Motherhood, equality and the state: the possibilities and limitations of the Australian Human Rights Commission

by

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Glossary

ABC	Australian Broadcasting Corporation
ABS	Australian Bureau of Statistics
ACOSS	Australian Council of Social Services
ACTU	Australian Council of Trade Unions
ALP	Australian Labor Party
APS	Australian Public Service
ATSIC	Aboriginal and Torres Strait Islander Commission
COAG	Council of Australian Governments
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women (1979)
CSW	Commission on the Status of Women
ECOSOC	Economic and Social Council
GFC	global financial crisis
GST	Goods and Services Tax
HECS	Higher Education Contribution Scheme
HREC	Human Research Ethics Committee
HREOC	Human Rights and Equal Opportunity Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organisation
IVF	in-vitro fertilisation
MP	Member of Parliament
NGO	Non-government organisation
OECD	Organisation for Economic Cooperation and Development
PML	Paid-Maternity Leave
SBS	Special Broadcasting Service
SDA	Sex Discrimination Act 1984
SDC	Sex Discrimination Commissioner
UK	United Kingdom

UN	United Nations
UNCSW	United Nations Commission on the Status of Women
US	United States
UNDHR	United Nations Declaration on Human Rights
WPR	What's the problem represented to be?

Abstract

Human rights discourses are increasingly being utilised by state and non-state actors in efforts for change for women globally. This thesis investigates the possibilities or limitations of the Australian Human Rights Commission (hereafter referred to as the Commission) to contribute to women's progress. The Commission is the Australian states' key human rights body that conducts policymaking within a human rights framework. I adopt Carol Bacchi's (2009) 'What's the problem represented to be?' approach to ask: how was the Commission problematised by different federal governments between 1977 and 2008 and what were the effects of the problematisations on the material and legislative conditions of the Commissions?

I pay special attention to the way that motherhood is constructed in the problematisations of the Commission that has implications for women's progress. Bacchi's (2009) approach offers my study the tools to assess how we are governed through problematisations—how the government defines what is problematic and how problems are being represented in policy debate—by focusing on the competing discourses. In this study I analyse the 'discourses' (Foucault 1972) of the 'texts' produced by the Commission and federal government's parliamentary debates related to the establishment and functioning of the Commission.

My study assesses whether the Commission is successful in promoting a feminist agenda by utilising human rights language in its policy proposals and challenging patriarchal discourses of motherhood. Women's progress has been constrained by the history of the state's construction of maternal citizenship in its family policymaking. With a focus on paid-maternity leave policy specifically, in this research I ask: how was the need for paid-maternity leave policy problematised by the Commission?

However, my research acknowledges that there are limitations to what the Commission *is able to say* due to the discursive and material ties it maintains with the federal government. Hence, the Commission does not exist in a vacuum. Bacchi's approach provides the tools to historically assess how the Commission was problematised by the different federal governments and what 'effects' (Bacchi 2009) this had on the material

and legislative conditions of the Commission. My research shows that the problematising shifted from an emphasis on the need for strong human rights protection to the Commission being cast as a 'problem' that should have its powers and functions reduced. The significant discursive shift that occurred in Australia and similar Western countries from social-liberalism to neoliberalism contributed to a negative regime of truth about the Commission.

In this study, I argue that the negative regime of truth that circulated about the Commission in this time period was successfully opposed so that it maintained possibilities to contribute to women's progress. I also argue that the contemporary Australian state (in both liberal and neoliberal formations) reinforces unequal gendered conceptions of citizenship even as women's roles have changed significantly. The pursuit of a 'deconstructive equality' approach offers a hopeful outlook of the potential of state bodies, such as the Commission, to contribute to women's progress.

Declaration

Candidate's name: Sarah Hattam

I declare that this thesis presents work carried out by myself and does not incorporate without acknowledgment any material previously submitted for a degree or a diploma in any university. To the best of my knowledge and belief this thesis does not contain any materials previously published or written by another person except where the due reference is made in the text; and all substantive contributions by others to the work presented, including jointly authored publications, is clearly acknowledged.

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Signed _____

Date:

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Over and over again, stories in women's magazines insist that women can know fulfilment only at the moment of giving birth to a child. They deny the years when she can no longer look forward to giving birth, even if she repeats that act over and over again. In the *feminine mystique*, there is no other way for a woman to dream of creation or of the future. There is no way she can even dream about herself, except as her children's mother, her husband's wife. (Betty Friedan 1963, p. 55)

How is motherhood to be understood? Does motherhood refer only to the relationship between mother and child; or does motherhood also refer to women's standing in the political order? (Pateman 1992, pp. 20–21)

Parents—women especially—are reminded every day how they don't measure up. (Valenti 2012, p. xiv)

Chapter 1
Motherhood, equality and the Australian Human Rights Commission

My research began out of concern for the ways contemporary Australian women experience motherhood. Even though motherhood has changed in significant ways, such as an increase in the number of women remaining childless by choice, an increase in sole-motherhood families and women's work-force participation (Pocock 2005) and a reduction in the average number of children that women are having, motherhood remains, to use Pocock's term 'unrenovated' (2003, p. 1), as well as being constructed as 'compulsory' (Cassidy 2006, p. 40) for women. This often means that there is an expectation that all women should mother and should aspire to be 'good mothers'.

Feminism has long advocated for shifts in the way that parenting is often conceptualised as only women's work so that women may have greater opportunities for material security (Chodorow 1978; de Beauvoir 1949; Greer 1984; Rich 1986; Rowbotham 1973; Wearing 1984). While most Australian women in the twenty-first century would not relate to or resemble Betty Friedan's (1963) version of womanhood in the *Feminine Mystique* of the 1960s, research shows that women in the most industrialised countries are still being disadvantaged by their biological capacity to bear children (Benard & Correll 2010; Correll, Benard & Paik 2007; Gangl & Ziefle 2009; Miller 2011). Economic and employment indicators show that Australian women earn 83 cents to the male dollar (Office for Women 2009), are significantly under-represented in upper management across all industries (McGraw & Mackisack 2009) and are retiring with pitiful superannuation (Olsberg 2005).

My interest in women's experiences of motherhood expanded to include the state's relationship with women, and the role it plays in shaping women's lives and opportunities. I found that the state historically understands women in terms of maternal citizenship and hence defines women primarily as mothers (Pateman 1992). Such concern over the way the contemporary state constructs motherhood was inspired when I attended a public

forum in 2002, sponsored by the University of South Australia and the Australian Human Rights Commission (then the Australian Human Rights and Equal Opportunity Commission or HREOC and hereafter referred to as the Commission) on a proposal for paid-maternity leave (PML) in 2002.

I was surprised when the Sex Discrimination Commissioner (SDC) at the time, Pru Goward, claimed that Australia needed this policy change, on the grounds that a woman's 'basic social function' (2002a) is to have children, which should be supported by the government. Her framing of the need for paid-maternity leave did not reference feminist struggle; but instead positioned women primarily as maternal citizens. Identifying the problematic in this framing here is important. Simply put, feminism has dedicated much energy into gaining recognition for the value of motherhood (Ruddick 1989; 1983), yet it has also demanded that women are not defined by their wombs (Greer 1984).

This expansion in my research project involved not just a consideration of the processes of policymaking, but also a view of the state as a vehicle for progress (Pringle & Watson 1992) as the Commission forms part of the state. As a statutory authority, the Commission's work is guided by a framework of human rights and equality, giving the motivations for its work a distinctive logic that is different to other apparatus of the state (such as the Productivity Commission, whose work is guided by a framework of economic rationalism).[1] In this thesis, I use the term 'framework' as another way of describing the competing discourses or meaning-making process that occurs in policymaking or 'problematisations'. Bacchi says that discourse is more, or larger, than language, or words: 'it is useful to talk about discourses as frames, since they provide frameworks or ways of viewing issues' (1999, p. 40). Policymaking is shaped by particular frameworks or discourses that a government department or agency is guided by, depending on its objectives or mandate. In my research, I inspect a government agency

[1] As promoted on the Productivity Commission's website: 'As its name implies, the Commission's focus is on ways of achieving a more productive economy - the key to higher living standards'. It identifies as its main role to function as the 'Australian Government's principal advisory body on all aspects of microeconomic reform. The Commission's work covers all sectors of the economy. It extends to the public and private sectors and focuses on areas of Commonwealth as well as State and Territory responsibility' (Commonwealth, *Productivity Commission* website 2013).

whose mandate is guided by a human rights framework, as it utilises 'rights' discourses in its policymaking. The Commission uses a language of 'human rights' to propose policy change. Hence, my focus shifted from examining the experiences of Australian mothers to understanding how the Australian state constitutes 'motherhood' in its policymaking within a human rights and women's equality framework through an independent state agency such as the Commission.

Aims of the research

Being surprised that a Sex Discrimination Commissioner constituted women solely in maternal terms contributed to the central aim of my research—to investigate the possibilities and limitations of the Commission to contribute to women's progress. I apply a sociological framework to make sense of Goward's comments within the broader social, historical, cultural and political contexts. In this framework, her comments do not exist in isolation from the rest of society or politics. Her language choices, or the discourses she utilises, have been influenced and shaped by multiple ties that are explored in this thesis. This includes the material ties and legislative constraints, as well as its position as an apparatus of the state or an arena of the policy machinery. I consider the limitations that are placed on the Commission or the Commissioners that contributes to how they describe problems of, or problematise (Bacchi 2009), women's inequality. Conversely, I also question the possibilities that exist for the Commission to challenge the maternal citizen conception of womanhood that has proven to be harmful for women's progress in recent Australian history. My thesis assesses the problematisations of the Commission with a historical lens to provide insight into how the different federal governments have framed the need, or not, of an independent body to monitor Australia's human rights obligations.

I have formulated the following three research questions to investigate the possibilities and limitations of the Commission to contribute to women's progress:

- First, how was the need for a human rights agency problematised by different federal governments between 1977 and 2008 and how was motherhood constructed in these problematisations?

- Second, what are the effects of the state's problematising of human rights on the Commission's legislative and material conditions during the period 1977–2008?
- Third, how does the Commission construct motherhood in its policymaking, focusing on PML policy specifically?

The following sections develop the rationale of my study that gives shape to these three questions. I discuss the connection between women's progress and policy, why I look for women's progress through the state, and why I investigate the Commission. Overall, the study closely examines the possibilities of the Commission to contribute to women's progress, as well as its limitations.

Women's progress and policy

First, what do I mean by women's progress? Walby (2009a) argues, 'there is no single and universally agreed upon definition of progress, rather there are many competing framings of the project' (p. 17). Is it being richer, living longer, reduced inequality or more human rights (Walby 2009a)? I borrow from Walby's (2009a) framework that suggests the goals of economic development, equality and rights should be pursued simultaneously and we should not give up on the idea of progress even if it is a contested project. For Walby, the contestation exists around the notion of a universal standard of progress, as she questions:

> Is there a single universal standard, or will there always be particular standards for different cultures and communities? The tension between universalism and particularism runs through all of these framings of progress: between a concept of progress that is universally applicable and one that always varies by social location. (p.14)

Walby (2009a) acknowledges the theoretical tensions present in pursuing 'progress' that exist between the classic sociological position of modernity as progress and the approach that rejects the universalistic and ethnocentric use of the concept. As she proposes,

The postmodern critique of modernity argues that a universally relevant concept of progress is inherently impossible. However, it can also be argued that universal standards are needed, since exceptions can be manipulated by the powerful. (p. 14)

Rather Walby (2009a) argues for the usefulness of the position of regarding 'progress' as a contested project that proposes: 'there are alternative conceptions, but not an infinite number; it exists as a notion that is highly contested; it is argued over in politics and policy, philosophy and theory, data and analysis (p. 4).

What is particularly useful for my project from Walby's framework of progress is her emphasis that 'while there is no single foundation for standards of progress, the formulation, encoding and institutionalization of concepts of progress in international conventions and agreements, especially those orchestrated by the UN, proceed apace' (p. 17). My study of the Commission considers the ties it has to the UN and details how the UN advocated for the creation of such bodies as the Commission in the *Paris Principles* document. Hence, my project acknowledges the tensions that exist over labelling or identifying what 'progress' entails but at the same time finds the category useful to adopt in line with Walby's work. She acknowledges the importance of international human rights mechanisms as an avenue for social change, or 'progress'.

I also acknowledge the tensions in adopting the category of 'progress' at the same time as utilising a Foucauldian approach to power of the subject. Working with poststructural positions can be defined by a tension between providing critique and a language of possibility. Simply put, we have to resist reifying the concepts we use to explain the social. But then that gets us into trouble when we want to outline a political project. Aronowitz (1992) is helpful on this point: 'in place of determinate categories of which positive science is so fond, negative theory in its quest for the sources of transformation is caught between a critique of categories … and its own will to explanation, a program which requires, positive, unhistorically mediated, categories' (p. 297). There are many ways that critical scholarship attempts to resolve this tension. From Foucault, there is mostly an attempt to resist outlining a language of possibility or any positive project. For Foucault the moment of critique 'consists in seeing what kinds of self-evidences, liberties, acquired and non-reflective modes of thought, the practices we accept rest on' (Foucault 1982b: 33). Critique stops 'treating thought lightly' (p. 33) and opens up our reasoning for interrogation. Criticism consists in driving this thought out of hiding and

trying to change it: showing that things are not as obvious as we might believe, doing it in such a way that what we accept as going without saying no longer goes without saying. To criticize is to render the too-easy gestures difficult. (Foucault 1982, p.34)

It is through such critique 'one begins to be unable, any longer, to think things as one usually thinks them, transformation becomes simultaneously very urgent, very difficult, and altogether possible' (Foucault 1982, p. 34). But then Foucault did advocate for some ideas from a normative project. In the later part of his life for instance he advocated for 'practices of freedom'. He had historicized that notion carefully in much of his writing but the title of one of his last interviews—'The ethic of care for self as a practice of freedom'—quite clearly articulates his position on that idea. I am hesitant to seek an 'essential Foucault' (Jessop 2008, p. 153) as his theory of power developed and changed over time. In other words, where he may have been much stronger in his critique of Enlightenment ideas of 'liberty' in his earlier work, his later work such as the one listed above, positions people as 'self-determining agents who are capable of challenging and resisting the structures of domination in modern society' (McNay 1992, p. 4).

This theme has also been taken up by a range of feminist scholars (McNay 1992; McNeil 1994; Ramazanoglu 1994;). McNay claims the charge Foucault is anti-Enlightenment should be reassessed as she shows how Foucault's theory of practices of the self, 'rather than representing a rejection of Enlightenment values, represents an attempt to rework some of the Enlightenment central categories, such as interrelated concepts of autonomy and emancipation' (1992, p.3).

While Foucault was critical of the ideas of the Enlightenment that contributed concepts of progress, reason and human nature, he also acknowledged the 'Enlightenment as the source of a critical tradition on which we still depend' (Ramazanoglu 1993, p. 23). McNeil (1993) also supports the claim that 'Foucault never totally abandoned Enlightenment parameters' (p. 151). Hence, this allows us to 'use the discourses of rights, liberties and justice' – and for my project, 'progress' - while being 'aware of the potential dangers' (Grimshaw 1993, p. 59).

My research advocates for such a pursuit of progress as it recognises the significance of both material and cultural impediments. Rather than position culture and the material domains as adversaries, or entering into debates about the material offering an account of 'real' world struggles which the cultural lacks, I believe it is more fruitful to consider both the material and cultural aspects of women's progress (Sheridan 2002). By way of a brief clarification of my use of the terms 'cultural' and 'material':

- The 'material' represents the economic position and opportunities of women as constrained by the neoliberal marketplace and government. It also represents the material conditions of the Commission as represented in the budget contributions from the neoliberal federal government.
- The 'cultural' domain is understood as 'symbolic codes which regulate what is considered normal and deviant' (Ferguson 1989, pp. 245–246).

Second, in this thesis I examine the possibilities for achieving women's progress through the Commission's work by conducting a critical policy analysis. I investigate the Commission's contribution to policy debates in Australia as well as the structural and material effects of its relationship with the state. I adopt Bacchi's (1999, 2009, 2012) poststructuralist approach to policy-as-discourse as central to my methodological approach. This approach is concerned with assessing how problems are represented in policy, rather than assessing policy in terms of 'solutions' or 'outcomes'.

Bacchi's approach provides a way of understanding how we are governed. Bacchi focuses on the 'problem representations' (1999, 2009) or 'problematisations' (2012) in policy that indicate how the need for policy is framed or the framework that is adopted. In line with Bacchi's approach, my study adopts Foucault's (1972) definition of discourse that signifies the relationship between practices, language, knowledge and power. For Foucault, discourses can be thought of as more than merely ways to communicate but 'as practices that systematically form the objects of which they speak' (p. 49). Foucault's theory of discourse offers us a way of thinking about the way that the meaning-making system works through language, but also has broader implications for what a society or

culture defines as the 'truth' through competing belief systems or 'knowledges'. The significance of discourses for my project is that the state governs through discourse—the meaning-making system that defines what is normal behaviour or practice—and that patriarchal discourses of motherhood have been historically utilised by the state. To cite Watson (2000) on this point: 'the attention to discourse makes us aware how crucial, amongst other things, written documents—such as laws and policy reports—are in constructing particular subject positions for particular individuals' (p. 75).

Foucault's theory of discourse provides a frame for the analysis of how women are constituted as subjects of motherhood discourses in policy. I am sensitive to the idea that 'discourses are not the direct product of intentional manipulation by a few key political actors, but neither are they trans-historical structures operating outside human intervention' (Bacchi 1999, p. 43). I also hold onto the possibility of social actors pursuing certain goals, such as women's progress, through language use (Bacchi 1999), such as policy work of the Commission. A policy-as-discourse approach demonstrates the contested nature of meaning as one examines *what can and cannot be said in the representation of problems.*

Women's progress and the state

The theoretical framework for my thesis is based on two different but related aspects that underpin the rationale of this thesis. The first is the work that has already been conducted on feminist engagement with the Australian state (Chappell 2000, 2002a, 2002b; Eisenstein 1996; Franzway, Court & Connell 1989; Sawer 1990; Watson 1990). Analyses of feminist engagement with the state have focused on women's policy machinery including the work of the Australian Federal Office for Women (formerly named the Office of the Status of Women) as the central hub for pursuing policy change for women (Eisenstein 1996; Ryan 1990; Sawer 1990, 1996, 2003c; Sawer & Groves 1994). This literature shows that Australia has a unique history compared to other similar countries, as feminists have entered various arenas of the state and achieved some progress from within (Chappell 2002a; Sawer 1991). The success of the 'femocrat strategy' in Australia from the 1970s through to the 1980s set the ground for a strong feminist voice within the

state to advocate for women's rights. However, the shift to a neoliberal and anti-feminist logic that occurred from the mid-1990s onwards in Australia severely altered the policy machinery landscape. My thesis makes a contribution to feminist accounts of women's policy machinery in the state and especially the policy work of the Commission. I take a poststructuralist view of the state that regards its power and structure as a 'by-product of political struggles whose coherence is as much established in discourse as in shifting temporary connections' (Pringle & Watson 1992, p. 22). In this view, the state does not represent a monolithic body with universal interests, but rather it is made up of a set of arenas that compete with one another. I adopt the perspective that state power involves not only 'discursive struggles' (Pringle & Watson 1992) but it also has material effects in its provision of resources. In this thesis, I argue the Commission and the Productivity Commission are different arenas of the state that compete with one another in the framing of the need for paid-parental leave.

The second aspect of my theoretical framework utilises the body of contested feminist theoretical work on how to best pursue women's progress. This work is often conceptualised in terms of the same/difference or equality/difference dilemma. The same/difference or equality/difference dilemma has been extensively explored (Pateman 1992; Ruddick 1983; Squires 1999) and these discussions reveal that there is no simple answer when it comes to working out how best to pursue 'equality' for women. On the equality/same side, women's differences to men are treated as irrelevant and hence the assumption is that women should be treated the same as men and have the same economic, political and social opportunities in the public sphere (Phillips 1987, 1999). On the difference side of the binary, women's differences are central to arguments that women should receive specific support because of their biological capacity to bear children. The same/difference framing of the discussion has placed limitations on an emancipatory feminist political project as it forces women into making an impossible choice. Choosing an 'equality' approach denies women's differences, and promotes gender neutrality or accepting the male benchmark. This means women compete on men's terms, and motherhood becomes an invisible part of women's lives. Choose 'difference' and the efforts to highlight women's specific needs has the potential of

reinforcing the biological and essentialist arguments that have historically been detrimental to women's progress. A very useful alternative to choosing between the two approaches is offered by poststructuralist accounts of 'deconstructive equality' (Guerrina 2001; Nash 2002; Nentwich 2006; Scott 1997).

The complexity of this argument is outlined in later chapters and forms the basis of one of my key arguments that projects or practices aimed at addressing women's progress need to think beyond binary thinking that traps us into the either/or approach. Instead, the third approach advocates for two key precepts: first, that when considering the best strategy for progress along the lines of equality or difference, the most 'appropriate' strategy must be considered on a *contextual basis* (Nentwich 2006; Walby 2009b). That is, in some contexts, a case needs to be made that a woman's specific needs have to be considered for her to have the same freedoms as men in the workplace. In other contexts, her specific needs are not relevant to a case for progress and therefore arguments for sameness are more appropriate. The second precept of deconstructive equality relates to the first, for if we are going to think beyond the binary of same/difference, then this needs to overcome the masculine/feminine binaries that have historically defined gender norms and created the 'good mother' discourses. To advance women's progress, we need a constructivist approach which contests fixed, cultural and biological explanations of gender.

In adopting this approach, I make no claims for providing a clear-cut and uncontroversial explanation of what a utopian version of equality for women would look like. Just as other conceptions of equality have led to real, practical and positive changes in women's lives without producing an end point to equality, a deconstructive equality approach does not promise it will, or can, offer a resolution to the problem of women's inequality that are described in this thesis. However, it does offer a framework that can be applied in assessing the possibilities of the Commission to contribute to women's progress in Australia by considering the importance of how problems of women's inequality are represented in policymaking.

My analysis of the Commission focuses on a specific policy of PML in order to consider which approach was utilised in its problematisations of PML. Is it on the grounds of equality or difference, or does the Commission adopt both arguments depending on the context that is reflected in a deconstructive equality approach? Further, does the Commission challenge cultural and/or biological explanations of gender, or are men and women positioned in traditional and stereotypical ways based on a masculine and feminine binary logic. My analysis also considers how the different federal governments, construct gender categories in debates about the need for a human rights agency and family policy.

Women's progress and the Australian Human Rights Commission

It is important to outline why I chose to investigate the Commission as one of the state's key sites for advancing women's progress. My investigations reveal that although many feminist scholars have assessed the Commission's potential in its mediation of anti-discrimination legislation in the *Sex Discrimination Act 1984* (SDA) (Chappell, Hill & Chesterman 2009; Charlesworth 2004; 2007; Gaze 2005; Guest 1999; Magarey 2004; Sawer 2010; Thorton 1990, 2006, 2010), there is a gap in knowledge about how the different federal governments 'problematised' the need for a human rights institution, impacting on the Commission's work towards women's progress. Chappell, Chesterman and Hill (2009) conducted a thorough analysis of the politics of human rights in Australia and our current rights protection. Political scientist Marian Sawer explored the Australian women's policy machinery that includes links to human rights bodies such as the United Nations (UN), and specifically the Commission on the Status of Women (CSW) (2006). These analyses provide an in-depth insight into the workings of the government policy machinery and legislation in Australia. My study aims to add new knowledge by examining how the problematising of human rights and women's equality by the state contributed to the possibilities or limitations of the Commission to contribute to women's progress in Australia, specifically in relation to how motherhood is constructed.

The Commission holds a key position within the state, specifically regarding women's rights and equality. The Commission was established during a period in Australia when

the Hawke Labor government strengthened women's federal policy machinery, and the Commission was created as another arena with a mandate to pursue women's equality. The Commission is an independent statutory authority established in 1986 by the *Australian Human Rights and Equal Opportunity Act 1986*. It replaced the first Human Rights Commission that was created in 1981 by the Liberal Fraser government and prior to this, a Human Rights Bureau within the Whitlam Labor government's Attorney-General's Department. Debates in federal parliament about Australia's need for a mechanism within the state to ensure that human rights commitments are observed can be traced back to the early 1970s.

Two key events led to the creation of an independent human rights body. First, in 1978 the UN Commission on Human Rights held a seminar titled *National and local institutions for the promotion and protection of human rights* where guidelines for the structure and functioning of national human rights institutions were created. Second, the ratification of the *International Covenant on Civil and Political Rights* (ICCPR) in 1980 committed the Australian Government to form a mechanism within the state to ensure the Covenant is observed. Australia also has a long history of maintaining a strong and positive relationship with the UN that contributes to the developments in our observance of human rights, such as establishing the Commission.

The Commission has demonstrated success in engaging the state on issues of rights and equal opportunity through its multiple functions. The Commission's function to examine enactments and criticise the government if it has breached its human rights commitments has given the Commission possibilities to engage the federal government on a range of issues. The Commissioners, such as the SDC, are mandated to identify any issue of inequality that fits within the parameters of the human rights Conventions or Covenants, conduct research into the issue and recommend policy change by the various arenas of the state. The Commission has been a loud voice in policy debates on mandatory detention of refugees (2004), the removal of Aboriginal and Torres Strait Islander children from their families between 1869 and 1969 (1997), and specifically for my project, paid-maternity or parental leave (2002b, 2007).

As well as observing commitments to human rights, the Commission addresses discrimination on the grounds of sex, race, ethnicity, religion, age, gender and sexuality in the public sphere. Its function to mediate international human rights Conventions and Covenants as well as anti-discrimination legislation, such as the UN's *Convention on the Elimination of all forms of Discrimination Against Women 1979* (CEDAW) and the SDA (which is the ratified outcome of CEDAW) has given many women opportunities to redress incidences of discrimination in the workplace and in the delivery of public services. In 2009/2010, the Commission received 532 sex-discrimination complaints (Commonwealth 2010)—up from 472 complaints in 2006/2007 (Commonwealth 2007) —although the Commission is limited to performing a conciliation role in such cases and does not have powers to enforce decisions.

The Commission also functions to provide public comment, to inform, and educate Australians by using available media and educational resources and contributes to greater awareness of issues of inequality. Specifically for my research, this encompasses challenging stereotypical roles for men and women (as outlined in CEDAW article 5(a) and discussed in more detail later in this chapter). For example, the Commissioners perform a public role by giving speeches on specific issues, making comments in the media, producing guidelines for employers or employees, and outlining obligations under specific legislation. This role was especially important during the period of 1996–2007 in Australian politics when the SDC's voice was an important counter to the challenges to women's progress emanating from the federal government.

In the next sections I outline the rationale for my three specific research questions.

Research question one: how was the need for a human rights agency problematised by different federal governments between 1977 and 2008 and how was motherhood constructed in these problematisations?

Question one provides insight into the links between the various federal governments and the Commission and hence directly informs the central aim of my research to investigate

the possibilities and limitations of the Commission to contribute to women's progress. As outlined earlier, focusing on 'problematisations' in policymaking brings into focus how problems are represented, or framed. This can reveal what the government considers to be important or a priority for funding or change. Question one is concerned with investigating whether the different federal governments prioritised a government agency whose job it is to hold them accountable to their human rights obligations and propose policy change within a framework of human rights. The Commission's job is not to consider the economic wellbeing of the country, but rather the wellbeing and human rights of its citizens and strangers (such as in the case of refugees and asylum seekers). Intrinsic to my focus on the limitations on the Commission to contribute to women's progress are its material and legislative ties to the federal government. My analysis of the legislative and material conditions of the Commission reveals a contentious relationship between the Commission and the different federal governments as a continuous theme in this thesis that can be explained in the discursive shifts that occurred from the time of the Fraser government through to the Rudd government. The specific time period examined is between 1977 and 2008. In my thesis, the discursive shifts are linked to how the different federal governments framed the need, or not, for a human rights commission.

I argue the discursive shifts that occurred between 1977 and 2008 demonstrate a greater emphasis on economic stability of the country—through privatisation and liberalisation of the market—at the expense of looking after the needs and interests of all people, and are reflected in the discourses adopted at the time. These discourses entail a shift away from a social-liberal agenda that governs for the common good to a neoliberal agenda that rejects the needs of minority groups or the disadvantaged. As an example, the Commission was mandated to protect the rights of the disadvantaged, who were labelled 'special interest groups' by the Howard-led Coalition government. Instead the Coalition government shifted the focus towards 'governing for the mainstream' (Johnson 2000) and rejected the voices of the 'elites', such as the Commission, who were concerned with minority and special interest groups (Sawer 1999, 2002, 2004, 2005). As my thesis develops, I describe how a negative 'regime of truth' (Foucault 1980b, p. 131) developed about the Commission as a consequence of the dominant neoliberal logic. My thesis

examines other discursive shifts that occurred during the period 1977–2008 that impacted on women's policymaking, such as the emphasis on gender mainstreaming (Bacchi & Eveline 2003; Sawer 2003c), 'family values' and the pitting of women's rights against children's rights (Maddox 2005;). The global financial crisis (GFC) marks a significant point in Australian political reality that created a challenge for the then Labor leader, Kevin Rudd, who attempted for a time to use government spending to ameliorate a crisis and hence back off from a rigid neoliberal agenda, at least economically. These discursive shifts are further examined in Chapter three and applied in the analysis of how the need for a human rights agency was problematised by the different federal governments between 1977 and 2008. In my thesis, I argue that the Commission is limited by the gendered and neoliberal logic that drives state policymaking as well as the discursive shifts that have occurred in the political landscape regarding issues of 'rights', 'equality', 'women' progress' and 'human rights'.

Contained in these 'problematisations' of a human rights agency are also discourses of women's equality, and motherhood; hence, there are two dimensions to research question one. I critically investigate both how motherhood is constructed in these debates and about the need for a human rights commission. This question encompasses three aspects of 'motherhood' as a category in a project that is concerned with women's progress. First, I examine the contemporary meanings of motherhood and the influence these meanings have on some women's lives in Australia. Second, I examine the history of family policy in Australia that shows the policymaking in this area has long been a site for the state to construct specific norms of motherhood. The third aspect focuses attention on whether there is potential for the Commission to challenge patriarchal constructions of motherhood through the use of human rights language, or discourses of rights.

The first aspect I highlight here relates to the contemporary meanings of motherhood. According to Pocock (2005), these meanings often contribute to women choosing between having a career and caring for children, which impacts on women's independence and ability to navigate the public sphere with as much freedom as men. My focus on the meanings of motherhood emphasises that it is not motherhood per se that is

the problem for women's progress but how women are influenced by the social constructions of motherhood within Australian institutions and the public culture. Hence, it is not a matter of de-linking women from motherhood, but challenging particular discourses of motherhood and material practices of the state that restrict women's engagement with the public sphere. My project argues for the importance of considering the material and discursive domains and borrows the perspective from Franzway, Court and Connell (1989) that the state is the main organiser of the relations of gender (p. 52).

My project considers the possibilities of one arena of the state - the Commission - to challenge such discourses of motherhood in its policy making within a human rights framework. I argue in later chapters that a shift away from conceptualising parenting as only women's work could also bring about positive change and progress for women.

Many women now constitute their identities by drawing on competing and contradictory societal expectations about career success and motherhood (Medved & Kirby 2005, p. 436). In spite of the populist claims that feminism had apparently promised women they 'can have it all' (as so spitefully pointed out by Australian journalist Virginia Hausegger 2005), in Australia, cultural constructions of femininity and masculinity are still based on traditional ideals of the nuclear family (Maher & Saugeres 2007).

The *choices* women make about their lives are often made in a context of influential discourses about the 'good' mother (Cannold 2005; Gorman & Fritzsche 2002; Johnston & Swanson 2006) or 'essential motherhood' (Diquinzio 2006, p. 228). The term 'essential motherhood' refers to the discursive practices of 'exclusive and selfless attention and care of children based on women's psychological and emotional capacities as natural in women' (Diquinzio 2006, p. 228). Essential motherhood represents a universal and essentialist rendering of motherhood activity and identity, which, when combined with the discourses and demands of the public sphere of work, can produce a detrimental clash between work and home life (Grimshaw, Murphy & Probert 2005; Poole 2005).

Research shows that women who try to be 'good' mothers' while pursuing other aspirations—such as having attachments to a career, study or any other leisure activities outside of the family (Miller & Brown 2005)—report being stressed (Craig 2007; Power 2005), face discrimination in the workplace on becoming pregnant or returning from maternity leave (Goward 2002, 2005; Halliday 2001), and develop 'motherguilt' (Hocshchild 1990, 1997, 2003; Pocock 2001, 2005, 2006). The 'good mother' discourses often influence a woman's views on who should care for her child(ren). Views on childcare significantly influence a woman's workforce participation and subsequently her economic independence (Hand 2005). My research is sensitive about making claims for progress for all women as a unified group in challenging cultural constructions of motherhood because some women happily take up the identity and activities of the 'good' mother. Rather, the research hopes to contribute to a contemporary feminist debate, and specifically, how best to balance 'the needs of children for nurture and the needs for women's independence without overloading women' (Craig 2006, p. 260)?

Australian contemporary gendered culture may endorse the notion of mothers working, but other elements of our culture remain unchanged and patriarchal. Positive discourses of the working mother gained popularity during the 1970s and 1980s and have been widely viewed as the feminist ideal. Dillaway and Pare (2008) suggest it was the connection between such discourses and feminism which contributed to the controversy surrounding the working mother. Campo (2005) also proposes that feminism has been blamed for creating a generation of 'childless career women and "harried working mothers"'(p. 106). This has become common sense and too often characterises public debates about feminism.

This point is confirmed in a number of analyses that link the fertility crisis with feminism (Buttrose & Adams 2005; Hausseger 2005; Manne 2005; Maushart 2005). Such analyses support a 'backlash' (Dux & Simi 2008; Faludi 1992) to feminism that contests both women's entry into the workforce and any challenge to the patriarchal relations of the traditional family. This is in spite of the need for most families to have two incomes to maintain the household (Australian Institute of Family Studies 2011) and that women

from lower socioeconomic groups have always had to work (Yeo 2005). For example, historians Swaine, Warne and Grimshaw (2005) detail how women who migrated to Australia after World War II assumed they would work to build the family's future, and in doing so, challenged the Anglo middle-class notion of the 'angel in the home'.

The so-called 'childless career woman' has become a global trend as statistics show that fertility rates are low around the world. Women's fertility decisions, or forced choices, have been the focus of multiple studies (Cannold 2005; McDonald 1997, 2000a, 2000b, 2003; Parr 2007; Tietjens-Meyers 2001). One of the concerning revelations of women's decisions to delay children or remain childless, is their fear of not being able to live up to the ideal of the 'good mother' if they also plan on retaining attachment to the workforce (Berry 1994). As Australian sociologists Jane-Maree Maher and Lisa Saugeres (2007) argue:

> Dominant constructions of good mothering suggest that mothers need to be intensely focused on child rearing, and this construction of mothering may be seen as engendering guilt in women who mother and encouraging women without children to view mothering as an all-encompassing and potentially engulfing experience. (pp. 7–8)

The issue that lies at the heart of this friction is that one of the goals of feminism was to provide women with choices: release women from Friedan's (1963) *mystique* if it was making them unhappy. But as Pocock (2001, p. 40) argues, this is a false choice. As one participant in her study on Australian mothers claimed: 'there is a real false representation. If you are home with your kids, you should be out working. If you are out working you should be home with your kids. And you can't win either way' (p. 40).

There are large numbers of women who attempt to balance both. In fact there are more mothers who have an attachment to the workforce than those who do not in Australia—66 per cent of mothers in couple families and 60 per cent of mothers who are the significant, or lone, parent (Australian Bureau of Statistics (ABS) 2010). This often leads women to pursue the ideal of 'supermum' (Pocock 2003). 'Supermum' realises that despite the inner fulfilment, she remains unequal in the world of work and still lacks a viable level of independence in her life. How women and men balance work and family is

a growing issue that many have explored (Craig 2007; Gray et al. 2002; Losoncz & Graham 2009). Even though there is a growing concern by fathers about balancing work and family commitments (Craig 2006; Gatrell & Cooper 2008; Hewitt et al. 2011, Lemay et al. 2010, 2011), and there is an increase in the hours men spend doing housework and caring work in the home (Hewitt et al. 2011), this concern manifests differently for women.

Men also experience feelings of 'guilt' but they are not encouraged to share their feelings in the same ways as women, as hegemonic forms of masculinity are greatly rewarded in the current gender order (Connell 2005a; 2005b). At the same time, the meanings of being a 'good mother' are developed in conjunction with the meanings of being a good male provider. We do not have one category without the other, and both women and men are potentially restricted by these limiting or narrow gendered identities. I argue such limited views on gender identity are a problem for women as the binary of feminine/masculine provides greater opportunities for those on the masculine side: masculinity is attributed with a greater value and has had stronger links to the public sphere of work, economics, politics and power than the feminine side (Gatens 1991; Pateman 1983). The problem with binary thinking is a recurring theme in my study; as outlined above, I advocate for a poststructuralist approach that argues for thinking beyond dichotomies. In this thesis, I argue that one of the limitations of the Commission to contribute to women's progress are the influential discourses of the 'good mother' in contemporary Australian society, which are hinged on a disadvantageous gendered binary.

The second aspect that relates to the broader aim of investigating how the state constructs motherhood is found in the history of family policymaking in Australia that shows this has long been a site for the state to construct patriarchal discourses of motherhood. Even though a majority of women contribute to the economy as workers, they are still regarded as performing a reproductive function by the state because of their biological capacity to bear children and future workers. Pateman (1983; 1992) identifies this problem in her analyses of the liberal notions of citizenship that preclude women from the public sphere because of constructed meanings of their biological function which entailed dependency

on their male partner. In this study, I argue that the contemporary Australian state (in both liberal and neoliberal formations) reinforces unequal gendered conceptions of citizenship even as women's roles have changed significantly.

Attached to this problem of gendered inequality are the contentions that still exist about how we should be cohabitating and with whom. The state is a key agent for this conflict as historically the state has developed strong interest in family formation. As Baker (2001) states, 'governments regulate who is eligible to marry, which marriage-like relationships are acceptable, the grounds and procedures for divorce, who are suitable parents for adoption' (p. 209). Australian sociologist Peter McDonald (2005) argues that governments recognise the *social value* of children as, 'fundamentally, children are tomorrow's citizens and tomorrow's workers' (p. 228). The 'proper' socialisation of children is therefore in the interests of the state, and functionalist arguments about this taking place in the nuclear family have dominated government directions for policy as well as the legitimacy of particular family forms.

As an example, British sociologist Carol Smart (1996) shows how the United Kingdom (UK) government has 'patrolled' the boundaries of motherhood, rewarding women within the middle-class, traditional nuclear family and penalising the single or poor mother through various policies including welfare payments. There have been successful efforts in Australia to challenge the privileging notion of the traditional, nuclear family in childcare and family tax policies that recognise that both parents may have an attachment to the workforce. However, research also shows that it only takes a change of government to reinstate more patriarchal views of the family and to impose particular patterns of family formation (Baird 2004; Van Acker 2005).

I am not claiming that the state is inherently patriarchal in its interests and intent, but that discourses of the patriarchal nuclear family are powerful and can be identified historically in much family policy (McDonald 2000a, 2003). Such discourses represent this family form and the roles imposed as *natural*. In this logic, the natural role for women in this family form is to mother and to nurture its members (Poole 2005). To be clear, in this

thesis I am arguing that it is not 'motherhood' per se that is a barrier to women's progress, but the way that motherhood is inflected through patriarchal discourses (Foucault 1972) that is the impediment to women's progress. Patriarchal discourses of motherhood are represented in various tropes of the 'good' mother; such as the 'angel in the home'; the 'natural' role; 'biological' destiny; 'maternal' role; 'instinctual' role; 'central' role; and 'real' woman. There is a shared assumption in Australian culture that a woman is not a 'real' woman if she chooses not to have children.

