minutes’ per week: ACT Government, ‘Religious Education in ACT Public Schools Policy’, *Education* (Web Page, January 2016) cl 9.1 <https://www.education.act.gov.au/publications_and_policies/School-and-Corporate-Policies/curriculum/religion/religious-education-in-act-public-school-policy> (‘ACT Policy’). Finally, in the Northern Territory, it must be at least half an hour per week: *Education Act 2015* (NT) s 86(4).

of 30 minutes on Scripture classes.³³ These classes must take place during school hours, again in nearly every state and territory except Victoria,³⁴ which restricts Scripture lessons to lunchtimes and ‘the hour immediately preceding or after school hours’ (despite the assumption in the state’s statute that Scripture may be provided during school hours).³⁵ Further, three Australian states require parents to opt *out* of Scripture lessons for their children (Queensland, South Australia, and Western Australia),³⁶ whilst the other three states and two territories require parents to expressly opt *in* to Scripture lessons (New South Wales,³⁷ Victoria, Tasmania, the Australian Capital Territory, and the Northern Territory).³⁸

C. Provision of Scripture Classes

In general, independent religious groups do the lion’s share of work to organise and provide Scripture classes, with state governments simply fulfilling an oversight and gatekeeping role. The Scripture teachers who provide the lessons are themselves, with little variation, either ministers or other approved representatives of churches and other religious groups.³⁹ Further, the curriculum taught by Scripture teachers is developed by these churches and other religious bodies,⁴⁰ and they must typically be published online to inform parents of the content of Scripture lessons.⁴¹ The exception to this relatively unobtrusive approach is, again, Victoria. It is the only jurisdiction in Australia to mandate the presence of a ‘Big Brother’ figure in the Scripture classroom — a teacher who is expressly charged with reporting to the principal if he or she hears any ‘information, ideas, opinions or beliefs communicated to students’ by the Scripture teacher that ‘contradict the school’s values, curriculum or an applicable law’.⁴²

D. Alternatives to Scripture Classes

The States and Territories have taken a mix of differing approaches to accommodating children whose parents elect not to send them to Scripture classes provided within school hours. In New

³³ Department of Education (Vic), *Ministerial Direction No 145: Special Religious Instruction in Government Schools* (Direction No 145, 9 November 2015) cl 6(5) (*‘Ministerial Direction No 145 (Vic)’*).

³⁴ See, eg, *Education Act 1990* (NSW) s 3A; *Education Act 2015* (NT) s 86(1); *Education (General Provisions) Act 2006* (Qld) s 76(1); *Education and Children’s Services Act 2019* (SA) s 7(4)(g).

³⁵ *Ministerial Direction No 145* (Vic) (n 33) cl 6(4); *Education and Training Reform Act 2006* (Vic) s 2.2.11(2). See also the conclusion of Ginnane V-P in *Aitken v Victoria Department of Education & Early Childhood Development* [2012] VCAT 1547, [79] (*‘Aitken’*): ‘The history of the *Education Act* indicates that its purpose was to facilitate the provision of SRI in Government schools by enabling it to be provided during the normal school hours’. This is an example of how ministerial directives have surreptitiously made drastic changes to how Scripture teaching was designed to operate under the relevant Act.

³⁶ *Education (General Provisions) Act 2006* (Qld) s 76(5); South Australia Department of Education, ‘Religious Activities in Schools and Preschools Policy’ (Web Document, July 2023) 5 <<https://www.education.sa.gov.au/policies/shared/religious-activities-in-schools-and-preschools-policy.pdf>> (*‘SA Policy’*); *School Education Act 1999* (WA) s 71.

³⁷ Although s 33 of the *Education Act 1990* (NSW) prima facie appears to provide for an opt-out system, the New South Wales Government’s guidelines make it clear that, if parents have not replied to a schools’ request for their preference to be nominated, ‘the student is to participate in alternative meaningful activities pending a response’: ‘NSW Procedures’ (n 32) cl 2.

³⁸ *Education Act 2004* (ACT) s 29(1); *Education Act 2015* (NT) ss 86(2)–86(3); *Education Act 2016* (Tas) s 126(5); *Ministerial Direction No 145* (Vic) (n 33) cl 13(3).

