Conclusion

The End of the Journey

9.1 Introduction

The advent of new communities and the introduction of different, minority religions, in greater numbers than previously, present Australian society with new challenges. They will require fresh legal responses; from the branches of Executive Government and administration, from the courts and from the legislature.¹

Michael Kirby, former Justice of the High Court of Australia, made the above observation almost two decades ago. He was right in anticipating that changes in the religious demographic profile of Australia would necessitate, as he puts it, ‘fresh legal responses’ from all branches of the Australian government, if they are to be responsive to the needs of a diverse society. This book has demonstrated that one particular segment of Australian law – the system of local planning – has failed to keep pace in this regard by continuously clinging to anachronistic regulatory tools that hinder the spatial and structural aspect of the right to freedom of religion or belief. This study suggests that the local planning system is functioning under the assumption that Australia is still culturally and religiously homogenous. Twenty-first century Australia is vastly different. The infusion of international human rights norms, particularly those pertaining to the right to freedom of religion or belief, into the Australian local planning system could have been its ‘fresh legal response’ to the demands of 21st-century Australia. Unfortunately, however, this human rights-inspired overhaul of Australian local planning has not yet materialised, and the principles and concepts that underpin the discipline continue to be, as planning scholar Susan Thompson convincingly described, ‘culturally exclusive, inequitable and unwilling and/or unable to accommodate different ways of being in urban space’.² Religious freedom norms have barely infiltrated the local

planning system in Australia. The result is the paradox that, while religious diversity is formally celebrated and extolled in Australia, the important spatial and structural aspect of that diversity – that is, the ability of religious groups to fully exercise their right to establish and maintain places of worship – tends to be constrained by the local planning processes. As revealed in the analysis in Chapters 5, 6 and 7, this constraining effect is the result of the enforcement of planning regulatory tools which are underpinned by, and thus promote, the majority population's Anglo-Celtic standards of convenience and beauty in the built environment.

In this final chapter, the salient findings of the previous chapters are summarised. This is followed by a discussion of the contribution that this study makes to the existing body of knowledge and its wider significance to the understanding of the interaction between law and religion.

9.2 Summary of Findings

By analysing the incremental contributions of each of the international human rights instruments guaranteeing religious freedom, Chapter 2 demonstrated that a distinct right to establish and maintain places of worship has been carved out from the core nucleus of the right to freedom of religion or belief. Being part of a coherent whole, the right to establish and maintain places of worship enjoys the same international legal guarantees that protect religious freedom. The key principles underlying the international legal protection of religious freedom have been demonstrated to have a direct positive bearing on the protective capacity of the right to establish and maintain places of worship, and vice versa. Such a symbiotic relationship fortifies the legal protection of the spatial and structural aspect of religious freedom.

Chapter 3 explained how the status of the right to establish and maintain places of worship as a distinct human rights norm was solidified by demonstrating how it has received its own substantive contents through the process of international human rights standard-setting. It demonstrated how the bare and austere manner in which the right was articulated in Article 6(a) of the Religion Declaration could be compensated by resorting to and synthesising the pronouncements of human rights authorities that have a direct influence on international standard-setting pertaining to religious freedom. This same technique can also be employed in order to increase understanding of other vague or imprecise elements of the right to freedom of religion or belief. Like its ‘parent’ human right, the right to establish and maintain places of worship has a composite character, comprising distinct but related elements all operating