Myths of the traditional, nuclear family as 'the basic unit of society', which is made up of husband, wife and children, persist within our society, despite the various forms that now make up *families* (Poole 2005). The use of the term 'families' should connote the variations in family life and avoid the notion that there is one normal form (Baker 2001). Recent statistics show that 23 per cent of households are lone-person households, and couple families with children living in the household decreased from 48 per cent in 1997 to 44 per cent in 2010 (ABS 2010).

The sexual division of labour is central to the patriarchal nuclear family that endorses the breadwinner and caretaker roles, with the caretaker being dependent on the breadwinner. Poole (2005) suggests that even in contemporary dual-income families, women tend to earn less than their husbands or partners. Income is an influencing factor when decisions are made about childcare will be managed when the couple starts a family. It makes more economic sense for the lower earner (mostly women) to adopt the role of carer (Craig 2007). As well as this, research shows that on having children, women are more likely to pursue part-time work to balance the needs of the family (Australian Institute of Family Studies 2008). Earning less often means that women are economically dependent on their partner so they have less bargaining capacity to demand that men share more of the household tasks or take on more of a caring role. The family is also supposed to be a place of nurturing and care, yet one in three women experience family violence in Australia (Evans 2007). Evans (2007) finds that economic security or independence is a determinant in whether a woman leaves a violent relationship. The emphasis on economic security or independence has been a central tenet of feminism as it means that women are

not constrained by their dependence on a male partner. Australian feminist Anne Summers (1994) suggests in her controversial *Letter to The Next Generation*, the fundamental issues facing women of my generation are maintaining control over our fertility and our economic independence (as was fought for in her generation). Summers (1994) argues 'if you cannot control your fertility, and you have no means of economic sustenance, you can control nothing else in your life' (p. 526). In this thesis, I argue that another limitation on the Commission to contribute to women's progress is the history of the state's construction of maternal citizenship in its family policymaking.

The third aspect of whether there is potential of the Commission to challenge patriarchal constructions of motherhood through the use of human rights language or rights discourses, is significant in light of the first two issues. What lies at the heart of this issue for my project is the expectation that the Commission's problematisations within a human rights framework will challenge the patriarchal notions of the 'good mother' promoted by the state in its family policymaking. Walby (2002) claims that the use of human rights language has become a popular strategy for feminism globally. Many other feminists have supported the use of human rights law to advance women's progress (Binion 1995; Bunch 1990; Charlesworth, Chinkin & Wright 1991; Chinkin, 2000; Grewal 1999; James 1994; Redman & O'Connell 2000). Australia has a long history of constructing 'rights' discourses as well as maintaining a strong link to international human rights networks. The ratification of CEDAW in Australia significantly strengthened the basis for arguing for women's rights within the state. CEDAW includes a range of economic, political, social and cultural rights. Specifically for my study, I draw on Article 5(a) of CEDAW that relates to social and cultural rights to support my argument that there is a possibility for the Commission to challenge patriarchal constructions of motherhood. Article 5(a) asserts that states must undertake:

> To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. (CEDAW 1979)

In this thesis, I assess the possibilities of the Commission to contribute to women's progress on the basis of the increasing popularity of human rights language adopted to advance a feminist project.

Research question two: what are the effects of the state's problematising of human rights on the Commission's legislative and material conditions during the period 1977–2008?

Thus far, I have outlined factors addressed in this thesis that relate to how different federal governments have problematised the need for a human rights agency. These problematisations had specific effects on the legislative and material conditions of the Commission that created certain limitations on what the Commission could do and, importantly, say. Hence, research question number two provides insight to the central aim of the study to assess the possibilities or limitations of the Commission to contribute to women's progress by focusing on the legislative and material conditions. The legislative and material conditions include the Commission's legislative mandate, its budget and its position within the state as a statutory authority.

The contested nature of a human rights commission is discussed in terms of the legislative and material 'effects' these had on the Commission as a consequence of these discursive shifts that occurred from the time of the Fraser government through to the Rudd government. The issue of resources and budgets is an important part of this study. If the government is not supportive of the Commission and its objectives, it can easily undermine the Commission's power to advocate by taking away its material conditions without consultation with parliament. As Franzway, Court and Connell (1989) argue, resources are central to determining what can and cannot be done by organisations working towards social justice goals. Putting pressure on the material conditions of the Commission influences what the Commissions *is able to say*. Rather than make frank and fearless observations about whether the federal government is meeting its human rights obligations, an insecure budget has the potential of limiting the Commission in what public observations it makes. In Chapter six, I analyse the budget contributions made by the different federal governments, which demonstrates the level of support shown by the

different federal governments for the Commission as an 'independent' human rights agency. I argue that there has been conflict over the Commission's powers, functions and independence from its inception that limits its potential to contribute to women's progress.

Another significant limitation that may be placed on the Commission occurs when the state refuses to grant a strong version of independence. As such, the relationship between the Commission and the federal government is contradictory and paradoxical as the Commission is given powers and functions to contribute to women's progress, yet it has not been given a strong independent status. The independence of a national human rights institution was first expressed in the *United Nations Paris Principles* of 1991. The *Paris Principles* were created by the UN to provide a set of guidelines for all national human rights institutions that endorse the value of independence. The *Paris Principles* recommend that the budget and powers of the human rights institution are protected to ensure it can fulfil its functions and avoid circumstances where a hostile government can undermine its powers. The Australian Commission has been denied such independent status that raises questions about how it navigates an insecure and ambivalent relationship with the state. In Chapters five and six, I examine how the different federal governments either strengthened or attempted to weaken the Commission's powers and functions by passing legislation or proposing legislative changes. In this thesis I argue that the Commission is limited by the statutory authority position of the Commission that creates a lack of independence of the Commission that manifests in the insecure budget conditions (according to the *Paris Principles 1991*) and a lack of independence of the Commission due to the ability of the executive arm of government to alter its mandate (according to the *Paris Principles 1991*).

Research question three: how does the Commission construct motherhood in its policymaking, focusing on paid-maternity leave policy specifically?

Research question number three offers further insight into the central aim of investigating the possibilities or limitations of the Commission to contribute to women's progress by focusing on its policymaking function specifically. I have thus far suggested that there

has been a long history of the state legislating and making policies to shape particular family formations that have often reinforced discourses of the patriarchal nuclear family (Baker 2010). This specific family type has the potential to encourage economic dependency and can limit women's progress. Childcare policy and family tax benefits are examples of how different governments can shape families and the roles of the family members. My study focuses on another policy that has the potential of providing women with greater possibilities to balance work with child rearing instead of choosing one over the other—government funded universal PML.

I chose to focus on PML for a number of reasons. First, PML is a policy that has historically been framed by feminism as contributing to women's greater economic independence, and as challenging the patriarchal family model of women's dependence. Second, arguments of economic dependence have competed with other arguments such as the health and wellbeing of women and children as well as the need for women to contribute the future workers to fulfil their maternal citizenship duties (Baird 2004; Curtin 2003). Each of these arguments frames the issue in different terms that are described as either pursuing an 'equality' approach, or a 'difference' approach. The need for PML may be seen as a problem of women's economic dependence so that women have the same or equal opportunities to men, or as a problem of health and wellbeing so that their role as child bearers is valued. The different frames provide a fruitful site to investigate the potential for women's progress, as these problem representations (Bacchi 1999; 2009) provides insight into how we are governed by a gendered state. Third, there has been an ongoing debate about the need for a universal PML policy that has strong connections to human rights language and law. A universal PML arrangement was one of only two reservations made by the Hawke Labor government when it ratified CEDAW in 1983. This highlights the history of the problematisations of PML within a human rights framework.

My study looks at how the need for PML policy was problematised by the state and the Commission to assess whether the problem representations adopted reinforced discourses of the patriarchal nuclear family or challenged them. I assess whether the Commission

adopted arguments for equality or arguments for difference, or if it contested the either/or approach and took a 'contextual' (Walby 2009) approach to the policy problem that is supported in poststructuralist versions of equality that have been labelled 'deconstructive equality' (Scott 1997) or the 'deconstructive approach' (Nentwich 2006; Guerrina 2001). The Commission produced multiple policy proposals to persuade the government of the need for a PML policy over a ten-year period as well as engaging in other forms of public advocacy through speeches for the policy. In Chapter seven, I examine the problematisations of PML to assess whether the Commission pursued a deconstructive equality approach.

My analysis of how the Commission constructs motherhood in its problematisations of PML found that, in advocating for a better arrangement for women to balance their dual roles of worker and mother, the Commission adopted a pragmatic approach. After the production of earlier reports that argued for a government-funded PML scheme without successful policy change, the problematisations shifted away from economic independence in favour of a greater emphasis on the *wellbeing* of families. In my assessment of this shift, I make two arguments. First, that the Commission could be regarded as constituting the maternal citizen and the discourses of the 'good mother' in this problematisation that is harmful for women's progress. Such a pragmatic approach may support policy or legislative change, but what impact does this have on culture and the meaning-making system that contributes to the gendered subject? However, my second argument is that the Commission could also be assessed as adopting a deconstructive approach in the problematisations that represents the assessment of the 'context' of the need for the policy (Scott 1997; Walby 2009). What this means is that the greater emphasis on health and wellbeing of families alongside the need for economic independence frames the issue on the basis that in some contexts, the need for a focus on health and wellbeing will be important for some women, and the need for economic independence will more important for other women. Rather than take an either/or or dichotomous approach to the problematisations, I argue that adopting a deconstructive equality approach allows for a more nuanced account of the possibilities of the Commission to contribute to women's progress.

Brief outline of organisation of thesis

I provide a more detailed outline of the thesis chapters in the following chapter in order to demonstrate how Bacchi's approach is applied in this study. However, a brief outline of the organisation of the thesis is as follows. Chapter two explains the methodology adopted in the thesis that underpins the rationale, collection and analysis of data in my study. This chapter shows how the three central research questions of my study are operationalised through Carol Bacchi's (2009): *What's the problem represented to be?* (WPR) policy analysis methodology.

Chapter three sets up the historical context around feminist engagement with and within the state and family policies in Australia by outlining the political, economic and social discursive shifts that took place in the period 1977–2008. Central to this chapter is the analysis of how 'rights' and 'equality' discourses were constituted in social-liberalism and neoliberalism which were in play between the different governments and the Commission.

Chapter four further develops my theoretical framework based on Scott's (1997) deconstructive approach to make sense of power of the gendered state as it produces the gendered subject. This chapter considers the debates over the most 'viable' pathway to women's progress and offers an argument for a deconstructive approach (Scott 1997) to the pursuit of 'equality' that rejects notions of the maternal citizen.

Chapter five examines how the Commission was problematised when it was first established during the period 1977–1986. These problematisations shaped the powers, functions and position it was given in the women's policy machinery as a statutory authority. I focus particularly on how the category *woman* was being constructed in these debates.

Chapter six examines how the Commission was problematised in the period of 1986–2008, with a focus on the legislative and material 'effects' of these problematisations. In my analysis, I consider how the discursive strategies of the different governments explain

efforts to strengthen or weaken the independence of the Commission in its mandate and budget as the negative regime of truth continued to be circulated. I pay special attention to the relationship between the federal government and the Commissioners to reveal the influences over what the Commissioners *are able to say*.

Chapter seven conducts an analysis of the problematisations of PML in the policy proposals of the Commission to assess how it constructs motherhood. I consider whether the SDCs challenged the patriarchal discourses of motherhood—and hence the constitution of the gendered subject—in their policy proposals that have been disadvantageous for women's progress. I assess whether the Commission adopted arguments for equality, or arguments for difference, or if it contested the either/or approach and took a 'contextual' (Walby 2009) approach to the policy problem.

Chapter eight summarises my understanding of the contested nature of motherhood in the work of the Commission during the period 1977–2008. I question '*What is left unproblematic in the problem representations*' (Bacchi 2009) of human rights and motherhood by the state and by the Commission. I also question '*if the problem can be thought about differently?* (Bacchi 2009). I put forward a deconstructive equality alternative to pursuing women's progress within the state.

Chapter 2
Methodology: Critical policy study

As outlined in Chapter one, my project began initially out of a concern about motherhood and women's progress. I am especially interested in whether public policy changes designed to make it possible for women to better balance the dual roles of parent and worker, can lead to positive changes in women's opportunities in the workplace as evidence of women's progress. Such interests led me to explore the processes of social policymaking within the state to address these needs, with particular attention to how the Commission engages in the policymaking process in the state.

By the time I began my investigation of feminist engagement within the Australian state−with a focus on the Commission−the Howard Coalition government had dismantled or 'mainstreamed' federal women's policy initiatives and women were severely under-represented in federal policy debates (Chappell 2002c; Thornton 2006; Whip 2003). Where other similarly developed countries have antagonistic and ambivalent relationships between feminist movements and the state, Australia has a history of women entering government and of viewing the state as a positive vehicle for social change (Sawer 1991). This has not been consistent, nor has it received bi-partisan support by governments. However, this relationship between feminism and the state in Australia is unique in global politics (Chappell 2002a). Perhaps it was this history that gave me the hope that a feminist agenda could or would be present *somewhere* within the state, in spite of the Howard Coalition government's mainstreaming of gender initiatives and policy. Given the increasing popularity of human rights discourse, I hoped a strong feminist agenda would be articulated by the Commission.

My project started out as an exploration of the contestation between the Coalition government and the Commission on the grounds the government was driven by a neoliberal logic. It took a sudden turn when Australia had a change of government in 2007 with the victory of the Australian Labor Party led by Kevin Rudd. I was in my data collection phase collecting information on the Commission, its legislative and policy

history, its budgets and the related issues of federal government's women's policy. I had been well on my way to mounting an argument that the tenuous relationship between the Commission and the Coalition government could be accounted for by Howard's emphasis on shifting the focus away from the needs of the 'special interest' groups to governing for the 'mainstream', downgrading policy and funding directed at issues of disadvantage and social justice. However, I found that the Rudd Labor government also undermined the material resources and cut the Commission's budget significantly in its first year.

This meant that instead of focusing on party politics (Australia Labor Party versus Liberal-National Coalition), or individual state actors (such as Commissioner Goward), or viewing the state as having unified interests (such as under Howard's leadership), I had to adopt a different approach which considered the intricacies of the power relations within the state apparatus. Such an approach views the relationship between the Commission and the federal government as one of continuous contestation, as the Commission was just one agency that competed in the policymaking process amongst others. My research retained a focus on the powers and functions of the Commission, and the contestation that has occurred over its powers, as is evident in legislative debates and changes (discussed in Chapters five and six), but I changed my focus to the Commission's possibilities and limitations to shape policymaking within the state. I developed a more 'pragmatic' approach (Bacchi 1999; 2009) to the potential for feminist discourses to compete within the state apparatus and influencing policymaking.

As proposed in Chapter one, my study is also centrally concerned with the contemporary meanings of motherhood. The dominance of patriarchal motherhood discourses framed in binary terms mean women find themselves choosing between work and caring for children, which can negatively impact on their economic independence. One of the dominant discourses asserts that a 'good mother' chooses her children above all other interests, in spite of the gains made by feminism to challenge the 'angel in the home' construction of womanhood and family. Boyd (2002) describes how the emphasis of 'being there' for children is a dominant discourse that drives many women into stay-at-home motherhood or shelving career plans for part-time options. The Australian

workplace has a long history of modelling its ideal worker on the independent male (or one who has a partner at home to care for the children), making it difficult for women, even if they do not have dependents, to live up to this ideal if they undertake paid work outside of the home, again affecting career progression and a woman's material position (Pocock 2003). As well as this, the Australian Government has a recent history of 'patrolling the boundaries of motherhood' (Smart 1996), rewarding those women (and their families) who make the 'right choices' in family policy (Brennan 2007). Risk making the 'wrong choice' and enter the world of 'motherguilt'. Or as a recent United States (US) study on contemporary motherhood states: 'Parents – women especially – are reminded every day how they don't measure up' (Valenti 2012, p. xiv). My study examines how the state, through its policymaking and the work of the Commission, utilises discourses of motherhood and if they construct or contest the guilt-inspiring meanings that often shape women's choices about work or define how they feel about themselves.

Aims of the study

As outlined in Chapter one, the central aim of the study is to investigate the possibilities and limitations of the Commission to contribute to women's progress by challenging discourses of the 'good mother'. I designed three interlocking research questions to address this aim:

- First, how was the need for a human rights agency problematised by different federal governments between 1977 and 2008 and how was motherhood constructed in these problematisations?
- Second, what are the effects of the state's problematising of human rights on the Commission's legislative and material conditions during the period 1977–2008?
- Third, how does the Commission construct motherhood in its policymaking, focusing on PML policy specifically?

The study draws on a feminist sensibility and is interested in examining whether or not the Commission can contribute to women's progress through its function to influence policy that benefits women. I do this by investigating the contribution the Commission

makes to the constitution and circulation of motherhood discourses in relation to human rights and women's progress. I also examine the establishment of the Commission, its position in the policy machinery and its relationship with different federal governments to consider whether these impact on the Commission's potential to influence policy. With that in mind, an appropriate methodology for my study draws on the field of critical policy studies, and especially policy studies informed by Foucauldian approaches.

In this chapter I briefly explain the adoption of a critical policy analysis approach, provide some introductory rationale for taking up a feminist version of Foucault for analysing policy discourses, provide some pertinent examples of this methodology and especially those of Carol Bacchi, and delineate my methods and the policy archive I analyse.

Critical policy studies

Critical policy studies 'offer[s] a forum for critical public policy research that challenges the limits of dominant positivist or techno-rationalist practices of policy analysis and public management' (Griggs et al. 2007 p.1). As a broad church of approaches, critical policy studies draws on a range of disciplines, is often inter-disciplinary or even transdisciplinary, is openly political, and is often associated with the 'discursive turn' in the social sciences.

> Alongside this desire to 'bring politics back in', [critical policy studies] seeks to bridge the 'gap' between theory and practice. Too often, prescriptions for policy seem to be made in a theoretical void, reduced to a collection of apparent atheoretical traits of 'good practice'. Equally, theoretical debates whilst revealing the underlying assumptions of so-called 'good practice' have not always culminated in alternative prescriptions or potential avenues for practitioners. Deconstructing underlying theoretical and methodological problematisations whilst moving beyond critique to suggest alternative forms of action, we suggest, is the aim of theory-driven practice. (Griggs et al. 2007 p.1)

Critical policy studies is a broad field that includes variously critical policy sociology (Ball 1997), critical policy analysis (Taylor 1997), critical policy scholarship (Grace 1998), or policy as discourse analysis (Bacchi 1999; 2009). As such there are many variations and alternatives for doing policy research. The term critical here refers to an

epistemological orientation that draws on lineages of critical social theory broadly defined. In my thesis, I draw on feminist readings of Foucault specifically. Critical inquiry here refers to research that is sceptical about common sense and official knowledge, and has a sensitivity towards the way that power works on and through knowledge and subjectivity (Bacchi 2009).

Given my research focus, I have taken up a *policy as discourse analysis* (Bacchi 1999, 2000, 2004, 2005a, 2009) approach into designing an appropriate mode of 'critical policy analysis'. In this study I analyse the 'discourses' of the 'texts' produced by the Commission and federal government's parliamentary debates related to the establishment and functioning of the Commission. Fairclough (2003) suggests 'texts' are seen as parts of social events, as one way people interact with each other in the social world is to read and write. These social events have 'social effects', which may bring about change. A discourse analysis of texts illuminates the struggles for a 'dominant' meaning.

The methodological approach of discourse analysis has rapidly expanded in the humanities and social sciences (van Dijk 1990). However, elsewhere van Dijk (1997) warns against 'an anything goes' (p. 6) application as not just any comments on a piece of text or talk can be accepted as discourse analysis. Van Dijk (1997) argues for a move beyond obvious and trivial summaries of 'what speakers are doing' (p. 6) to analyse the structures and strategies. I group my data into two broad 'social events'—texts produced by the Commission and parliamentary debates—that are considered within the strategies of the legislation, budget and location of the Commission. For example, my analysis of the discourses is connected to the assessment of the legislative and material changes that occurred as an effect of the discursive strategies (addressed in Chapter six). The analysis also considers the 'structural' location of the Commission within the state as a statutory authority to assess the possibilities and limitations it has to contribute to women's progress (addressed in Chapters five and six). The texts do not stand on their own, but are considered within the contexts of these structures and strategies. Hence, my analysis looks beyond 'what speakers are doing' to explain how one phrase appears over another and the implications this has for women's progress in Australia.

There are various versions of discourse analysis that encompass a range of methods. As Gillen and Petersen (2005) suggest:

> At one end of a continuum one might put the algorithmic approach to language processing that informs computer software such as voice recognition and translation software. At another end one might put the poststructuralist disruptions of belief in any notion of 'transparency' in language. (p. 146)

The approach I adopt in this study belongs at the poststructuralist end of the continuum. To be clear here, I do not conduct a 'content analysis'[2] that involves searching for the frequency of language use (such as *how often* the term 'woman' or 'motherhood' or 'women's equality' is used in parliamentary debates or policy documents using a data analysis program) that has its foundations in the positivist tradition. According to Ackerly and True (2010), there is now a popular perception that data analysis programs offer a more systematic and procedural analysis of discourses. They disagree, claiming that these methods do not 'diminish or replace interpretation and fine-grained analysis' (Ackerly & True 2010, p. 213). I am concerned with detecting how particular configurations of 'knowledges' constitute restrictive gender norms (that lead to women being cast as maternal citizens) in political discussions and policy documents. The term 'knowledges' here draws on a Foucauldian view of discourse, as interpreted by Bacchi:

> Foucault was particularly interested in the discourses (or truth claims), which he called 'discursive formations', associated with the human sciences and the professions (Sawyer, 2002, pp 436-7). These truth claims can be described as 'knowledges' rather than as 'knowledge', to assert their contested status. The role of these knowledges in governing (how rule happens) is a dominant theme in Foucault … (Bacchi 2009, p. 35)

Mills (1998) evaluates the usefulness of discourse analysis to feminist research by tracing the uses of the methodology in early feminist scholarship and to an examination of

[2] Wharton (2006) provides a clear explanation of the difference between a 'content analysis' and 'textual analysis'. 'A content analysis of documents will tend towards a systematic and enumerative approach in order to quantify the frequency of elements within documents (such as words or images) or the quantity of similar types of document. Typically, this kind of analysis is concerned with the manifest content of a document and is usually associated with the positivist tradition of social research. Textual analysis on the other hand is usually thought of as being part of the qualitative and interpretivist tradition. Here emphasis is less on the amount and frequency of occurrences and more on interpreting the meaning the document might have. Semiology, the study of signs, identifies words and especially images as signs that offer complex meanings or significations beyond the surface of the text' (cited in Jupp 2006, pp. 80-82).

'sexism [as] a set of attitudes which [are] encoded within particular language forms and presented women in negative and demeaning terms' (p. 236). This earlier perspective stipulated that meaning resided within language items and therefore, uses of sexist language, such as *he* was described as being sexist in all circumstances (Mills 1998). Now there is an acknowledgement of the diversity of the possible readings available, because of the different positions women 'take-up' based on socio-economic status, race/ethnicity, sexuality, education and so on (Weedon 1987; St Pierre 2000).

But then to study 'discourse' is to study language. Cameron (1998) also investigates the importance of language in feminist research by identifying the 'turn to language' (Fraser 1995) that occurred and led to the popularity of discourse analysis as a feminist methodology. Cameron (1998) addresses various aspects of use of 'language' in feminist analysis, from the study of grammar, sexist language, and communicative events, power in speech communities and, importantly for my research, the construction of the masculine/feminine binary in language uses. Identifying the power of binaries is central to the methodological approach adopted in this study. Cameron (1998) identifies how the gendered subject is created in language, but believes that doing away with the gender dualism is not necessary in the speech community. Rather there is a need to take account of the persuasiveness of the dualism instead. I return to the problem with binaries further in this chapter as well as in Chapter four.

Policy-as-discourse or 'What's the problem represented to be?'

Methodologically, the version of discourse analysis I use is advanced in the framework developed by political scientist Carol Bacchi (1999, 2000, 2004, 2005a, 2009, 2010) in her conception of 'policy-as-discourse'. She built on this conception in her 'What's the problem represented to be?' (WPR) approach in 1999 and then again in 2009. Bacchi's approach informs my research design and my analysis of data. Bacchi's methodology has been taken up across the various disciplines as it offers a generative approach to policy studies.[3] Where the emphasis has been on solving a problem or fact-finding,

[3] A few examples of work that utilise her WPR (2009) include Spanger (2011) who examines the policy field of prostitution and human trafficking in Denmark; Eggebo (2010) examines marriage

Bacchi looks at 'politics through the interrogation of how meaning is made' (Goodwin 2012, p. 25). That is, how are problems being represented in the policy debates?

First, what does Bacchi mean by policy? '[A] "policy" then is a set of shifting, diverse, and contradictory responses to a spectrum of political interests' (Edelman 1988, p. 16 cited in 1999, p. 42). Second how does Bacchi understand discourse? Discourse is a term used across many disciplines to describe the meaning-constituting system; however, as Bacchi (2005b) suggests, there are differences in its uses, which require careful clarification here. Bacchi's (1999) use of the term discourse is borrowing from Foucault, which is evident in her earlier work and which she carries through to the WPR approach (2009). Specifically, it is this Foucauldian (1972) definition of discourse she adopts:

> … as practices that systematically form the objects of which they speak. Of course, discourses are composed of signs; but what they do is more than use these signs to designate things. It is this *more* that renders them irreducible to language (langue) and speech. It is this 'more' that we must reveal and describe. (p. 49)

Foucault (1972) further elaborates on discourse analysis: 'according to what rules has a particular statement been made, and consequently according to what rules could other similar statements be made?' (p. 27) and further, 'how is it that one particular statement appeared rather than another?' (p. 27). Bacchi says that discourse is more, or larger, than language, or words: 'it is useful to talk about discourses as frames, since they provide frameworks or ways of viewing issues' (1999, p. 40). Discourses as used here then, invoke the idea of frames as grids or schemes of intelligibility 'in which any interpretation depends' (MacLachlan & Reid, 1994, p. 5). Discourses can also be described as '"speaking" which sets limits on what can be said' (Bacchi 1999, p. 40). It is the *limits* that signify the power relations. In line with Bacchi, discourse in this thesis does not refer to free and open public debate but the way in which 'language or, more broadly, bodies of knowledge, conceptual and interpretive schema define the terrain and consequently complicate attempts to change' (1999, p. 40).

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regulation and immigration policies in Norway; Edwards (2010) looks into social inclusion policy in Australia that impacts on the youth sector; Dwyer et al. (2011) assess health education materials on Hepatitis C; and Fraser and Moore (2011) examine illicit drug use policy. These studies demonstrate how Bacchi's approach has been adopted across disciplines.

By way of example, we can assess how 'discourses' circulate shared assumptions about the category 'woman' which constitute (give shape to) the role and subjectivity of the mother in childcare policy debates. If the same discourses appear across a range of texts, at a number of different institutional sites within society, this can be regarded as a *discursive formation* (Hall 1997). Thus, it may or may not be true that children who are placed into childcare from a young age will be disadvantaged in some way compared with children who remain in the home with a parent. But if the message that children *will* be disadvantaged is circulated in the media, by academics and politicians, based on evidence using the dominant liberal or scientific frameworks, then a 'regime of truth' (Foucault 1980b, p. 131) operates that forms 'the objects of which they speak'. This 'regime of truth' casts women as deviant for putting their children into childcare and positions them as bad mothers, for if the 'evidence' shows children will be disadvantaged, why would a mother make this 'choice'? What is important methodologically here, drawing on Foucault, is not to be examining 'the "Truth" of knowledge in the absolute sense—a "Truth" which remained so, whatever the period, setting, context' (Hall 1997, p. 76) but instead to examine the 'discursive formation sustaining a regime of truth' (p. 76) and in my case a regime of truth sustained by the Commission as an agent of the state about the 'good mother'.

What Foucault's theory of discourse offers my argument then, is a way of exploring the competing discourses of motherhood—contained in discussions about 'human rights' and 'women's equality'—and how these discourses operate as a 'regime of truth'. Such a notion acknowledges that 'truth' is produced not outside human invention, nor the 'direct product of intentional manipulation by a few key political actors' (Bacchi 1999, p. 43). As such then 'all of the knowledge we have is a result or the effect of power struggles' (Mills 1997, p. 21). In our society, *legitimate* forms of knowledge have their foundation in liberal and scientific paradigms that stem from the Enlightenment (Bronner 2004).[4]

[4] The significance of the Enlightenment period in contributing to knowledge production about the individual and the ordering of society is discussed further in Chapter four.

Bacchi takes this contestation of the 'truth' and applies it to policy analysis. Bacchi's (1999) approach to policy problems is to focus on the 'problem representation'—or a 'what's the problem?' approach—rather than on the solution. Bacchi borrows from Stone (1998) in explaining the value of the 'problem representation' approach:

> Problem definition is never simply a matter of defining goals and measuring our distance from them. It is rather the strategic representation of situations … Representations of a problem are therefore constructed to win the most people to one's side and the most leverage over one's opponents. (Stone 1988, p. 183 cited in Bacchi 1999, p. 36)

Rather than accept the 'problem' identified in the policy as the 'truth', she considers how the problem is represented. The focus for Bacchi is examining the 'regime of truth' that characterises policy and politics and names the problems that exist in society that need fixing. Or she describes it another way here in relation to 'interpretations' in policymaking (borrowed from Nancy Fraser 1989, p. 166–175):

> Any description of an issue or a "problem" is an interpretation, and interpretations involve judgment and choices. Crucially, we also need to realise that interpretations are interventions since they have programmatic outcomes; that is, the interpretation offered will line up with particular policy recommendations. (Bacchi 2010, p. 263)

Bacchi's WPR approach offers us an insight into 'how governing takes place, and with what implications for those so governed' (2009, p. ix). Keeping in mind that, in a Foucauldian spirit, governing relates to 'how men [*sic*] govern (themselves and others) by means of production of truth' (1980c, p. 47, cited in b, p. 2). Governing can be identified in the problematisations, which Bacchi takes from Foucault 'as a method (thinking problematically) [that] involves studying problematised "objects" (problematisations) and the (historical) processes of their production' (2012a, p. 4). Or to quote Foucault (1996) directly on his method of problematics:

> But the work of history of thought would be to rediscover at the root of these diverse solutions the general form of problematisations that has made them possible – even in their very opposition; or what has made possible the transformations of the difficulties and obstacles of a practice into a general problem for which one proposes diverse practical solutions. It is a problematisation that responds to these difficulties, but by doing something quite other than expressing them or manifesting them: in connection with them it develops the conditions in which possible responses can be given; it denies the elements that will constitute what different solutions attempt to respond to. (p. 421)

In Bacchi's (2012a) approach, we are governed through problematisations—how the government defines what is problematic. Her approach also suggests 'rather than reacting to problems, governments are active in the creation (or production) of policy problems' (Bacchi 2009, p. 1). The application of Bacchi's approach also takes into consideration 'the need for social actors to use language in the service of particular goals, but at the same time acknowledging the embeddeness of actors in discursive systems constituted by tradition, religion and political institutions' (Bacchi 1999, p. 45).

Problem representations—or problematisations (Bacchi 2012a)—have what she terms 'effects'. The concept of effects relates to how the problematisations directly affect people's lives (Bacchi 1999, p. 45; 2009, p. 19). To take up the childcare example again, a woman's decision-making about who cares for her child(ren) may be influenced by the regime of truth that putting your child into childcare will damage your child.

This regime of truth may also influence how she feels about herself as a mother that can be described as her 'subjectivity'.[5] Bacchi (1999; 2005; 2012a) adopts a poststructuralist approach to the subject that involves the Foucauldian shift from the fixed individual to the socially constructed subject. In this framework, the contextual nature of the subject is inscribed in the concept of subjectivity, which is the 'conscious and unconscious thoughts and emotions of the individual, her sense of herself and her ways of understanding her relation to the world' (Weedon 1987, p. 32). Discourse itself produces subjects as figures who embody the specific forms of knowledge that the discourses produce (Hall 1997), such as the 'good' mother or working 'bad' mother. As such, scientific theories construct us as particular kinds of beings, through the kinds of 'truth' they produce (Bacchi 2009, p. 35).

To return to the childcare example, Bacchi provides an explanation of the WPR approach by analysing the different problem representations of childcare policy by the government, focusing on the funding arrangements (2009, pp. 3–4). Bacchi questions: Is childcare a

[5] Please see Chapter 4 for further clarification of the concept of subjectivity in poststructuralist theory as it relates to the 'gendered subject', the good mother.

labour market problem, welfare problem, problem of family 'choice', or a matter of public responsibility? She points out that the problem representation that frames it as a matter of 'family choice' where 'vouchers are given to families to spend either on family day care on institutional care, or as a subsidy for a parent (most often a mother) who stays at home' (Bacchi 2009, p. 3) feature 'deep-seated assumptions about both the nature of the family and about individual agency' (Bacchi 2009, pp. 5–6).

In other words, framing the need for childcare funding along lines of individual choice, where the mother chooses to spend the money on care outside the home, draws on existing tensions surrounding a woman's 'choice' to work outside of the home because of the dominance of the 'good mother' discourses. In this discourse, the 'good mother' chooses the 'intensive mothering' (Hay 1996) version, above all other interests. This policy representation has the potential to reinforce the dominant meanings about the 'good mother', rather than challenging them. Here one can see how the meaning-constituting system—or regime of truth—works inside policy debates about childcare.

What this approach shows us is that change is difficult because of the way 'problems' are represented in discourse. In Chapter seven, I take up the significant case study of how the Commission represents the problem of PML over a period of time that supports this idea that change is difficult. The Commission has produced four separate reports that have each made recommendations to the federal government to implement a federally-funded PML scheme. One of the central questions that guides my analysis in Chapter seven is why did the government reject this specific policy recommendation four times? What discourses were being constituted in these reports and how do they interact with the dominant discourses being constituted by the state at the time? [6]

As stated earlier in this chapter, one of the key questions of my study is to examine how different federal governments problematised the need for a human rights agency was problematised by different federal governments between 1977 and 2008 and how

[6] Chapter three outlines the influential discourses or discursive strategies of the state as they relate to work of the Commission.

motherhood was constructed in these problematisations? When reading through Bacchi's approach, this question specifically entails examining two contexts: First, how different federal governments from Fraser to Rudd, problematised the need for a human rights commission and the meanings of 'motherhood' and 'women's equality' that were circulated in parliamentary debates, media articles, policy documents. Second, how the Commission constitutes in the discourses it utilises, the categories 'woman' and 'women's rights' and 'equality' in its policy proposals for PML, speeches, media articles and websites. I provide a detailed outline of the data collection and archive in the second part of this chapter.

The WPR approach directs attention to the problematisation of the central purpose of the Commission to represent human rights within Australia. First, it asks how the federal government 'problematises' human rights and women's progress and its relationship with a state agency established to address such problems. Second, the study asks what is the problem of the Commission's 'independence' represented to be, and how significant is this to the possibilities and limitations of its contributions to women's progress. Third, it asks questions about how the Commission constitutes problems of inequality and how it engages with complex, often contradictory and significant policy.

This next section outlines in more detail how I apply Bacchi's WPR approach in my examination of the problem representations of the federal government and the Commission.

The 'what's the problem represented to be' approach

Bacchi's WPR (2009) approach has developed across over a decade of scholarship and more recently she proposes six questions that provide a frame for a comprehensive analysis of policy processes of the Commission.[7] These six questions are:

[7] Bacchi (1999) has previous iterations of these questions: What is the problem of (domestic violence, abortion, etc) represented to be either in a specific policy debate or in a specific policy proposal? What presuppositions or assumptions underlie this representation? What effects are produced by this representation? How are subjects constituted with it? What is likely to change? What is likely to stay the same? Who is likely to benefit from this representation? What is left unproblematic in this representation? How would 'responses' differ if the 'problem' were thought about or represented differently?

1. What's the problem represented to be in specific policy?
2. What presuppositions or assumptions underlie this representation of the 'problem'?
3. How has this representation of the problem 'come' about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?
5. What effects are produced by this representation of the 'problem'?
6. How/where has this representation of the 'problem' been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

These questions map well onto my research questions, and open up useful paths for my investigations. Table 1 on page 40 represents how I have assigned Bacchi's questions to my three questions.

Table 1 Alignment of research questions with Bacchi's questions

Research questions	Bacchi's what's the problem represented to be questions
Question 1: how was the need for a human rights agency been problematised by different federal governments between 1977 and 2008 and how was motherhood constructed in these problematisations?	1. What's the problem represented to be in specific policy? 2. What presuppositions or assumptions underlie this representation of the 'problem'? 3. How has this representation of the problem 'come' about?
Question 2: what are the effects of the state's problematising of human rights on the Commission's legislative and material conditions during the period 1977–2008?	3. How has this representation of the problem come about? 5. What effects are produced by this representation of the 'problem'?
Question 3: how does the Commission construct motherhood in its policymaking, focusing on paid-maternity leave policy specifically?	1. What's the problem represented to be in specific policy? 2. What presuppositions or assumptions underlie this representation of the 'problem'? 3. How has this representation of the problem 'come' about? 4. What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently? 6 How/where has this representation of the 'problem' been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

I now provide a brief elaboration of the six questions, as they are addressed methodologically in my study in the analysis of the data in Chapters five, six and seven, as well as shaping the focus of Chapters three and four.

Question 1: What is the problem represented to be in specific policy?

As mentioned earlier, I am concerned with two contexts of policymaking. First, I am interested in how the need for a human rights agency was problematised by different federal governments between 1977 and 2008. These problematisations are examined by considering the discursive shifts that occurred within the state during the same period that include the shift from social-liberalism to neoliberalism, mainstreaming of gender and gender policy units, and broader family policy. Further to this, my analysis considers how the concepts of women's equality and rights were being problematised by the different

federal governments in the debates for a human rights agency as well as how the category woman was being constructed. This responds to broader questions of how the Commission can contribute to women's progress as an independent agency of the state.

Second, I am interested in how the Commission represents the need for PML policy. I use studies by Curtin (2003) and Baird (2004) who identified competing arguments in circulation within feminism and by the state for the need for PML. The competing arguments focus on women's economic independence, the health and wellbeing of women and children, and a fertility crisis. My analysis considers whether the Commission adopts these arguments in their problematisations. Both Curtin and Baird highlight different strategies enacted by feminist policy actors ('femocrats') and by the state. Problematising PML on the basis of economic independence has long been a strategy of liberal feminism, or 'equality seekers' as they believe women should be treated the same as men. Problematising PML on the grounds of health and wellbeing of women and children is a strategy of the 'difference' feminism; those who argue women's differences should be valued equally to men. Problematising PML on the basis that Australia has a concerning fertility rate is an argument that has historically been adopted by the state and casts women as 'maternal citizens'. Hence, by assessing how the Commission problematised the need for PML provides an insight to the strategies it adopted.

Question 2: What presuppositions or assumptions underlie this representation of the problem?

I am particularly concerned with the regime of truth, or 'conceptual logics' (Bacchi, 2009, p. 35) of the 'good' mother that are circulated by the state and constitute problem representations in policy. Bacchi's question two guides the analysis towards a deeper understanding of the knowledges that constitute the regime of truth of the 'good mother'. As outlined earlier, legitimated forms of knowledge have their foundation in liberal and scientific paradigms that stem from the Enlightenment (Bronner 2004). Some branches of feminism have argued that liberalism and science have produced harmful knowledges about 'womanhood' (Outram 2005).

My study examines the presuppositions or assumptions that underlie representations in policy that are developed from scientific paradigms that have produced certain knowledges about the welfare of children. The scientific paradigms rely on assumptions that children will suffer psychologically if not cared for predominantly by their mother. A strong connection has also been developed between a woman's biology and her destiny that naturalises motherhood. Hence, the intensive mothering model is promoted by scientific paradigms (this is explained further in Chapter four).