³⁹ ‘ACT Policy’ (n 32) cl 9.1; *Education Act 1990* (NSW) s 32(3); *Education Act 2015* (NT) s 86(3); *Education (General Provisions) Act 2006* (Qld) s 76(1); *Education and Children’s Services Regulations 2020* (SA) reg 31(a); *Education and Training Reform Act 2006* (Vic) s 2.2.11(a); *School Education Regulations 2000* (WA) reg 48(1).

⁴⁰ *Education Act 2004* (ACT) s 29(3); *Education Act 1990* (NSW) s 32(3); *Education (General Provisions) Regulation 2017* (Qld) reg 28; *Ministerial Direction 145* (Vic) (n 32) cl 10(a).

⁴¹ See, eg, ‘NSW Procedures’ (n 32) cl 1.

⁴² See *Ministerial Direction 145* (Vic) (n 33) cl 12.

South Wales, an alternative program with a comparable rationale is provided known as ‘special education in ethics’.⁴³ According to the New South Wales Government, this program educates students ‘in ethical decision making, action and reflection within a secular framework, based on a branch of philosophy’.⁴⁴ By contrast, Queensland simply requires ‘other instruction in a separate location’ for secular students, Western Australia requires ‘meaningful’ and ‘educational’ alternative activities to be provided, and South Australia and the Australian Capital Territory require curriculum-based education to continue uninterrupted.⁴⁵

Finally, it should be noted that all Australian jurisdictions permit the more sociological topic of ‘general religious education’ to be taught at public schools for all students. Victorian and Western Australian legislation has defined ‘general religious education’ as ‘education about the major forms of religious thought and expression characteristic of Australian society and other societies in the world’.⁴⁶ In practical terms, these world religions may be studied through stand-alone subjects or (perhaps more commonly) through topics within set subjects from primary school through to Year 10. Following that, students may elect to take the ‘Studies of Religion’ elective in Years 11 and 12.⁴⁷ These classes aim to ‘support the development of religious understandings and tolerance’, as opposed to cultivating moral and spiritual development.⁴⁸

E. Conclusions

As has been highlighted, there is substantial congruence between most states and territories on the provision of Scripture, with the largest dividing issue being whether the classes are offered on an opt-in or opt-out basis. The most significant outlier overall is Victoria, which not only offers Scripture classes on an opt-in basis but also offers them outside of school hours for a minimal duration under close surveillance.

Far from a mere academic curiosity, the differences in Victoria’s approach have had drastic practical consequences. The deliberate marginalisation and over-regulation of Scripture in Victoria has led to its near disappearance in the state, with student enrolments in the program dropping 99%, from 93,000 to 750, over the past 10 years.⁴⁹ By contrast, the more traditionally supportive state of New South Wales has recently experienced a five year high for Scripture enrolments, peaking at 350,000 in 2024.⁵⁰ Plainly, what may at first appear as minor changes to the legal and policy structure underlying Scripture teaching can have existential consequences for the program’s viability.

⁴³ *Education Act 1990* (NSW) s 33A.

⁴⁴ ‘NSW Procedures’ (n 32).

⁴⁵ *Education Act 2004* (ACT) s 29(2); *Education (General Provisions) Regulation 2017* (Qld) reg 31; ‘SA Policy’ (n 36) 5; Western Australia Department of Education, ‘Guidelines for Religious Education’ (Web Document, 17 November 2015) 4 <<https://www.education.wa.edu.au/dl/3j6p318>> (‘WA Guidelines’).

⁴⁶ *Education and Training Reform Act 2006* (Vic) s 2.2.10(3); *School Education Act 1999* (WA) s 66. Cf the similar definition in *Education Act 2016* (Tas) s 126(1).

⁴⁷ See Queensland Government, ‘Religious Instruction Policy Statement: Frequently Asked Questions’, *Education* (Web Page, 22 June 2022) <<https://education.qld.gov.au/parents-and-carers/school-information/school-operations/policy-statement/faq#:~:text=RI%20is%20a%20program%20of,by%20the%20Department%20of%20Education.>>.

⁴⁸ ‘WA Guidelines’ (n 45) 2.