In my research, I also focus on the construction of the rational individual in liberal theory. Aspects of liberal theory have proven to be disadvantageous for women's progress as it produces assumptions that rely on the public/private sphere binary. This binary positions men within the public sphere of work and positions women within a private sphere of home, reinforcing the 'good mother' discourses (Phillips 1999) (this is also explained further in Chapter four).

Hence, critiques of binary thinking underpin much of the theorising in my thesis. The WPR approach provides the tools to identify and question the presuppositions or assumptions by interrogating 'the binaries, key concepts and categories operating within a policy' (Bacchi 2009, p. 7). Contesting language binaries is a central feature of poststructuralist approaches through a method of deconstruction. Deconstruction is explored in greater detail in Chapter four; however, for the purposes of explaining binaries as they relate to the WPR approach, it is useful to think about binaries as opposites. As Bacchi (2009) suggests, consider as examples: nature/culture, public/private, mind/body, male/female (p. 7). There are three key elements of the binary relationship that are problematic. First, that the two terms of any binary are connected. Although any binary represents opposites, each term derives its meaning from the other. For example, to be female means not being male. Or another example, the meaning of being a 'good mother' is developed in conjunction with the meaning of being a good male provider. Or, as outlined earlier, a good/bad mother binary is created. Second, a hierarchy often exists between the two terms, that is, one term is attributed a higher status

than the other. Feminists have long been concerned with the higher value placed on the public, mind, male aspects of the binaries featured earlier. Third, this hierarchy is perceived to be 'natural', rather than 'conceptual' (Gatens 1991). If a hierarchy is 'natural', it is fixed in some essential form and is more difficult to challenge. Hence, what we need to do in policy analysis is 'watch where binaries appear' and examine 'how they function to shape the understanding of the issue' (Bacchi 2009, p. 7).

Along with deconstructing binaries, the WPR approach proposes analysing key concepts. Key concepts are explained by Bacchi (2009) as abstract labels that are relatively open-ended, hotly contested and people fill them with different meanings (p. 8). The examples she provides are related to equality, liberty, youth, unemployment, participation and democracy (Bacchi 2009, p. 8). Each of these key concepts or key words (Williams 1988) are significant sites for political contestation. The task of policy analysis using the WPR approach is to identify key concepts as problematisations and examine the contested meanings of those concepts (Bacchi 2009, p. 8). In my study, I am especially interested in the key concepts of 'equality' and 'human rights'.

Categories are also important to the analysis and relate closely to how people are defined in discourses. Categories are represented in the naming or labelling of people based on specific identity markers, such as gender, family status or age. Bacchi's focus on people categories is close to the poststructuralist approach to subjectivity for they have effects on 'how people come to think about themselves and about others' (2009, p. 9). In a WPR approach, we need to see how categories function to give particular meanings to problematisations (2009, p. 9). The categories I am specifically interested in are 'woman', 'motherhood', 'maternal citizen' and the 'family'.

In summary then, I am rendering the question: *What presuppositions or assumptions underlie this representation of the problem*? as a deconstruction of binary terms, and an examination of key terms and categories (see Chapter four).

Question 3: How has this representation of the 'problem' come about?

To properly examine how the need for a human rights agency, women's equality and rights were problematised by different federal governments between 1977 and 2008 requires an historical understanding; that is, to ponder how things got to be this way. The WPR approach borrows from Foucault's genealogical method to shape the question: *'How has this representation of the 'problem' come about?* Bacchi (1999) explains genealogy as 'a technique to historicize claims to knowledge, indicating shifts in thinking and acting around particular issues' (p. 40).

Specifically an historical analysis foregrounds the following:

1. identifies specific points in time when key decision were made, and taking an issue in a particular direction (Bacchi 2009, p. 10)
2. upsets any assumption that the way 'problems' are understood are the inevitable product of 'natural' evolution over time (Bacchi 2009, p. 10)
3. provides insights into the power relations that affect the success of some problem representations and the defeat of others (Bacchi 2009, p. 11).

An historical analysis offers my study the opportunity to explore insights into the forms of governance, in recent Australian history (between 1977 and 2008) in relation to women's progress and human rights. To examine how the dominant discourse operates around motherhood in the policy proposals of the Commission (as discussed in Chapter seven), it is important to understand the history of the formation of problem representations made in parliament and its legislative work (see Chapters five and six). A short history of family policy, feminist engagement with the state and the discursive shifts of the different federal governments is based on this approach in Chapter three.

Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the problem be thought about differently?

What is distinctive to Bacchi's approach to policy analysis is the question: what fails to be problematised? (2009, p. 12). In my study, the question becomes what is left unproblematic in the problematisation of human rights. Critical policy analysis demands not being trapped by the logic of the policy and hence asking questions such as what is missing, silenced, and or how might we think differently. Such questions drive the development of my conceptual framework in Chapter four. In Chapter four, I argue that the dominant configuration of liberal policy logic is trapped by a choice between 'equality' or 'difference'. An alternative framing that underpins my argument is deconstructive equality because it identifies what is missing or silenced. The same questions are posed in Chapter five in relation to the parliamentary debates about the need for human rights protection. These debates reveal how rights were constructed, as 'women' as a category were absent, or how 'motherhood' was constituted (given shape to) within other arguments, such as 'pro-life'.

Question 5: What effects are produced by this representation of the problem?

Another distinctive aspect of Bacchi's WPR approach is its concern with 'effects' (1999, p. 45) over 'outcomes' that are found in traditional policy approaches. Traditional policy approaches consider that results can be measured—producing 'outcomes'—where as Bacchi's approach suggests 'effects' focus on how problematisations benefit or harm some more than others (Bacchi 2009, p. 15). She identifies three connected kinds of effects: discursive, subjectification and lived effects.

The discursive effects relate to the presuppositions and assumptions that underlie representations in policy that put forward certain 'truths' and ignore or disregard others. The concern here is that 'some options of social intervention are closed off by the way in which a 'problem' is represented' that can have damaging effects for certain people'

(Bacchi 2009, p. 16). In my study, earlier problematisations of the need for PML made by the Coalition federal government as a fertility issue led to the increase of the maternity payment, or labelled the 'Baby Bonus'. In this framing of the issue, women were paid to have children to address the perceived problem of the fertility crisis. This framing limits the possibility identified by liberal feminism for women to maintain economic independence and retain attachment to the workforce.

Subjectification effects relates to a theory of subjectivity (Weedon 1987). If we take the view that *who we are* can be an 'effect' of the discourses that are available to us, through policies, then each of us potentially takes up a subject position as an 'effect' of those policies (Bacchi 2009, p. 16). And subject positions influences our decision-making and practices. Often subject positions offered in policies are based on binaries and set people up in opposition to each other. As already suggested, an example of this is the stay-at-home mother versus the working mother in the 'mother wars'.

Third, lived effects relates to the material impacts of problem representations (Bacchi 2009, p. 17). Bacchi (2009) makes a connection between problem representations and the material effects in her suggestions that 'one way to simplify the task (of identifying the problem representation) is to see how funds are targeted within a proposal' (p. 4). My study focuses on two different concerns about the material effects of problem representations: (i) the lived effects that deny people resources in family policymaking, such as PML (as addressed in Chapter three and Chapter seven); and (ii) how the need for a human rights agency that has legislative and material effects is contested (as addressed in Chapter 6).

> *Question 6: How/where is this representation of the 'problem' produced, disseminated and defended? How could it be questioned, disrupted and replaced?*

I look at *multiple sites* to assess how/where the representation of the 'problem' is produced, disseminated and defended, which is in line with Bacchi's (2009) approach:

> The approach can be applied to debates surrounding policy issues in public venues such as parliaments or the media, to policy documents such as committee reports and to policy proposals in the shape of legislative or judicial decrees. (p. 265)

The data and literature in my study are derived from three main sources. They draw upon a significant body of secondary literature related to feminist engagement with the state, political theory, human rights, and motherhood and family policy. They are also based, to a significant degree, on primary research undertaken over a two-year period, starting in July 2006 and finishing in July 2008. I consulted government documents, newspaper reports, Hansard, the Commission's website and contacted the Commission directly for annual reports and policy proposals. I also conducted interviews with a small number of SDCs. Note that all of the data was analysed as 'text' (Fairclough 2003).

An outline of my study: the 'what's the problem represented to be?' approach and the three research questions

I now provide a brief explanation of how each chapter incorporates Bacchi's approach and connects with my three research questions. Bacchi's WPR approach is utilised systematically in the analysis of the data in Chapters five, six and seven and informs the focus of Chapters three and four. How Bacchi's six questions relate to the three research questions is identified in this chapter as well as how they are addressed systematically throughout the thesis. Following the outline of the chapters I include the data collection and archive for each chapter.

Chapter three

Chapter three sets up the historical context around family policies in Australia and introduces feminist engagement with and within the state. This provides the contextual background for the first research question, to investigate how the state problematises the need for a human rights agency and motherhood. I do this by mapping the women's policy machinery in Australia and the shift from social-liberalism to neoliberal logic, utilising Bacchi's question three: *How has this representation of the problem come about*? Tracing the history of the meaning-making that was going on inside political debates helps to explain the dynamic relationship between the Commission and the federal government and the problem representations in the Commission's policy

proposals, utilising Bacchi's question one: *What's the problem represented to be in specific policy?* Specifically, Chapter three addresses how the 'rights' and 'equality' discourses are constituted in social-liberalism and neoliberalism for the purpose of providing a useful framework of analysis of the relationship between the different governments and the Commission. Answering this question goes some way to assist my argument that the discursive shifts that occurred during these periods impacted on the material and legislative conditions of the Commission.

Chapter four

Chapter four provides a map of key debates around motherhood and especially a feminist poststructuralist critique of liberal theory and its maternal citizen, setting up a theoretical framework for analysing the gendered subject and the gendered state. This chapter provides the theoretical basis for the first research question, as stated above, to investigate how the state constructs motherhood in its problematisations of human rights and women's equality. Chapter four utilises Bacchi's question two*: What presuppositions or assumptions underlie this representation of the problem?* This chapter carefully defends a theory of 'deconstructive equality' (Scott 1997) which I argue does, and could further, contribute to women's progress as strategy of the Commission in its approach to policymaking. The chapter argues for an analysis of both the discursive and the material aspects of women's policy. Chapter four also reviews theories of the gendered state. The thesis argues for a co-constitutive relationship between gender and the state. Just as the thesis emphasises the material and discursive nature of policy, it adopts a perspective of state power that can be assessed not only in the 'discursive struggles' but also in consideration of how the state has material 'effects' in its provision of resources, utilising Bacchi's question five: *What effects are produced by this representation of the 'problem'?*

Chapter five

Chapter five addresses the second research question, to examine the 'effects' of the state's problematising of human rights on the Commission's legislative and material conditions. To assess the problematisations, Chapter five utilises Bacchi's question three:

How has this representation of the problem come about? It examines the parliamentary debates over the establishment of a Commission, highlighting the competing nature of human rights, feminism, the breakdown of the family and the fear of Communism and abortion politics at the time. This chapter elucidates the contested nature of the Commission right from its origins—contested in terms of the possibilities of advancing progress for women specifically. To assess the contestation over the material and legislative conditions of the Commission, Chapter five utilises Bacchi's question five: *What effects are produced by this representation of the problem?* This chapter outlines the functions and powers given to the Commission by the state, highlighting the ways that the powers and independence of the Human Rights Commission have been historically constrained both discursively and materially. The chapter uses Bacchi's approach to reveal how the need for a human rights commission was problematised historically.

Chapter six

A significant theme for understanding the role of the Commission in advancing women's progress is the independence of the Commission. Chapter six also addresses the second research question, as stated above, to examine the effects of the state's problematising of human rights on the Commission's legislative and material conditions. Continuing on discussions of the liberal and/or neoliberal state from Chapter three, Chapter six provides a brief sketch of what occurred regarding the independence of the Commission (its mandate and budget) in four federal governments in the periods of Hawke, Keating, Howard and Rudd utilising Bacchi's question five: *What effects are produced by this representation of the problem?* This chapter outlines the evolution of policy logic from liberal to neoliberal as it relates to the problematising of human rights and provides a critique of both Labor and Liberal governments, again utilising Bacchi's question three: *How has this representation of the problem come about?* The point of asking this important question is to argue that the Commission does not exist in a vacuum, but rather is constrained by its discursive and material relationship with the state.

Chapter seven

Chapter seven maps the shifts in problematising PML as evident in the work of SDCs: Quentin Bryce, Susan Walpole, Susan Halliday, Pru Goward, John von Doussa and Elizabeth Broderick. This chapter addresses the third research question, which explores how the Commission constructs motherhood through its contributions to a PML policy. Examining problematisations of PML provides a strong case of the work of the Commission. Still being interested in the independence of the Commission, this analysis shows that the Commissioners, although constrained by the anti-feminist and neo-liberal sentiment, contributed to evolutionary policy change. The chapter utilises Bacchi's question one: *What's the problem represented to be in specific policy?* by also considering what the Commissioners 'can and cannot say in the representation of problems' (Bacchi 1999) in PML policy documents and debates. Drawing on the theoretical framework outlined in Chapter four, Chapter seven also utilises Bacchi's question seven to ask: *What presuppositions underlie this representation of the problem?* Significantly, for my question of women's progress, over the studied time period, the framing shifted from one of maternity leave constituting the maternal citizen to parental leave, incorporating men in the caring role. This is demonstrated by utilising Bacchi's question three: *How has this representation of the policy come about?* Analysing change is significant for my argument that a deconstructive equality (Scott 1997) approach could be adopted by agents of the state (such as the Commissioners) to consider policy problems on a contextual basis.

Chapter eight

In the concluding chapter of the thesis, I return to the central aim of the research which is to investigate the possibilities and limitations of the Commission to contribute to women's progress. As was stated in the introduction, the central aim is addressed by considering the three research questions that relate to a range of factors pertaining to the material, legislative and cultural conditions of the Commission. The final chapter especially utilises Bacchi's question four: *What is left unproblematic in the problem representations* of human rights and motherhood by the state and by the Commission. Question four also asks for researchers or policy analysts think about whether there *are*

any silences in the problematisations and if the '*problem' can be thought about differently*? In response to this question, I put forward a deconstructive equality alternative to pursuing women's progress within the state and by an apparatus that is not constrained by binary thinking. My proposition for a deconstructive equality approach is premised on the argument that engages with Bacchi's question six on *how problem representations can be questioned, disrupted and replaced?* as a poststructuralist approach to 'equality' or 'rights' provides a space for thinking through how political projects polarise issues of subjectivity. In doing so, I argue against the limitations of gender-based dualistic thinking.

Data collection and archive

My thesis considers the Commission's position in the political landscape to assess the Commission's potential to contribute to women's progress, with an historical lens. Such an analysis demanded a careful selection from the policy archives. Please refer to Appendix 1 for a complete list of the primary sources gathered and analysed in this study that have been arranged according to chapter.

For Chapter five, I read through Hansard records of the parliamentary debates on the establishment of the Commission in 1981 (the debates started in the late 1970s) and the establishment of the 'new' Commission in 1986 (the debates started in 1985). I focus on parliamentary debates around the powers and functions given to the Commission in 1981 and then in 1986. I review the 1981 Act and the 1986 Act for these powers and functions.

For Chapter six, I traced the changes to the powers and functions of the Commission from 1986 based on the following primary sources: annual reports (many of which I requested from the Commission directly as the earlier years are not held in national or university libraries), Hansard, Bills Digests that are produced by the Commonwealth and are available for public viewing via Hansard and the range of Acts or Bills of the amendments to the 1986 Act. Significantly, I attained information about the budgets of the Commission in the annual reports as a relevant focus on the material aspects of the Commission (as well as the discursive).

For Chapter six, I also searched the national newspaper archive databases for public comments made by the relevant Commissioners and the President. These comments provide insight to the relationship between the Commission and the federal government. One of the central roles of the Commission is to keep the government accountable to its human rights obligations and one of the ways it has done this is through public debate including being openly critical of the government in the media. Publicising human rights violations, or the weakening of human rights protection in Australia, is an important strategy that provides a fruitful site to assess what the '*Commission is able to say'* or the '*limits that are put on speaking'* that is characteristic of the WPR approach.

For Chapter seven, assessing how the Commission represented the problem of women's equality, the category 'woman' and PML involved searching the Commission's website for its archive of speeches given by the SDCs. The site featured speeches given as far back as 1991 that have since been removed. I also requested hard copies of policy proposals produced by the SDCs (Walpole 1997a; Halliday 1999a; Goward 2002b; Goward 2002c; Goward 2007; Broderick 2008f). I focused specifically on these policy proposals, as each advocated for a universally funded PML arrangement, even if it was not a central theme of the policy proposal (such as Walpole's report 1997a).

The Commission has produced a range of material on many other issues that relate to women's human rights and equality. However I focused specifically on the policy of PML to provide realistic limits on the study. PML is also a policy that has been contested for many years and provides the study with a topic that offers the opportunity to conduct an in-depth genealogical policy study.

I also conducted interviews with two SDCs that are examined in Chapter seven. The study is based on analysis of policy texts, and the interviews complement these documents by providing contextual information and examples of the competing discourse utilised by the Commission. In line with Bacchi's WPR approach, my study reviews multiple sites (data) to assess *how* the problem representation came about and *where.*

Hence, the interviews are an important source but form only part of the larger collection of data. Limiting my study to interviews with informants from the Commission or the government would have restricted the broad-ranging analysis as encouraged by the WPR policy analysis approach (Bacchi 2005). The following section provides an outline of how the interviews were conducted and addresses the ethical implications.

The interviews with two informants of the Commission

I conducted semi-structured, in-depth interviews with two key informants of the Commission. The in-depth interview can be defined as 'a particular kind of conversation between the researcher and the interviewee that requires active asking and listening' (Hesse-Biber & Leavy 2006, p. 119). The semi-structured interview is explained by Hesse-Biber and Leavy (2006) as an interview 'which relies on a certain set of questions' (p. 125) where effort is made to 'guide the conversation to remain, more loosely, on those questions' (p. 125). Sarantakos (1996) explains that the 'open' interviews are adaptable to changes in the direction of the topic or questions. The interview questions were structured as open-ended questions, which meant the interviewee was given the opportunity to provide an extensive response, and accompanied the semi-structured nature of the interview. According to Stroh (2000), interviews offer the researcher the exploration of an issue with a participant, rather than to test knowledge or simply categorise.

The informants could be classified as 'elites': gatekeepers such as Members of Parliament (MPs) (Stroh 2000, p. 199). As such, the relationship between interviewer and interviewee did not experience an imbalance of power in favour of the interviewer, which can apply to this context. Oakley (1981) was one of the early feminist sociologists to criticise the uneven balance of power between researcher and 'subject'; the balance of power, in this case, was held with the interviewee based on their 'gate keeping' position.

When I started my research, I sought an interview with Pru Goward who was the SDC at the time. However, she resigned from the Commission and moved into her role as a Minister in the New South Wales State Parliament. Nevertheless, I approached Goward for an interview in 2007, but she declined my request on the grounds it would be

'inappropriate to comment' (see Appendix 2 for email response) on leaving the Commission.

The former President of the Commission, John von Doussa QC, was appointed acting SDC while the federal government looked for a replacement for Goward and he agreed to be interviewed. The interview took place in September 2007 at the University of Adelaide (see interview questions at Appendix 3) and President von Doussa responded to all of my questions. The interview was recorded by an audiotape and notes were taken throughout the interview where appropriate.

The second interview was with the current SDC, Elizabeth Broderick, and took place in May 2008 in Sydney at the Commission's offices. The interview questions presented were the same as at Appendix 3; however, there was an opportunity to build on these questions with the changes in the federal political sphere. Both interviews lasted approximately one hour and offered my research an insight into the political complexities faced by the Commission.

Ethical considerations

There were a number of ethical considerations involved in this project. These relate to the nature of the study, which required face-to-face interviews with key informants from the Commission, which required approval by the University of South Australia Human Research Ethics Committee (HREC). The key ethical issue relevant to this project is the assurance of not 'misrepresenting or misappropriating' (Kirsch 1999) what the informants revealed in the interviews and ensuring the thoughtful and appropriate use of the information in the research. As the purpose of the interviews was to seek comments from the informants that could be attributed directly to them, the research did not involve issues of anonymity (de Laine 2000). However, the security of the raw data will be placed in secure storage at the office of the School of Communication, International Studies and Languages at the University of South Australia on completion of the data analysis for seven (7) years. This will ensure confidentiality and protection of the raw material being used for other purposes by anyone else.

Prior to approaching the informants, I completed the appropriate ethics protocols application and submitted this to the HREC for consideration. The HREC approved the application, pending minor changes to the information sheet. On 17 May 2007 I received final approval for a twelve-month period to approach the prospective informants and conduct the interviews. The ethics approval was extended on 24 April 2007 until 30 April 2009.

I am aware of many of the ethical issues that could occur in gaining qualitative data through the method of open interviews based on a list of semi-structured questions. For this reason, I pursued ethical decision-making at all times. This includes being consciously aware of one's values, principles, allegiance to ethical codes, intuition and feelings, within a context characterised by professional and power relations (de Laine 2000). Jones (2004) supports this ethical approach, as she suggests it is 'crucial that researchers choose their actions with a self-conscious awareness of why they are making them and what the effects are likely to be upon that relationship' (p. 259).

Conclusion

This chapter has detailed the methodological approach adopted in my research. Borrowing Bacchi's (2009) own caution, I am aware that, 'the kind of assessment of effects offered in a WPR approach is clearly contentious and gives a whole new meaning to policy 'evaluation'. There is no calculus offered, no cost-benefit analysis, no 'balance sheet' (p. 43). However, this approach offers my research and the field of policy analysis new insights into 'where particular problem representations have led and are likely to lead' (Bacchi 2009 p. 43) in the human rights policy area as well as on the future strategies of feminist engagement within the state. Central to my thesis is the issue of how a state agency and its workers—in the policy area of women's human rights—work within the state by problematising women's rights and equality to achieve progress for women. The next chapter provides a brief history of the discursive shifts that have occurred within the state during the period from the Hawke government to the Rudd government in relations to rights, equality, women's policy and family policy. This

genealogy of the political landscape is applied in the analysis of the relationship between the Commission and the different federal governments in later chapters.

Chapter 3
The Australian state, feminist engagement and family policy: a brief history

The research examines how women, and especially mothers, are constituted by the state in problematisations of the need for a human rights agency. In particular, my project examines whether the utilisation of human rights discourses, through the work of the Commission, have been a viable feminist strategy. Chapter three sets up the historical context around feminist engagement with, and within, the state and family policies in Australia, framed on Bacchi's question three from her WPR approach (2009) *How has this representation of the problem come about*? This question is informed by Foucault's genealogical approach that aims to map continuities and discontinuities in thinking around particular issues. I outlined in Chapter two that I am concerned with two contexts of policymaking:

- First, I am interested in how the need for a human rights agency was problematised by different federal governments between 1977 and 2008 and how motherhood was constructed in these problematisations.
- Second, I am interested in how the Commission constructs motherhood in its policymaking, focusing on PML policy specifically.

Tracing the history of the meaning-making that was occurring amongst the arenas of the state helps to explain the relationship between the Commission and the federal government and the problem representations examined in Chapters five, six and seven. Central to this chapter is the analysis of how 'rights' and 'equality' discourses are constituted in social-liberalism and neoliberalism. This serves the purpose of providing a useful framework for analysis of the relationship between the different governments and the Commission. Chapter three advances my argument that a negative regime of truth about the Commission developed as a result of the discursive shifts.

This chapter provides context to the parliamentary debates, legislative changes and budget contributions that are relevant to the study as it explores the broader discursive

strategies that were occurring at the time, showing that that the Commission did not exist in a vacuum. Chapter three brings into focus those networks of power that exist within the state to advance women's human rights, but that these networks were undermined by the political technologies of neoliberalism that led to a mainstreaming of women's issues, and ultimately to the demise of the femocracy. This chapter also examines how specific policies, particularly family policies, have been problematised historically by a gendered state. Importantly, this chapter addresses how different Australian governments constituted or 'problematised' (Bacchi 1999) 'rights' and 'equality' that influenced their relationships with the Commission.

In application of Bacchi's question three that provides my research with a genealogical and 'historical' lens, a number of key questions addressed in this chapter are:

- How does tracing the shift from social-liberalism to a neoliberal logic help explain the material and legislative constraint on the Commission with a focus on how the meanings attached to 'rights' and 'equality' changed?
- What can recent histories of feminist engagement with the state through the women's policy machinery tell us about the framing of women's rights and equality?
- What can recent histories of family policymaking in Australia tell us about how the category 'woman' was constructed?

These three questions relate to the first central research question of how the need for a human rights agency was problematised by the different federal governments between 1977-2008. In asking 'how the representation of the problem came about', specific aspects of Australian history need to be examined. For my project, these aspects relate to the contested meanings of 'rights' and 'equality', feminist engagement with the state, and family policymaking.

Political, economic and social discursive strategies and the state

Political, economic and social discursive strategies and shifts have occurred in Australia in the period 1986–2008 that have changed the role of the state. The following section responds to the question: How does tracing the shift from social-liberalism to a neoliberal

logic help explain the material and legislative constraints on the Commission, with a focus on how the meanings attached to 'rights' and 'equality' changed. I describe these discursive strategies as a shift from social-liberalism to neoliberalism, the creation and contempt of the 'new class' elite, the rejection of special interest groups' needs, the rise of neo-conservative and religious discourses in politics and the silencing of dissenting voices, the creation of a 'new government', and the GFC.

Shift to neoliberalism on 'rights' and 'equality' discourses

The Australian state has undergone significant changes over the lifetime of the Commission (1986–current) that can be attributed to the shift from social-liberalism to neoliberalism. Whereas Chapter four argues that there are limitations to women's equality in liberal political theory, this chapter addresses how 'rights' and 'equality' discourses are constituted in social-liberalism and neoliberalism for the purpose of providing a useful framework for analysis of the relationship between the different federal governments between 1977 and 2008 and the Commission. To be specific, I argue that how the different federal governments problematised 'rights' and 'equality' impacted on the Commission.

First, it is important to briefly outline the characteristics of a social-liberal welfare state and a neoliberal state. A social-liberal welfare state 'provided basic needs to citizens and was responsible for the wellbeing of its individual members' (Brodie 1997, p. 232). The foundations created by the 'Australian settlement' through protectionism policies and the establishment of strong wage arbitration can be viewed as contributing to an Australian 'workers welfare state' (Woodards 2005. p. 9). In a Keynesian welfare state, a relatively autonomous national government regulates its own national economy essentially by resisting the movement of capital within national boundaries and closely regulating banks (Woodards 2005). Although it is accused of creating a path of dependency (Woodards 2005), as well as supporting racist polices such as the White Australia Policy, the foundations of the Australian settlement contributed to the constitution of a social-liberal state. Australia was run as a welfare state until Gough Whitlam implemented the

reduction of tariffs in 1973. As such, Whitlam was the first Australian Labor Party (ALP) leader to merge neoliberal and social-democratic commitments (Cahill 2009, p. 15).

Political theorists Lee and McBride (2007) offer a critical description of the shift to the neoliberal state:

> Neo-liberalism has cast the primary purpose of politics as the servicing of the interests of entrepreneurs, corporations, private enterprises and liberalised markets, operating within a neo-classical orthodoxy on globalisation which holds that trade and development will accelerate, and inequalities in income and wealth simultaneously narrow as the world converges around an Anglo-American, liberal democratic model of capitalism. (p. 6)

Under neoliberalism, markets are understood to be the best way of organising economic activity because they are associated with 'competition, economic efficiency and choice' (Larner 2000, p. 5). Britain and the US were the first to implement a neoliberal framework under the governments of Margaret Thatcher and Ronald Reagan, and the framework spread to Australia and other English speaking countries (Woodards 2005). Neoliberalism is also forced onto the least industrialised countries as it forms the framework for global governance through global regulators (such as the World Trade Organisation, International Monetary Fund and the World Bank) and gives greater power to transnational corporations (Lee & McBride 2007). Neoliberal policies have been synonymous with 'economic rationalist' policies in Australia where 'economic considerations [are] above all other values' (Woodards 2005, p. 40). This shift has seen a privileging of the 'economic' over the 'social' as the economy has come to take precedence over social concerns.

The key point for my research of this shift from a welfare state based on social-liberalism, to a neoliberal state, is that it offers radically different approaches to protection of the community and thus for how to pursue 'rights'. Significantly, the different approaches to 'rights' discourses were adopted in the different problematisations of the Commission by different federal governments which produced different legislative and material effects. Social-liberalism emphasises 'rights' as an expression of the 'collective aspirations of society' (Sawer 2003a, p. 10), an evolving idea of the 'common good' (Sawer 2003a) or 'collective good' (Thornton 2006) with pursuit of 'equality' and

'justice' as its discursive strategies. Policymaking within a framework of social-liberalism involves a significant role of the government in addressing inequality caused by lack of education, poor health and bad housing through a strong welfare system and government spending in these areas (Sawer 2003a).

Neoliberalism, on the other hand, endorses individual 'rights' over collective rights as best pursued by the invisible hand of the market, or the doctrine of 'laissez-faire', in which government intervention ceases and individuals are left to their own endeavours with the free-market providing the reward (Burchell 1993). The discursive strategies of neo-liberalism encourage individual responsibility with the constitution of dominant discourses of 'freedom' and 'choice'. Policymaking under neoliberalism involves such strategies as privatisation of government services, such as health, education and utilities, as the market is deregulated (Thornton 2006). This does not mean that there is a reduced role for government, rather it indicates that the state plays a different role in shaping and influencing the behaviour of its citizens by encouraging new forms of self-management and self-regulation by individuals (Johnson 2000, p. 100). Thornton (2006) argues that the discourses of 'freedom' and 'choice' deny the inequalities that specific groups such as women, Indigenous, gay and lesbian, and non-Anglo experience in Australia. Instead, it is assumed that the market will provide 'equal' choices and freedom for all. The consequence of such logic is a rejection of claims by 'special interest' groups and a focus on the interests of the 'mainstream' (Johnson 2000). Such logic is problematic for questions of women's progress as women's interests became defined as special interests. Sawer's (2003a) suggestion that governments should be judged 'on the extent to which they provide 'equal opportunity' and not 'how lightly they touch our purse' (p. 1) is a useful critique of neoliberal logic for my research.

Sawer claims (2003a) the discourses of 'equal opportunity' achieved prominence in socialist-liberal theory with the development of the work of British professor of moral philosophy TH Green and his followers, as they attempted to shift the focus of liberalism to 'equal opportunity as the chief object of the state' (Sawer 2003a, p. 23). This entailed asserting the view that there is an 'interdependence of individuals and the role of the

community (with the state as its collective agency) in achieving equal opportunity for all its members' (Sawer 2003a, p. 23). Green's philosophy of social-liberalism was apparent in Australia's system of governance, in spite of some resistance, in the early 1900s as Australia promoted civil and political rights and ensured material means were available to all through a social security system (Davis 2001). Sawer makes the connection between the origins of Australia's social-liberalism roots and women's engagement with the state for social reform, as 'it provided a normative framework for the demands of organised women … [which] proclaimed that the legitimacy of the state derived from the achievement of common purposes such as theirs' (2003a, p. 155).

I adopt the view that since the 1970s, the ALP has implemented greater reforms than the Australian Liberal Party in relation to women's equality and has a history of engaging socialist discourses (Bramble & Kuhn 1999; Chappell 2002a). By way of a recent example, Prime Minister Rudd was critical of the neoliberal strategy adopted by the former Coalition government and actively promoted his government as social-democratic (2009). The Australian Liberal Party tends to argue that a society will be more equitable when the rights of individuals are foregrounded, which reflects a classical liberal position (Johnson 2000). Johnson (2000) makes a clear distinction between the policymaking of the Hawke (1986–1991) and Keating (1991–1996) Labor governments and the Howard Coalition (1996–2007) government by arguing that the Labor governments promote a 'group, co-operative capitalism' while the Liberal government reasserts the 'abstract, self-reliant individual' (p. 58). The problematisations of the Commission under the Hawke and Keating governments are informed by socialist inspired discourses of 'equality' and 'justice' as is evident in their strengthening of the human rights mandate and providing adequate funding (discussed in Chapters five and six).

However, this is not to claim that the Hawke and Keating governments were not also advancing neoliberal discourses in economic policies at the same time. The move of the Hawke and Keating governments away from Labor socialist traditions has been extensively discussed (Castles 2001; Frankel 1997; Jaensch 1989; Johnson 1989, 2000; McKenna 2000; Maddox 1989; Maddox & Battin 1991; Scalmer 1997; Wiseman 1996)

with claims that these governments initiated neoliberal policies. The Hawke government was criticised as being the most 'right-wing' development in Labor Party history (Johnson 1989) and that the party had been 'hijacked' by the Hawke-Keating governments (Jaensch 1989) to sponsor 'consensus politics' (Maddox 1989). The 'right-wing' transformation of the Hawke government in its third term was evident in the adoption of economic rationalist policies such as the deregulation of the market and banking sector; increased privatisation of public goods and services; and forced increases in labour productivity (Pusey 2003, p. 80). More recent analyses of the shifts in the ALP refute the argument that there has been 'an abandonment of the great Labor tradition' (Bramble & Kuhn 2009, p. 290) and rather,

> Labor's policies and practices have consistently reflected the interplay of the forces that make up the Party's material constitution—its working class base, the trade union officials and parliamentary representatives and the pressure on the Party's leadership from the capitalist class and the state machine within which Labor's parliamentarians are embedded and whose interests they promote'. (Bramble and Kuhn 2009, p. 290)

The claim that the Hawke government degraded a Labor socialist tradition must be considered within the context of the internationalisation of the global economy (Maddox & Battin 1991). The increase in global trade, investment and production meant that Hawke believed he had to actively engage with the international community for the benefit of Australia's economy, and as such, both Hawke and Keating were pro-globalisation (Lavelle 2005). This meant that governments had to reduce trade and economic protections in ways that are now understood as neoliberal policies. Although some elements of what is being labelled globalisation have a long history, such as international trade, the advancements in travel and communications of the 1980s increased global interconnectedness.

The Hawke government should also be assessed in relation to Labor's tradition of promoting social harmony. Johnson (1989) argues the social harmony ideology of the ALP has always prescribed economic reform within the limits of liberal capitalism, rather than a complete revolutionising of the economy. It is also argued that the initiatives of economic reform, such as the changes to industrial relations legislation encouraging

enterprise bargaining, counteracts other social policy initiatives aimed at reducing inequality for women (Wills 1995).

Michael Pusey's now classic study (2003) details a number of initiatives of economic reform which occurred under the Hawke government that demonstrate the effects of a shift to neoliberalism. These include the floating of the Australian dollar and partial deregulation of the banking industry in 1983; the allocation of seventeen licences to foreign banks to trade in Australia in 1995; the Higher Education Contribution Scheme (HECS) fees introduced for university students in 1987; the corporatising of Telstra and Australia Post[8], and the introduction of the *Industrial Relations Act 1988*, which allows individual contracts, in 1988 (Pusey 2003, pp. 186–189). There were also changes to the Accord legislation of the Australian Council of Trade Unions (ACTU) that allowed discounting of wages and ongoing wage restraint. As Watts (1996) claims, 'the impulse to protect and defend workers' interests was at the very heart of the ALP's Accord' (p. 63) as it intended to provide a framework for negotiations yet it 'stripped away the mediatory role of the old arbitration system' (p. 63).

As under the Hawke government, the attempts by the Keating government to constitute an equal opportunity agenda in its policymaking competed with the implementation of economic-rationalist policies and the deregulation of the market to sustain competition in the growing global economy (Wiseman 1996). Perhaps Keating, more so than Hawke, took a stronger view of the role of the state to promote the 'independent and entrepreneurial citizen identity' (Johnson 2000) that had been undermined by the welfare state. According to Lavelle (2005), Keating viewed globalisation as an 'unstoppable juggernaut' (p. 53) which influenced his decision to de-regulate Australia's economy.

In spite of this though, as Castles (2001) documents that, under the Hawke and Keating governments when compared with any other Organisation for Economic Cooperation and Development (OECD) country, spending in the social policy area was high (p. 538). This expenditure included the reintroduction of a universal health care system (Medicare), real

[8] Telstra is the national telecommunications service and Australia Post is the national postal service.

efforts to cope with child poverty, and subsidised childcare. Keating also promoted the ALP as standing for the values of 'social justice, social cohesion and equal opportunity—the fair go' (cited in Wiseman 1996, p. 106). In his last term as Prime Minister, Keating had promised to look after the 'working-class true believers', which Frankel (1997) argues 'was naively seen by many to signal the abandonment of a decade of economic rationalist policies' (p. 21).

The economic reforms of the Keating government which built on the neoliberal policies of the Hawke government included the privatisation of the Commonwealth bank in three stages (1991, 1993 and 1996), tariff cuts as part of the 'Building a competitive Australia' statement in 1991' loosening of regulation of foreign banks and privatisation of Qantas after taking over Australian Airlines between 1992 and 1995, non-union agreements introduced as part of the *Industrial Relations Reform Act 1993*, and the Council of Australian Governments (COAG) agreement to implement national competition packages in 1995 (Pusey 2003, pp. 188–199).

The Howard Coalition government's implementation of neoliberal policies expanded on the policy strategies of the Hawke/Keating governments. Howard took a radical restructuring approach to industrial relations with successful efforts to weaken the trade unions and shift workers to individual contracts and to an enterprise bargaining approach with *Workchoices* (Woodards 2005). Regarding taxation, Howard reduced personal income tax and also introduced the *Goods and Services Tax* (GST) on goods and services. According to Woodard (2005), the rationale underlying a neoliberal ideology supports the reduction of personal income taxation, which in turn supports the idea that individuals should have greater 'freedom' and 'choice' over how their money is spent, rather than high taxation to support the welfare state (p. 95). The Coalition government continued the process of privatisation by selling the national transmission networks of the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS), all airports in capital cities as well as some in rural areas, a national shipping line, the Australian Defence Industries, and the National Railways Commission (Woodards 2005, p. 123). Johnson (2000) also shows how the Coalition government privatised services, such as

employment services—shifting responsibility for finding work to the marketplace. Howard created the Productivity Commission whose function is to assess policy recommendations for short or long term economic gain (Commonwealth, Productivity Commission website 2013), which is in line with a neoliberal framework.

It is widely held by political theorists and commentators that both Australian Labor and Liberal governments are constituted in multiple discourses *as well as* constituting discursive strategies to manage the growing influence of globalisation, capitalism and the global economy (Cook 2004; Johnson 2000). The federal government can contribute to the economic security and wellbeing of women directly, through its expenditures, and indirectly through legislation that enables women to secure their own economic wellbeing. But governments can also detract from women's economic security through policies and changes that appear gender neutral, but actually disadvantage women (Wills 1995).

Howard's rule: revenge of the mainstream

The discourses adopted by the Coalition government have been well documented by a number of Australian political theorists (Johnson 2000; Maddox 2005; Sawer 1999, 2002, 2004, 2005). These competing discourses have been labelled by terms such as 'revenge of the mainstream', 'anti-elitism', 'special interest groups', 'popular sovereignty', 'family values' and 'silencing dissent'. The deployment of these tropes impacted on the powers and autonomy of the Commission, as it became a target of the larger discursive strategies of the Coalition government. The analysis in Chapter six demonstrates that these discourses featured in the problematisations of the need for a human rights Commission by the Coalition government. I argue that instead of the problem being framed on the grounds that Australia needs a human rights agency to protect human rights in Australia, the Commission itself was represented as the problem that needed to be better managed and controlled by reducing its powers and functions.

The first discursive strategy adopted by the Coalition government can be described as a rejection of 'special interest groups' and a promotion of the interests of the 'mainstream'.

Johnson's (2000) study of the shift from the Keating Labor government to the Howard Coalition government provides a thorough delineation of the discursive strategies of both governments; this period highlights the largest shift to take place in the history of the Commission. Johnson shows how the Coalition government capitalised on the Keating Labor government's deployment of the 'crisis' being created with the quickening pace of globalisation and the demands of the global economy with his politics of 'reassurance' (2000, p. 6).

The Keating government worked hard to create a more inclusive Australia by meeting the needs of disadvantaged groups, which were reconstituted as 'special interest' under the Coalition. This entailed the belief that elite 'special interests' had exploited taxpayers under Keating (Johnson 2005). Consequently, Howard predicted that Australia needed 'reassurance' about a number of aspects of society and especially that the needs of mainstream Australia would once again be properly represented under his leadership. The 'special interest groups' who had been gaining a disproportionate amount of attention and funding from the Keating government would be ignored (Howard 1994).

As Johnson (2000) thoughtfully suggests, determining who was represented in Howard's 'mainstream' group was difficult, as Howard regularly changed the 'common-enemy'. However, she suggests the special interest groups were feminists, gays, lesbians, multicultural groups and Aboriginal organisations (p. 40). Howard supported the dominance of Anglo-Celtic culture in the Australian public culture, indicating that this was a characteristic of this 'mainstream' group. Or as Johnson (2000) puts it: '"Revenge of the mainstream" discourse is about encouraging Anglo-Celts and heterosexuals "mainstream" to construct their own identity as unquestioningly central and other identities as "special interests"' (p. 42).

Sawer (2004) identifies a second discursive strategy as the construction and attack of a 'new class elite' who are 'university-educated intellectuals, radicalised by the social movements of the 1960s and with a vested interest in expanding the public sector' (p. 34) or more pejoratively, the 'chattering chardonnay set' (Maddox 2005, p. 77). Hence, the

Coalition government presented an anti-elitist position as a way of drawing further divisions between 'mainstream' Australia and the others. The 'new class' for Howard 'speaks a language of public interest and equal opportunity' (Sawer 2004, p. 34) which is interpreted as 'political correctness' (Sawer 2004, p. 34). The new class was described as 'sneering' at 'ordinary Australians' (Sawer 2004, p. 41) and was different to the business and financial elites of previous times. Rather, they were made up of teachers, social workers and public servants (Sawer 2006). As Sawer points out, there was an unusual contradiction at play in this discursive shift. As well as supposedly holding contempt for ordinary Australians, this group was also labelled 'bleeding hearts'.

Significantly for my argument, Sawer (2004) suggests that 'human-rights advocates' working through bodies, such as the Commission, were viewed in this discourse as self-serving, benefiting only the agency and the people working in it, rather than the higher order of human rights (p. 41). The Coalition government could also be charged with pitting rights against each other—such as the rights of sovereignty against universal human rights that offer competing principles with different sources of legitimacy (Kelly 2005, p. 16). Howard very publicly rejected advice and guidance from the UN, for he did not want to 'resort to the moral superiority of International treaties' (Howard 1995a cited in Johnson 2007, p. 199). Johnson (2007) argues that Howard associated the UN with representing special interest groups and that his belief was that Australia should not 'change its values to court other countries' (p. 199).

Within the Howard government's backlash politics, feminists were also depicted as having contempt for ordinary women (Sawer 2006, p. 123). In this discourse, the 'ordinary woman' is constituted as the heterosexual, married, 'stay-at-home' mother or the woman who is happy to juggle part-time work with family responsibilities, but not pursue a career 'pushed' onto women by feminism. Howard was open about his preference for stay-at-home mothers: 'I am a very strong believer in the proposition that the care provided full-time by a parent is the most precious childcare of all' (Howard cited in Karvelas 2007).

The discourses of the 'mainstream' were also adopted in reference to women, specifically to 'mainstream' women's policy. As Sawer (2005) suggests, the adoption of the idea that women's interests are 'special interests' and that the pursuit of equality 'meant treating everyone the same, regardless of the impact of such treatment on groups who differed in significant respects from the norm' (p. 11) led to the weakening of the women's policy machinery created under previous governments. Under the Coalition government, Australia experienced a sharp turn to neoliberal ideals of individual rights which were defined in terms of the normative male. The effect was neglect of the interests or needs of those who were not part of the norm. This was not the approach originally intended by the Hawke Labor government—but rather to encourage the central location of policy machinery so that economic, as well as non-economic areas of policy, could be monitored in terms of the impact on both men and women (Sawer 2005).[9] Instead, in Australia under the Howard government, gender mainstreaming meant abolishing the women's policy units.

A third discursive strategy is documented by Maddox (2005) who considers how the Coalition government project could be compared to the 'American-style, religiously infected social conservatism' (pp. 105–106). She suggests that the ideals of 'traditional family values' were central in policymaking. Maddox provides a number of examples to support this claim, such as limiting in-vitro fertilisation (IVF) treatments to heterosexual couples; resistance to implement PML policy; adopting British sociologist Catherine Hakim's 'adaptive motherhood model' which positioned women as mothers first, workers second; Family Tax benefits which benefited couples where one parent stayed at home; and implementing 'Shared Care' child custody arrangements which gave greater rights to the father, even at the risk of harm of the mother or child(ren).

[9] Attacks on the Commission were not an isolated event as the Coalition government cut funding and positions from other arms of the policy machinery aimed at social policy initiatives. These included massive cuts to legal aid funding—$120 million—which it was suggested also impacts on the maintenance of human rights, as the necessity for cases to be heard in the Federal Court would significantly impact on whether a person pursuing an incidence of discrimination could feasibly do so (Bolkus & McKiernan 1997).

Maddox (2005) suggests that Howard may have drawn on traditional family discourses at times of leadership insecurity in order to bolster his support from the 'Lyons Forum'.[10] This group was established for the purpose of pursuing 'traditional family values' in Australia and met frequently during Howard's leadership to assess policy proposals for their impact on the traditional family. The Lyons Forum could be compared to a parliamentary version of the 'Women Who Want to be Women' group established in Australia in the 1980s, which had the same purpose and intent: resist the changes proposed by feminism and the radical left in politics which threatened gender norms based on the traditional nuclear family. Maddox (2005) also makes a strong case for the need to understand the constitution of religious discourses in Howard's policymaking, which impacted on the pursuit for women's equality. In response to Maddox's (2005) claim of the power of the religious right in Australia, Gleeson (2011) offers a more hopeful analysis of resistance to the religious right. Gleeson (2011) studied the political debates over abortion raised by Howard's Health Minister, Tony Abbott. Her study shows that Abbott's attempt to repeal abortion law was not successful because the pro-choice movement was much stronger than the conservative religious following that Abbott had anticipated support from. Nonetheless, the Coalition government did increase its funding to pregnancy counselling for women to explore pregnancy options (Gleeson 2011, p. 485), which shows that religious discourses were significant in constituting policymaking.

The final discursive strategy adopted by the Coalition government to be discussed here has been described as 'silencing dissent' (Hamilton & Maddison 2007). Hamilton and Maddison (2007) collaborated with a number of concerned pro-democracy advocates about what they regarded as the damage being done to Australia's democratic processes, particularly the freedom to express criticism of the government. Maddison and Hamilton (2007, p. 2) argue that it is no coincidence that non-government organisations (NGOs) were having their funding cut at the same time that some parts of the media were being 'gagged', and that restrictions were being placed on statutory authorities (such as the

[10] According to Maddox, the Lyons Forum had held a high membership of around half of the Liberal Party's parliamentary members, including some 15 frontbenchers (2005, p. 102).

Commission). Rather, these strategies, when viewed together, demonstrate a systematic strategy by the Coalition government to mute opposition to government policy and control public opinion.

An aspect of this strategy involved the claim that the Coalition government engaged in the practice of 'stacking' public statutory authority agencies (McIntosh 2007). This meant that the Coalition government made very selective appointments of those running these statutory authorities and removed dissenting voices. McIntosh (2007) even suggests that Howard had a list of people within public institutions who needed to be removed 'to advance the cause of the conservatives' (p. 151).

Another aspect of the strategy was to remove some of the powers and independence of these agencies, which was enabled by a report the Coalition government commissioned into the governance arrangements of statutory authorities. McIntosh (2007) focused on the ABC, the Australian Heritage Council, the Fair Pay Commission and the National Museum of Australia in his study of these strategies. Chapter six argues that the Coalition government tried to 'stack' the Commission, leading to fraught relationships with Commissioners who spoke out against the government, and the appointment of at least one Commissioner who was friends with Howard. My analysis argues that this strategy was part of the Coalition government's attempts to undermine the Commission's powers and independence.

Additionally, other reforms to the public service made by the Coalition government in the *Public Service Act 1999* included a tightening of the Code of Conduct, which identifies a number of requirements for public servants including the condition to be apolitical, to treat their work with confidentiality and to ensure at all times the proper use of government resources. Barker (2007) argues that the emphasis on being *apolitical* really only represented views which were in opposition to the Coalition government. Where public servants had been encouraged to give 'frank and objective' advice (p. 128), the Coalition government discouraged dissent amongst its ranks.

Barker (2007) suggests that previous Labor governments also engaged in efforts to impose restrictions on the public service, and the Coalition government created a climate of 'uncertainty, fear and retribution' through the work of its ministerial advisers (p. 127). This impacted on both the Commission and government departments working on women's policy initiatives. Feminism was seen as a political 'ideology' and therefore should not be expressed by anyone working in the women's policy machine. In Chapter six, I further elaborate on how the Coalition government's discursive strategies impacted on the work of the Commission.

This section has given context and history to how the problematisations of the Commission came about as it was represented as a problem (Bacchi 2009) because the Commission was connected to special interest groups, a new elite class and bleeding hearts who had too much power. This section also demonstrated how a negative regime of truth developed about the Commission.

Rudd's promises: a 'new' social democratic government and the global financial crisis

This section shows that the problematisation of a human rights commission by the Rudd government is informed by the discourses of a 'new socialist government' and the GFC. The Rudd Labor government replaced the Coalition government in December 2007. Kevin Rudd was Prime Minister for three years until he lost a 'sudden' leadership challenge by his deputy, Julia Gillard. In his short time as leader, he made much effort to draw a distinction between the Coalition government's strategies and the Labor government's. Rudd's key strategies were the creation of a 'new' government, which rejected in part the 'failing' neoliberal framework and instead implemented a weak social-democratic approach based on Labor's tradition and those developed to manage the GFC. In spite of the different language or discourses used by the Rudd government, the material conditions for women stayed the same. This supports my earlier argument that questions of women's progress need to consider both the discursive and material aspects, as this shows that a weak challenge to neoliberal discourses did not bring about material change.

Notably, the Rudd government took power without a women's policy platform. Sawer (2010) compares Rudd's strategy with the Blair government in the UK, which avoided the 'f' word (feminism) as it was seen to be a deterrent to winning the support of blue-collar workers (p. 89). The unpopularity of Howard's *Workchoices Industrial Relations* legislation was a bigger issue for working-class people than women's policy and lost him the 2007 election (Muir 2008).

Rudd described his idea of a 'new government' at the *Progressive Governance Conference* in London as 'pro-market, pro-business and pro-globalisation' (Rudd 2008). He interpreted this to mean 'implementing a fairness agenda aimed at maximising equality of opportunity for every individual to pursue their life opportunities to the fullest' (Rudd 2008). Importantly for matters of women's rights he sought to actively 're-engage' the UN 'for Australia's voice has been too quiet for too long in the councils of the world' (Rudd 2008). This marks a clear shift from the Coalition government, which argued for the need to retain government sovereignty and hence to ignore international human-rights voices.

Rudd (2009) also openly rejected aspects of neoliberalism. He published an essay arguing that the causes of the GFC were neoliberal policies which had taken over the world and are at 'home' in the Liberal Party (p. 28). He lists a number of Coalition government policy initiatives where cuts were made to public spending and led to market deregulation based on the attitude that there should be minimal government intervention in the markets. Rudd suggested in this essay that the failings of neoliberalism are derived from the shift away from the state; for he believed that this meant a reduced role of the state.

Cahill (2009) critiques Rudd's position for the inconsistencies between neoliberal theory and practice. Instead of a withering away of the state, the role of the state shifted to an 'activist' role in the introduction, implementation and reproduction of neoliberalism (p. 13). Larner (2000) also argues that while very few political parties explicitly identify themselves as neoliberal, adherence to market-based policy options characterise the

current policy programs of social democratic governments, at least in the English speaking world (p. 9).

The Rudd government's efforts to produce equal opportunity and social inclusion or 'fairness' had its limits. Mendes (2009) argues that the government may promote greater opportunities through education, training and employment, yet it did not radically alter the economic or social welfare policies implemented by the Coalition government (p. 27). Second, he provides a number of examples of how the Rudd government mirrors policies from Howard, such as enforcing certain behaviour in the Northern Territory Emergency Response policy and quarantining of welfare payments to Indigenous parents to ensure school attendance of their children. Mendes (2009) concludes by claiming, in line with Cahill (2009) that in spite of efforts to reject aspects of neoliberalism there is a 'reluctance to challenge free market orthodoxy' (Mendes 2009, p. 36). The emphasis on individual responsibility as a quality reflected in neoliberal discourses is demonstrated in these policies and demonstrates the dominance of such discourses.

Rudd (2009) polarised the Australian Labor and Liberal parties by stating that 'the contrast between the competing political traditions within Australia on the role of governments and the market is clear' (p. 28). For Rudd, this was about the government having a central role in the regulation of markets, provision of public goods and maintaining stability of financial systems (p. 28). Accordingly, Rudd had presented himself as a fiscal conservative throughout his election campaign, which seemed at the time to mean 'prudent management for surpluses' (Scott 2009). His steps to avoid a recession in Australia, such as the stimulus payments to Australian workers who earned more than $6,000 and less than $100,000, and investment in other programs, raised questions as to whether he had reinvented the term 'fiscal conservative' to mean returning to Keynesian economics (Scott 2009, p. 3).

Rudd (2009) referred to 'rights' or 'equality'. In the essay discussed above:

> Social justice is also viewed as an essential component of the social-democratic project. The social-democratic pursuit of social justice is founded on a belief in the self-evident value of equality, rather than, for example, an exclusively utilitarian

> argument that a particular investment in education is justified because it yields increases in productivity growth (although, happily, from the point of view of modern social democrats, both things happen to be true). Expressed more broadly, the pursuit of social justice is founded on the argument that all human beings have an intrinsic right to human dignity, equality of opportunity and the ability to lead a fulfilling life. (p. 25)

The Rudd government set about ensuring the electorate knew what a social-democratic government represented as well as defining the differences between his government and the former Coalition government. The striking part of Rudd's strategy is his conviction that his government would have the potential to change (effectively roll back) the long-term implementation of neoliberal policies that he claims led to the GFC. When the discourses of women's rights initiatives, neoliberalism and the GFC are placed in competition with one another, history shows us that when there is an economic crisis, resources for women's initiatives are cut (Curthoys 1996, p. 142).

Whether Rudd's strategy is successful in supporting the Commission in its role to pursue women's equality is assessed in Chapter six. I will show how there were contradictions in the Rudd government's reformist policies as on the one hand it set about inquiring into how human rights protections and the SDA could be strengthened; on the other hand it cut funding to the Commission. Having provided a brief sketch of the relatively recent shift to neoliberalism as the dominant political philosophy in Australia and other competing discourses that contributed to the problematisations of the Commission, I now turn to a discussion of women's policy machinery in Australia.

Women's policy machinery

This chapter reviews the history of the Australian women's policy machinery. This section addresses a question posed earlier that reflects Bacchi's genealogical approach to policy: What can recent histories of feminist engagement with the state through the women's policy machinery tell us about the framing of women's rights and equality? First, it argues that the establishment of the Commission and its mechanisms to pursue women's equality fits within a broader framework of feminist action within the state. Second, it demonstrates that both the Commission and the women's policy machinery experienced similar attacks by the Coalition government in the strategy of gender

mainstreaming—in the form of downsizing and weakening the policy units—as a consequence of neoliberalism. Third, it addresses the problematic expectations that have been placed on female politicians or female bureaucrats to represent women's interests. These three themes assist my analysis of the SDCs in Chapter seven. Historically, women in political positions had their feminist intentions questioned. This section elaborates further on the context surrounding the relationship between the different federal governments and the Commission in order to show how the Commission was problematised.

History of women's policy machinery: the 'femocracy'

The second wave of the Australian women's movement gained an international reputation for its success in engaging the state on its demands. Sawer (1991) thinks it was successful because of Australia's history of radical social movements looking to government to satisfy their interests as well as the opportunities provided by reformist governments when the contemporary women's movement was at its peak. I have grown up with, and benefited from, this history; but it also helped me form the view that the state cared about women's equality as feminists had achieved positive engagement with the state. Chappell (2002b) supports these claims about the success of women's-movement activism within the state regarding the support of a progressive Labor government, but adds that particular characteristics of the Australian state also contributed to the success; a weakness of 'neutrality of bureaucratic norms and the nature of Australian federalism' (p. 90), for example.

Australian adoption of the Westminster civil service system had not involved strict enforcement of the extent to which public servants can engage in 'partisan political activities and [from] expressing their views' (Chappell 2002b, p. 90), until the Coalition government made changes to the *Public Service Act 1999*. A system of advocates of sectional interests within the public sector presented feminists with 'positive opportunity structures' (Chappell 2002b, p. 90). The political party and federal structures also provided opportunities for feminists as the social-democratic Labor parties of Whitlam and Hawke developed a women's policy machinery (see discussion below), and the

federal structures encouraged the establishment of inter-governmental relationships to address women's inequality (Chappell 2002b).

The development of positive opportunity structures can also be attributed to the establishment of the Women's Electoral Lobby (founded by Beatrice Faust in 1972) and subsequently, women entering federal government with a commitment to feminist principles (the first women's adviser to the Prime Minister, Gough Whitlam, was also appointed in 1972). Some scholars (Sawer & Groves 1994; Yeatman 1990) argue it was the birth of the Australian 'femocrat' that made the greatest impact on women's access to economic, social and political life as they were able to use these positions to enact changes. Sawer and Groves (1994) define a 'femocrat' as a 'feminist who takes up women's policy positions and, subsequently, also feminists who moved onto mainstream positions in government' (p. 8).

The capacity for women to work on advancing the position of women and the development of anti-discrimination strategies can partly be attributed to Gough Whitlam's commitment to addressing women's issues in the 1970s (Sawer & Groves 1994) and Bob Hawke's in the 1980s (Ronalds 1991). The decision by Whitlam in 1972 to create the position of Women's Adviser to the Prime Minister (Elizabeth Reid was selected from candidates including Anne Summers, Eva Cox and Lyndall Ryan) played a pioneering role for further development in government for women (Sawer & Groves 1994). Reid received a mixed response from 'mainstream' Australia and the women's movement (for a detailed discussion of this see Sawer 1990), but her appointment set progress into action. Seventeen other Women's Electoral Lobby members entered the policymaking machinery, with intentions to reform government structures and procedures to produce better chances of making real changes to women's policy (Sawer & Groves 1994).

These changes were expressed in the establishment of the Women's Affairs Section.[11] The Women's Affairs Section proposed it 'should become a nucleus of a network of women's policy units to be established in various functional departments' (Sawer & Groves 1994, p. 23), symbolised as a 'wheel' of which the Woman's Affairs Branch formed the hub and the units in functional departments the spokes (Sawer & Groves 1994). This structure allowed for the examination of the impact on women of policy proposals in all departments and within Cabinet. Being at the centre of policymaking, instead of a separate arm or department, meant that the femocrats had access to the Prime Minister's department as well as having the means of monitoring and evaluating the outcomes for women of all government activity. This also meant that it was not just the programs specifically intended to advance the status of women that were assessed by the policy machinery (Sawer 1991, p. 262).

The election of Malcolm Fraser as Prime Minister in 1977 brought a few setbacks for the women's policy machinery as the Women's Affairs Branch was re-shuffled and downgraded to the Department of Home Affairs and re-named the Office of Women's Affairs (Ryan 1990). Here the Office had less access to policy proposals or Cabinet submissions and they had lost their position at the hub of the 'wheel' (Sawer 1986a). Ryan (1990) documents the 'downgrading of women's affairs' during the Fraser years as it became more difficult to access the Cabinet submissions and for the femocrats to contribute to the policy processes.

However, the Office of Women's Affairs had some support from the inner-circle of power, and most notably two male Ministers who held the position of assisting the Prime Minister for the Status of Women. One in particular deserves special mention here, as he is the same Minister who lobbied for the implementation of the Human Rights Commission in 1977, Attorney-General Robert Ellicott (see Chapter five for further discussion). Thus, the Office survived, but its power had been undermined. According to

[11] The role of the Women's Affairs Section was to support the Women's Adviser to the Prime Minister. This section has evolved over time, and was better known as the Office of the Status of Women. The Heads of the Office have included Anne Summers, Sara Dowse, Kath Taperall, Helen L'Orange & Ann Sherry. Currently this office is identified as the Office for Women.

Van Acker (2001), one of the only issues that gained useful attention during Fraser's leadership was domestic violence against women, as other initiatives and services were cut.

Following the Fraser government, the Hawke and Keating governments demonstrated support for the women's policy machinery and the advancement of women's rights in their relationship with the Office for Women. Hawke moved it back into the Prime Ministers Department and listened to feminists (Van Acker 2001). Under Hawke, annual women's budget statements were developed to assess economic and budgetary policy against feminist criteria, and childcare funding was increased. Under Keating, there were further increments for childcare, women's health and domestic violence (Curthoys 1996). However, as Van Acker (2001) highlights, the neoliberal strategy impacted on this support as feminists were unable to challenge successfully the logic of economic policies which were undermining women's initiatives and services.

The constraints of these economic policies on the women's policy machinery are explored by Eisenstein (1996) in her work on Australian femocrats. She interviewed a number of women with key roles in the bureaucracy who shared their experiences from working on the inside. A number of reflections are included which suggest that the femocracy has been substantially weakened; as Eisenstein (1996) states, 'at this writing (1995) the femocracy was alive, but struggling' (p. 203). This review of the history of feminist engagement with the state through the women's policy machinery supports my argument that the establishment of the Commission and its mechanisms to pursue women's equality fits within a broader framework of feminist action within the state. This review also demonstrates the conflict that has existed within the state over the framing of women's rights and equality that also impacted on the work of the Commission. This shows that although it had a degree of autonomy, the Commission nevertheless had strong ties to the rest of the policy machinery.

Gender mainstreaming or debunking of the women's policy machinery

Alston (2006) charts the history of gender mainstreaming and locates its origin at the UN at the 1975 *International Women's Year Conference*. The indicators established at that conference were used as a comparison at the 1995 *Fourth Beijing World Conference on Women*, demonstrating there had been a limited shift in the status of women globally in the twenty-year period. Gender mainstreaming was developed as a new strategy which aimed to move away from what was being described as the women-focused approach that gave attention to women in one small area of organisational structures, thus ignoring larger institutional structures (Alston 2006, p. 126).

Gender mainstreaming is a fraught idea because it requires a commitment to 'gender equality' by the 'mainstream' agenda (Walby 2005). This raises significant issues about whose interests are then recognised in the mainstream and how one pursues equality. Bacchi and Eveline (2003) define mainstreaming as 'a commitment to guarantee that every part of an organisation assumes a responsibility to ensure that policies impact evenly on women and men' (p. 98). Australian writers Eveline and Todd (2009) detail how gender mainstreaming uses a form of gender analysis as its principal tool, and begins from the premise that policy routinely (re)produces gender inequality (p. 542). The strategy depends on an ongoing process, which has been problematic as more recent governments have taken a hostile approach to the pursuit of gender equality (p. 544). As noted earlier in this chapter, 'gender mainstreaming' under the Hawke and Keating governments meant that women's policy was moved away from a central location so that economic as well as non-economic areas of policy could be monitored in terms of the impact on both men and women (Sawer 2005). Critics of the changes argued it removed gender from the political agenda as it took power away from the dedicated units (Bacchi & Eveline 2003).

Under the Coalition government, gender mainstreaming took on a completely different meaning. The Coalition government's strategy of gender mainstreaming was part of a larger strategy to shift the focus away from 'special interest' groups, such as feminists or

women, to the mainstream. Hence, gender mainstreaming for Howard meant that government did not need the mechanisms or resources invested in the pursuit for women's equality. Whip (2003) details how in the first couple of years of his government, Howard dismantled or abolished the following: the Register of Women (a list of women qualified to serve on government boards and authorities); the Women's Statistics Unit in the ABS; and the Women's Bureau (a body established in 1963 by the Menzies' government to identify work opportunities for women, promote equality, oversee policy initiatives for women in other departments, and monitor Australia's response to UN conventions relating to women in the labour market). In addition, the powers of the Affirmative Action Agency were reduced as the agency was no longer permitted to publicly expose companies which failed to comply with the law, and the budget for the Office for Women was cut by 40 per cent. According to Summers (2003), Howard wanted to abolish the Office for Women and the Affirmative Action Agency in the first year of his leadership. However, his female chief of staff convinced him not to (2003, p. 127). Instead, in efforts to weaken its potential to contribute to women's equality, just as Fraser did in the 1970s, Howard moved the Office for Women out of the Department of Prime Minister and Cabinet to the Department of Family and Community Services.

Sawer (2003c) also outlines the specific strategies of the Coalition government to undermine the women's policy machinery, such as its appointment of 'one of the most conservative members of government, Senator Jocelyn Newman' (p. 253) as Minister assisting the Prime Minister for the Status of Women, and cutting women's policy structures in other major departments such as Education, Training and Youth Affairs. Sawer (2003c) suggests that even though the original model of the women's policy machinery no longer existed, there was 'still the institutionalised acknowledgement that all government policy needs to be analysed for gender effects' (p. 262).

To return to an earlier question then, what does a review of the history of feminist engagement with the state through the women's policy machinery tell us about the framing of women's rights and equality under the different federal governments? The

women's movement had some success at working with the state through the establishment of a strong women's policy machinery. During this period, the problem of women's equality was represented differently by the different governments. The Office for Women has undergone many changes and budget cuts, which were severe under the Coalition government, and which formed part of Howard's larger effort to mainstream gender issues to remove the *special* focus. Where feminists learned to work within bureaucratic structures under Labor governments, they faced additional challenges within a political environment that did not support feminist concerns (Van Acker 2001). This is also reflected in the conflict that existed between different governments and the Commission.

Role and accountability of female political figures

Whether feminist or not, women have not had a straight path into working in the state, whether as MPs or as bureaucrats. Women in these roles have often been criticised for not carrying the feminist 'torch' or constituting discourses of feminism that were considered too conservative for the larger 'radical' feminist movement (Sawer & Groves 1994; Sawer 1990). On this issue of female bureaucrats being criticised for not taking up the feminist struggle, I want to foreground here the controversy that arose around the appointment of the SDCs (as explored in Chapter six) and the discourses they used in their policy work and public documents (as explored in Chapter seven). Specifically, I am interested in these questions: Do the SDCs in the case study period identify as feminist? Do they articulate feminist discourse in their media and policy formats? Historically, the job appeared to be feminist by definition. Importantly, in my analysis in Chapter seven of the SDC's work, I account for the different strands of feminism, as my study shows that different SDCs identified with different strands. These questions link in with the WPR approach as they provide the opportunity to look at the problem of feminist bureaucrats being criticised for not taking up the feminist struggle historically which relates to Bacchi's question three: *How has this representation of the problem* 'come' *about?* In this thesis, I argue that there was a history of the SDC's strong representation of the problem of women's inequality in their policy work. This contributed to my initial

concern over Goward's constitution of the maternal citizen in her framing of the need for PML.

To reference earlier studies, Sawer (1986b) conducted research in 1986 on female parliamentarians' views of their roles and whether these women believed they were accountable for representing women's interests specifically. Sawer identified three types of women from the responses to the survey—mothers, individualists and feminists. 'The mothers' were characterised by their view that their role in parliament was to represent the interests of families and stay-at-home mothers to maintain and support the traditional breadwinner/housewife family type. 'The individualists' made efforts to separate themselves from 'women's issues', and rather saw themselves representing individual ability, which was no different to their male colleagues. As Sawer (1986b) suggests, 'the individualists were anxious to escape from the limitations of the maternal roles of politics and to avoid stereotyped association with the nurturing areas given low esteem by their male colleagues (pp. 534–535). 'The feminists' believed that women do experience collective disadvantage and therefore they had a duty to address this disadvantage in their role as MP.

A significant point made by a number of the female MPs was how important their image was to the electorate and the effort they needed to invest in not being perceived as a 'threat to ingrained gender roles' (Sawer 1986b, pp. 536). Feminism was perceived as a threat to gender roles, as is evident in the advocacy group 'Women Who Want to be Women', which lobbied parliament to reject the SDA. Sawer's (1986b) study shows that not all women who entered government during this period, the peak of the femocracy, entered with a commitment to feminism, and many were aware that they needed to maintain the patriarchal gender norms in how they presented themselves to retain electorate support. Although the SDCs are not MPs and are nominated by the ruling government, Sawer's (1986b) work is useful in explaining the image adopted as well as whether they openly identify as feminists.

Lynch (1984) published a review of the growth of 'bureaucratic feminism' where, although a self-identified bureaucratic feminist herself, she identifies many problematic aspects of women entering the government on feminist terms. She explored the constraints of the state's structures and suggests this produces questions over whether the woman *co-opts* to retain her job; conforms through appropriate conservative dress; and/or separates from the larger women's movement because of the need to keep government information secret and becomes a manager of women and therefore represents her own power figuration. Lynch (1984) argues that the entry of women with a commitment to feminist principles into government positions altered the constitution of more radical feminist discourses or strategies to 'conservative and careerist' discourses (p. 38). Although this produced tensions within the feminist movement in this era, Lynch (1984) argues: 'feminist bureaucrats have to quit whinging about rejection and unfair criticism (from the women's movement) and accept the political consequences of our structural position. We may not be impotent nor co-opted but we are within and part of the establishment' (p. 44).

In another parallel study, in defence of the femocracy, Franzway (1986) argues that the contradictory nature of the state and the complex nature of its power structures[12] must always be considered when judging the activism of these women. For 'if the (welfare state) is riven with contradiction, then state workers are faced with that contradiction. The issue is crucial for femocrats as state-workers. Are they inexorably agents of the welfare state or do they have opportunities to challenge welfare ideologies?' (p. 52). Franzway (1986) draws attention to the need for a more nuanced analysis for the role of the state. This project is concerned with how individual Commissioners interpret their responsibilities in a role that was designed to promote feminist goals. It also acknowledges that the structures of the state provide a constraint which the SDCs must navigate and takes into account that they do exert agency through the political structures which protect them, such as the liberal democratic characteristics of the separation of powers and freedom of dissent (this argument is advanced in Chapter six). My project also considers what the Commissioners *are able to say in the representation of problems*

[12] See Chapters four and six for a discussion of the state's power and structures.

by using Bacchi's (2009) WPR approach. To reiterate an earlier point, this means that in my analysis of the discourses that are constituted in the problematisations by the SDCs, I have an awareness that 'discourses are not the direct product of intentional manipulation by a few key political actors, but neither are they trans-historical structures operating outside human intervention' (Bacchi 1999, p. 43). As stated in Chapter one, I hold onto the possibility of social actors pursuing certain goals, such as women's progress, through language use (Bacchi 1999) that alters policy, such as policy work of the Commission.

The state, citizenship and family policy

The following section asks the question: What can recent histories of family policymaking in Australia tell us about how the category 'woman' was constructed? I argue that the meaning of this category is central to the problem representations in PML policy examined in Chapter seven. This section argues that there has been a history of constructing the category 'woman' in terms of maternal citizenship that values women's biological function, contributing to discourses of the 'good mother'. The pursuit for women's progress competes with conceptions of maternal citizenship.

State support of families and the promotion of specific family formations have a long history in Australia and similar countries, as public policy has supported a conservative view of family life (Baker 2010, p. 6). In this view, gender roles are differentiated and single parenting, unmarried cohabitation and divorce are all strongly discouraged (Baker 2010). This shaping of family formation by the state has not been unopposed; as the second wave of feminists argued that the nuclear family form in Western culture is oppressive to women (Barrett & McIntosh 1982). This oppression is founded on the sexual division of labour and women's relegation to the domestic sphere, and the consequential power imbalance (Jagger & Wright 1999). The division of labour is represented in the private/public dichotomy that Pateman (1983) argues is central to centuries of feminist writing and is 'ultimately, what the feminist movement is about' (p. 281). In their critique, Barrett and McIntosh describe the division of labour in these terms:

> The division of labour in the family is associated with the greater power of men … the principle wage-earner and his dependents, of the husband who contributes cash

> while the wife contributes household labour, is not a division between equals, but an unequal exchange in which the man's interests predominate. (1982, p. 65)

This domination by men's interests in the nuclear family stems from women's economic dependence on men as a result of the sexual division of labour, where men are defined as breadwinners and women as dependents with responsibility for taking on the role of carer (Jagger & Wright 1999).

This dependency that characterises the sexual division of labour explains how men and women have historically experienced citizenship differently (Lister 1990). As Walby (1994) questions, is being a carer compatible with being a full citizen, which has been defined in masculine terms of negotiating the world of work and politics. Women were not given full citizenship (Marshall 1950) and rather have been defined as maternal citizens by the state (Phillips 1993). Pateman (1992) documents how in the late nineteenth and early twentieth centuries women were regarded as performing a public service in devoting their lives to bearing children and achieved citizenship on these grounds. Recognising the value of motherhood is important for women's progress because it contests the notion that only work done outside of the home with an economic attachment is of value. However, casting women primarily as mothers has created complications for the material position of women as well as the subject positions that are available to them, and this problem lingers in the twenty-first century.

I argued earlier there were concerted efforts by femocrats to address women's disadvantage by making specific policy and legislation aimed at strengthening women's connections with the public sphere (such as the SDA), however advancing women's independence has often been connected to family policy. Family policies have the potential to increase women's independence and challenge the sexual division of labour, or conversely, the state can manipulate family formation in its policymaking. Even though the Hawke and Keating governments are regarded as being more progressive for women's rights, one can still find evidence of women being constructed as maternal citizens. It should be pointed out again that it was the Hawke government that made the reservation to implementing a universal PML scheme when ratifying CEDAW in 1980.

Johnson (2000) suggests that the Hawke Labor government constituted women as a group 'that had a tremendous amount to offer in the public sphere of the economy but also as a group that had a special responsibility in the private sphere of domestic life' (p. 74).

The Coalition government also adopted this logic in its rejection of PML as it considered that PML discriminated against stay-at-home mothers, so it implemented the Baby Bonus as the alternative, which is discussed in more detail in Chapter seven in the analysis of PML problematisations. Baird (2004) outlines the different orientations to PML that could be adopted by the state, one of which particularly positions women as maternal citizens. A welfare orientation to PML provides 'monetary recognition for their maternal role' (Baird 2004, p. 265) and has a history in Australia as the Maternity Allowance, introduced in 1912.

As the fertility rate has declined, there are much higher expectations in the West about how children should be cared for and protected (Giddens 2004, p. 29). This is evident in the debate about the need for the Commission (in Chapter five), as well as the PML debate, where women's rights are pitted against the rights of the child (and sometimes the unborn child), or the wellbeing of children is adopted in arguments for policy change (in Chapter seven). Giddens (2004) details how attitudes towards children have changed as result of the *UN Convention on the Rights of the Child 1989* that contributed to the popularity of the pursuit of children's rights in popular discourse.

Where the women's policy machinery had some success in the 1980s and early 1990s in challenging the nuclear-family norm in family policymaking, the male-breadwinner model of the family re-emerged as a basis for family policy in Australia under the Coalition government (McDonald 1997, 2000a, 2000b, 2003, 2005). These policies are structured to provide greater economic benefit to families that resemble the 'nuclear family' form, where women are encouraged to take on the role of mother and nurturer. McDonald (2000a) argues that the structure of family benefits in Australia provided incentives for young women to reduce the number of children that they have because these policies did not support the dual roles of mother-worker. The Coalition government

developed a system that discourages mothers from returning to work which is out of touch with the realities of young Western women's lives today and with the values held by most young men (McDonald 2000a).

Van Acker (2005) identifies such policies as the Family Tax Benefit Part A and B, childcare benefits and the Baby Bonus. Her analysis reveals that 'for mothers to receive the full benefits of the baby bonus, they would have to stay at home for five years' (p. 93). The Family Tax Benefit Part B assessed the second-earners' income (which is typically the woman's income) which Van Acker (2005) argues 'promotes the white-picket fence ideal of the mother as prime carer … as the father's income is only assessed on whether the mother worked' (p. 93). Importantly, Van Acker (2005) also outlines how government policies influence women's decisions about returning to work, and supports the proposition about women's access to full membership of citizenship. Further to Van Acker's (2005) analysis of the Coalition government's family policymaking, Baird and Cutcher (2005) and Curtin (2003) conducted analyses of the framing of the PML debate as inspired by the Commission's proposal for PML in 2002. Baird and Cutcher (2005) argue that framing the need for PML on the basis of Australia's declining fertility rate, as proposed by the Coalition government, constitutes motherhood as a social function. Baird and Cutcher (2005) critique Coalition government Treasurer Peter Costello's comment on announcement of the Baby Bonus for women 'to have one for the father, one for the mother and one for the country' as it underpins the construction of motherhood in these terms:

> 'one for the mother' reflects the way motherhood is constructed through the lens of patriarchal concerns, while 'one for the father' highlights the way that motherhood is tied closely with notions of fatherhood and helps to support a 'fragile masculine identity'. Finally 'one for the country', points to the historical role of mothers in Australia as nation-builders. (p. 103)

Curtin (2003) argues the need for PML was constructed as three problem representations. First, that we need PML because it supports women's attachment to the workforce. Second, it is important for the welfare of women and third, because it offers a solution to the declining fertility rate. Curtin's (2003) argument is that women's attachment to the workforce was downgraded as a reason for the need for PML and instead the welfare of

mothers and babies and fertility concerns were employed which 'offered little challenge to the traditional view of woman as citizen mother' (p. 18).

In summary, the state's construction of the maternal citizen in its policymaking contributes to the constitution of the discourses of the 'good mother', which is problematic for women's progress that incorporates both material and subject positions. On this point, Smart (1989) explains how the state constructs the 'bad mother', which historically is the single-mother as she has rejected the patriarchal nuclear family form. The 'bad mother' is also the working mother according to the Coalition government. Howard cleverly, yet ingenuously, denied this, but his government's policies reflect otherwise.

In its early days, the Rudd government was more pro-active in promoting women-friendly family policies, in spite of the delays to actual economic investment due to the GFC. McKinnon (2009) claims there was cause for hope that the Rudd government would enact policies which would advance women's progress with the presence of his then deputy-leader Julia Gillard[13]. The Rudd government implemented the first national federally funded paid-parental scheme that supported both working men *and* women. This goes some way towards challenging the idea that it should primarily be the mother who stays home and hence, rejecting traditional notions of maternal citizenship.

Conclusion

This chapter has been framed by Bacchi's (2009) question three from her WPR approach *How has this representation of the problem come about*? This question is informed by Foucault's genealogical approach that shows the shifts in thinking around particular issues. This chapter identified the discursive shifts that have occurred in Australia that are central to an explanation about the historical conflict between different federal governments and the Commission and the problematisations of a human rights agency and PML. Specifically, I am interested addressing the question: How does tracing the

[13] PM Kevin Rudd's deputy leader, Julia Gillard, took over leadership of the Labor Party and the Prime Ministership in June 2010 after the Labor Party lost confidence in Kevin Rudd's ability to win the August 2010 Federal Election (Lofgren 2010).

shift from social-liberalism to a neoliberal logic help explain the material and legislative constraint on the Commission? This chapter has addressed how 'rights' and 'equality' discourses are constituted in social-liberalism and neoliberalism. The shift from social-liberalism to neoliberalism that is reflected in the constitution of discourses of 'rights' and 'equality' demonstrates that the state shifted from an emphasis on protecting the individual to an emphasis on individual responsibility. I have argued that both Labor and Coalition governments adopted a neoliberal approach in their policymaking, but that the Coalition government is regarded as implementing a more extreme version that is tied to denouncing the 'special' needs of the disadvantaged, such as women (Sawer 1999, 2002, 2004, 2005; Woodards 2005). Being responsible (even for your own disadvantage) undermines the need for mechanisms such as the Commission to protect women's rights.