⁴⁹ Madeleine Heffernan, ‘Religion Class Enrolments Slump in State Schools in Decade Since Program Changes’ *The Age* (online, 26 February 2023) <<https://www.theage.com.au/national/victoria/religion-class-enrolments-slump-in-state-schools-in-decade-since-program-changes-20230221-p5cm6u.html>>.

⁵⁰ Tara Sing, ‘School Scripture Numbers are the Highest They Have Been in Five Years’ *Sydney Anglicans* (online, 2 February 2024) <<https://sydneyanglicans.net/news/wanted-more-scripture-teachers/53879>>.

IV. CRITICAL REFLECTION ON SCRIPTURE IN PUBLIC SCHOOLS

A. Support for Scripture Teaching

1. Opening Comments

A state's position on most of the modern controversies surrounding Scripture classes (eg, whether they should be opt-in, whether they should occur during school hours, how long they should go for) is largely derivative of its attitude towards the religious freedom of parents and its tolerance of religion more generally. With this in mind, the following sections will first present the arguments for retaining Scripture in state schools, before discussing common objections.

2. The Case for Keeping Scripture

There are at least three compelling and interrelated reasons that tend in favour of a sympathetic approach to Scripture teaching from law and policymakers: it teaches important values, it supports holistic wellbeing, and it develops students' identities.

(a) Values and Virtues

Values-based education remains an essential aspect of schooling, both because parents expect it and because, in light of growing social issues such as family breakdown, alcohol and drug use, and domestic violence, broader society requires it.⁵¹

Importantly, although religion is no longer universally considered the foundation of individual morality,⁵² research indicates that religiosity and values formation are deeply interrelated. Further, whilst a search for universal values in a pluralist context may be elusive,⁵³ all of the major religious traditions offered in Scripture classes (Christianity, Judaism, Islam, Baha'i, Hinduism, and Buddhism) effectively impart the same broad set of values necessary for good citizenship, all of which centre around concepts of honesty, compassion, responsibility, and righteousness.⁵⁴

(b) Spirituality and Wellbeing

Although modern public education tends to focus on physical and intellectual development to the neglect of spiritual development,⁵⁵ there is a re-emerging recognition of the fact that 'man shall not live by bread alone'. For instance, both the *Melbourne Declaration* and the *Alice Springs (Mparntwe) Declaration* contain an explicit recognition of the need to cultivate

⁵¹ Gross and Rutland (n 4) 76, 78.

⁵² Tony EAUDE, 'Spiritual and Moral Development' in L Phillip Barnes (ed), *Debates in Religious Education* (Routledge, 2012) 144, 145.

⁵³ Ibid 150–1.

⁵⁴ Gross and Rutland (n 4) 82, 93, 96.

⁵⁵ Ibid 136–7.

spiritual wellbeing in students,⁵⁶ and s 7(2)(c)(v) of the *Education Act 2004* (ACT) states that education should recognise the religious needs, *inter alia*, of all students.⁵⁷

Crucially, Scripture classes plug a gap in this area, contributing to students' spiritual wellbeing by helping them to understand the meaning and purpose of life.⁵⁸ Not only that, religious practices encouraged by Scripture, such as church attendance, prayer, and giving to others, have been directly linked to improved mental and physical health and wellbeing, as well as a lowered probability of engaging in risky behaviours such as drug use and promiscuity.⁵⁹

(c) Cultural and Religious Identity

Finally, Scripture classes may play an important role in the development of cultural and religious identity in students. For instance, it has been asserted that they provide students with both a sense of belonging and a practical support network of like peers who affirm the same fundamental beliefs — a particularly valuable asset for students from minority religions within the school community.⁶⁰

3. Common Objections

(a) General Religious Education is a Preferable Substitute

The most common argument for the abolition of Scripture lessons is that General Religious Education ('GRE') is more suited to a modern, multicultural society than Scripture is.⁶¹ (This was the underlying rationale for the Victorian Government's removal of Scripture lessons from ordinary school hours and their replacement with a form of GRE.⁶²)

However, there are serious inherent limitations within GRE. Chief among these is that GRE does not aim 'to nurture belief, promote community cohesion, find truth, develop character, increase a sense of identity, gain knowledge or deepen spirituality'.⁶³

⁵⁶ Ministerial Council on Education, Employment, Training and Youth Affairs, *Melbourne Declaration on Educational Goals for Young Australians* (Declaration, December 2008) 9 <<https://files.eric.ed.gov/fulltext/ED534449.pdf>> ('*Melbourne Declaration*'); Education Council, Department of Education, Skills and Employment (Cth), *Alice Springs (Mparntwe) Education Declaration* (Declaration, 13 December 2019) 6 <<https://www.education.gov.au/indigenous-education/resources/alice-springs-mparntwe-education-declaration>>.