In this chapter, I reviewed other discursive shifts that influenced the disputes between the Coalition government particularly and the Commission. The Coalition government appealed to 'the mainstream' and denigrated and ignored special interest groups, again downgrading the need for a human rights body that is charged with mediating women's human rights and equal opportunity legislation. The Rudd government defined itself as different to the Coalition government by promoting a weak social-democratic agenda and rejecting aspects of neoliberalism, yet has been rightly critiqued on the grounds that his government did not follow this through into policy or practice (Cahill 2009; Mendes 2009). I argue in Chapter six that these discursive shifts help explain the material and legislative conditions of the Commission during this period as I demonstrate the budget contributions of the federal government and the proposed and realised legislative changes.

In this chapter, I have also specifically shown the importance of the question: What can recent histories of feminist engagement with the state through the women's policy machinery tell us about the framing of women's rights and equality? I reviewed the contestation that has occurred over the women's policy machinery in order to compare how women's issues have been prioritised within the federal government. I argued that the Labor governments were more progressive in terms of creating and supporting

structures that gave opportunities for female bureaucrats concerned with women's progress to make policy through the femocracy. The subsequent gender mainstreaming meant that women's issues were swallowed up within departments, but such a move potentially at least encouraged all policymakers to assess the impact on gender. The extreme version of gender mainstreaming under the Coalition government meant that much of the machinery established in the 1970s and 1980s was abolished. My brief exploration of the women's policy machinery in this chapter is further developed in Chapter six and focuses on the correlation between what was happening within bureaucratic structures and the Commission.

The final section of Chapter three asked: What can recent histories of family policymaking in Australia tell us about how the category 'woman' was constructed? I provided a brief sketch of how the state encourages specific family formations, such as the patriarchal nuclear family, through examining policymaking on the family. Simply put, the pursuit for women's progress competes with conceptions of maternal citizenship. Australia has a long history of defining female citizenship in maternal terms, as women have been rewarded for contributing future workers. I argue that promoting the nuclear family, and the traditional roles of breadwinner and homemaker which have accompanied it, is problematic for women's equality. The sexual division of labour sets up a pattern of dependency which impacts on women's potential to navigate the public world with as much freedom as men. Chapter seven examines how the need for PML was problematised by the Commission and assesses whether these representations are informed by these patriarchal discourses of the family.

Chapter 4
Theories of the good mother in the gendered state

This thesis is concerned with how the state constructs motherhood within a framework of human rights and women's equality. Or, more specifically, it is focused on critically examining how a human rights agency within the state contests constructions of motherhood in ways that lead to women's progress. This focus borrows Pateman's important questions, as identified in Chapter one: 'How is motherhood to be understood? Does motherhood refer only to the relationship between mother and child; or does motherhood also refer to women's standing in the political order?' (Pateman 1992, pp. 20–21). I regard the Commission as an apparatus of the state that has linkages to other apparatus (such as the women's policy machinery), therefore it is necessary to analyse its role through theories of the state that have implications for its possibilities to influence policymaking.

In this thesis I make a case for the importance of regarding the use of human rights mechanisms and language for advancing feminist goals in contemporary times (Walby 2002) and hence also to counter the undermining of the women's policy machinery by gender policy mainstreaming (Bacchi & Eveline 2003). My theoretical framework is designed to consider the complexities of engaging in an emancipatory project—women's progress—and especially foregrounding the struggles over what is the most viable pathway to 'women's progress'. Some of these struggles focus on the efficacy or not of using 'human rights' discourses as a strategy. Hence, there are various theories that attempt to explain the power of the state.

My theoretical framework is informed by Bacchi's (2009) WPR approach and in particular question two: *What presuppositions or assumptions underlie this representation of the problem?* In Chapter two, I explained that this question highlights the importance of unpacking or identifying the relationship between knowledge and power as it operates in policy processes. Knowledge is never innocent and always provides reasons for power relations, and especially reasons for inclusions and

exclusions, and for determining what is 'normal' and 'good'. This chapter examines the presuppositions or assumptions, informed by configurations of knowledge, or the 'regime of truth' that underlie policy about women that are disadvantageous for women's progress. To be specific, this chapter examines the configurations of knowledge that produce discourses of the 'good mother' as the 'truth'. This is significant to my project, as such knowledge in the form of discourses that are circulated by the state informs policy and parliamentary debates. I take up a poststructuralist approach that provides a frame for critique of scientific and liberal paradigms of knowledge that provide legitimation for dominant human rights discourse in Australia.

To take this a step further, this chapter considers how the state constitutes the gendered subject *as well as* the configurations of knowledge that guide the gendered state. To make sense of motherhood discourses that operate as *the* regime of truth and that drive policy and parliamentary debates, we need to look into rationality or logics that produce such 'truth' claims. Thus, this chapter is also shaped by another of Bacchi's WPR questions: *How has this representation of the problem come about?* Whereas Chapters five and six consider a genealogy of motherhood discourses in human rights discussions that shows us how the problem of the 'good mother' came about in PML problematisations, Chapter four provides a historical account of the gendered subject and state. Chapter four reviews theories of the gendered state to make an argument for a poststructuralist state (Pringle and Watson 1992).

As outlined earlier, Bacchi considers it important to interrogate the binaries, categories and key concepts in problem representations as they reveal the 'truth' claims and normalising processes or strategies that shape who we are and what we do. In regard to interrogating key concepts, I aim to address how human rights discourse draws heavily on concepts such as 'equality' or 'difference' that not only reinforce liberal norms but also sustain the status quo. I therefore treat the concepts of rights and equality as 'open to continuous contestation' (Lombardo, Meier & Verloo 2009, p. 10) in order to identify the limitations of the discursive framework that guides the work of the Commission. Against a liberal paradigm of rights, I argue for a 'deconstructive equality' approach developed

by Joan Scott (1997) as way of moving beyond the equality/difference bind. As discussed earlier, the contestation of binary logic is a continuous theme of my thesis that is explained in this chapter. Chapter four argues that the influential discourses of rights are either dependent on the production of binary thinking, or invest in, and shape key concepts and categories. Scott's (1997) concept of 'deconstructive equality' draws heavily on a poststructuralist approach that contests binary thinking, as a way of pursuing women's progress and shapes feminist politics, that aligns with Bacchi's (2009) WPR approach. The purpose of this discussion is to develop a lens for assessing the policy work of the Commission in terms of its potential to pursue women's progress. I assess whether the Commission utilises or promotes a deconstructive equality approach in its problematisations of PML later in the thesis.

This chapter has three main sections. First I start with a discussion of the theories of the gendered state, specifically how particular configurations of knowledge give shape to a gendered state. Importantly for my project, these configurations of knowledge inform the functioning or strategies of the gendered state, and the Commission's work is also shaped by these logics. In the second part of the chapter, I consider the discursive construction of knowledge that gives shape to the gendered subject, specifically to the 'good mother'. I take aim at scientific paradigms that connect a woman's biology with her social function that both naturalises and essentialise motherhood. I also focus on scientific paradigms that have produced knowledge about the welfare of children that rely on assumptions that children will suffer psychologically if not cared for predominantly by their mother. In the final move of the chapter, I briefly develop the notion of Scott's (19997) 'deconstructive equality', as a strategy to contest liberal motherhood discourses that are disadvantageous to women's progress.

The gendered state

This section discusses theories of the state with the aim of examining how the state is gendered. I discuss how feminists have theorised power relations of the state to demonstrate its significance as an arena for contestation of women's progress. Much feminist theorising of the state has relied on liberal, Marxist, or radical frameworks which

have provided a valuable but often restricted outlook of women's engagement with the state. This section reviews how Enlightenment ideas have formed the basis of feminist liberal views of power of the state and how the work of Foucault has provided feminists with a more hopeful way of challenging patriarchal discourses within the state.

This discussion of the configurations of knowledge born out of the Enlightenment is important for my project and forms part of the theoretical framework, as it helps me answer Bacchi's question: *What presuppositions or assumptions underlie the problematisations of a human rights agency by the different federal governments?* The focus on configurations of knowledge helps explain why certain discourses appear over others in texts produced by the state and the discursive/lived 'effects' (Bacchi 2009) this has on the potential for the Commission to pursue women's progress. The 'lived effects' I am specifically referring to are 'material' conditions that are represented in the Commission's budget and legislation. Chapters five and six examine the legislative mandate that gives the Commission its powers and functions as well as the budget contributions from the different federal governments. This focus tells us about how the Commission either has potential or is limited to contribute to women's progress by its position within the gendered state.

Feminist theories of the state

Feminist theorising of the state flourished in the late 1980s and early 1990s (Allen 1990; Connell 1990; Franzway Court & Connell 1989; MacKinnon 1989; Pateman 1988; Walby 1990). There were disparate views on the power of the state that are important to explore here as they show the contested nature of feminist theory that is also in line with the genealogical approach I adopt in this thesis. The differences in feminist theorising of the state manifested particularly over how feminists engage the state on its interests, or whether the state is a viable site for contestation and change by a feminist agenda. Questions were raised about how to conceptualise the state's oppression of women. Would feminism benefit or be compromised by its engagement with the state? (Genovese & Sponberg 2006). The question of whether feminism needed to adopt the category of the state at all was also raised (Allen 1990).

Many forms of the state were named to describe the relations of power between civil society and the state, or more specifically women and the state. Skopol (1985) explored the state-centred versus society-centred approaches as she documented the resurgence of the focus on the state in *Bringing the State Back in*. Walby (1990) argued that the state is patriarchal, capitalist and racist as she was most concerned with the unproblematic use of liberal and Marxist frameworks by feminists in analyses of the state. Walby (1990) demonstrates how feminists had made headway engaging the state, on matters such as employment, divorce laws and welfare, but that significant limitations still existed. Pateman (1988) conceives the state as being not just patriarchal, but also fraternal, as she argues the social contract between a state and its (male) citizens is exclusionary of women. In her terms, the earlier establishment of civil society was based on fraternal discourses, with men unified as equal 'brothers'.

Much of the feminist theorising of the state in the 1980s and early 1990s was informed by liberal, Marxist or radical frameworks. All of these approaches supported the idea that the state and its apparatus represent a fixed institution of structural power, which works collaboratively to represent a unified male interest, with limited potential for women's engagement with the state (Watson & Pringle 1990). During this time, liberal-feminist strategies were dominant through a pursuit for legislated rights that was considered the strongest approach to equality, or as Franzway reflects, were considered the 'most realistic (Maddison & Franzway 2006). The liberal-feminist perspective conceived of the state as a neutral arbiter between the different interest groups. Such a perspective recognised that state institutions are dominated by men and that policies reflect masculine interests, but that the state could be 're-captured' from the interests of men with greater female political representation (Watson 1990).

Given the dominance of the liberal perspective it is important here to consider the history of liberal thought, as it shaped liberal feminism. This is also an important strategy of Bacchi's (2009) WPR approach to make sense of the meaning-making process. The Enlightenment period (from the seventeenth century) produced particular doctrines about

the *ordering of society* as well as *human nature* that have informed the development of liberal political theory. As Waldron (1987) suggests, '[t]he relationship between liberal thought and the legacy of the Enlightenment cannot be stressed too strongly' (p. 134). The emphasis for each individual of understanding the world on a scientific, empirical and rational basis—and to have some power over how the world is made—was adopted as a way of structuring political frameworks and knowledge in political theory in the West. Hence, liberal feminists took the view that they could have some power over how politics worked too.

Locke and Hobbes are attributed with developing earlier notions of political liberalism which campaigned for the idea of 'rights', 'sovereignty' and 'legitimacy'. According to Bronner (2004), both saw the need for a new political order capable of allowing the pursuit of self-interest supported by a social contract. This dictated the terms of the relationship between the state and its people. The idea of a social contract emphasises the liberal rule of law—in common law—that all must obey, with the freedom of the *individual* to do whatever the law does not prohibit. Hence, 'equality under the law, the formal recognition of reciprocity, becomes the prerequisite for a genuinely liberal order. Each can make the same claims upon the state' (Bronner 2004, p. 48). However, an earlier vision by feminists of a liberal order was not realised, as women could not, and still do not, make the same claims upon the state or benefit in the same way from the social contract (Pateman 1988, 1989).

This goes some way towards explaining the history of the configuration of knowledge that shaped the gendered state, as the key Enlightenment ideas of 'rationality', 'reason' and 'rights' applied to male citizens only as the state represented the needs and interests of men in the public sphere. Here we can see that *particular interpretations* of the Enlightenment ideas are disadvantageous to women's experiences of social and political life. Enlightenment ideas of femininity are often detrimental to women's emancipation, and equality as rationality and reason in science has naturalised women's differences (Outram 2005). It is not women's differences that are the problem, rather that a hierarchy is asserted on the basis of an essentialised gender difference. For example, the idea that

the rational man is superior to the non-rational woman, as adopted in liberal political theory. I show later in this chapter how the two most popular approaches to women's progress—equality and difference—reinforce liberal norms and produce the gendered subject, specifically the 'good mother'. Although there is much critique of the limitations of the discourses of liberalism in the pursuit of women's progress (Pateman; Phillips 1987; Thornton 1990; Squires 1999) liberal feminist engagement with the Australian 'liberal-democratic' state has been an important strategy. (For example, as discussed in Chapter three, the success of femocrats establishing a strong women's policy machinery within the federal government in the 1970–80s.)

However, there have been other strategies that built on or critiqued liberal feminist approaches. The radical-feminist approach to the state maintained that the state is inherently patriarchal, hence the term the 'patriarchal state'. Such views expanded on the interests of liberal feminists to address the 'personal' issues of women, such as reproduction and sexuality (Kantola 2010). Women's 'personal' issues were considered to be outside state politics by the liberal feminists because they represented an 'imperfect idea of citizenship' (Franzway, Court & Connell 1989) as liberal conceptions of citizenship were based on the normative, rational man. The radical feminists considered the state a key source of patriarchal power, as it adopts the male viewpoint and serves and consolidates the interest of men, or the 'patriarch general' (Jessop 2008, p. 69). In radical explanations of the state, it is not enough for women to enter government or produce progressive legislation and policy change, but the whole system of patriarchy must be dismantled.

Franzway, Court and Connell (1989), and Connell (1990), theorise that patriarchy is embedded in the procedures of the state. As Connell (1990) suggests, 'this allows us to acknowledge the patriarchal character of the state without falling into a conspiracy theory or making futile searches for Patriarch Headquarters' (p. 517). The focus on 'state's procedures as impersonal processes' (Franzway, Court and Connell 1989) is connected to the objectivity of law and the bureaucracy as patriarchal interests may be embodied in a hierarchy of functions within the state (Franzway, Court and Connell 1989). Connell

(1990) further argues that the 'state is *historically* patriarchal, patriarchal as a matter of concrete social practices' (p. 535). This argument offers an alternative to viewing the state as 'essentially patriarchal' or 'male' (Connell 1990, p. 535) which is intrinsic to the radical and Marxist perspectives. Such views also offer a more hopeful space for feminist engagement with the state and thus is an essential basis for my argument.

In Marxist feminist explanations of the state, the dominant or ruling class controls the actions of the state for its interests. The state is not just an institution, but also a form of social relations (Kantola 2010, p. 300). The subordination of women is central to the maintenance of a capitalist-political economy through the reproduction of the labour force in the family. The Marxist feminist explanation of the state also considers that it has an objective existence as a set of institutions and structures; plays a key role in organising relations of power in any given society; operates as a unity, albeit a contradictory and complex one; and has a set of coherent interests, based on underlying economic relations, which exist outside the state and are directly represented by or embodied in it (Pringle & Watson 1992, p. 55).

Franzway, Court and Connell (1989) view the 'state as not outside society' (p. 52), but rather propose that there is a co-constitutive relationship between gender and the state. Chappell (2002a) also rejects an either/or approach to gender interests and the state as either inherently patriarchal or gender neutral and advocates for a 'mid-position that sees the interaction between gender interests and the state as dynamic and co-constitutive' (p. 3). However, this is not to diminish the power of the state as it is:

> a structure of power, persisting over time; an institutionalisation of power relation … it is a node within that network of power relations that is one of the principal sub-structures of the gender order. The state is indeed the main organiser of the power relations of gender. (Franzway, Court and Connell 1989, p. 52)

This is not to claim that the state deploys only one kind of political power (Brown 1992, p. 13). Brown (1992) offers four modalities of state power: 'Juridical-legislative or liberal dimensions which encompasses the state's formal or constitutional aspects, capitalist dimensions, legitimate arbitrary power in policymaking and legitimate monopolies of internal and external violence and the bureaucratic dimension of the state' (pp. 13–14).

Brown argues that a feminist theory of the state requires 'a mapping of an intricate grid of often conflicting strategies, technologies and discourses of power' (p. 14) as not all modalities exert the same 'masculine' power. In this regard, although all state power is marked with gender, hence the 'gendered state', it is not present across all modalities in the same way. The problem I am addressing here is what Brown (1992) refers to as the 'legitimate arbitrary power in policy-making' (pp. 13–14).

As Mazur and McBride (2007, p. 504) point out, the important work by Franzway, Court and Connell (1989), and Pringle and Watson (1992), signified a shift away from the liberal, Marxist and radical feminist theories of state power as they put into question the notion of a monolithic patriarchal state. Franzway, Court and Connell's (1989) theory of the state is captured here:

> The state is seen as part of a dispersed apparatus of social control which works as much through the production of dominant 'discourses' – i.e. ways of symbolising and talking about the world – as it does through naked force. This approach is helpful in getting beyond the notion of 'the state' as a preconstituted object, as an organisation and nothing else … In sharp contrast to the monolithic idea of the state in traditional socialist rhetoric, this research points to the multiple, overlapping and sometimes contradictory apparatuses at work. (p. 18)

Pringle and Watson (1992) also contend, 'we can conceptualise the state, not as an institution but as a set of arenas; a by-product of political struggles whose coherence is as much established in discourse as in shifting temporary connections' (p. 22). My project finds both explanations of the state useful as they accommodate the precarious position that the Commission inhabits within the state apparatus, as it often contradicts the policymaking of other apparatus and competes with projects of other arenas (such as the Productivity Commission).

Poststructuralist theories of the state

Pringle and Watson's (1992) feminist theories of the state signalled the strongest alignment with a poststructuralist shift that involved moving away from regarding the state's power as emanating from a sovereign being and taking on a monolithic form. Others who have followed include Kantola (2006) and Kantola and Dahl (2005). The poststructuralist shift can be accounted for in the adoption of the work of Foucault,

specifically in his theories of 'governmentality' (1991b) and 'bio-power'. Foucault departs from the idea that sovereign power or the power of the law has 'power over' people and is repressive; rather power is productive. Power is dispersed through social relations rather than being located in one central institution known as the state (Foucault 1980a; 1980b). According to Pringle and Watson (1992) 'Foucault deliberately makes few direct references to "the state" because he wants to confront the view of it as Leviathan, a sovereign being from which power emanates' (p. 56). Foucault argues that power is not only imposed from the top of a social hierarchy, but also is relational and operates in a capillary fashion—in this regard 'the state' is an overall effect of all these relations and cannot be assumed to act coherently as the agent of particular groups (Pringle & Watson 1992, p. 55). Rather than viewing power as central to the state, Foucault was concerned with the 'actual practices of subjugation' and 'where it is exercised over individuals' (Jessop 2008, p. 148).

In Foucault's notion of bio-power, scientific categories (species, population, fertility and so forth), rather than legal ones, become the object of systematic, sustained, political attention and intervention (Rabinow 1984). Foucault's argument about the emergence of bio-power operating in parallel with sovereign forms of power is quoted here:

> This normative rationality has gradually undermined and 'invested' (like parasites invest a body) both the excesses of sovereign power and, more important, the procedures of the law (without eliminating either, again like a parasite). The entry of medicine, psychiatry and some social sciences into legal deliberations in the nineteenth century led in the direction of what Foucault calls a systematic 'normalisation' of the law – that is, towards an increasing appeal to statistical measures and judgements about what is normal and what is not in given populations, rather than adherence to absolute measures of rights and wrong. (Foucault cited in Rabinow 1984, p. 21)

On the idea of bio-power, Foucault rejects the model in which power is seen as possessed by the state, especially by the law (Nash 2000). Foucault's theory of 'governmentality' (1991b) builds on the idea of bio-power as it critiqued Machiavelli's notion of 'The Prince', or the rule of one leader with sovereign power over all people within the state or borders. Instead, Foucault suggests that, with the rise in the deployment of bio-power (such as scientific discourse), a rationality of government developed that places at the centre of its concerns population, resources and wealth (Watson 2000, p. 71). The

significance of the family also shifted during this same period, as it became the favoured site for the regulation and management of the population through the father. For political scientists, such as Bacchi, who utilise Foucault's theory of governmentality and his understanding of how contemporary politics works, the emphasis is on the discursive forms of power and normalisation. The norms are inscribed in the belief systems of liberal theory and science that are expressed in policies and decision-making of the state.

However, the state's power is more than discursive and there are limitations to a poststructuralist theory of the state. According to Ball (1994a) 'poststructuralism offers very different ways of looking at and beyond the obvious and puts different sorts of questions on the agenda for change' (p. 2). Ball (1994a) is willing, as I am, to admit 'ambivalence about certain versions of poststructuralism, to own up to a modernist commitment to the idea of "the real" and to the constraints of the material context … ' (p. 4). In my research, 'the real' is represented by the economic constraints placed on the Commission that limit its potential to contribute to women's progress. As such, my argument concurs with Kantola (2007) that the 'state be theorized not only as a discursive but also as a structural process' (p. 279). Without reverting to a reductionist Marxist or structuralist account of the power of the state, I want to retain a focus on the material and structural as fundamental to my thesis argument. This is part of the reason why I need to keep the focus on the significance of the budget of the Commission as well as its position as an apparatus of the state that has certain limitations placed on it by the guiding principles of Australia's political system.

Earlier forms of feminist theorising about women's oppression were dominated by the view that causes of women's inequality could be explained in theories of *social structure*. Barrett and Phillips (1992) suggest that this structure might be 'posited as patriarchy, or an exploitative economic system, or a structural relationship between home and workplace' and the issues were 'typically typecast in social structural terms' (p. 2). My research is not limited to this conceptualisation of women's oppression, but wants to retain a 'structural' analysis. For Nash (2000), structures are 'created, sustained and re-made in more or less conscious social action, while at the same time, social action is itself

constrained by the existing distribution of resources and ways of making sense of the world' (p. 36). Pringle and Watson (1992) argue that the outcomes of particular policies will depend on the limits placed by 'structures' *and* the discursive struggles that define and constitute the state and specific interests, from one moment to the next (p. 63). This is further supported by Bacchi's WPR approach in her concept of the material 'effects' of problem representations. As Franzway, Court and Connell (1989) argue, resources are central to determining what can and cannot be done by organisations working towards social justice goals.

This chapter has examined how feminist theorising of the state developed initially around liberal, Marxist or radical frameworks, which has been influenced by Foucault. This suggests the following six key points. First, the state's processes and procedures are gendered; but the state is not inherently patriarchal. Second, the state is not a monolithic entity with a coherent and unified agenda. Third, the relationship between state and civil society is co-constitutive and each impacts on the other. Fourth, the state exerts different forms of power that need to be considered. Fifth, the state is a set of arenas or apparatus whose interests often over-lap and intersect but do not always coincide. Last, the state's power is both discursive and material as resources shape what can be done within the state. These six points are interwoven into my thesis argument that, as an apparatus of the state, the Commission has certain limitations placed on it to contribute to women's progress but that it also has the potential to contribute to policy change.

The gendered subject

My analysis of the construction of the gendered subject inside of an Enlightenment rationality is underpinned by critiques of the ideas of progress, reason, human nature, science and individualism. To reiterate, while this dissertation argues that these ideas have not accommodated rights or equality for women in the same way that they have for some men, it recognises that these ideas inform our dominant belief systems in understanding human nature and the ordering of society. Or, as Ramazanoglu (1993) succinctly puts it: although the ideas of the Enlightenment 'have been contested on many accounts, they have remained powerful in affecting common-sense assumptions about

what is true and how we discover truth' (p. 23). As such we still need to contest or interrogate the constructions of the gendered subject that are harmful for women's progress. Keeping in mind that what I am doing in this section is utilising one of Bacchi's questions—*What presuppositions or assumptions underlie the representation of the 'good mother' in policy proposals that problematise PML?*—I am looking at how these presuppositions or assumptions are informed by binary thinking that is harmful as well as how the category 'woman' is constructed using configurations of knowledge that rely on liberal or scientific paradigms. This helps analyse the problem representations in Chapters five, six and seven. A prime purpose of this analysis is to move closer to the argument that change for women and men is possible.

> Foucault claims ideas of the Enlightenment that underpin explanations of human nature, or the subject in the social and political sciences retain a 'normative rationality' (Foucault 1982). According to Foucault, such normativity represents the dominant belief system structuring knowledges, such as science and liberal political theory. As an example and specifically for my thesis, the gendered subject in twenty-first century Australia is constituted in 'regimes of truth' which are founded on these ideas of the Enlightenment. To quote Foucault (1991a): 'each society has its regime of truth … that is, the types of discourses which it accepts and makes function as true' and which is 'centred on the form of scientific discourse and the institutions which produce it' (pp. 72–73).

Foucault (1982) explains how modern forms of power constitute us as *subjects*. For Foucault (1982) there are two meanings of the word subject: 'subject to someone else's control and dependence, and tied to his [*sic*] identity by a conscience and self-knowledge. Both meanings suggest a form of power which subjugates and makes subject to' (pp. 208, 212). Modern power operates not by ignoring individuals, but by claiming to have arrived at the 'truth' of the individual and thereby limiting individuality to a 'set of very specific patterns' (Foucault 1982, p. 214). The subject operates within the limits of the discursive formation or regime of truth; hence is subjected to discourse (Hall 1997, p. 55).

Foucault provides an alternative to the essentialised and fixed individual to a historically and socially constructed subject. In his framework, the subject is invoked by the concept of subjectivity, which is the 'conscious and unconscious thoughts and emotions of the individual, her sense of herself and her ways of understanding her relation to the world' (Weedon 1987, p. 32). The concept of subjectivity here signifies a shift away from an *essence* defining how a woman or man should feel, speak, think and act, to considering how a woman's social relations and discursive position will influence her decision-making, feelings and actions (Laclau & Mouffe 2001). In this approach, there is a decentering of the Cartesian conception of the unitary subject (Sarup 1993, p.3) and instead the proposition that subjects are constituted by discourse.

McNay (1992) borrowing from Foucault, also suggests that in contemporary society there is a 'tendency to embed social norms and rights in what are perceived as the rational and objective structures of the law and science lead to individuals being caught up within the normalising web of law and medicine' (p. 85). The social norms I am concerned with, which are culturally mediated and contribute to how women make meaning of their lives, rely on scientific 'truths' about fulfilling biological destiny and psychological 'truths' about child development. Both of these beliefs systems (discourses) support the idea that it is 'paramount for individual development that the person delivering care to children was their own mother' (Craig 2007, p. 71). Feminist discourses have contested these social norms about womanhood, but dominant subject positions are difficult to challenge as motherhood is constituted as a *natural* institution (Smart 1996).

Just as the discourses of science and law contribute to the gendered subject, so too has the positioning by society of the female subject on the margin of reason and rationality. Gatens (1991) explains how early records show a table of dichotomous distinctions: good/bad, light/dark, unity/plurality, male/female. The distinctions between the left and right side associates maleness to good, light, unity (all have positive connotations) and femaleness to bad, dark, plurality (all have negative connotations). Gatens (1991) rightly argues that the problem with dichotomous thought is that it promotes a version of social

and political values through misrepresenting a 'conceptual division' as if it were a 'natural division'. My argument seeks to break through dualistic options by pursuing alternatives proposed by poststructuralist theory that aims to 'deconstruct' the binaries.

The good mother

The regime of truth produced by scientific discourse constitutes a biological gendered subject. Stone (2004) provides a useful explanation of biological essentialism as 'the view that all women are constituted as women by possession of wombs, breasts and *child-bearing capacity* [emphasis added]*'* (p. 139). Such essentialism also assumes that there are 'properties essential to women … that are shared by, or common to, all women' (Stone 2004, p. 138). The essentialist claims about womanhood casts particular forms of feminine experience as the norm and 'typically, it is historically and culturally privileged forms of femininity that become normalised' (Stone 2004, p. 140).

Johnston and Swanson (2006) frame this in race/ethnicity and class terms by stating that white, middle class forms of womanhood have been naturalised and normalised as the feminine experience in Australia (p. 509). Australian sociologists, Maher and Saugeres (2007), argue that in contemporary Australia, the US and the UK, 'ideals of intensive mothering where women are seen as best suited to look after young children and required to be unconditionally available, still hold considerable power' (p. 6). Borrowing from Smart (1996), the argument is that motherhood is not a natural condition, rather:

> it is an institution that presents itself as a natural outcome of biologically given gender differences, as a natural consequence of (hetero)sexual activity, and as a natural manifestation of an innate female characteristic, namely the maternal instinct. (p. 37)

Not only is motherhood not natural, but also specific normative expectations are constructed which create boundaries of 'proper' motherhood. These expectations have also been conceptualised as the 'good mother' (Cannold 2005), 'intensive mothering' (Hay 1996) or 'essential motherhood' (DiQuinzio 2006). We have 'dominant normative constraints that create certain categories of mothers as bad or inadequate because they are perceived to fail to live up to the ideals of motherhood that are imposed through legal and public policies' (Smart 1996, p. 39).

In part, the normative expectations of motherhood arose from the health and psychological professions, as they 'imposed specific standards of motherhood' (Smart 1996, p. 45) which suggest that 'maternal bonding, attentive parenting and high time-inputs are necessary for optimal educational and social outcomes' (Craig 2007, p. 71). I am not arguing that we do not need standards of parenting so that children have their physical and emotional needs met and feel cared for and loved so they develop into healthy, functioning adults. What I do want to argue though, is that there is 'no evidence that non-maternal care had a detrimental effect on children's development and rather it is the quality of parenting and not maternal employment which impacts child outcomes' (Craig 2007, p. 71). The problem with normative expectations of motherhood in contemporary Australia, where increasingly both men and women are in paid employment,[14] is that mothers are faced with a difficult choice. Craig (2007) argues that this frames 'choice' as between 'economic independence and providing optimum care for their children' (p. 71).

Craig (2007) suggests that women who violate expectations of fulltime motherhood must contend not only with others' judgement but also with their own feelings of guilt, also described as 'motherguilt' (Hocshchild 1990, 1997) or 'motherwars' (Pocock 2001). These normative expectations of motherhood, some argue, are strongest amongst the middle classes. Working-class mothers are constructed as deviant as they are not able to live up to the ideal. But, working-class mothers often do not have a 'choice' about working outside the home (Smart 1996). However, motherhood is not relevant to women's practices and behaviour at all times. Making it so prevents women from equal engagement with the public sphere of work, politics and economics and is harmful to their subjectivity (Scott 1997).

[14] According to Craig, only 18.1 per cent of families co-habit in traditional breadwinner/housewife arrangements and a greater portion of families have a mother who works outside the home (2007, p. 70).

Gendered subject in liberal theory

The concepts 'rights' and 'equality', as developed in the Enlightenment and extended to liberal theory, have been useful in pursuing progress for women, but have stumbled in regard to challenging the essentialist construction of the gendered subject. These concepts of 'rights' and 'equality' are central to this thesis as the Commission was established to pursue and promote rights and equality. At this point, I return to my earlier exploration of the liberal configurations as they apply to the gendered state, but look specifically at how the strategies to purse 'equality' (gender neutrality) or 'difference' (such as the maternal citizen) have been theorised and create a bind for feminism.

The framing of rights and equality in liberal theory has produced a dichotomy of either/or which has the potential to neutralise gender or promote the biological role of women. Where feminists generally agree that rationality inherent in the liberal subject has been defined in masculine terms, McNay (1992) observes they do not agree on a single response. This can be seen in Squires' (1999) framing of different approaches—inclusion, reversal and displacement. Squires shows how the inclusion approach has been the most popular in feminist theorising, but we need an integration of the third approach (which I adopt with the tools of poststructuralist theory later in this chapter) to produce cultural as well as political change.

It may appear that I am applying contradictory frameworks in this thesis. Specifically putting together a framework that wants to hold on to a unified notion of universal women's rights (liberal feminism) and at the same time using theoretical perspectives (poststructuralist) that critique universalising trends in social theory. To be clear here, my intention is not to disavow the gains of liberal feminism in Australia. As one of the many strands of feminism, liberal feminism has produced enormous progress for women's political, social and economic rights. I agree with Nussbaum (1999a, 1999b) and Porter (2003, 2007) who argue that globally we need a set of *universal* human rights. As Porter (2007) suggests, ' … without universal principles, there are no grounds for defending an assertion that all humans have equal right to justice or to claim what is their due' (p. 116). On this point I side with Wendy Brown (1995) who states, 'I do not want

to participate in an argument for or against rights as such' (p. 100). Even Derrida (1996) is clear on this point. In an interview he clarifies his deconstructive position on 'emancipation', and whilst he does not mention 'rights', his general point is instructive here:

> A word on the important theme of Emancipation. … Even if I would not wish to inscribe the discourse of emancipation with a teleology, a metaphysics, an eschatology, or even a classical messianism, I none the less believe that there is no ethico-political decision or gesture without what I would call A 'Yes' to emancipation, to the discourse of emancipation … (pp. 89-90)

For the sake of ethico-political decisions we need to have a discourse of universal rights.

In the same vein, I borrow Butler's (2004a; 2004b) stance on this theme. In her famous reflection on post-September 11 2001 (*Precarious Life: The Powers of Mourning and Violence*) she reminds us emphatically of the problem of universalizing what it means to be human:

> Whether or not we continue to enforce a universal conception of human rights at moments of outrage and incomprehension, precisely when we think that others have taken themselves out of the human community as we know it, is a test of our very humanity. We make a mistake, therefore, if we take a single definition of the human, and then extrapolate from that established understanding of the human for all of its various cultural forms. (Butler 2004b, p. 84)

But then, also in a reflective interview in which she discusses her work with the United Nations she 'suggest that there are ways of seeking recourse to universality that are quite important and necessary' (Butler 2004a, p. 339). To quote more fully from Butler (2004a) here:

> …we can say as a universal that women and men ought to be treated equally, but we don not know what that means in any given context. [The term human rights] is an abstraction that remains to be specified: what equality will prove to be will be radically different from context to context. So the pragmatic dimension of the politics ends up particularizing the problem of universality in a very interesting way. … It doesn't mean it [human rights, equality, women's progress] cannot be said; it only comes to life when it is applied and redeployed in ways that cannot be fully anticipated by anyone who strategically mobilizes it'.(p 339)

Butler (2004a) goes onto to say that, 'the task of politics would be to keep it open, to keep it as a contested site of persistent crisis and not let it be settled' (p. 340). The very foundation of my project is to emphasise the importance of Australia's only national, state-funded human rights institution and to develop an argument that demonstrates the ways that it can be strengthened. My thesis examines how the Commission functions as a contested site for political change as it holds the federal government accountable to its human rights obligations. It does this by conducting inquiries into government policy making and proposing policy change. Key examples of these are the inquiry into the Indigenous stolen generation as well as children in immigration detention.

Butler's reflections of her own work as chair of the International Gay and Lesbian Human Rights Commission demonstrate the applicability of her genealogical approach to gender in a human rights context. She highlights the importance of holding international women's human rights conferences, but points out that not all who attend the conference are in agreement of 'what a "woman" is' (Butler 2004a, p. 338). Hence, a coalitional feminist politics allows the space for women to 'act together' within a human rights context for the purpose of pursuing greater rights for women without necessarily having a shared understanding of what a 'woman' is.

There are examples I can mention here also on bringing different framings into one study and specifically different version of critical inquiry. Of special note to my thesis is the work of Nancy Fraser (1989). By way of a pertinent example, in *Unruly Practices: Power, Discourse, and Gender in Contemporary Social Theory,* she borrows from Derrida, Foucault and Habermas and develops her own version of a 'new constellation' (Bernstein 1992) for analyses/critique. To analyse some social problems, one theoretical frame just cannot do all the work required. Some are strong on critique and with various forms of deconstruction but then weak on putting forward a normative political project that would make sense. Foucault and Derrida provide good examples of that problem. In my case, whilst working predominately with a Foucauldian frame I still required conceptual resources to make a case for a political project.

Another pertinent example is found in the work of Stephen Ball (1993, 1994. Whilst most of his work is in Education studies, he has been a significant interlocator with Bacchi, (my most significant resource for my methodology). Bacchi has an early paper on her policy methodology that engages with Ball's Foucauldian approach to critical policy studies. Ball (1994) brings together, post-structuralism, critical policy studies, and critical ethnography. In defending his 'applied sociology' (p. 2) he argues that 'critical social research is 'not bounded by a single (grand theoretical perspective)'' (p. 2).

> The concern is with the task rather than theoretical purism or conceptual niceties. But rather some modesty is also required, a willing uncertainty and a reluctance to leap to analytical closure. (p. 2)

Individual, equality and rights in feminist theory

I first consider the 'equality' approach adopted in feminism that continues to produce the gendered subject and links back to earlier discussions of liberal state feminism. Significantly, Pateman (1992) labelled the same/difference framework of equality as the 'Wollstonecraft dilemma', as the dichotomy is recognised as having its roots in the earliest calls for women's equality. Porter (1991) details the major goal of liberal feminism is to extend the conceptions of the *individual* to include the female and the attempt to have women accepted into the public realm on equal terms with men (p. 131). This represents what Squires (1999) labels the inclusion approach. The problem with this goal is that the individual was developed on masculine values (Bacchi 1990), and there was also a failure by most liberal theorists to include women in reference to the individual, as the category woman was defined in fixed biological, sexual and familial terms (Porter 1991). In her critique of Locke's thesis on the *individual*, Pateman (1983) also identifies the contradiction. A woman is a subordinate to her husband, and hence does not fit the description of an individual, enjoying equal rights. A natural subordinate cannot at the same time be free and equal (Pateman 1983).

The important gains of liberal feminism have been in the area of political rights, and in Australia this has equated to improved women's citizenship which has been driven by strong anti-discrimination legislation, equal opportunity policies for greater *equality*

(Franzway Court & Connell 1989) as well as the increase in use of human rights language to explain women's situations (Chappell, Chesterman & Hill 2009; Cody & Pettitt 2007). A shortcoming of this approach though is that the policies and legislation apply to the public sphere only and hence neglect a whole spectrum of women's lives and experiences, which contributes to their disadvantage. Women have to pretend to be equal in the public sphere when their differences are overwhelming in the private sphere (Phillips 1987). Citizenship requires we all assert ourselves as an abstract, public self that is easier for men to achieve (Phillips 1999) because of the way that masculinity is constructed.[15]

This argument is further developed by Thornton (1990, 2006) in her analysis of anti-discrimination legislation in Australia, which she claims is aimed at achieving formal equality. In pursuit of formal equality, assumptions are made that inequality can be remedied by treating all people in an identical manner, where the benchmark figure is 'white, Anglo-Celtic, heterosexual and male'.[16] This benchmark figure is otherwise known as the 'hegemonic male'[17] in the gender order. Masculinity is constituted in many arenas, including in the private sphere of the home, and as Connell (2005a) claims, there are few 'really good husbands' who share the load of physical and emotional labour of the private sphere. Hence, what I am suggesting is that masculinity is defined by a lack of unpaid and caring work around the home. This is not to deny the positive changes that have taken place in Australia which has seen trends of men and women sharing the

[15] One of the consequences of this is that in trying to compete with men on their terms, some women have delayed having children too long, only to find out they are unable to have children—and rather than blame the gendered nature of citizenship, feminism has been blamed for leading women astray (see Hausseger 2005).

[16] Importantly, despite the diversities in masculinity, white, middle-class forms of masculinity have maintained their hegemony in Australia, as race relations and class boundaries are factors which contribute to the gender order. Australia's anti-discrimination legislation accompanies a social norm of inequality within the dominating neoliberal framework which is anti-gay and lesbian, anti-Aboriginal and xenophobic (Thornton 2006).

[17] Hegemonic masculinity is defined as 'the configuration of gender practice which embodies the currently accepted answer to the problem of the legitimacy of patriarchy, which guarantees (or is taken to guarantee) the dominant position of men and the subordination of women' (Connell 1995, p. 77). It should also be clarified that there is no such thing as a single concept of masculinity, but many different masculinities, each associated with different positions of power (Connell 2005b).

nurturing work in the private sphere, or the greater desire for men to be active parents. However, we still have a powerful ordering of gender (Connell 2003; 2011) that attributes greater value to some forms of masculinity and some forms of femininity, which retain their dominance in Australia.

Liberal feminism has also produced strong arguments about the value of *rights* for women's progress, by marshalling discourses of *universal* human rights. In Australia, liberal conceptions of human rights have produced practical changes for women, specifically in the ratification of CEDAW (1979) and the creation of the SDA. Human rights discourses assert the rights of the individual as a private, individual or autonomous human being of dignity (Howard 1992). Evatt (2002) poses the question of how women's human rights should be asserted so they are effective: separated or integrated into the broader field of human rights? Currently we have some separation in the creation of the UN CSW and the 'women's' human rights convention in CEDAW. This was a significant achievement for the UN and for the pursuit of global women's equality. However, the legislation above suffers from the same problem as other laws as the SDA and CEDAW are predominantly concerned with public actions or practices of the public sphere of work, politics and government (Binion 1995; Chappell 2002c). As an example, this application of rights ignores that some women suffer from human rights abuse in the home (Fergus 2006). Although Australia has a long history of viewing violence in the home as a private matter 'not to be meddled with by the state' (Franzway, Zufferey & Chung 2007, p. 76), federal and state governments have made greater efforts in recent years to address family violence.[18] The statistics of domestic violence in Australia show the severity of this issue, yet it is not just human rights legislation which is limited to address this abuse, as other apparatus of the state and guiding doctrines, such as Family Law and its Courts, have failed to protect women and children in the home (Evans 2007).

[18] The Labor government has recently initiated a significant campaign in addressing domestic or family violence with its 'National Plan to Reduce Violence Against Women and Children 2010–2022'. This includes changing aspects of the *Family Law Act 1975* which have contributed to familial violence, such as the 'Shared-Care' arrangements that were brought in under the Coalition government. It is also investing money to community prevention strategies through the 'Respectful Relations' initiative.

Difference feminism and a feminist standpoint

On the other side of the binary is the 'difference' approach that also contributes to the constitution of the gendered subject. According to Ackerly (2001), what is needed is recognition that what it means to be human differs for women and men, and thus the human rights of women are not the same. Ackerly's (2001) argument captures Squires' (1999) second approach of 'reversal', otherwise known as *difference* in the discursive construction of women's progress. The central argument in this approach is to replace male dominated thinking with discourses that privilege women's experiences and perspectives and enables women to gain a positive sense of their identity. 'Difference' feminism parts ways with the equality seekers or those pursuing inclusion, such as liberal feminists, on the basis that they aim to pursue a reversal of the dominance of patriarchy by celebrating the nurturing, peace-loving, intuitive, emotional qualities of women (Ruddick 1989, 1993).

Such *difference* arguments of women's citizenship have been predominantly founded on women's unique contribution to reproducing the population—otherwise called 'maternal thinking' (Ruddick 1983; 1989). For Ruddick (1983), maternal thinking represents a focus on the preservation, growth and acceptability of children in the public world which accompanies the practice of 'attentive love' (p. 227) which should be integrated with dominant conceptions of citizenship. This 'attentive love' and 'maternal thinking' is shaped by three elements: preservation of child(ren), growth of child(ren) and social acceptability of child(ren). According to Ruddick (1989), maternal thinking also centres on meeting 'demands' of preservation love, nurturance and training. Ruddick's (1983) vision for a coherent implementation of 'maternal thinking' into the dominant discourse of the public sphere involves a caring situation, where neither women nor men would have power over their children's life for moral authority, without doing the work of attentive love (p. 227). This is an early proposition for more equal caring and working arrangements in households, which are more prevalent in contemporary public and academic discussions on work/life balance.

The problem with this framing of the debate is the specific reference to the 'maternal', which eventuates in drawing boundaries between mothers and fathers and embeds essentialist assumptions about motherhood. On the one hand, this is a positive step, in that women's contribution to the state is being recognised (Yeo 2005), but on the other, maternal thinking/citizenship suggests that all women are defined by this capacity to mother, and this excludes women from liberal individualist notions of citizenship. The liberal notions of reason and individualism clash with those of essential motherhood, and especially around notions of emotion and self-sacrifice (Diquinzio 2006).

Importantly though, a focus on women's experiences emphasises the need for a feminist standpoint. Sandra Harding (1987, 1992, 1993, 2004), Dorothy Smith (1988, 2005) and Nancy Hartsock (1983,1993) have offered persuasive arguments about the importance of the social position of the researcher. Specifically, for the oppressed group being studied it is better studied by a member of that group. Harding (1993) suggests 'to start from the marginalised lives' (p. 50) offers real insight as such people are not benefiting from the continued relations of oppression. The benefits of the work of standpoint feminists cannot be over-exaggerated as they have challenged the gender-neutrality of social science research and have given women a strong voice (Fonow & Cook 1991; Harding 2004; Harding & Hintika 1983; Maynard & Purvis 1994; Nielsen 1990; Reinharz 1992; Stanley 1990).

However, difference feminism and standpoint theory have been criticised for taking a relatively simplistic approach to the term 'woman' and identification of 'women's interests'. In effect, such feminists make a range of assumptions (perhaps unintentionally) about women's social class, racial/ethnic group and sexuality (Hill & Chappell 2006, p. 2). This critique has led to the charge of being concerned with white middle-class problems under the broad banner of 'patriarchy' and neglecting the impact of capitalism and racism (Walby 1990). As an example, Mohanty (1991) argues that some Western feminism has generalised Third World women as a unified group and such views lack specificity in regard to non-Western women's lives.

The universalising of human rights discourses has similar problems. Arguments for collective human rights also mean neglecting differences among women and their cultural traditions (Grewal 1999). Porter and Nussbaum both address this conflict between cultural tradition and the maintenance of universal human rights. For Porter (2003), although it is necessary to respect cultural traditions, 'when there is a conflict between universal rights to equality and culturally specific subjection of women, rights to equality should take normative priority' (p. 252). Nussbaum (1999b) promotes universal conceptions of rights and equality even if 'that involves assault on many local traditions, both Western and non-Western (p. 30).

Nussbaum's position does raise questions about where to draw the line in regard to cultural practices and traditions. Specifically in the Australian context, questions have been raised about the Islamic tradition of the Hijab dress for women. Against the argument that this custom is oppressive to women, many Muslim women defend their choice to wear it as empowering (Ho & Dreher 2009). As stated earlier in this chapter, arguing for a universal set of human rights demands that rights discourse in liberal theory have greater sensitivity to women's differences.

This emphasis on difference, or rejection of an essentialist explanation of womanhood, though, creates a new set of problems, as it paralyses the development of new ideas and strategies about how women engage in politics by denying that women have any shared characteristics that could motivate them to act as a collectivity (Stone 2004). According to Walby (2009b), this led to relativist conclusions: it is never possible to find a place from which to make claims concerning progress (p. 36). Hill and Chappell (2006) suggest that this has left 'men comfortably in control of the institutions that shape women's lives and gender practices' (p. 2).

Unfortunately this is true as a recent study shows[19] that women are significantly under-represented in most decision-making positions. But what are the consequences of denying

[19] Equal Opportunity in the Workplace for Women Agency Australian Census of Women's Leadership 2008 highlighted that only 8.3 per cent of board members in ASX 200 companies were female.

differences among women which benefit a white, middle-class hegemonic group (Hooks 1984; Mohanty 1991). On this point, Walby (2009b) argues that just because the concept of gender or women's equality is contested, it does not mean that there are not some commonalities between the different approaches (p. 36). Rather, feminist politics has usually involved a complex combination of the different approaches including equality and difference (p. 46). Between essentialism and relativism then, I want to argue for a 'coalitional feminist politics' which encourages the mobilisation of women in pursuit of a determinate objective while acknowledging irreducible differences (Stone 2004, p. 152).

As Stone (2004) observes, there was a significant critique of essentialism in the 1970s and 1990s by many leading feminist thinkers. However, during the 1990s, the view that anti-essentialism 'problematically undercut feminist politics' (Stone 2004, p.135) produced new conceptualising in the form of 'strategic essentialism' (Spivak 1990). Spivak proposes a minimal essentialism for political activism but stops short of making descriptive claims about reality. However, Stone (2004) argues that 'one cannot defend essentialism on strategic grounds without first showing that there is an homogeneous set of essentialist assumptions that exerts a coherent influence on women's social experience – which amount to defending essentialism on descriptive grounds' (p. 144). What this means is that it is difficult to separate the descriptive (what defines a woman) from the strategies of progress for women's equality, as it is necessary to make certain delineations in defining the problem which affects women's progress. Butler's (1999) 'genealogy' of woman is also useful here in avoiding the problems of essentialism, assuming that there are 'properties essential to women … that are shared by, or common to, all women' (Stone 2004, p. 138).

A genealogical approach to gender allows for differences among women, on the basis that it is the historically constructed 'concepts' of women and femininity which are taken up by women, that are shared. In the words of Butler (1999), a 'genealogical approach refuses to search for the origins of gender, the inner truth of female desire, a genuine or authentic sexual identity … ' (p. xxxix). Instead, women become

> feminine by reworking established interpretations of femininity … (and) in carrying out this reworking, each woman becomes located within a historical chain of

> women, a chain composed of all those who have successively engaged in reinterpreting the meaning of femininity. (Stone 2004, p. 150)

This points to a possible explanation about why women so readily take up the role of wife and mother even though they are disadvantaged and under-valued in these roles.

Stone usefully proposes that if Butler's (1999) genealogical approach to gender is adopted, which questions the concept of 'woman' itself, rather than women themselves, a coalitional feminist politics is possible. A coalitional feminist politics is possible when 'different women, or sets of women, decide to act together to achieve some determinate objective, while yet acknowledging the irreducible differences between them and the often highly divergent concerns that motivate them to pursue this objective' (Stone 2004, p. 152). Women can form a distinct social group even in the absence of any common properties.

In summary, this *difference* approach does not challenge the normative rationality of liberal theory and has the potential to essentialise womanhood. It also has the potential to neglect the differences among women and to assume a unitary position that all women speak from which means that in Australia, the views of Indigenous women, women from minority ethnic groups, lesbians and working-class women are often laminated under the banner of 'women's' interests. I take up Scott's (1997) argument later in this chapter that we take from either side of the binary of equality/difference depending on the context. The discussion has also focused on the construction of the gendered subject and the contributions made by liberal theory to dominant discourses of rights and equality within which the Commission is situated. How this impacts on the Commission's possibilities to pursue women's progress is explored in Chapters five and six.

Deconstructive equality

> We need theory that will enable us to articulate alternative ways of thinking about (and thus acting upon) gender without simply reversing the old hierarchies or confirming them … it seems me that the body of theory referred to as poststructuralism best meets all these requirements. (Scott 1997, p. 759)

Thus far in this chapter, I have outlined the limitations of the equality/difference framework that has driven much feminist theorising and practice. Scott claims that a theory of 'deconstructive equality' may be able to offer us the tools to think outside of the binary of equality and difference and also help us devise hopeful political strategies. She is upfront about the difficulties to 'formulate a "deconstructive" political strategy in the face of powerful tendencies that construct the world in binary terms' (p. 767). Scott's (1997) approach has since been adopted by others who advocate for deconstructive approaches to equality (Nentwich 2006; Guerrina 2001). Scott (1997) developed the concept of deconstructive equality in response to the question '[h]ow do we recognise and use notions of sexual difference and yet make arguments for equality' (p. 44)?

I should point out that there is congruence between Bacchi's (2005) WPR approach and Scott's (1997) theory of 'deconstructive equality'. Scott and Bacchi both adopt poststructuralist tools that involve calling into question and interrogating truth claims, making visible the meaning-making produced from binaries that are harmful for women's progress. Where Bacchi is not explicit about her approach to binaries, Scott embraces the work of Derrida (1984), specifically in the method of 'deconstruction'. To give my own examination of poststructuralist theory and specifically Derrida's (1984) theory of deconstruction more depth, I look beyond Scott's work and draw directly on the work of Derrida as well as other feminist deconstructionists. This addition provides greater insight to challenging the gendered subject through deconstruction, rather than just the categories of 'equality' or 'difference'.

Feminist theory has questioned for some time how it is we can pursue progress for women that does not naturalise, ignore or universalise women's differences. Scott's (1997) suggestion is this ultimately rests with how men's and women's differences are positioned in relation to one another or how women's differences are constructed as a dichotomy or binary. To reiterate a point made earlier, dichotomous distinctions that associate one side with positive connotations and the other with negative, or set the two terms up hierarchically, have been traced back to the beginnings of Western philosophy in Ancient Greece (Gatens 1991). This history promotes the division as 'natural', rather

than ‘conceptual’, making it difficult to challenge. As explained earlier, some examples of dichotomies in relation to the way the category motherhood is constructed are good/bad mother, stay-at-home mother/working mother, intensive mothering/independent mother.

Another way of explaining the dichotomous division is through the structuralist approach to language that is often found in the area of cultural studies. As my project is concerned with the cultural constructions of motherhood, it is deemed appropriate to consider this theory briefly here. Structural linguist Ferdinand de Saussure (1974) insisted language be understood as a system—of semiotics—where the relationship between words is structured around the hierarchy or binary relationship of a ‘sign’. The ‘sign’ is both a signifier (sound or written image) and a signified (meaning) and each sign derives its meaning from its differences from all the other signs in a language chain (Weedon 1987). For example, when one conjures up thoughts of the ‘mother’, these are considered in relation to the ‘father’ or the ‘sister’ as their meaning is based on the differences between one another. Structural explanations of language have been used as a tool to reveal the ‘truth’ or the ‘real’ on the basis that there is a strong link between word, texts and the world (Britzman 1992).

What makes Foucault and Derrida’s work poststructuralist is their rejection of this structural and fixed relationship of meaning-making. Where Foucault is concerned with culture, his focus shifted to the production of knowledge (rather than just meaning) through discourse (rather than just language) (Hall 1997, p. 42). Derrida maintained a focus on language use, but challenged hierarchical structure and instead proposed a theory of ‘*differance*’. In Derrida’s (1984) approach, which has subsequently been referred to as ‘deconstruction’, there are no fixed signified or signifiers, rather the meanings change according to context.

Another way of explaining deconstruction is to think of it as a method that aims to identify how ‘the other’ (the oppressed minority) is represented and constructed through language and highlights the privileging of one term over the other. In the structural relationship of language into binary oppositions, one term is seen as offering universal,

necessary truth while the other is understood to be derivative or corrupting of the truth (Nash 1994). To argue that 'woman' is constructed as the 'other' in language, is to argue that 'woman' exists in relation to its placement to 'man' (Poovey 1988). This relationship between the two terms is dependent on the relationship between other terms, such as strong/weak, rational/irrational, independent/dependent. The binary man/woman is interconnected to a language chain of other binaries that reinforce one another in the meaning-making system. To challenge the meanings of man/woman and the hierarchical structure, we would also need to challenge the meanings in the language chain.

Deconstruction has received support from those working on feminist projects (Deutscher 1997; Elam 1994; Nash 1994, 1998; Poovey 1988; Scott 1997), not because it abolishes hierarchical thinking that produces binary oppositions, but because it allows us to *rethink* gendered power and gendered subjectivities to reveal its contingent quality. If the previously fixed oppositions are illusory, then we can rethink how the category 'woman' is constituted.

Scott (1997) makes a case for applying the tools of poststructuralist theory, as a methodology, to political problems that would mean focusing on the way that binaries operate to reveal the power relation. A starting place for Scott is with the equality-versus-difference framing of women's progress. She suggests we should reject:

> the idea that equality-versus-difference constitutes an opposition. Instead of framing analyses and strategies as if such binary pairs were timeless and true, we need to ask how the dichotomous pairing of equality and difference itself works. Instead of remaining within the terms of existing political discourse, we need to subject those terms to critical examination. Until we understand how the concepts work to constrain and construct specific meanings, we cannot make them work for us. (p. 762)

As she proposes, moving past the impossible choice of arguing for either 'equality' or 'difference' means we have to 'unmask the power relationship constructed by posing equality as the antithesis of difference and the refusal of its consequent dichotomous construction of political choices' (p. 765). Setting these two categories up as opposites and antithetical hides the connection between the two terms, for we do not have a

situation where ‘equality is not the elimination of difference, and difference does not preclude equality’ (p. 761).

Scott (1997) describes Derrida’s deconstruction as the process that reveals the ‘interdependence of seemingly dichotomous terms and their meaning relative to a particular history’ (p. 761). Rather than this opposition being natural, deconstruction shows us it is socially constructed in particular contexts. Scott provides a useful example in relation to the history of women’s work to highlight this point, as the meanings of ‘woman worker’ have always been developed in opposition of ‘male worker’ and involved the interplay of various discursive fields that are also positioned in a binary, such as private/public, family/work, skilled/unskilled. Scott says the problem with this is the differences are naturalised and ‘we start the story, in other words, too late, by uncritically accepting a gendered category (the “woman worker”) that itself needs investigation because its meaning is relative to its history’ (p. 767).

We can see here the synchronicity between Bacchi and Scott’s approaches, as both want to contest the use of categories and trace the history of the meaning-making process. What this means in practical terms though, is that to apply or pursue ‘deconstructive equality’ as an approach that may contribute to women’s progress, one must conduct a ‘systematic criticism of the operations of categorical difference’ and expose ‘the kinds of exclusions and inclusions—the hierarchies—it constructs, and a refusal of their ultimate “truth”’ (Scott 1997, p. 768). The tools of discourse theory and deconstruction offer a critical position on the construction of ‘truth’. The refusal of the ‘truth’ should be conducted with the intent of not pursuing an equality resting on sameness, but rather ‘in the name of an equality that rests on differences’ (1997, p. 768). Scott’s central argument here is that we continually bring the focus back to ‘differences’, or as she explains: ‘differences as the condition of individual and collective identities, differences as the constant challenge to fixing of those identities’ (1997, pp. 766–767).

This avoids the trap of asserting ‘fixed categories as normative statements’ (Scott 1997, p. 766) which has equated womanhood with ideal notions of motherhood. As Walby

(2009b) recommends, what we should do is take from either approach *according to the context*, which is also suggested by Scott (1997):

> Political strategies then will rest on analyses of the utility of certain arguments in certain discursive contexts, without, however, invoking absolute qualities for women and men. There are moments when it makes sense for mothers to demand consideration of their social role, and contexts within which motherhood is irrelevant to women's behaviour; but to maintain that womanhood is motherhood is to obscure the differences that make choice possible. (p. 47)

Nash (2002) suggests poststructuralists should not give up on equality, even as they contest the category and regard its history as being problematic. Here I specifically refer to the liberal configurations of knowledge that have injected meaning into the category 'equality'. Significantly for my project, Nash makes a strong connection between 'deconstructive equality' and human rights. She locates a 'deconstructive equality' approach in CEDAW, as Article 5(a) of the Covenant states that states must undertake:

> To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. (CEDAW 1979)

Nash (2002) interprets this as advocating for a 'de-gendering' that does not 'mean the elimination of all women and men as such, but rather gendered practices, such that no occupation or values correspond to either sex' (p. 419). If this position is taken to its extreme, it can lead to the unpopular position of androgyny that I am not advocating as a practical step for women's progress. Rather, I adopt the position that a poststructuralist version of equality involves the 'continual disruption of gendered practices and identities without penalty or disadvantage to any person' (Nash 2002, p. 421). Hence, Nash shows us that there is a link between a poststructuralist version of equality and human rights, which I apply in my analysis of the Commission to assess whether it 'disrupts gendered practices and identities' in their problem representations. The Commission, and especially the SDCs, are guided by CEDAW as its mandate and therefore Nash's proposition can be suitably applied in my argument.

Other studies provide thoughtful demonstrations of applying a deconstructive to similar problems I identify in this thesis. Nentwich (2006) conducts a discourse analysis of the

way that equal opportunity workers in Switzerland construct the meaning of equal opportunities and considers the way these constructions either draw on 'same' arguments, 'difference' arguments or the third approach, as developed in response to the same/difference dilemma, deconstructive approaches. Nentwich's (2006) description of the 'deconstructive repertoire' is similar to Nash's (2002) as she states, in a deconstructive approach, 'gender is a social construction and therefore change in every direction is imaginable and possible. The key is to eliminate the hierarchy between women and men, but differences in general are also negotiable and can be objects of change' (p. 514).

Nentwich (2006) identifies a similar problem to Scott in relation to the same/difference 'dilemmas', as solutions to the problems are perceived by pursuing one side of the dilemma over the other, or 'valuing one concept as more important or true than the other' (p. 505). Instead, what we need to do is think beyond the idea of opposing approaches, where it's 'this or that approach', and then it will become 'possible to see all three feminist perspectives as different possibilities for change' (Nentwich 2006, p. 505). For Nentwich, this comes back to a matter of *context*, which as already stated, is important for Walby (2009b) and Scott (1997). If we are willing to be flexible in our approaches and strategies, and shift from one approach to another depending on the specific context, then Nentwich (2006) suggests we have a 'strategy of dealing with the tensions inherited from feminist theory' (p.515).

The poststructuralist, deconstructive approach is further supported in another project that tangles with similar problems to mine; that is, how the state problematises gender in its legislation and policymaking. Guerrina (2001) conducted a study of maternity legislation and equal rights policies in the UK and the European Union by examining whether such legislation and policies appeal to the strategies defined by same/difference arguments. To put this in the same terms as Bacchi does, whether the problematisations represent an 'equality' approach or a 'difference' approach. Guerrina (2001) makes the case for a poststructuralist approach as a way of renegotiating the way the category woman is constructed in both of these approaches—that equates womanhood with motherhood.

Guerrina advocates two important moves that would advance the feminist project beyond the same/difference dilemma. The first one is to 'focus on a redefinition of both concepts, so they become congruent' (Guerrina 2001, p. 36). This important step is based on her argument that 'equality does not necessarily preclude difference, and difference should not constrain the pursuit of equality' (Guerrina 2001, p. 36). Here she advocates for Evan's concept of 'equality in difference' (Evans 1995, p. 3, 7 cited in Guerrina 2001, p. 36). The second step also relates to *context* as she highlights the need to regard 'woman' as a contested site of meaning, as:

> maternity occurs within a social framework that enshrines specific assumptions about 'woman', 'motherhood' and their relationship. Most women experience some biological commonalities throughout maternity; however, it would be a mistake to believe that these commonalities defined the essence of woman or motherhood, either in the private or the public sphere. (Guerrina 2001, p. 37)

In my analysis and argument, I use similar approaches to Nentwich and Guerrina, to consider whether the Commission seeks women's progress along the lines of 'equality' (gender neutral) or 'difference' (the maternal citizen) in its problem representations and consider how the framing of these problems reinforces and is dependent on the binary. The aim is to reveal how the binary works, as guided by Bacchi's (2005) question two—'*What presuppositions or assumptions underlie this representation of the problem?*—of her WPR approach. For example, in the PML proposals, does the Commission promote the need for PML on the basis that women should have the same opportunities for career progression as men in the workplace? Or does it claim that because motherhood is a woman's social function, it should be supported by the state? My aim is not to privilege one approach over the other; however, I pay close attention to the way that the category 'woman' is being constructed in these approaches to also examine if these approaches constitute (give shape to) the 'good mother'. In line with poststructuralist approaches, my project also treats the category woman as a contested site by examining how the category was constructed in the discussions of the need, or not, of a human rights agency. This focus responds to Pateman's important questions outlined in chapter one: 'How is motherhood to be understood? Does motherhood refer only to the relationship between mother and child; or does motherhood also refer to women's standing in the political order?' (Pateman 1992, pp. 20–21).

Conclusion

This chapter has been framed around Bacchi's question: *What presuppositions or assumptions underlie this representation of the problem?* This question is concerned with revealing the configurations of knowledge that give shape to the problem of the gendered state and the gendered subject—or more specifically, the theories that explain how the state is gendered and how this kind of state produces the gendered subject, or the 'good mother'.

My review of different feminist theories of the state drew specifically on the ideas that the state is gendered in its objective processes and does not represent a monolithic, patriarchal interest, but should be assessed in terms of its different mechanisms of power. The power of the state is both discursive and material/institutional. This is in line with a poststructuralist view of the state (Pringle & Watson 1992; Kantola 2006; Kantola & Dahl) that utilises Foucault's theory of 'bio-power' to explain the power of scientific categories that normalise particular practices and subjects. I argue that the Commission's work is also shaped by the logics of the gendered state.

In the second part of the chapter, I considered the discursive construction of knowledge that gives shape to the gendered subject, or specifically to the 'good mother'. I contested the scientific paradigms that connect a woman's biology with her social function that both naturalises and essentialises motherhood and is harmful for women's progress. I also focused on scientific paradigms that have produced knowledge about the welfare of children that rely on assumptions that children will suffer psychologically if not cared for predominantly by their mother. I examined the harmful consequence of the gendered subject in liberal theory for women who are positioned in an either/or bind regarding pursuing equality or difference.

In the final section of the chapter, I briefly developed the notion of Scott's (1988a) 'deconstructive equality', as a strategy to contest liberal motherhood discourses that are disadvantageous to women's progress. I adopted a poststructuralist approach to negotiate alternative subject positions for women that challenge the normative rationality of

liberalism, science and binary thinking. I borrowed from Scott's (1997) proposition for 'deconstructive equality'. Deconstructive equality proposes a way out of the bind of the same/difference dichotomy by challenging the constitution of the 'gendered subject'. Deconstructive equality argues for a constructivist approach to gender which contests cultural and biological essentialism limiting women's progress in contemporary times. This chapter has set up the theoretical framework as I examine whether a deconstructive equality approach is pursued in the problematisations of the Commission in my analysis in Chapter seven.

Chapter 5
Problematisations of the Commission 1977–1986

> National human rights institutions represent the new actors on the human rights landscape, empowered with promoting and protecting universal human rights within the domestic framework. (Asia Pacific Human Rights Network 2004, p. 2)

> Indeed it is something of a miracle that governments are prepared to establish bodies whose primary function is inevitably to criticise their actions. (Bailey 1990, p. 148)

This chapter responds to the first research question: how was the need for a human rights commission problematised by different federal governments between 1977 and 2008 and how was motherhood constructed in these problematisations. Assessing how the Commission was problematised by the different federal governments provides an insight to the discourses—contributing to regimes of truth about the Commission—that competed in debates about the need for a body to monitor human rights in Australia. From failed and controversial attempts to pass the original Human Rights Commission Bill in the late 1970s to the reconfiguration and strengthening of the Commission in 1986, the Commission has faced many challenges to justify its existence in Australia (Bailey 1990). This chapter shows that there was support within the state for a human rights commission—otherwise it would not have been established. However, this chapter demonstrates that from its inception, the Commission's potential to contribute positively to social change has been limited by the nature of its ties to the federal government.

In this chapter I adopt Bacchi's (2009) WPR approach that gives us an insight into 'how governing takes place' (p. ix). Chapter five is framed by Bacchi's question three *How has this representation of the problem come about* that takes a genealogical approach by considering the history of the establishment of the Commission to assess how the need for a human rights agency was problematised from the beginning. This chapter highlights the ties that bind the Commission to the state and influences *what it can say* in its problematisations of women's inequality. As outlined earlier, my research considers the relationship between the material and discursive forms of power of the state (Pringle & Watson 1992) as they relate to the work of the Commission.

The parliamentary debates of the period show how the issues were deliberated and how the proposal for a Commission was problematised (Villiers 1987). Over its short lifetime the Commission has been branded a 'Star-Chamber' (cited in Mitchell 1985), 'Toothless Watchdog' (Haines 1981), 'Australia's Coercive Zealots' (Chipman 1985) and 'Big Bob's Thought Police' (Sheil 1986). Peter Bailey, former Deputy Chairperson of the 1981 Human Rights Commission, documented its early years with a focus on the struggle it endured and criticisms it faced. This chapter builds on Bailey's (1990) observations to inspect how women's equality and rights were prioritised in the Commission's earlier mandate.

There is a gap in research on the relationship between the different federal governments—led by Malcolm Fraser, Bob Hawke, Paul Keating, John Howard and Kevin Rudd—and the Commission with reference to the role it plays in women's policy machinery and its contribution to problematisations of women's equality by the state. As I argued in Chapter three, the women's policy machinery was initially established by the 'femocracy' or 'femocrats'—feminists appointed to public policy positions (Franzway, Court & Connell 1989)—since the reforming Whitlam Labor government (Eisenstein 1996). By the 1990s the femocrat strategy had unravelled under the pressure of neoliberalism and conservatism, which led to non-feminists being appointed to women's policy positions (Eisenstein 1996).

The parliamentary debates about the establishment of the Commission also demonstrate the struggle of engagement with the state proposed by Franzway, Court and Connell (1989), Chappell (2002a), Pringle[20] (1997). This chapter highlights the competing discourses of human rights, feminism, the breakdown of the family and the fear of Communism and abortion politics at the time. I argue that this demonstrates the contested nature of the Commission—contested in terms of the possibilities of advancing progress

[20] Pringle (1997, p. 77) proposes that what feminists are dealing with is not a struggle of women as a unified group against men as a unified group, but a tussle against a multiplicity of discourses and practices in which women are constructed in subordination.

for women specifically. I pay special attention to the way the federal government constructs the category 'woman' in its discussions about the need, or not, of a human rights agency. This specific focus provides an insight into how the state engaged with feminism and a women's rights agenda. As discussed in Chapter four, my research is framed by a poststructuralist account of the meanings of 'woman' that rejects universal, essentialist conceptions equating womanhood with motherhood. My investigation examines the connection between how the category 'woman' was constructed with the implications this has for broader questions of women's progress. My research reveals that patriarchal discourses of 'motherhood'—through the signification of pro-life discourses, for example—were constituted as a theme in the establishment and work of the Commission in its early years. This examination shows how its potential to pursue change for women is undermined by the gendered nature of the state.

In application of Bacchi's question five, this chapter also addresses research question number two: what are the effects of the state's problematising of human rights on the legislative and material conditions during the period 1977–2008. This specific time period covers the beginning of problematising of a human rights agency in parliament (1977) up to the end of my data collection period (2008). I do this by outlining the functions and powers given to the Commission by the state in 1981 (the first Commission) and also in 1986 (the second agency that replaced the first. Bacchi (2009) importantly makes a connection between problem representations (discourses) and the material in the 'effects' that are produced. Hence, my study provides an insight into not only how 'governing takes place' (Bacchi 2009, p. ix) but the project also considers the 'implication for those so governed' (Bacchi 2009, p. ix).

In Chapter five, the material effects that are produced from the problematisations of a human rights commission relate to its functions and powers as outlined in the legislation. This chapter argues that the discursive impacts on the material conditions of the Commisison in the form of the functions and powers it was given in legislation to monitor Australia's human rights obligations. Chapter five also argues that the 'structural' location, or 'structural processes' (Kantola 2007) of the Commission within

the state as a statutory authority limits its possibilities to contribute to women's progress. The Commission's position in the state policy machinery as a statutory authority with a mandate to criticise the government's actions (and recommend policy and legislative changes) has meant that its relationship with the state has been contradictory from the beginning. Statutory authorities[21] are often created for reasons of 'independence', to endorse transparency and accountability. This 'independence' is needed when the objectives of the organisation are believed to transcend the partisan interests of the government (Macintosh 2007). Statutory authorities serve both governance and ideological purposes and most often are deferred to when governments want to appear concerned or active on an issue, such as human rights. The pursuit of international human rights standards has, at times, not been a central interest of federal governments in Australia. Consequently, the 'independence' of the Commission has therefore been threatened or the work of the Commission ignored.

The *Paris Principles* 1991 provide a set of guidelines for all national human rights institutions, such as the Commission, to follow and endorses the value of 'independence'. This chapter explores how the Commission has not been given full 'independent' status according to the *Paris Principles*, which means it has not been shielded from the interests of different federal governments. Another 'structural process' (Kantola 2007) examined in this chapter is the Commission's connection to the UN, focusing particularly on aspects that relate to women's rights. I outline the relationship the Commission has with the UN Committee on the Status of Women as well as the UN's women's rights charter in the form of CEDAW.

Chapter five is divided into three sections to address these issues that directly relate to the questions I pose. The first section explores the establishment of the 1981 Commission.

[21] Statutory authorities are non-departmental public agencies that are often part of the executive and the judiciary arms of the federal government—otherwise referred to as a quasi-judiciary body (as the Commission is). The Commission is operationally separate from ministers and Cabinet, other than having to report directly to the Attorney-General on its inquiring function. Control of the Commission is left to a non-ministerial person who is granted powers under the legislation (the president), although they have to answer to the Attorney-General. As Macintosh (2007) outlines, 'there is an operational divide that provides the entities with some scope for taking actions without political interference' (p. 149).

This is examined in an historical context to reveal the competing discourses that were negotiated by the state and international parties, and contributed to its initial creation. I also explore the powers and functions outlined in the Commission's first mandate, and the central functions of the Commission as outlined in the Acts. The second section examines the establishment of the 1986 Commission. My research demonstrates how the powers and functions in the mandate were strengthened, but also how there was opposition to the powers of the 'new' Commission accounted for on the work of the 1981 Commission. The third section investigates the position of the Commission in the women's policy machinery. This investigation outlines the implication of the statutory authority status of the Commission and the 'independence' it is ascribed. This section then explores who the Australian government is 'accountable' to in meeting its women's rights obligations, and if the Commission is involved in this relationship.

Establishment and functions of the 1981 Human Rights Commission

This section investigates how much legislative power the state was prepared to give the Commission in the 1981 Human Rights Commission as well as how far the state was prepared to go in allowing the Commission to inquire into and report on the federal government's actions. This chapter has been organised into a chronological order of events; this focus is relevant across this time period. The analysis of the competing discourses in parliamentary debates is central to this chapter as it reveals not only how the state problematised the need for a human rights institution, but also how the meanings of woman and motherhood are circulated. The analysis of discourses used in parliamentary debates reveals the defining issues being raised to influence opinion leaders, the media and lobby groups (Villiers 1987) or as Bacchi (1999) suggests, 'public policy problems achieve their reality in language' (p. 37). I start with a discussion of 'human rights' discourses in Australia to trace how meaning of human rights has been made historically. This is important to the discussion in this chapter because 'rights' discourses are constituted in parliamentary debates about the need for a human rights commission.

Rights discourses in Australia

According to Campbell (2006), discourses of 'rights' are currently influential in politics, law and morality. On this theme, Walby (2002) suggests that 'human rights' discourses are being called upon and attached to various efforts for social and political change for women. Porter and Offord (2006) contend that the very survival of the individual, community and society in the twenty-first century is influenced by the language, vision and culture of 'human rights'. However, 'rights' discussions have contended with hostility and opposition that has influenced the way the Australian state has pursued 'rights' policy and legislation (Charlesworth 2002).

Historically, the UN has played a major role in the development of human rights discourses and policies. Its establishment after World War II was a considerable occasion in the constitution of human rights discourses in Australia. At the 1945 meeting in San Francisco, the head of the Australian delegation, Labor Attorney-General and Minister for Foreign Affairs, Dr Evatt was prominent in the drafting of the *UN Human Rights Charter*. In 1948, Dr Evatt was elected President of the General Assembly (1946–1949) when the *UN Declaration of Human Rights* was adopted (Devereux 2005). As Devereux (2005) suggests, in her study of Australia's journey during the twenty-year period in which the International Bill of Rights[22] was developed, Dr Evatt took the opportunity to express Australia's eagerness at developing a binding human rights treaty and 'was heralded as the "first step" in Australia's human rights journey' (p. 1). The 'Evatt Period' of Australia's relationship with the UN marked a time when Australia sought recognition of broad international human rights guarantees in relation to civil, political, economic and social rights (Devereux 2005). This was evident in the 'active view of the state's role in implementing such rights and federal action was viewed as desirable so as to provide for the uniform enjoyment of human rights' (Devereux 2005, p. 233).

[22] The three documents constituting the International Bill of Rights are the United Nations Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Australian delegates also contributed extensively to the drafting of both the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[23] Both were drafted in 1966 on the basis that the *United Nations Declaration of Human Rights* (UNDHR) is not legally binding, therefore the UN needed a set of specific 'rights' which UN members could implement into domestic legislation. However, the Australian delegation was more 'subdued' in 1966 than in 1948 with the unveiling of the UNDHR (Devereux 2005). Apparently, the 'ebullience of 1948 had given way to a cautious non-committal stance' in 1966 as the Australian Government did not represent a willingness to be bound by all the provisions of the ICCPR and ICESCR (Devereux 2005, p. 2). Devereux attributes this to both the 'Spender Period' (1949–1951) and the 'Casey Period' (1951–1960) (former Liberal Ministers for External Affairs), as there was a shift in thinking during both periods around rights requiring government intervention and support for the work of the UN and its 'interference' in state affairs. This shift is identified as being defined by party politics as the Labor government's commitment to socialism led to involvement in all forms of rights, whereas the Liberal governments which followed the 'Evatt Period' resisted rights relying on government action for enforcement (Devereux 2005).

In Australia, discourses of 'human rights' and the implementation of human rights mechanisms have competed with four key arguments. Other scholars or human rights representatives have identified these arguments in their work which I reference here. The first argument is a perceived need to balance state sovereignty with the protection of civil liberties and rights (Charlesworth 2002). The second argument is founded on the fear of international human rights relationships influencing Australian culture and 'way of life' (Tay 1986). The third is the belief that the Australian Constitution and Common-Law provides citizens with all the rights needed (Tay 1986). The fourth is based on fears that Australia's autonomy would be undermined by international human rights relationships

[23] The ICCPR was signed by the Whitlam Labor government in 1972 and ratified on 13 August 1980 by the Fraser Liberal government. The ICESCR was signed on 18 December 1972 and ratified on 10 December 1975 by the Whitlam Labor government. The ICCPR has been ratified and attached to the *HREOC Act 1986* which means that the Commission is responsible for monitoring Australia's compliance. The Australian Government has ratified the ICESCR; however, it does not form part of domestic law and is not incorporated in the *HREOC Act*.

(Charlesworth 2002). These arguments appear in the problematisations of a human rights commission by the different federal governments in the parliamentary debates, media, speeches or other 'texts' analysed and discussed in Chapters five and six. I argue that the discursive struggles that occurred within the state, as is evidenced in the problematisations, centred on the need to show the international community that the Australian Government was committed to meeting its human rights obligations, without compromising its autonomy or altering its current legislative arrangements with the Constitution and Common Law.

The early appeals for a Human Rights Commission: pro-life debates

This section discusses how competing discourses of 'rights', 'state sovereignty' and 'pro-life' were utilised in the problematisations on the need for a human rights commission that shows how the framing of a need for a Commission shifted according to the 'discursive struggles' (Pringle 1997). This section argues that the discursive struggles utilised patriarchal motherhood discourses and implicates a regime of truth about the 'good mother' that is disadvantageous for women's progress. This goes some way to responding to my argument that the regime of truth, or 'conceptual logics' (Bacchi 2009, p. 35) of the 'good mother' are circulated by the state and are constituted in representations in policy.