⁵⁷ Notably, although spirituality may be a broader category than traditional religion, the close link between the two is indisputable. See Eade (n 52) 147.

⁵⁸ Gross and Rutland (n 4) 78.

⁵⁹ Ibid 130, 133; Ying Chen and Tyler J VanderWeele, 'Associations of Religious Upbringing with Subsequent Health and Well-Being from Adolescence to Young Adulthood: An Outcome-Wide Analysis' (2018) 187(11) *American Journal of Epidemiology* 2, 355.

⁶⁰ Ibid 109, 115–19.

⁶¹ See Maddox, *Taking God to School* (n 13) 148–53; Cathy Byrne, *Religion in Secular Education: What, in Heaven's Name, Are We Teaching Our Children?* (Brill, 2014); Anna Halafoff, Kim Lam and Gary Bouma, 'Worldviews Education: Cosmopolitan Peacebuilding and Preventing Violent Extremism' (2019) 40(3) *Journal of Beliefs & Values* 381.

⁶² Victorian Government, 'New Curriculum Supports Students to Build Healthy Relationships and Understanding' (Media Release, 21 August 2015) <<https://www.premier.vic.gov.au/new-curriculum-supports-students-build-healthy-relationships-and-understanding>>.

⁶³ Terence Lovat, 'The New Values Education: A Pedagogical Imperative for Student Wellbeing' in Terence Lovat, Ron Toomey, and Neville Clement (eds), *International Research Handbook on Values Education and Student Wellbeing* (Springer, 2010) 3.

Not only that, but there are at least three reasons to believe that Scripture lessons actually serve multiculturalism *better* than GRE. First, Scripture teaching nurtures each individual's religious and cultural foundations, which in turn promotes a robust pluralism.⁶⁴ Second, allowing a degree of religious education incentivises parents of diverse religious backgrounds to keep their children in the public system, as they do not feel forced to choose private religious schools or home schooling to maintain their cultural and religious identity.⁶⁵ Third, tolerance for other people groups is arguably more effectively taught within a particularist religious context, paradoxical as that may sound. For instance, this value is regularly taught in Scripture classes by reference to religious ideas such as mankind being created in God's image and through foundational stories such as the Good Samaritan.⁶⁶

(b) Scripture Has Lost its Social Relevance Due to the Decline in Religious Affiliation and Church Attendance

Although recent decades have seen a precipitous drop in denominational affiliation and church attendance in Australia, this has not had the impact on demand for Scripture one might suppose. Studies show that parents with a Christian upbringing, but with no active involvement with religion, still tend to send their children to Scripture lessons. Some of these parents continue the cycle by sending their children to Christian Scripture, wanting their children to learn the same basic religious values they grew up with. On the other hand, another group of these parents opt to send their children to Buddhist Scripture classes, perhaps due to a lingering sense that exposure to some kind of authentic spirituality still matters.⁶⁷

Hence, since the demand for religious education in public schools is staying relatively stable, Scripture classes are arguably becoming *more* important in the modern era, standing as one of the only sources of religious knowledge and experience open to most Australian children today.

(c) Offering Scripture Disadvantages Non-religious Students

Finally, concerns have been raised that students who do not participate in Scripture 'are missing out on essential learning time'.⁶⁸ Further, it has been suggested that Scripture lessons may have an 'alienating', 'excluding' or 'isolating' impact' on students who do not participate in them.⁶⁹ If true, these concerns would indeed pose a real challenge to the fairness of maintaining Scripture classes. However, their legitimacy has been effectively called into question by the findings of the Victorian Civil and Administrative Tribunal in *Aitken v Victoria- Department of Education & Early Childhood Development* [2012] VCAT 1547 ('*Aitken*').⁷⁰

In *Aitken*, the complainants argued that their children had been discriminated against as a result of their non-participation in Victorian Scripture classes.⁷¹ However, in dismissing this claim, the Tribunal found, first, that the children were not missing out on essential learning time since 'other valuable activities' were offered to them during the Scripture period such as silent

⁶⁴ Gross and Rutland (n 4) 129.

⁶⁵ Ibid 61–2.

⁶⁶ Ibid 164, 170–1.

⁶⁷ Ibid 61, 96.

⁶⁸ See, eg, Victorian Government (n 62).

⁶⁹ See, eg, Maddox, *Taking God to School* (n 13), quoting Catherine Byrne, 'Rejecting the Secular: Religious Instruction in Queensland Public Schools' in Christopher Hartney and Zoe Alderton (eds), *Secularisation: New Historical Perspective* (Cambridge Scholars Press, 2013).

⁷⁰ This decision was upheld on appeal in *Aitken v Victoria* (2013) 46 VR 676.

⁷¹ *Aitken* (n 35) [4] (Ginnane V-P).

reading and mathematics activities.⁷² Second, the Tribunal also found no evidence of non-Scripture students being ‘subject to any differential treatment’ or being teased or bullied in any way.⁷³ Although the Tribunal’s comments here were made in the limited context of three identified Victorian schools, they appear to have substantial relevance more broadly.

It might also finally be observed that such concerns relating to productive use of time and avoiding social isolation would be effectively addressed if a version of New South Wales’ ‘Special Education in Ethics’ alternative to Scripture was provided in every other state and territory in Australia.

B. Regulating the Content of Scripture Teaching

1. Opening Comments

Another live controversy concerns whether Australian governments ought to do more to regulate the content of Scripture teaching.

The current situation, as previously noted, is that the government’s role is limited to approving which religious bodies can provide Scripture teaching in schools, meaning total responsibility for the content and curricula taught lies with the religious bodies themselves.⁷⁴ One recent review of Scripture materials completed by the Queensland Department of Education rightly observed that ‘the current legislation governing RI in state schools does not enable centralised regulation of RI content’, and a 2015 review of the NSW Scripture system found that neither Scripture ‘providers nor the Department monitors [Scripture teaching’s] compliance [with departmental policies] in any systematic way’.⁷⁵

Indeed, this minimal-interventionist approach from state governments has meant that very few prospective Scripture providers have been refused their applications to teach within schools; in fact, this has only occurred where the applicants were not true religious bodies at all, but rather secular activist groups posing as religious bodies for political purposes. The 2015 New South Wales review found that no Scripture providers had lost their approval in recent years and that the only provider to be refused initial approval was the ‘Gordon Church of the Flying Spaghetti Monster’ (a parody church created for the sake of a political stunt).⁷⁶ In such cases, however, the government’s rationale for excluding the applicants appears to be their lack of denominational status and bona fide belief system, as opposed to any objection to the offensiveness or undesirability of the content they teach. A clear example of this is the Queensland Government’s rejection of the application by the ‘Noosa Temple of Satan’ to provide Scripture teaching in public schools. Even there, the Government’s focus was on the fact that the group’s ‘true purpose [was] political as opposed to religious’ and that the group

⁷² Ibid [349], [463]. It might also be noted that a mere 30 minutes per week is a fairly minor period of time to sacrifice, all things considered.

⁷³ Ibid [351], [425], [428].

⁷⁴ See above (text accompany nn. 39-42).

⁷⁵ Department of Education (Qld), *Report on the Review of the Connect Religious Instruction Materials* (Report, August 2016) i <<https://cdn.newsnow.io/Un3zFxnGjZZYujEcmXfzcX/dba80bbc-b801-4931-96e2-99cb358cf3ef.pdf>> (*Connect Review*); ARTD Consultants, ‘2015 Review of Special Religious Education and Special Education in Ethics in NSW Government Schools’ (Web Document, 23 March 2016) xviii, 42 <<https://education.nsw.gov.au/content/dam/main-education/about-us/educational-data/cese/evaluation-evidence-bank/2016-special-religious-education-and-special-education-in-ethics-in-nsw-government-schools-2015-review.pdf>>.