There were efforts by key state actors, from both political parties, to introduce a Bill of Rights[24] or a Bill for a Human Rights Commission. Attorney-General Lionel Murphy in the Whitlam Labor Government introduced a Bill of Rights in 1973, but it was rejected in opposition to Constitutional law. In 1977, Liberal Attorney-General Robert Ellicot put another Human Rights Bill before the parliament. This Bill had dropped the proposal for a Bill of Rights and advocated the creation of a Human Rights Commission, which would function as an inquiring and investigative agency. The proposal for an agency to monitor

24 Debates on a Bill of Rights are significant in relation to human rights discourse. The Bill of Rights has at various times in parliament been linked to a Human Rights Commission and it was anticipated by some in the 1980s that the Hawke Labor government would succeed at attaching a Bill of Rights to the constitution, which would then alter the functions of the Commission (Tay 1986). However, the question of a Bill of Rights has so far played little part in shaping functions and powers of the Commission and the question of women's equality.

human rights obligations in Australia could be regarded as a strategic, but less powerful, alternative to a Bill of Rights.

The Bill was resisted by the state Attorneys-General out of fear it would increase the powers of the Commission and the Commonwealth over State legislation, despite the emphasis placed on the Commission inquiring into matters related to federal law. Ellicot justifies the need for a Human Rights Commission:

> The government is committed to preserving human rights in this country. It does not, however, agree that it is necessary to have a Bill of Rights in order to do so. It does, however, believe that there should be administrative machinery, such as that involved in the establishment of a Human Rights Commission, through which our commitment to human rights can be demonstrated and constantly pursued. (House of Representatives Hansard, 1 June 1977)

Through discursive claims for State support, human rights had gained ground, but Ellicot sought to limit this through policy machinery rather than much more powerful legislative change.

On 25 September 1979, the Liberal Attorney-General, Senator Peter Durack, put another Human Rights Commission Bill before parliament with a greater emphasis on the educational and promotional role of the Commission, as opposed to the legal and judicial function. The heavy resistance to the Bill rested on a specific clause on the translation of the 'Right to Life' article of the ICCPR. Liberal House of Representatives Minister, Mr John Martyr, argued that the Commission should interpret this to represent the right to life of a child before, as well as after the birth (cited in Bailey 1990, p. 109). [25] The Senate rejected this proposed amendment on the grounds that the function of the Commission is not to determine the rights of unborn children and would get caught up in complaints about abortion issues. This Bill was debated throughout the year and the

[25] As stated above, former Deputy Chairperson of the 1981 Human Rights Commission published an insight to the workings of the Commission in its early years that I expand on by focusing on women's rights. I first discovered the resistance to a human rights commission on the grounds of abortion politics in his work, which I have referenced here as a secondary source. I conducted primary research of parliamentary debates that occurred a few years later that took up the theme of 'right to life' in reasons for not creating a human rights commission as is evidenced from the quotes taken from Hansard.

government had not reached a consensus before dissolution for the October general election.

After this Bill was rejected, there were two important steps that contributed to the eventual creation of the Commission which deserve mention here. The first was a meeting in Geneva in 1978, organised by the UN Commission on Human Rights, to draft guidelines for the structure and functioning of national human rights institutions. The seminar was titled 'National and local institutions for the promotion and protection of human rights' and was the culmination of prior discussions on standard-setting of human rights with emphasis on the creation of national institutions to assist the effective implementation of these standards (UN 1995). A set of guidelines was agreed including:

> To act as a source of human rights information for the Government and people of the country
> To assist in educating public opinion and promoting awareness of and respect for human rights
> To study and keep under review the status of legislation, judicial decision and administrative arrangements for the promotion of human rights, and
> To prepare and submit reports on these matters to the appropriate authorities. (UN 1995)

It is worth noting the similarities of these guidelines with the first mandate of the 1981 Commission as used in preparation of the legislation.

The second step was the ratification of the ICCPR on 31 August 1980. Its ratification committed the Australian Government to creating a mechanism to ensure the Covenant would be observed (Liberal Senator Mary Walters, Senate Hansard, 12 March 1981). The ICCPR was ratified with fourteen reservations of the fifty-three articles, which was criticised as severe in comparison to other countries (Labor Senator Gareth Evans, Senate Hansard 12 March 1981). The Attorney-General had the powers to create a 'Bureau' within their department to fulfil the function of monitoring the Covenant, so the first incarnation of a human rights body was established.

In its short lifetime, the Human Rights Bureau took complaints, requests for assistance and requests for information in the general field of human rights. The Bureau also made progress in establishing relationships with NGOs in the human rights field, paving the

way for the Commission. It was apparent to some Ministers in 1981, though, that there was a 'need for more effective machinery to promote human rights in Australia' (Liberal Minister Robert Viner 24 March 1981 House of Representatives Hansard).

The Human Rights Commission Bill was reintroduced in 1981 by the Liberal Fraser government, with majority parliamentary support for a human rights body. The 'new' Human Rights Commission Bill had overcome the 'abortion' debate, as the government had signed three Declarations which were attached to the Commission's mandate and interpreted by some as representing the rights of the 'unborn child' (Labor Senator Michael Tate 12 March 1981; Independent Senator Brian Harradine 12 March 1981). These Declarations were the *Rights of the Child*, *Rights of Mentally Retarded Persons* and the *Rights of Disabled Persons*. The key phrase interpreted as representing the rights of 'unborn' children is taken from a line in the preamble of the *Rights of the Child*:

> Whereas the child, by reason of his physical and mental immaturity need[s] special safeguards and care, including appropriate legal protection before as well as after the birth. (United Nations Declaration on the Rights of the Child)

Labor Senator James Cunningham claimed that the addition of this reference to the unborn enabled him to support the Bill, as he could not support it without this reference. As stated here:

> I made it quite plain last year before the election that I intended to support legislation that recognised the rights of the child before birth. I believe in 1981 we are far past unscientific ideas as to when life begins. Today it is an undisputed scientific fact that human life begins at fertilisation. (Senate Hansard, 25 March 1981)

This Bill was considered a compromise between those who needed a binding anti-abortion perspective and those who believe it is unnecessary to make any reference to abortion in the Bill (Senator Christopher Puplick, Senate Hansard, 12 March 1981). The compromise reached was the attachment of the three Declarations, with interpretations left to the individual senators. One Senator in particular stated that he thought it should be the Commission's function to educate the Australian community on rights of the unborn child. He had hoped that this 'education' would lead to a decrease in the number of abortions, 'which almost everybody agrees is quite unacceptably high' (Labor Senator James Cunningham, Senate Hansard, 25 March 1981). According to Bailey (1990),

former Deputy Chairperson of the 1981 Commission, consultation took place between the author of the Human Rights Commission Bill and the Right to Life Association and amendments were made to recognise the rights of the child before and after birth.

As the ICCPR included a whole range of rights, it is interesting to note that anti-abortion advocates delayed the establishment of a human rights body. It is significant that the Senate dismissed the 1979 Human Rights Commission Bill on the grounds that they did not want the Commission's time being spent mediating the rights of the unborn (and promoting a pro-life agenda), and then a year later, were willing to appease the agenda of the anti-abortionists by specifically attaching the *Declaration on the Rights of the Child*. The conflicting interests of the state are apparent in the negotiation of these competing discourses as evidently parliamentarians, in the key legislative body, problematised 'rights' in different ways. The push for a human rights body to monitor Australia's human rights obligations had to compete with the pro-life arguments as discourses of 'rights' were being constituted as the 'rights' of the unborn.

Importantly for my focus on how motherhood was being constructed in the problematisations of a human rights commission, there are strong connections to my research problem of how the gendered state constitutes the maternal citizen. Although neither categories of 'woman' or 'motherhood' are mentioned, 'good mother' discourses are being constituted in these problematisations. As the WPR approach (Bacchi 2009) suggests, asking: 'where are the silences' in the problematisations also points towards a more complex reading than only asking what is said.

The 'rights of the unborn' presents one side of the rights dilemma, as feminists have long argued that it is a woman's 'right' to make decisions about her own life and this extends to her reproductive capacities (Petchesky 1986). This has been contested on moral and ethical grounds in Australia and similar Western countries and continues to inspire much vitriol.[26] Abortion has been a political issue and was monitored by the Australian state

[26] I can provide a number of contemporary examples of the negative reaction to abortion in Australia. The decriminalisation of abortion in the state of Victoria in October 2008 inspired a violent response in the

from the earliest days of British settlement with the adoption of the *Offences Against the Person Act 1861* from the British Crimes Act.

The emphasis on 'right to life' of the unborn in the Human Rights Commission Bill debates may have derived from the 'loopholes' in abortion law, which meant women could seek abortions on specific grounds. This can be linked back to the Menhennitt Ruling in 1969 in Victoria, where the Offences Against the Person Act was intended to protect women from interference by unsafe practices designed to induce abortion in the pre-antibiotics era (Wainer 2007). The Act became Sections 65 and 66 of the *Crimes Act 1958*. In Victoria, anybody who was found guilty of inducing an unlawful abortion could be sentenced to up to fifteen-years jail (Wainer 2006, p. 4). This was further interpreted by the judicial system that no abortion was lawful with the result that abortions were carried out in secrecy and stigmatised as illegal.

The Menhennitt ruling in 1969 in the Victorian Supreme Court provided case law for legal abortions when performed under specific circumstances (Cica 1998). These vary between states, however, the common circumstance is if a medical professional believes that an 'abortion is necessary to preserve the pregnant woman from a serious danger to her life or to her physical or mental health, beyond the normal dangers of pregnancy and childbirth' (Cica 1998, p. 2). There is some variance in the cut-off period for when the abortion can be performed (Cica 1998). Hence, perhaps the pro-life supporters of the Right to Life Association considered the Human Rights Commission Bill provided another avenue for them to push for further criminalisation of abortion. I note here that my research does not have the capacity to explore the exhaustive debates on abortion politics, but it acknowledges the importance of the pro-choice movements within

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Victorian parliament by a member in the public gallery when the Bill was passed (Fitzsimmons 2008). Opposition Leader, Tony Abbott publicly stated that 'the problem with the contemporary Australian practice of abortion is that an objectively grave matter has been reduced to a question of the mother's convenience' (cited in Devine 2004). There has been fiery debate about the abortion pill RU486 since1996. It took ten years for the legislation to pass through parliament (Sawer 2012).

feminism and aims to draw a connection between abortion politics and motherhood discourses.

Discourses of 'motherhood', in particular 'good' mothering, are articulated in abortion debates, as an unwanted pregnancy can be a test of a woman's moral character. In these discourses, a woman is good if she chooses motherhood and is considered 'extra virtuous if she chooses motherhood despite or against the odds' (Cannold 1998, p. 105). Cannold (1998) goes even further to suggest the 'abortion debate' should be renamed the 'motherhood debate', as it is the different views held by pro- and anti-choice women about what priority women give to motherhood in their lives that is at the heart of the abortion debate. For the anti-choice advocates, a woman who has an abortion 'lacks the right sorts of ideas about motherhood and womanhood' and 'a good woman is one who primarily values herself as a good mother' (Cannold 1998, p. 110).

Although there is no specific references to motherhood in the parliamentary debates, and therefore this could be recognised as one of Bacchi's (2009) 'silences', the demand for consideration of the rights of the 'unborn' reflects discursive assumptions about motherhood and gender norms. These debates contribute to the regime of truth about the 'good mother' and become part of the discursive formation that influences the construction of gender as well as Australian women's subjectivity. That is, how a woman feels about herself. This shows that in the earliest problematisations of a human rights commission, there is a history of pitting rights against one another and the competing rights of the child with the rights of women (Giddens 2004; Maddox 2005). These problematisations demonstrate the strength and history of the dominance of 'good' mother discourses, as anti-abortion advocates were successful in negotiating their position on the rights of the child. Although there was success in the negotiation of creating a body to monitor human rights obligations in Australia, the influence of 'right to life' discourses in these debates could be regarded as hampering women's progress.

Criticism of the 1981 Bill: weak and lacks teeth

The discursive struggles of the state are further explored in this section as the Labor Party, in opposition at the time, mounted a strong case to strengthen the powers and functions of the Commission and include women's rights with the addition of CEDAW to its mandate. This section provides further insight to how a human rights commission was problematised by the parliament at the time—that is how the parliamentarian constructed the problem of the need for a body to monitor human rights. Importantly the problematisations show that there was a support for stronger human rights protection in Australia by giving a mechanism, such as the Commission, greater powers than initially intended. It is these problematisations that I focus on specifically in my analysis.

Debate over the Bill in 1981 was prompted by the Labor opposition's list of amendments (see Appendix 4 for the amendments) which called for the total retraction of the Bill, redrafting with its proposed amendments to then be presented again at a later time. The two main issues in question about this Bill were its inability to address the states and territories human rights abuses (as the Human Rights Commission jurisdiction in this Bill applied to federal actions only) and that the rights were not judicially enforceable in Australian courts. The Fraser government tried to appease the fears the states expressed over the 1973 and 1977 Bills by reducing the jurisdiction of the proposed Commission. Senators from various political parties commented on the 'weakness' of the Bill in being able to provide recourse for human rights violations by the state (either federal or state):

> The rights which are now within the Commission's jurisdiction are the shoddy, emasculated residual list of rights, what is left over after those reservations and declarations, those 14 exceptions have been taken out … This represents a very significant limitation on the role of the Commission, one which has tended to go utterly unnoticed, but one which will not go unnoticed so far as the opposition is concerned. (Labor Senator Gareth Evans, Senate Hansard, 12 March 1981)

Senator Evans considered it significant that the Commission's mandate was weakened by the reservations made to the ICCPR at the time of ratification. The specific reservations that weaken its mandate are in relation to the powers of the states and territories, as Articles 2 and 50 stipulate the provisions of the Covenant should extend to all parts of federal state without limitations (see Appendix 4). The reservation to these Articles is

made on the grounds that each state or territory constituent has existing legislative measures to address the provisions of the Covenant. In other words, the existing laws of each state and territory will not be reviewed by the Commonwealth according to the provisions of the Covenant as the Commonwealth will not interfere with laws of the states and territories. However, the reservation does state that cooperative arrangements would be conducted in order to facilitate the implementation of the Covenant. This indicates that the Commission's positioning in the policy machinery to only monitor federal law would place limitations on its ability to monitor human rights abuses or contribute to policy as the legislation which supported its functions and powers was weak from the beginning.

Democrat Senator Haines advocated for a Bill of Rights, as well as a Human Rights Commission, and therefore found the proposed Bill to be too weak in addressing the 'rights' of Australians. She states:

> I complained on behalf of the Australian Democrats that the original Bill was weak and lacked teeth and did not apply to States. I said that it did not contain a Bill of Rights and many other matters. I am sorry to say that this Bill is even weaker than that one. (Democrat Leader, Janine Haines, Senate Hansard, 12 March 1981)

Both Senator Hamer and Senator Cunningham point to other weaknesses of the Bill. For Cunningham, the weakness is identified in the lack of judicial power the Commission has in addressing human rights violations and its mandate addressing only federal policy and actions, as suggested here in these statements:

> I do not believe it is a good Bill but it is better than nothing. Although, in my view, it is a weak and timid Bill, it is the best we can get at the moment. (Liberal Senator David Hamer, Senate Hansard, 12 March 1981)

Labor was more damning of the legislation:

> The Human Rights Commission Bill 1981 … does not confer human rights on anybody, it does not override inconsistent State laws, and it does not allow for court proceedings if human rights are infringed. (Labor Senator James Cunningham, Senate Hansard, 25 March 1981)

Another common criticism of this Bill stemmed from the suspicion of the Labor Party about why the Fraser government was pushing for the Human Rights Commission. As suggested earlier, the Fraser government was concerned with its international standing on

human rights issues and a need to demonstrate the fulfilment of its international obligations. As expressed in the following statement by a Labor Minister:

> The concern of the Fraser government with regard to human rights seems to be much a promotional concern. It seems to be very much confined to the ability of the Prime Minister, Mr. Malcolm Fraser, to parade himself in international forums as some sort of champion of human rights. (Labor Senator Susan Ryan, Senate Hansard, 12 March 1981)

It was also argued by some in government that it had the legislative ability to create strong, human rights protection machinery, but it was neglecting to do so. The Australian Constitution divides up legislative power by specifying a list of subjects on which the parliament can enact laws that are outlined in Section 51 (McCallum 2005). Labor Senator Cunningham argued the government could have employed Section 51 on the subject of 'laws in respect of external affairs for the peace, order and good government of Australia [as] [t]his power extends to the implementation of an international treaty which imposes obligations on Australia' (Labor Senator Cunningham, Senate Hansard, 25 March 1981). The Human Rights Commission Bill, as presented by the Fraser government, did not provide the Commission with executive powers to enforce the provisions of the various international Conventions.

The core weakness identified in this Bill was its inability to redress human rights violations within the executive arm of the state or the judiciary. Instead, the 'Commission would only be able to monitor, investigate and report upon some violations of human rights, but not all' (Labor Senator Susan Ryan, Senate Hansard, 12 March 1981). As former Deputy Chairperson of the 1981 Commission Bailey (1990) details, scheduling the international human rights instruments to the legislation gives them a declaratory status, which means they are not directly enforceable by the Commission or by the courts. A human rights complaint could lead to a report being tabled in parliament with policy and political considerations (Bailey 1990). The Fraser government was prepared to give the Commission legislative power to investigate its actions and have a violation made public, but not give it power to enforce or seek compensation for a human rights violation. As Bailey suggests, despite this lack of enforcement, the requirement for the Attorney-General to table all reports in parliament within fifteen sitting days of receiving

it, increased its potential to influence the state in observing human rights standards (Bailey 1990). As the state could easily disregard the Commission's recommendations, the Commission was still viewed as 'lacking teeth' to enforce legislative and policy changes.

Examining the different problematisations of the need for a human rights commission demonstrate the contestations that existed within parliament over what the Commission's function should be—for in its earliest mandate, the Commission's role of contributing to policy debates did not even exist yet. Criticism over the weakness of the Bill came from all sides of politics which demonstrates a history of support for the Commission as MPs argued for the Commission to have greater powers than intended in the original Bill. There is evidence of the history of 'rights' discourses in Australia in the problematisations of the need for a human rights commission as there is emphasis on the need to maintain a healthy relationship with the UN. In its 1981 form, the Commission was given the powers to inquire into federal law which could be regarded an important first step in the protection of human rights in Australia, in spite of the weaknesses identified in the debates.

The invisibility of 'women's rights'

The key question of how women were represented in the Commission's mandate is explored in this section to assess how the category woman was constructed over time in the early problematisations of a human rights commission. My analysis focuses on how the category 'woman' was constructed to assess how women's progress was being prioritised by the state within a human rights framework. The analysis considers where there might be silences in the problematisations—for example, women were missing as a group in the legislation—and whether the problem could be thought about differently. The issue of how, or indeed if, women's rights would be pursued by the Commission was raised in the Senate debates. It is noted that this Bill appeared before the first presentation of the Sex Discrimination Bill in 1981 as Labor Senator Susan Ryan announced during the debate of the Human Rights Commission Bill 1981 that she would be introducing the 'Sex Bill' into parliament soon (Senate Hansard, 12 March 1981).

However, the Fraser government had signed CEDAW in 1980 and there was support in parliament and in parts of the community[27] for the proposal that the Convention be attached to the jurisdiction of the Commission to 'specifically represent the rights of women' (Labor Senator Lionel Bowen, Senate Hansard, 25 March 1981). Although some sectors of Australian society, such as the pro-traditional family group mentioned in Chapter two, 'Women Who Want to be Women', put up aggressive opposition to the articles of CEDAW and its future ratification. Senator Susan Ryan argued that women were the only group not explicitly included in the Convention, referring specifically to them in the Human Rights Commission Bill 1981:

> There is specific recognition now of racial minorities, children, the disabled, and the mentally handicapped but not of women … despite the government making such a fuss and attempting to draw unto itself such kudos for signing the Convention (CEDAW) in Copenhagen, it seems to find it unnecessary to attach that Convention to the legislation. (Labor Senator Ryan, Senate Hansard, 12 March 1981)

When framed by Franzway, Court and Connell's (1989) argument of the gendered nature of the state addressing only men's interests, Ryan's observation becomes especially significant. In the early problematisations there is a disregard for women's rights specifically, as though they do not even exist as a category or a group. The charge that 'human rights' suffered from gender neutrality has some weight when it is revealed that women were not explicitly included. This demonstrates that liberal discourses of 'rights' and 'equality' were being constituted in the earlier problematisations of the Commission. Phillips (1987) argues that liberal versions of 'equality' and 'rights' has a history of

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[27] The Women's Electoral Lobby made public comment on the Human Rights Commission Bill 1981, raising the following issues:
The Bill as drafted confers no further rights on women, aborigines [*sic*], other disadvantaged groups or anyone at all.
A Commission set up under the proposed legislation would be ineffective, inconsequential and would have no teeth.
The Bill has so many exclusions to the obtaining of information by subpoena that it is almost impossible to make a case. If you overcome this hurdle your case can be disallowed as against the public interest. Persons who are subpoenaed can refuse to testify on the grounds of self-incrimination … unlike the procedures laid down for Australian Royal Commissions.
There are no real sanctions in the Bill – the Commissioner can write a letter to the culprit or table a report in some future Parliamentary session. The Bill does not provide the right of appeal to the judiciary.
The Bill is window-dressing by the Australian government to fool other nations into believing that Australia is carrying out its obligations under the Convention on Human Rights (cited in Labor Senator Ryan, Senate Hansard, 12 March 1981).

excluding women's needs as liberal theory neglects the private sphere. The exclusion of women's specific rights in the Commission's first mandate demonstrates the state's limited masculine view of 'rights' and 'equality' as only applying to the public sphere.

My analysis of the early problematisations of a human rights commission shows that the state constituted patriarchal discourses in its deliberations, contributing to a regime of truth about women that is disadvantageous for women's progress. Either women were cast as maternal citizens in the dominance of abortion politics in the very first debates about the formation of a human rights agency or they were absent as a specific group in the discussions for the 1981 Commission. I argue that even in the absence of the category 'woman' in the Commission's first mandate, it articulated patriarchal motherhood discourses contributing to the disadvantageous gendered subject as outlined in Chapter four.

A toothless watchdog is born

The powers and functions of the 1981 Commission are addressed in the following section to demonstrate the material 'effects' (Bacchi 2009) of the problematisations. To reiterate a point made earlier, examining the competing representations of the problem of a human rights commission gives us a great insight to how 'governing takes place' (Bacchi 2009, p. ix) but the project must also consider the 'implication for those so governed' (Bacchi 2009, p. ix). This includes a discussion of the potential for the first mandate to pursue women's progress.

The Human Rights Commission Bill was approved by the Senate on 12 March 1981 and included only one of the Labor Party's amendments. CEDAW was not attached to the mandate, signalling that the discourses of women's 'rights' and 'equality' were dominated by competing patriarchal discourses. The amendment for the Commission to comment on state and territory human rights abuses was adopted, but with great restrictions on how the Commission could approach these cases. Section 11 of the *Human Rights Commission Act 1981* represents the 'inter-governmental arrangements' that could be made between the Commission and a State or Territory. However, these arrangements

had to be made between the Attorney-General and a minister for the state and territory in question.

Bailey (1990) suggests the criticisms of this restriction expressed in the parliamentary debates were based on the grounds that 'an unfriendly Commonwealth Attorney-General (could) make an arrangement with a State Minister that would have the effect of reducing the effectiveness of the Commission's operations' (p. 121). The other amendments (see Appendix 4) were neglected in the final Bill. The definition of 'human rights', which guided the Commission's inquiries and comment, is explained in the Act as 'the rights and freedoms recognised in the Covenant, declared by the Declarations or recognised or declared by any relevant international instrument' (Section 3 Human Rights Commission Act). The international legislation that underpinned the Bill was limited to the ICCPR, *Declarations on the Rights of the Child*, *Mentally Retarded and Disabled*. The *Racial Discrimination Act 1975*[28] was added to its jurisdiction after changes were made to the Act.

The Human Rights Commission replaced the Human Rights Bureau and the Office of the Commissioner for Community Relations (see footnote 43 for explanation of Commissioner of Community Relations) with the inauguration of the Commission on Human Rights Day[29], 10 December 1981 (Tay 1986). It should be noted here that a five-year 'sunset clause' was inserted in to the Bill to allow for the government to review the functions of the Commission and ensure they were satisfactory (Liberal Senator David

28 The issue of discrimination on the basis of race had been debated and explored previously in government with the passing of the *Racial Discrimination Act 1975*. This created the need for a body to manage complaints on racial discrimination, which took the form of the Commissioner for Community Relations. Its sole purpose was to mediate the Racial Discrimination Act, and take complaints from individuals of all states (without having any powers to act on the discrimination, other than to report on the complaints annually to the federal government). There was a fear by some that the new Commission would remove this protection, as the functions of the Commission would essentially take over the Commissioner for Community Relations' role. This is evident in Labor Senator Holding's statement in the Senate debate: 'The legislation - whatever good might be extracted from it - essentially is a smokescreen designed to dismember the existing *Racial Discrimination Act*; it is designed to force the present Commissioner for Community Relations out of office; and it is designed to dismember the whole structure of administration which has been created over a period to enable the people Australia to have reported to them on a continuing basis infringements of human rights and exercises of racial discrimination which has taken place in our community' (Senate Hansard, 25 March 1981).

29 Human Rights Day celebrates the creation of the UN Declaration of Human Rights on 10 December 1948, therefore it was quite fitting that our Human Rights Commission was established on this day.

Hamer, Senate Hansard, 12 March 1981). This provided the legislative grounds for the reconfiguration of the 1981 Commission to the Human Rights and Equal Opportunity Commission in 1986.

The important elements of the Human Rights Commission Act considered in this thesis relate to its powers and functions and the membership of the Commission, which demonstrates the evolution of the Commission and its strengthening with the *Human Rights and Equal Opportunity Commission Act 1984*. In 1981, the Commission's structure consisted of six part-time Commissioners, one full-time Commissioner, who was the deputy chairperson, and a part-time chairperson. Selection criteria for members of the Commission were based on the individual expertise of each member as important to its effective functioning and chosen by the Attorney-General (Bailey 1990). The Commissioners were selected on the basis of their knowledge of most of the issues likely to be central to the work of the Commission (Bailey 1990). The 1981 Commission was not divided into clear-cut areas or 'units' as the current Commission is, but the Commissioners were selected on the basis of a special area of knowledge. For example, Norma Ford was appointed to Women's Affairs, Professor Manuel Aronery was appointed to Ethnic Affairs, and Eva Geia was appointed to Aboriginal Affairs. The first Chairperson of the Commission was Dame Roma Mitchell (1981–1986) and the Deputy Chairperson was Peter Bailey[30] (1981–1986).

One of the benefits of having part-time Commissioners filling a majority of the roles of the Commission was their tie to the wider community (Bailey 1990, p. 119). Formal meetings of the Commissioners happened less frequently once the Commissioners were appointed on a full-time basis. The downside of having a majority of part-time Commissioners was the lack of cohesion and their heavy work commitments outside of the Commission. This meant the Commissioners had difficulty keeping up with the increasing workload of the Commission (Bailey 1990).

[30] Peter Bailey has continued to be vocal on human rights protection in Australia, as he made public comment on the negative impact of the proposed Human Rights Legislation Bill 1998 on the functions and powers of the Commission (Bailey 1999)

The functions of the Commission as featured in Section 9 of the 1981 Act could be summarised as follows: to examine, inquire and comment on Commonwealth acts, legislation and practices to ensure consistency with human rights commitments; to promote an understanding of human rights in the wider Australian community; and to educate the community on Australia's human rights obligations. The criticism expressed in the parliamentary debates of the lack of power afforded the Commission to enforce judicially the international human rights standards was not addressed, so essentially the Commission's main function was to educate the Australian community on human rights principles. The Commission could inquire into government actions and report to the Attorney-General on how the government was not meeting its obligations under the ICCPR, *Rights of the Child*, *Mentally Retarded Persons* or *Disabled Persons*; however, no action could be taken to enforce human rights standards (see Appendix 5 for a full outline of the functions).

Even though the Commission was supposed to have a degree of autonomy, the Act detailed the condition of close ties between the Commission and the federal government. The Commission was required to report to the Attorney-General or other ministers on its actions and inquiries. During the lifetime of the first Human Rights Commission, the Attorneys-General were Senator the Honourable Peter Durack QC of the Fraser Liberal government and with the change of government, Senator the Honourable Gareth Evans QC under the Hawke Labor government.

CEDAW and the ICESCR were excluded from its mandate. Evidently, the 1981 mandate was lacking in its support of women's human rights. This deficiency was further highlighted not long after the Commission was established in 1981 with the first appearance of the Sex Discrimination Bill in parliament. This Bill was created to fulfil Australia's international obligations under CEDAW to address women's differential social location. The SDA provided legislative support to protect women from discrimination in the public sphere. This accompanied the creation of an SDC and the provisions for investigation.

The SDC was located within the Commission, but not with full membership, to administer the provisions of the Act as the SDA was 'unofficially' attached to the Commission's mandate. The government decided it would prefer the SDC not to have full membership of the Commission, just as with the Commissioner for Community Relations (mediating the *Racial Discrimination Act 1975*) (Bailey 1990). This meant the Commissioners had no direct involvement with, or responsibility to, the Commission, but were supplied with resources and were invited to all meetings of the Commission (Bailey 1990). This 'temporary' home with the Human Rights Commission without legislative support meant that resources were limited and its potential was not being exercised. The next section explores how women's human rights were included in the 'new' Commission.

This inquiry into the establishment of the 1981 Commission demonstrates that the state was only prepared to give it limited powers, despite its statutory authority status. The competing discourses of 'rights' and state sovereignty in the problematisations produced a human rights mechanism which could comment and educate on human rights, but had no enforcement powers. The gendered nature of the state ignored women's specific human rights needs and rendered women invisible or constituted them in maternal terms as maternal citizens. This is evidenced by the exclusion of women from the 1981 mandate and the discursive struggles with the anti-abortionists. The following section explores the creation of the 1986 Commission.

Creation of a 'new' Commission: Human Rights and Equal Opportunity Commission

The establishment and functions of the 1986 Human Rights Commission is explored in the following section by examining how the Commission was problematised. Just as with the investigation of the 1981 Commission, the problem representations in the debates for the 1986 Commission reveal 'how governing takes place, and with what implications for those so governed' (Bacchi 2009, p. ix). This section focuses on how the need for a Human Rights Commission was problematised by the state in the debates that occurred between 1984–1986. I focus on the competing discourses that were constituted, the powers and functions that were given to the Commission in the 1986 mandate that were

different to the 1981 Commission and how the category 'woman' was constituted in the debates and in the Commission's mandate.

As outlined earlier, a five-year sunset clause was inserted into the *Human Rights Commission Act* so a review could be conducted of its functions and powers. This provided the opportunity for further debate on how best to pursue human rights in Australia and to meet its international commitments. With a change of government, the Human Rights Commission was reviewed early when Senator Gareth Evans put forward a Bill for a Human Rights and Equal Opportunity Commission on 12 September 1984. The proposal to strengthen the 1981 Commission included the addition of two key pieces of legislation to its mandate. These were the SDA and the *International Labour Organisation (ILO) Discrimination* (Employment and Occupation) Convention (1958). The *ILO Convention* 111 requires:

> that each member state undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof. (ILO Convention 111).

Attorney-General Gareth Evans argued that the addition of the *ILO Convention 111* to the Commission's mandate would strengthen the Commission with wider functions and increase Australia's standing in the human rights arena (Senate Hansard, 12 September 1984). It was hoped this would be achieved by giving the Commission important functions in the field of employment and occupation, which included:

> investigation, conciliation and reporting in relation to acts and practices in the Commonwealth sphere that are discriminatory on the grounds specified in the Convention—race, colour, sex, religion, political opinion, national extraction and social origin-and on such of the grounds developed over the years by the State committees as may be declared by the Minister—age, criminal record, marital status, medical record, nationality, personal attributes, physical disability, sexual preference and trade union activities. (Labor Attorney-General Senator Gareth Evans, Senate Hansard, 12 September 1984)

The addition of the *ILO Convention 111* to the mandate also provided the basis for the name change, with the addition of 'Equal Opportunity'. Unfortunately the 1984 Bill lapsed with the federal government election and the issue disappeared from parliamentary discussion until October 1985 when the new Attorney-General Lionel Bowen put forward

essentially the same proposal as the former Attorney-General, but added a Bill of Rights to the legislation. The Australian Bill of Rights and The Human Rights and Equal Opportunity Bill 1985 were presented as a package, just as in 1973.

Despite the support for the Commission by the Liberal government in 1981, it was critical of the 'new' Commission once it was in opposition. It was concerned that the Commission would be endowed with much more power than the executive or the judiciary arms of government. The opposition argued that the 'new' Commission would function as a modern day 'Star Chamber', something that Dame Roma Mitchell saw as deplorably inaccurate in the last Annual Report (1984–85) of the 1981 Commission. She notes: 'Webster's dictionary defines the "Star Chamber" as a court existing in England from the Fifteenth century until 1641 that exercised wide civil and criminal jurisdictions under rules of procedure well-suited to the purposes of absolutist sovereigns. The Commission exercises no judicial power' (Mitchell 1984–85, p. 85).

Individuals in academia also expressed opposition to the powers of the Commission (Chipman 1984, 1985; Coleman 1984). As secondary sources, they provide evidence of the discursive formation that contributed to a regime of truth about the Commission. A discursive formation represents the same discourses appearing across a range of texts, at a number of institutional sites within society (Hall 1997). In this discursive formation, the Commission is represented as 'the problem', rather than there being a need for a body that monitors Australia's human rights obligations. Chipman (1984, 1985) published two articles in the conservative journal *Quadrant* in which he labelled the Commission 'The Zealots: Australia's Thought Police', based on his perception that the Commission was limiting freedom of speech in advocating changes to the *Race Discrimination Act 1975* which would outlaw racist speech. Chipman (1984) also labels the 'promotion and education' function of the Commission as a 'propaganda' role. He argues that the members of the Commission are employed on the basis of their 'zealous pursuit of that commitment to the particular anti-racist or anti-sexist or whatever other values that qualifies them for appointment' (p. 27), which leads to propaganda of these ideas of 'equality'. Coleman (1984) expands on this by criticising the Commission's intent to try

to ‘change behaviour’ or ‘raise consciousness’ (p. 32) as the ‘ideologues (Commissioners) find great problems where there may be none or only small ones’ (p. 32). This demonstrates contested problematisations of the Commission that were being produced outside of the state but that contribute to the ‘regime of the truth’ (Hall 1997) about the Commission. In these problematisations, we can find evidence of the shift to a neoliberal logic that puts the responsibility on the individual and rejects ‘group rights’. I return to this shift in Chapter six as the Coalition government also contributes to this regime of truth about the Commission that it is being run by elites only concerned with needs of the special interest groups.

Human Rights and Equal Opportunity Commission = Communism, feminism and the breakdown of the family

I have found that the problematisations of the Commission in the debates between 1984–1986 utilise the discourses of a fear of Communism, fear of feminism and the breakdown of the nuclear, traditional family. The opposition to both the Bill of Rights and a Human Rights Commission reflected the trepidation about Communism and the ties Australia had with Communist-run countries through the UN and the ratification or signing of Human Rights Covenants. These views reflect a well-established tradition in Australia of using references to Communism to articulate hostility to state-based social and legislative changes. This was demonstrated in the following statement by former Democrat leader, the late Janine Haines, ‘I get letters which say things like: “It is based on the UN ICCPR which has been accepted by Warsaw Pact countries and rejected by the UK and the USA”’ (Senate Hansard, 14 February 1986). Haines points out that these letters are based on misinformation as the UK had also signed and ratified the ICCPR.

It is noteworthy that in spite of the functioning of the 1981 Commission on the basis of the strength of the ICCPR, the debates about the Covenant reappear during the deliberation of the ‘new’ Commission. One Senator states in a petition that ‘there is a threat to our national security through making treaties of this kind with foreign nations’ (Liberal Senator Donald Jessop, Petition, 20 February 1986). Another alleges that the ‘Covenant was drawn up by overseas socialist countries’ (Liberal Senator Alan Missen,

20 February 1986). A majority of the resistance to the Bills came from the Independent and Liberal parties, which is interesting considering the Fraser Liberal government ratified the ICCPR. It is also noted that a majority of the reservations that were made in 1980 of the ICCPR by the Fraser government were retracted in 1984 by the Hawke Labor government.

One of the most startling revelations from the investigation of the parliamentary debates of the 1985 Bill is the response of a senior Liberal supporter, Senator Peter Durack. Durack was the Liberal Attorney-General in the Fraser government and one of the engineers of the 1981 Human Rights Commission. On these grounds, it could be assumed that Durack would support the Bill for the 'new' Commission. However, this is not the case. Durack rejected the proposal claiming it (the Commission) 'was an experiment that failed and therefore we would let it die and would not set up a new body as the Government is proposing to do' (Senate Hansard, 26 November 1986). In Durack's problematisation of the Commission, we can see how a negative regime of truth was forming about the Commission that carried through to the Coalition government's relationship with the Commission between 1996 and 2007.

One of the key criticisms Durack has of the Commission is its education function, as he believes it has 'given scope to the propagation of various biases of the individuals appointed to those bodies or of members of their staffs' (Senate Hansard, 26 November 1986). Here Durack is referring to an education kit titled *Teaching human rights* which was produced by the Commission and distributed to schools, which some in parliament believed promoted Communist ideals and attacked the traditional family (Liberal Senator James Short, Senate Hansard, 20 February 1986). Discourses of the family are also brought into play by National Party Senator Glenister Sheil who compares the Commission to the Orwellian 'Ministry of Love' and believes its role is to change and subvert society, by undermining the family (Senate Hansard, 26 November 1986). Sheil blames 'feminists and the hardcore left' with these ideas and states the 'real role' of the

Commission is to 'function as big Bob's[31] thought-police, to help undermine traditional attitudes and values by persuasion or coercion, and ultimately form another stone in the edifice of the socialist state' (Senate Hansard, 26 November 1986).

These problematisations of the Commission signify the emphasis on the nuclear, traditional family as the norm, which I have argued is problematic for women's progress. In Chapter three, I argued that the state has supported specific family formations that is reflected in conservative policymaking. The problematisations of the Commission that claim it will 'undermine the family' demonstrate the role the state plays in constructing a regime of truth about the 'good' mother as the traditional family places women at the centre, in the home as wife and mother (Barrett & McIntosh 1982). In addition, these comments are indicative of Foucault's (1991b) notion of 'governmentality' as Sheil and Durack both promote the proper functioning of society as resting with the family, and traditional roles within the family with a patriarchal male head. In these problematisations, there is a clash between pursuing human rights and promoting social order through the maintenance of the nuclear family construct, rather than regarding the two as being compatible. This is a strong demonstration of the problematisations of the liberal constitution of 'rights' and 'equality' as belonging in the public sphere and not applying to the private sphere of the home—as this suggests the Commission, and its role of pursuing 'rights' should stay out of the private sphere.

Debate over the Bill's package raged throughout most of 1986 so that by November the Labor Party appeared to have realised that if they did not move quickly, Australia would be left without a Human Rights Commission altogether. The Sunset Clause was dated for 9 December 1986. Consequently, they dropped the Bill of Rights from the package, leaving the Human Rights and Equal Opportunity Commission Bill to be debated on its own. Senator Evans reminded parliament on 26 November 1986 (thirteen days before the Sunset Clause date) the reasons why the government put forward the Bill in the first place. Evans highlighted the need for strengthening the work of the SDC by attaching the

[31] The researcher assumes Sheil is referring to the Australian PM at the time, Robert Hawke, otherwise known, and commonly referred to, as 'Bob'.

SDA to the Commission's mandate; the need for integration of the work of the Commission with the national and state Committees on Discrimination in Employment and Occupation, the need for a change in structure of the Commissioners to full-time to manage the increasing work load and the development of co-operative arrangements with four of the states meant the Commission had an effective agent in those states in the form of relevant Equal Opportunity agencies. Two days later, on 28 November 1986, the Human Rights and Equal Opportunity Bill 1985 was passed.