⁷⁶ ARTD Consultants (n 75) 41.

did not hold any genuine belief in a divine being, rather than the offensiveness of the group's proclaimed content.⁷⁷

It appears, therefore, that governments merely have 'soft power' in regulating Scripture content; the most they can do is conduct reviews and request Scripture providers update their materials in accordance with the review's recommendations.⁷⁸ However, although there is no clear legal authority compelling Scripture providers to comply with these recommendations,⁷⁹ they are still likely to do so, given the need for providers to maintain their social license and their relationship with the education system.

The question of how governments should use this soft power must be answered in conjunction with a broader consideration of the contentious policy issue of what limits should be placed on religious freedom generally within a secular state.

2. Should Scripture Teachers Generally Be Allowed to Teach Non-mainstream Content?

The first point to note is that the vast majority of Scripture content is not particularly controversial and does not sit uneasily with any government policies. In this vein, it is instructive to consider the Queensland Department of Education's conclusion following their comprehensive review of the content offered by *Connect* (a popular Christian Scripture provider in Queensland). Overall, the Department found that 'the vast majority of *Connect* materials align with the Department of Education and Training's legislation, policies, procedures or frameworks'. Further, the 'small number of concerns' they identified did not centre around the substance of the doctrines taught but instead focused on the way in which some of the content was conveyed and its age appropriateness for primary school children.⁸⁰ Not only that but, far from contradicting government policy, research has indicated that Scripture classes tend to promote the ethical value of living as a good citizen and a charitable neighbour within society.⁸¹

With that said, it is inevitable that people of faith will affirm some beliefs and practices that do not conform to the 'mainstream secular consensus'.⁸² Particular examples of such non-mainstream beliefs taught within some Scripture classes that have been criticised are biblical inerrancy⁸³ and traditional views on sexual morality.⁸⁴ Whilst such beliefs do not receive majority support more broadly, given that Scripture is provided as an 'openly "confessional"

⁷⁷ *Bell v State of Queensland* (2022) 10 QR 568, 574–5 [9] (Burns J).

⁷⁸ See ARTD Consultants (n 75) xviii; Department of Education (Qld), *Connect Review* (n 75) 16.

⁷⁹ Note, however, that the Queensland Department of Education has speculated some authority might be derived from principals' legislative duty to 'promote a safe, supportive and productive learning environment', as well as their 'common law duty of care for students': Department of Education (Qld), *Connect Review* (n 75) 15. That said, the Department itself recognised that there is insufficient clarity regarding what exactly these duties require in the context of monitoring Scripture content: at 16.

⁸⁰ *Ibid* i.

⁸¹ Gross and Rutland (n 4) 82.

⁸² *Ibid* 46–7.

⁸³ See Maddox, *Taking God to School* (n 13) 133–5, citing Catherine Byrne, 'Ideologies of Religion and Diversity in Australian Public Schools' (2012) 14(4) *Multicultural Perspectives* 201, 205.

⁸⁴ These teachings have been highly criticised, despite the fact that many would consider them 'standard features of Christian thought', rather than beliefs 'at the fringes of Christianity': Neil Foster, 'Schools, Scripture, Banning of Books and Sexual Orthodoxy', *Law and Religion Australia* (Blog Post, 11 May 2015) <<https://lawandreligionaustralia.blog/2015/05/11/schools-scripture-and-book-banning-in-nsw/>> ('Banning of Books').

program' consented to by parents, it seems reasonable to permit the teaching of such non-mainstream religious beliefs within school Scripture classes.⁸⁵ In fact, the toleration of differences in belief that this would promote is essential to sustaining a robust pluralism that recognises parents' rights under international law to 'ensure the religious and moral education of their children in conformity with their own convictions'.⁸⁶

Whilst many religious teachings that are out of step with mainstream secular thought should, therefore, be tolerated within Scripture lessons, it is undeniable that *some* limits should still exist to minimise risks such as radicalisation. Although the probability of such risks materialising in any given school is very low, the prospect is unfortunately not completely hypothetical. To take an extreme example, whilst not linked to Scripture classes, Islamic State ideology was disseminated through a voluntary religious club at a public high school within New South Wales in the recent past.⁸⁷ Therefore, the question becomes on what basis the line ought to be drawn between acceptable and unacceptable non-conformity within religious education.

3. Where is the Line Between Acceptable and Unacceptable Non-conformity?

A helpful starting point on this question is provided by art 18(3) of the *International Covenant on Civil and Political Rights*: 'Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others'. Admittedly, this is a broad standard that may leave room for debate in its application to real-world controversies. However, what it does make clear is that religious freedom is paramount and should only be constrained in extreme circumstances for the benefit of the most fundamental of conflicting rights.⁸⁸ The natural corollary is that religious freedom must not, therefore, be diminished to protect 'pseudo rights like the right not to be offended', nor should it be diminished in pursuit of a sanitised secular consensus that suppresses differences of opinion on important issues of personal belief.⁸⁹

⁸⁵ Neil Foster, 'Schools, Same Sex Politics and Religion in NSW', *Law and Religion Australia* (Blog Post, 26 August 2015) <<https://lawandreligionaustralia.blog/2015/08/26/schools-same-sex-politics-and-religion-in-nsw/>>.

⁸⁶ *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 18(4). Note that such a notion is consonant with Dr Michael Bird's promotion of 'confident pluralism' in Australia in Michael F Bird, *Religious Freedom in a Secular Age: A Christian Case for Liberty, Equality, and Secular Government* (Zondervan, 2022).

⁸⁷ See Neil Foster, "'Extremism' in Schools and Religious Freedom", *Law and Religion Australia* (Blog Post, 29 July 2015) <<https://lawandreligionaustralia.blog/2015/07/29/extremism-in-schools-and-religious-freedom/>> ('Extremism').

⁸⁸ Hastie comes to a comparable conclusion, though from a more utilitarian angle, arguing that religious texts in schools should only be censored in rare circumstances where 'two or more of the four key education stakeholders' (parents, students, society, and schools as institutions) are 'significantly ignored on a large scale':

David Hastie, 'Should We Ban Books in Schools? Arguments from the Public History of Australian School Text Censorship' (2018) 53(3) *English in Australia* 23, 32 ('Should We Ban Books').

⁸⁹ Foster, 'Extremism' (n 87); Bird (n 86) 102–6.

V. CONCLUSION

In sum, whilst there are limitations to available sociological data,⁹⁰ there are still a number of compelling policy arguments in favour of retaining Scripture lessons within school hours in Australia's public education system. It is submitted that the system in New South Wales, with its robust support for Scripture, its emphasis on parental choice, and its substantive alternative of 'Special Education in Ethics', is the best overall system, deserving of emulation by other Australian jurisdictions.

Moreover, the general posture of non-interventionism in Scripture curricula demonstrated by most states is commendable, and it is suggested that their soft power over content should continue to only be used in extraordinary cases. Although it may be unnecessary and undesirable to legislatively expand this power of intervention, a public clarification of its precise limits could be desirable, particularly to avoid overreach.⁹¹

Ultimately, if over 200 years of Australia's experience with religion in education has taught us anything, it is that we should not expect universal contentment with any Scripture system that we settle upon. With that said, a system that unbegrudgingly welcomes Scripture teachers into the public classroom appears to remain our greatest hope for a cohesive, pluralist society that chooses to support, rather than suppress, our inherent diversity.

⁹⁰ For instance, Gross and Rutland's qualitative data was gathered from a relatively small sample size of 58 Scripture teachers, mostly from New South Wales: Gross and Rutland (n 4) 18–20.

⁹¹ This arguably occurred in 2015 when the New South Wales Department of Education sent schools a warning regarding certain Christian books used in Scripture because of their traditional teaching on sexual morality. But note that the Minister for Education advised these books were no longer banned within two weeks of the initial warning. See Foster, 'Banning of Books' (n 84); Neil Foster, 'Update – Schools, Scripture, Banning of Books and Sexual Orthodoxy', *Law and Religion Australia* (Blog Post, 21 May 2015) <<https://lawandreligionaustralia.blog/2015/05/21/update-schools-scripture-banning-of-books-and-sexual-orthodoxy/>>; Hastie, 'Should We Ban Books' (n 88) 29–30.