Powers and functions of the Human Rights and Equal Opportunity Commission

Essentially the functions and powers of the 'new' Commission were similar to the 1981 Commission. The differences between the 1981 and 1986 Commissions were the strengthening of its mandate with the addition of CEDAW, the SDA and the *ILO Convention 111* on Equal Opportunity in the workplace. These aimed to address discrimination and women's specific human rights issues and expand the functions in regard to occupation and employment discrimination. Where the 1981 Commission mandate was supported by human rights Conventions, Covenants and Declarations as the sources of complaint of 'rights' abuse, the 1986 Commission was strengthened with the addition of the anti-discrimination legislation. A complaint could now be made against the state or public organisation on the basis of a human rights violation or discrimination. Bailey (1990) states that the addition of the anti-discrimination legislation strengthened the powers of the Commission in presiding over discrimination cases and provided an informal determination, which could be followed by possible recourse to the courts.

The Commissioner's role was expanded from part-time to full-time, with the allocation of a specialised full time SDC, Race Discrimination Commissioner, Human Rights Commissioner and a part-time president (all positions appointed by the Attorney-General). The relationship between the Attorney-General and the Commission remained intertwined in the 1986 Act. The power of the Commission to investigate federal and state enactments, legislation and policy to ensure consistency with Australia's human rights obligations still rested with the Attorney-General or other ministers (as outlined in

Section 11.1(e) of the 1986 Act). The key functions of the Commission outlined in the 1986 Act are to inquire into, and attempt to conciliate, complaints of unlawful discrimination; to examine enactments and proposed enactments; to inquire into any act or practice that may be inconsistent with or contrary to any human right; to promote an understanding and acceptance, and the public discussion, of human rights; and to undertake research and educational programs for the purpose of promoting human rights.

The definition of human rights in the 1986 Act is outlined in Part 1-Preliminary Section. 'Human rights mean the rights and freedoms recognised in the Covenant, declared by the Declarations or recognised or declared by any relevant international instrument' (1986, p. 5). The Covenant referred to is the ICCPR and the Declarations are the Rights of the Child, Mentally Retarded Persons and Disabled Persons. These specific rights remain the same as the 1981 Act (which was exclusive of women's rights); however the line 'any relevant international instrument' can be interpreted to include CEDAW as the women's human rights Convention had been ratified. As well as this, Section 11.1(a) states functions are conferred on the Commission by the SDA.[32] Both of these imply the pursuit of women's human rights and women's equality, expanding the definition of human rights to include women's rights.

My investigation of the parliamentary debates and the establishment of the 1981 Commission and the 1986 Commission reveals that the category 'woman' was absent from the discussions and so women were effectively denied specific human rights. Nevertheless, the discursive struggles over the best way to pursue 'rights' in Australia led to the creation of the Commission and legislative grounds for the pursuit of 'equality' for

[32] Discrimination means:
any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and any other distinction, exclusion or preference that: has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and has been declared by the regulations to constitute discrimination for the purposes of this Act; but does not include any distinction, exclusion or preference in respect of a particular job based on the inherent requirements of the job; or in connection with the employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs and teachings of a particular religion or creed, being a distinction, exclusion or preference made in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or that creed (1984, p. 4–5).

women. Despite resistance to both the Commission and women's rights mechanisms in parliament, the Hawke Labor government managed to create additional policy machinery to pursue women's rights with the creation of a strengthened human rights body in the Human Rights and Equal Opportunity Commission.

However, despite the fears of its opponents, the Commission's mandate was not strengthened with the powers or functions they anticipated in making judicial rulings or having a free reign over state legislation and policy. The creation of a national statutory authority to support human rights in Australia was strongly opposed, and yet the 1986 Commission was created with a somewhat stronger mandate. It is also noted that the 1986 Commission—with its stronger mandate—was established while the Hawke Labor government was in power. As outlined in Chapter three, the Hawke Labor governments discursive strategies of governing within a framework of socialist discourses of 'equality' and 'justice' could explain its strong support of the Commission. During the same period, the Hawke government had also created the SDA, highlighting an interest in supporting the rights of women at work and in the public sphere. The negative regimes of truth circulating about the Commission by those who feared its possible powers competed with stronger problematisations. Redressing human rights abuses was represented as more of a problem than those who feared the Commission's impact on the traditional family or the influence of Communism that needed addressing through a mechanism such as the Commission.

This chapter thus far has discussed the competing discourses in the problematisations of the proposal of the Commission. The rest of Chapter five examines the Commission's position in the federal policy machinery as a statutory authority. This demonstrates the material effects of the problematisations of the commission as the discursive struggles over how much power to give the Commission meant that it was constrained by its ties to the executive arm of the state. The following sections are shaped by this question: Does its statutory authority status provide sufficient 'independence' to meet Australia's human rights obligations or feminist goals?

Structural location and processes of the Commission

I argued in Chapter two that, along with a focus on the discursive, my analysis considers the 'structural' location of the Commission within the state as a statutory authority to assess the possibilities and limitations it has to contribute to women's progress. While I defend a poststructuralist theory of the state that describes the state as a set of arenas with multiple and competing interests rather than a monolithic body with one overarching interest (Pringle & Watson 1992), I also retain a focus on the 'structural processes' of the state, which is an approach supported in other poststructuralist explanations of the state (Kantola 2007; Pringle and Watson 1992). This highlights that the discursive struggles have material 'effects' (Bacchi 2009). The following sections consider three structural processes that influence the Commission's potential to contribute to women's progress as each process impedes the Commission's independence and *what it can say* in its promotion of human rights. First, I consider the Commission's statutory authority status and the implications this has for the 'independence' of the Commission. Second, I explore how the Commission's 'independence' is evaluated according to the *Paris Principles*. Third, I examine the Commission's position between the federal government and the UN. Each of these aspects responds to research questions two: what are the effects of the state's problematising of human rights on the Commission's legislative and material conditions during the period 1977–2008?

Statutory authority status in the policy machinery

The 1986 Commission maintained the same position in the state's policy machinery as the 1981 Commission as a statutory authority. Statutory authorities are established by a specific Act of parliament to fulfil prescribed responsibilities, and are created when independence is needed and close association with any political party is undesirable (Grant 2005). The 1986 Commission is an 'independent' body of the state in the policy machinery, which means it can comment on and influence policy, but is not often included in the direct drafting of policy or legislation. The work of the Commission is also limited by its responsibility to the Attorney-General. This means that the Commission has the power to inquire into any state or federal policy or enactment (except for an intelligence agency), but has to present its findings to the Attorney-General

before they are released to the public or tabled in parliament. In this process, the Commission can contribute to problematisations of human rights issues in Australia, but the federal government ultimately has the power over how these problems are framed and sold to the Australian public.

The Commission can work with inter-governmental agencies and groups and non-government groups to produce educational material or in the promotion of human rights. In the case of women's policy, the Commission can work with the federal Office for Women and the Department of Families, Housing, Community Services and Indigenous Affairs and the Equal Employment Opportunities for Women Office. However, its capacity to report directly to the UN on the government's human rights obligations has been restricted until recently, as the federal government has fulfilled this duty. Again, this has limited what the Commission is *able to say* in the problematisation on women's equality. This is explored in the following sections in the assessment of how well the Commission meets the guidelines of the *Paris Principles* in relation to its position in the human rights policy machinery. The Commission's structural location within the state apparatus or as an arena of the state is a limitation that is further examined in Chapter seven as I assess the Commission's potential to influence the federal government to create a strong PML policy.

United Nations Paris Principles

The exploration of the *UN Paris Principles* (UN 1991) also provides my research with a list of guidelines with which to assess the 'effectiveness' of the Commission and a basis to make arguments for the strengthening of its mandate and position in the policy machinery to give it greater potential to contribute to women's progress. The Commission's effectiveness is assessed on the basis of how independent the Commission is from other state apparatus. As argued earlier, the issue of 'independence' is essential for the effectiveness of human rights institutions as they need to be able to act independently of the government, party politics and all of the other entities and situations which may be in a position to affect its work (UN 1995b). A federally-funded body can never be entirely 'independent' of its managing government, as all institutions are

restricted by their links with the state and by the need to conform to their legislative mandates (UN 1995b). This section argues that the Commission's effectiveness rates well in some aspects, but that there other material and structural processes of the relationship that could be strengthened. I start with a brief outline of the *Paris Principles* and then provide my assessment.

The UN General Assembly unanimously adopted the *Principles Relating to the Status of National Institutions* (*Paris Principles*) on 20 December 1993. This set of guidelines was officially endorsed by the UN for states to model their human rights institutions on some years after the original Commission was established in Australia. Although, as outlined earlier, the 1981 Commission's mandate and the subsequent 1986 mandate were very similar to the 'unofficial' guidelines created at the 1978 Geneva conference of the UN Commission on Human Rights titled 'National and Local Institutions for the Promotion and Protection of Human Rights' (UN 1995b). The earlier work of the UN on human rights institutions had an influence on the mandates of the 1981 and 1986 Commissions despite its lack of 'enforcement' powers.

The *Paris Principles* resulted from continued discussions by the UN about the need for a set of guidelines for national human rights institutions, culminating in a set of endorsed principles being presented at a UN meeting in Paris in 1991, titled the *International Workshop on National Human Rights Institutions for the Promotion and Protection of Human Rights*. The *Paris Principles* affirm that national institutions are to be vested with the competence to promote and protect human rights and given as broad a mandate as possible, set forth clearly in a constitutional or legislative text (UN 1995b). However, these guidelines have not been endorsed to create a 'model, "ideal" or prototype institution' that the 'effectiveness' of other institutions may be measured; rather the *Paris Principles* are to be viewed as 'guidelines and recommendations' (UN 1995b).

The *Paris Principles* have been criticised for this weakness. The Asia Pacific Human Rights Network (2004) suggests: 'outlining a clear requirement of how much judicial power a human rights institution should have; establish[ing] a clearer mandate for human

rights institutions; and incorporate[ing] an assessment procedure of the performance of human rights institutions to identify how it could be strengthened'. Despite these identified weaknesses, the *Paris Principles* are useful in the assessment of the Commission's mandate and potential to contribute to women's progress as they provide a clear set of guidelines with which to examine the 'effectiveness' of the Commission. The 'effectiveness factors' as prescribed in the UN *Handbook on the establishment and strengthening of national human rights institutions* (hereafter referred to as the Handbook) are 'independence; defined jurisdiction and adequate powers; accessibility; cooperation; operational efficiency and accountability' (1995b, p. 10). This project is concerned specifically with the aspects of independence in relation to access and input to legislation and policy; and its role in the submission of reports to the UN Committees on Australia's human rights obligations; and financial autonomy.

My assessment of the Commission is that it rates well overall on the issue of 'independence' according to the guidelines of the *Paris Principles*, as it is steered by a clear mandate of its functions and powers and given independent legal status to exercise decision-making power (UN 1995b, p. 10). It is given operational autonomy to conduct its day-to-day affairs independently of any other department or authority (UN 1995b, p. 11). It is given authority to work with other government agencies and request cooperation with the provision of information and assisting investigations (UN 1995b, p. 11).

According to the *Paris Principles*, the Commission would pass the 'effectiveness' assessment in relation to access and input to legislation and policy. The *Paris Principles* state that human rights institutions must be given powers to investigate and advise on new and existing legislation by review, as well as in the drafting of new legislation to ensure it meets human rights obligations. The Commission is empowered to review existing and new legislation in Section 11 (e) of the Act, and Section 11 (j) of the Act outlines the powers to report on the laws that should be made. As outlined in the Handbook, the government is responsible for tabling the recommendations made by human rights organisations and indicating whether it intends to take action (UN 1995b, p. 23). The mandate of the Commission meets this provision, as Section 46 of the Act

outlines a copy of every report produced by the Commission that must be tabled in parliament within fifteen sitting days after the report is received. This step in the pursuit of human rights standards is especially important, although as the Handbook also states, 'if the recommendations of a national institution are ignored or passed over without reason, the institution will have little incentive to continue performing this function to the full extent of its ability' (UN 1995b, p. 23).

The apparent significance of the work of human rights institutions in relation to legislation must balance with existing law-making arrangements, so that responsibility for law-making must lie with parliament and the judiciary in a functioning democracy (UN 1995b). The potential to influence legislation and policymaking is limited by its core 'function as an additional safeguard in the law-making process' (UN 1995b, p. 24). It is this statement in the Handbook that raises concerns for my research, as it appears to undermine the potential of the Commission to influence legislation. This function of the Commission is also examined in Chapter six to address how different federal governments have received the Commission's recommendations; and how this could be strengthened to give the Commission greater influence in law-making.

The *Paris Principles* address the issue of policy advice separately from legislation, as it recognises that policy influence can have a greater impact on day-to-day improvements of human rights situations. The *Paris Principles* outline that a human rights institution should have the ability to influence policy by drawing on its inquiries, which may lead to the awareness of the detrimental effects of existing government policies, as well as the functioning of other sectors of the government, such as the police force. The Handbook also addresses the importance of human rights institutions in being able to raise awareness of 'hidden' human rights violations it uncovers in its research, such as in the home or workplace. The Commission's mandate meets these guidelines in Section 11 of the 1986 Act.

I argue that the importance of the Commission's policy recommendations, and hence the role of the Commission in the policy machinery, is that it is endowed with the

responsibility to ensure the federal government observes human rights provisions. The problematisation in the Commission's policy work draws on the guidelines of human rights principles, or is guided by a human rights framework, so in effect the problematisations will be identified as a violation of one of the *Paris Principles* and the policy proposal involves actions to rectify this violation (such as with the inquiry into refugee children placed in mandatory detention centres). As stated earlier, this differs from policy proposals produced by other arms of the government, such as the Productivity Commission, as it produces policy on the basis of all sorts of other reasons—economic, environmental, social engineering to name a few. Chapter seven shows that the Commission's recommendations to implement a PML scheme were ignored by the federal government in four different policy proposals. Even though the Commission has the independence to make policy recommendations within a framework of human rights, this does not necessarily mean the federal government will implement the recommendations.

Another factor that relates to the assessment of the effectiveness of the Commission is its role in the submission of reports to the relevant UN Committees on Australia's human rights obligations. The Handbook outlines that 'state parties to international human rights instruments are required to submit regular reports to the committees established under the respective instruments to oversee the implementation' (UN 1995b, p. 26). In the case of my research, the relevant instrument is CEDAW and the committee is the UN CSW.

The Handbook stipulates that the work of the human rights institution is often included in the reports submitted on the grounds that a 'national human rights institution is, by definition, itself an implementation mechanism and for that reason an appropriate subject for inclusion in reports' (1995b, p. 27). However, the Handbook also suggests the human rights institution could actively contribute to the preparation of the report, rather than just be cited in it. The federal Office for Women currently produces the reports to the CSW and only includes the work of the Commission to add to the list of 'developments' the government has made, rather than drawing on its direct contribution. This action of the government supports the Handbook's suggestion that 'contributions of national

institutions to the reporting process will vary according to … the willingness of the government to seek its assistance' (UN 1995b, p. 27).

The last aspect to consider in my assessment of the Commission's independence according to the *Paris Principles* is financial autonomy. Where the Commission has rated well in regard to the other aspects, I argue that one of the key threats to the independence of the Commission is in relation to its material positioning from the government. As stated in the Handbook, 'The link between financial autonomy and functional independence is a strong one. A national institution with no control over its finances will be dependent on the government Ministry or other body which exercises such control' (UN 1995b, p. 11). This is clarified further with specific reference to the institution's budget being 'secured' so that no official decision or action of the institution will affect its budget allocation, which may be especially important if the institution has a complaints procedure or the capacity to advise (in other word 'criticise') the government (UN 1995b, p. 11). The budget of the Commission is not 'secured' and has been affected by the different prioritising of the pursuit of human rights of the different federal governments as is shown in Chapter six of this thesis. The importance of the budget, as Franzway, Court and Connell (1989) argue, are that resources are central to determining what can and cannot be done by organisations working towards social justice goals.

This section has assessed legislative and material conditions of the Commission according to the *Paris Principles* that addresses research question two on the effects of the state's problematising of human rights on the Commission's legislative and material conditions during the period 1977–2008. This has provided further insight into the possibilities and limitations of the Commission to contribute to women's progress that is also referenced in the following chapters. The following section outlines the relationship between the UN and the Commission to demonstrate that the Commission is limited in its relationship to the international human rights community and this has restrictive implications for its potential to influence women's policy.

The Commission's position between the federal government and the United Nations

Another important 'structural process' that influences the Commission's potential to contribute to women's progress is the Commission's position between the federal government and the UN. In this section, I argue that the relationship the Commission has with the UN human rights community on women's policy demonstrates the state's ambivalence in its international relationships as the Commission is limited in *what it is able to say and do*. This supports the work of Charlesworth (2002) who has conducted analyses of human rights protection in Australia and identified the existence of fears within the state that Australia's autonomy would be undermined by international human rights relationships. In my discussion of the Commission's position between the federal government and the UN, I focus particularly on the women's rights structures and charter in the form of the UN Committee of the Status of Women and CEDAW.

My research of the position of the Commission has found that even though there have been improvements, there is still potential for strengthening its position by giving it greater power to report directly to the CSW on human rights violations by the federal government. Current arrangements for this relationship restrict this prospect. As featured earlier in this chapter, the current arrangement is outlined in Section 11.1 (e) of the Human Rights and Equal Opportunity Commission Act that the Commission must report to the minister if an inconsistency is found of any enactments with Australia's human rights obligations. There have been recent improvements in the ties between the Commission and the UN body that observes and promotes the human rights of women, namely the CSW. The signing of the Optional Protocol to CEDAW by the Rudd Labor government provides a mechanism for individuals to make a direct complaint to the UN about the protection of women's rights and gender equality in Australia (Honourable Robert McCelland & Honourable Tanya Plibersek, 2008). This strengthens the chain of

recourse in reporting government actions and policies and will provide another link between Australian women and the work of the UN. [33]

The CSW is a functional commission of the *UN Economic and Social Council* (ECOSOC), dedicated exclusively to gender equality and the advancement of women.[34] The CSW was established in 1946 to promote women's rights in political, economic, civil, social and educational fields (UN 2006). In its very early days, it was only attributed sub-commission status, until it was argued that a separate body to represent women's rights is necessary and it was given full commission status. The first session of the CSW was held in New York in February 1947 with attendance by the well-known Australian campaigner for women Jessie Street (UN 1995a).

As well as drafting CEDAW, the CSW was given the responsibility of monitoring individual states' obligations to the Convention. Article 18 of CEDAW outlines: 'states which are parties to the Convention are obligated to report within one year of ratification, and subsequently every four years, on the steps they have taken and obstacles they face in implementing the Convention' (UN 1995a). A committee within the CSW was created to fulfil this duty, the Committee on the Elimination of Discrimination Against Women. This committee is made up 'multinational experts' and it examines the government reports in public meetings at which government representatives are present to answer questions put by committee members (UN 1995a). It also requests information from UN agencies and NGOs to help its members assess the reports (UN 1995a). According to the committee, the input by NGOs in this assessment is also very important to the process.

Once the committee has deliberated on a state's performance, it issues general recommendations that provide detailed guidance to states on different Articles of the

[33] The signing of the Protocol occurred after the data-collection period ceased, therefore this project will not explore its implications. However, it is noted that it is a significant step for the Rudd government, a step the former Coalition government refused to make. This also provides further insight into the prioritising of women's human rights of the various federal governments.

[34] In 2010, The UN created the *UN Women Entity for Gender Equality and the Empowerment of Women,* where each of the separate sections dedicated to gender equity were merged into the *UN Women* group to bring together resources and mandates for greater impact. The CSW now belongs in the *UN Women* division.

Convention and the steps necessary to comply with them (UN 1995a). It is considered that these steps assist the government in pursuing compliance of the Convention, despite their non-binding status. Ratifying CEDAW committed the Australian Government to reporting on its pursuit of the articles outlined in CEDAW through policy and legislative mechanisms. It originally chose the federal Office for Women to fulfil this obligation, with the research and reporting conducted from this central 'hub' (Sawer 1990). It makes sense for this Office to prepare these reports to show how the Australian Government is prioritising women's human rights and equality as it has access to the initiatives and policy produced by many departments of the government. However, it could be assumed the federal Office for Women is motivated by interests to protect the government's international standing on human rights and may not provide a critical analysis of where or how the government could improve on its approaches to women's policy as the Commission could. This explains why until recently, the Commission was excluded from the reporting process. Earlier I explained the significance of including the national human rights institutions in the production of the reports as outlined in the *Paris Principles*, which is often based on the 'government's willingness' to involve the institution.

It was not until 2010 that the Commission was able to contribute directly to the reporting process (HREOC 2010). The Commission is now permitted to submit its own shadow report to the CSW on the Australian Government's observance of CEDAW. The absent voices of the Commission in earlier reports to the Committee reveals a former weakness in its position in the policy machinery. The Commission is able to offer a range of data and information about Australia's policies and legislation that could be improved to assist the promotion of women's political, economic and social position. The previous exclusion of the body that was created to monitor Australian women's human rights commitments in the reports to the UN CEDAW presents a sceptical position for the federal government.

What possible reasons would the government have had for not including the Commission in the production of the reports? It could be assumed that the exclusion of the Commission could be attributed to the government's fear of the Commission's data and

critique of policy and legislation that impacts on women's status in Australia. This is especially evident during the Howard years; examined further in Chapter six.

The final part of this chapter outlines CEDAW and its application in Australia. This includes when it was signed and ratified, and the reservations that were made at the time of ratification that have since been retracted. This provides a useful foundation for my analysis in Chapter seven of the problematisations of PML produced by the Commission that are constructed within a human rights framework—specifically because the problematisation rely on the strength of the articles contained in CEDAW.

Convention on the Elimination of All Forms of Discrimination Against Women in Australia

I have established that the central aim of this research is to investigate what possibilities the Commission has to contribute positively to women's progress. One of the strategies I have suggested thus far is for the Commission to challenge the regime of truth that circulates about the 'good mother'. I show in this section that this strategy is supported in CEDAW, the Commission's legislative powers regarding the promotion of women's rights in Australia.

As outlined in the preamble of CEDAW, there is a need for a specific human rights charter for women, as women still suffer from extensive discrimination. The definition of discrimination against women in CEDAW is featured in Article 1:

> Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

CEDAW was drafted by the CSW during the UN Decade for Women: Equality, Development and Peace between 1976 and 1985. A *Declaration on the Elimination of Discrimination Against Women* had been created and adopted by the UN General Assembly in 1967. However, its potential was limited as it had no enforcement powers (UN 1995a). The need for a legally binding Convention with effective implementation

procedures was explored at the World Conference of the International Women's Year in Mexico in 1975 (UN 1995a). A mandate for a draft of the Convention was set at the Mexico conference and working groups within the CSW began work on the articles in 1976 (UN 1995a). Deliberations of the Convention then moved to a working group of the Third Committee (which considers social, humanitarian and cultural issues) during 1977–1979. The UN General Assembly adopted CEDAW in 1979. The Liberal Fraser government signed CEDAW in July 1980 and it was ratified by the Hawke Labor government on 28 July 1983. The Hawke government made two reservations at this time to CEDAW. The first reservation was to Article 11(b), which was a specific reservation for women in armed combat or combat-related duties in relation to equal employment opportunities, including the application of the same criteria for selection in matters of employment (which has since been withdrawn).

The second reservation was to Article 11, paragraph 2 (b), to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances. In explanation of why the government made this reservation, it submitted the following to the UN:

> The Government of Australia states that maternity leave with pay is provided in respect to most women employed by the Commonwealth Government and the Governments of New South Wales and Victoria. Unpaid maternity leave is provided in respect of all women employed in the State of New South Wales and elsewhere to women employed under federal and some state industrial awards. Social security benefits subject to income tests are available to women who are sole parents. The Government of Australia advises that it is not at present in a position to take the measures required by Article 11, paragraph 2 (b). (UN 2006)

This reservation to PML is significant to my argument as it shows the history of the lack of support by the state for a federally-funded PML scheme for women. Ratifying CEDAW provided an opportunity for the state to implement this policy for women, and would have indicated the Hawke government's support for women's dual roles as workers and mothers, challenging the maternal citizen construct. This debate is explored in depth in Chapter seven, however, this reservation is highlighted here to contribute to the investigation of the discursive struggle over PML. It is also noted that this reservation

has been withdrawn as the Rudd government implemented a Paid Parental Leave scheme in 2011.

My inspection of the articles of CEDAW revealed that it contains two that could be regarded as supporting my argument that the Commission has the potential to challenge notions of the gendered subject that are harmful for women's progress, such as the 'good mother'. Article 5(a) specifies the state should aim:

> To modify the social and cultural patterns of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either sexes or on stereotyped roles for men and women. (CEDAW 1979)

It is suggested in the fourth and fifth reports on CEDAW in Australia, that it is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations (Office for Women 2003). This is specified in Article 5(b):

> To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Both of these Articles highlight the importance of challenging gender norms, but the second makes explicit reference to parenting being both women and men's responsibility. This means the Commission could challenge notions of the gendered subject in its problematisations in policymaking and have an awareness of the subject positions it makes available in policy debates (this is examined in Chapter seven). Challenging gender norms in policymaking is also central to the 'deconstructive equality' approach argued for in my research as a way of negotiating the restrictive gender binaries historically constituted in family policymaking.

Conclusion

This chapter has addressed two research questions. First, how the need for a human rights agency was problematised by different federal governments between 1977 and 2008 and how was motherhood constructed in these problematisations? Second, what are the

effects of the state's problematising of human rights on the Commission's legislative and material conditions during the period 1977–2008?

In response to the first question, I examined the establishment of the Commission in 1981 and again in 1986 by asking Bacchi's (2009) question one: what is the problem (of the Commission) represented to be. I argue that parliamentary debates about the creation of an 'independent' human rights body reveal the competing discourses about human rights. In relation to the need of a body to monitor human rights protection, the problematisations reveal supporters and opponents. The supporters regarded the Commission as necessary, arguing for increased powers and functions of the Commission than described in the proposed legislation. The opponents utilised discourses of fear regarding threats to state sovereignty, Communism and threats to the traditional family construct. By 1986, the discourses in the debates about the Commission had shifted so that instead of increased human rights protection being framed as the 'problem' that needed fixing, the Commission itself was being cast as the 'problem' and so should be abolished. I have argued that this can be identified as the beginnings of a regime of truth about the Commission that is carried through to arguments made by the Coalition government some years later.

In relation to how motherhood was constructed in these problematisations of a Commission—that has inferences to women's progress—discourses of motherhood were constituted in arguments for the role of the 1981 Commission to advocate for rights of the unborn child in its mandate; essentially another avenue to strengthen anti-abortion laws. As I argued in this chapter, abortion debates should be renamed motherhood debates (Cannold 1998) as they construct harmful subject positions for women in framing abortion as an issue of 'choice'. Choose abortion and a woman denies the subject position of mother. Deny motherhood and a woman is defying nature and her biological social function. My research shows discourses of abortion were so powerful in the earliest problematisations of a human rights commission that parliament delayed creating a commission until it could dispel the concerns of the anti-abortion advocates.

In response to the second question on the effects of problematisations, the result of the discursive struggles was a limited mandate which initially only allowed the Commission to inquire into and educate the Australian community and government on a limited definition of human rights, which, significantly for my argument, excluded women's specific rights. There were no enforcement powers, nor the ability to freely inquire into the state's legislation or policy. The change of government in 1983 led to the review of the 1981 mandate which, with much struggle and defence of the need for a human rights body, led to the 1986 Commission with a strengthened mandate to include cases of discrimination and the category 'women' in its definition of human rights. This shows that in spite of the negative regime of truth that was building about the Commission, the leading liberal-socialist Hawke government during this period successfully got the legislation through parliament, indicating that the discourses on the need for increased rights protection were stronger.

However, the 1986 Commission also suffered weaknesses in its mandate and positioning in the policy machinery in contrast to the guidelines of the UN on National Human Rights Institutions in the *Paris Principles*. The 'insecurity' of its budget with the state means its criticism of the government's policy and actions could potentially be limited out of fear of budget cuts. The emphasis in the *Paris Principles* on the 'financial autonomy' of the institution with a 'secured' budget is not met in the mandate of the Commission. I argue that the competing problematisations in these debates also determined where its structural location, as the emphasis was placed with the concern of Australia's international standing—how the state was perceived from the outside—and not necessarily on giving the Commission powers to make significant social changes by having a strong role in the reporting process to the UN CSW.

The 'independence' of the Commission to monitor and review federal legislation and policy and report on it with the assurance it will be tabled in parliament is included in its mandate. However, this chapter identified the ability for parliament to ignore its recommendations and its inconsistent involvement in the direct drafting of legislation as a weakness of the Commission. Although, perhaps statutory authorities suffer from the

constant paradox of 'independence': for it is only ever relative and without state support such institutions would not exist at all.

The focus of the Commission's position in the women's policy machinery culminates with its relationship between the state and the CSW. This chapter has shown how its position has only recently been strengthened with its inclusion in the production of the reports to the Committee on the Elimination of Discrimination Against Women. Despite the Commission's statutory authority status and the 'independence' this is meant to give the Commission, there are avenues for strengthening its powers and position in the women's policy machinery. Its potential to contribute to women's equality would be greater if it were endowed with the powers explored in this chapter.

In summary, I have discussed how the state came to develop its response to local and international demands for the state to pursue human rights. Compromises were struck in order to achieve at least some machinery in a statutory authority that retains some independence (enough to do something without threatening overall state power). By assessing how a human rights commission was problematised in parliament, my research reveals the strong contestation that existed over representation of 'rights' but also the invisibility of women's particular rights as well as the regime of truth that circulated within the state about the traditional, nuclear family. The gender neutrality inherent in liberal notions of 'rights' is evident as the problematisations cast the Commission as a threat to the private sphere and the gender norms that are reflected in the traditional family construct.

By applying Bacchi's (2009) genealogical approach that asks: *How has this representation of the problem come about,* this chapter has identified the beginnings of a regime of truth about the Commission as a 'problem' that contributed to the contestation examined in Chapter six. A regime of truth of the 'good mother' as utilised by the state within a human rights framework is also revealed and shows the history of the meaning-making process about the 'good mother'. This sets a foundation for the analysis in Chapter seven of whether a regime of truth is sustained by the Commission as an agent of

the state about the ‘good mother’ or whether it has the potential to challenge the gendered subject and contribute to women’s progress.

Chapter 6
'Effects' of the problematisations of the Commission 1986–2008

> That the only constant is change has particular relevance for the Human Rights and Equal Opportunity Commission. (Boniface 2003:, p. 8).

Chapter six addresses the second main research question of this thesis: what are the effects of the state's problematising of human rights on the Commission's legislative and material conditions. Continuing on the discussion of the liberal and/or neoliberal state and the competing discursive strategies from Chapter three, Chapter six provides an analysis of what occurred regarding the independence of the Commission (its mandate and budget) in four federal governments in the periods of Hawke, Keating, Howard and Rudd (between 1986 and 2008) utilising Bacchi's question five: *What effects are produced by this representation of the problem?* This chapter applies the evolution of policy logic from liberal to neoliberal as it relates to the problematising of human rights and provides a critique of both Labor and Liberal governments, again utilising Bacchi's question three: *How has this representation of the problem come about?* The point of asking this important question is to argue that the Commission does not exist in a vacuum but rather is constrained by its discursive and material relationship within the state. Ultimately, this influences *what it can say* in its problematisations in policymaking. This chapter also shows that applying a poststructuralist understanding to the power of the state provides a hopeful account of the possibilities for change and the potential of the Commission to contribute to women's progress.

I adopted Bacchi's (2009) WPR approach to analysing policymaking in Chapter five to examine the disputation in parliament over the need and functions of a human rights institution in different problematisations of the Commission. This chapter also engages this framework to examine discourses of 'rights' and how they are constituted in the problematisations, especially in relation to the need for human rights protection and in support of a human rights agency. This contributes to how the different federal governments related to the Commission on its mandate and material conditions. I argued

in Chapter five that a competing regime of truth began in the earliest problematisations about the need for a human rights commission, which this chapter carries through to the problematisations of the Hawke, Keating, Howard-Coalition and Rudd governments. My research is most concerned with understanding the regime of truth that constructs the Commission as a 'problem'—as a threat to state sovereignty, a threat to neoliberal notions of 'rights', and a threat to the traditional, nuclear family and the gendered subjects this creates—as this has the potential of undermining the Commission's potential to contribute to women's rights. I also argued in Chapter five that the Commission's power to criticise the government as a strategy to contribute to social change has meant that its relationship with the state is ambivalent. Its insecure budget produces a paradox, as the Commission should be able to comment fearlessly on whether the government is meeting its human rights obligations, and yet it is not given this security.

In this chapter, I show how the different federal governments have demonstrable intent and capability to strengthen or weaken the functions and powers of the Commission's mandate. There have been many critiques of the Coalition government's attempts to undermine the Commission's powers (Bailey 1999; Boniface 2003; Dasvarma 2003; Stott Despoja 2003; Gaze 2000; Hearn 2003; Summers 2003). However my research fills a gap in the research by examining the conflict that has occurred over the Commission's 'independence' in the period 1986–2008. In this chapter, my focus shifts away from addressing the problem of the regime of truth, or 'conceptual logics' (Bacchi, 2009, p. 35) of the 'good' mother that are circulated by the state and constitute problem representations in policy that I return to in Chapter seven.

In adopting Bacchi's (2009) approach, importance is placed on those involved directly in the policy process, as they develop the representation of the problem. This chapter demonstrates that the Hawke and Keating Labor governments were making progress in improving the status of women in policymaking, within the constraints of a liberal structure, but the Coalition government severely undermined these developments utilising discourses of anti-elitism, the traditional family, and religion. This chapter argues that the Commission needs stronger legislative and material autonomy to protect it from the

discursive strategies of different federal governments and support its potential to contribute to women's progress.

This chapter is divided into the following sections to address the thesis central research question two on the effects of the state's problematising of human rights on the Commission's legislative and material conditions during the period 1986–2008. I first discuss the tensions that exist within a liberal-democratic framework as it shapes the governance structures of the Australian state and as it relates to the Commission. This discussion is important to the analysis in this chapter as it provides an additional lens with which to assess how the apparatuses of the state relate to one another. The subsequent sections examine the relationship between the Commission and the different federal governments in chronological order, starting with the Hawke Labor government (1986–1991), Keating Labor government (1991–1996), Howard Liberal-Coalition government (1996–2007) and Rudd Labor government (2007–2008).

The liberal-democratic framework: possibilities and limitations

This section discusses the tensions inherent to a liberal-democratic framework that influences the relationship between the state apparatus that applies to the Australian liberal-democratic state. I argue that the increased influence of a neoliberal logic creates further tensions that also need to be considered in the assessment of the relationships within the state. In broad terms, categorising the Australian state's governance system as working within a liberal-democratic framework means we have a representative government as well as historical intent for allowing dissent to a degree to be expressed (Vromen et al. 2009, pp. 25–26). This aspect of democracy is significant as it provides the capacity for public debate, and dissent ensures continued accountability for decision-making (Hamilton & Maddison 2007, p. 1). The expression of dissent can be viewed in the creation of the Commission, as this thesis has already established that it was created for the purpose of monitoring the government's maintenance of human rights obligations. An additional check and balance is created that is inherent to the separation of powers, that is also intrinsic to Australia's liberal-democratic governing system.

Maddison (2007) suggests that Australia did not begin as a democracy, as the British Constitutional Monarchical arrangement set the foundations of the system of governance. This is one of the reasons that it is still a 'work in progress' (Maddison 2007, p. 25) and its fragility has been taken advantage of by various governments (but particularly for my research, the Coalition government). As was argued in Chapter three, Hamilton and Maddison (2007) construct a strong case about the different strategies of the Coalition government to dismantle democratic processes that support public debate (p. 2).

Tensions exist within liberal-democracies because liberalism promotes a limited role of government and for the individual to pursue 'maximisation of their own, rationally conceived interests' (Emy & Hughes 1993, pp. 246–247). Whereas democracy embodies the idea of government by all the people, including minorities (Vromen et al. 2009, p. 34), people are generally free to express dissent and criticise government institutions and representatives (Vromen et al. 2009, p. 41). Brown (2003) takes this further by arguing that with the shift to neoliberalism, democracy is under threat as the competition and power of the marketplace take precedence over the desire for democratic principles. As she states:

> There is nothing in liberal democracy's basic institutions or values – from free elections, representative democracy and individual liberties equally distributed, to modest power-sharing or even more substantive political participation – that inherently meets the test of serving economic competitiveness or inherently withstands a cost-benefit analysis. (Brown 2003, p. 9)

I show in this chapter that the democratic role of the Commission was undermined as the Coalition government attempted to silence the dissenting voice of the Commission and place restrictions on its autonomy. Within this system, claims can be made for the legitimate power of the Commission to engage the state, as well as the resistance demonstrated by the Commission and the minority governments as the Coalition government made attempts to weaken its powers.

I discussed the complications of adopting a Foucauldian approach to the power of the state in Chapter four, and found that like others (Brown 2006; Fraser 1989; Jessop 2008; Smart 1996), I was not prepared to disregard the power of the law. It is important then, to

outline how the liberal-democratic system of government influences the power of the Commission. This power is composed within a number of networks. Franzway, Court and Connell (1989) suggest we should view the power relations within the state as 'multiple, overlapping and sometimes contradictory apparatuses at work (p. 18). These apparatuses, as Hall (1987) suggests in reference to relative autonomy, can be a positive form of constrained division that can become places of power for distinct interests, such as the Commission.

This power is co-constitutive (Chappell 2002a), erratic and disconnected at times, which is evident in the position of the Commission. Where engagement with the state on social justice and human rights issues often occurs 'outside' the state through the lobbying of NGOs and social movements, the Commission is situated within the state's networks. What this means is that it has greater power on some levels than those engaging with the state from the 'outside'. But this chapter shows that it is limited by its material conditions, its statutory authority status, and its position as an administrative body. These networks of power are intrinsic to a liberal-democratic system. First, the Commission is limited by its position as an administrative body, rather than as a judicial body. Where the Commission has the responsibility to mediate and conciliate cases of discrimination, this chapter demonstrates its lack of power to make a determination and enforce the decision has also inspired conflict with the various federal governments. Second, an important network of power is found in its relationship with the international human rights community. Its mandate is underpinned by UN Human Rights Conventions and Covenants that met the criteria for the Fraser government to use Section 51 on External Powers of the Constitution to create the Commission. This provides the Commission with the support and weight of the international human rights community as the federal government entered into agreements with the UN to meet its human rights obligations on ratifying the various human rights charters. As the body that monitors the government's actions and policymaking, it could be viewed as the mediating body between the executive arm of government and the UN.

However, as elaborated in Chapter five, this power is not realised to its full potential as the Commission has a minor role in contributing to the reports to the UN CSW on Australia's implementation of CEDAW. On the one hand, the Commission has power to inquire into government policy based on meeting its human rights obligations and advise the government to make changes on a national level. On the other hand, its knowledge and its data on women's status in Australia is not used consistently in the reports, which deny the Commission international power to engage with the state to bring about social justice goals for women.

A third network of power is found in its statutory authority status. This is supposed to provide it with a level of 'independence' from the executive arm of the state and the conditions to engage with or challenge the state (MacIntosh 2007). Statutory authorities are an additional tool of liberal-democratic governments to provide another level of 'checking and balancing' that exists in the separation of the arms of the state (executive, judiciary and administrative). As outlined in Chapter five, statutory authorities are established by a specific Act of parliament to fulfil prescribed responsibilities and are created when independence is needed and close association with any political party is undesirable (Grant 2005). However, this produces insecurity; as Williams (1999) suggests, 'once the Federal Parliament has bestowed a right or entitlement in a statute, it is equally competent, under the doctrine of parliamentary sovereignty, to take such a right away' (p. 6).

I argued in Chapter five that this 'independence' provided to statutory authorities is always going to be relative, and contradictory, as it relies on the federal government for its material resources. As the budget of the Commission is not secured, as suggested it should be by the *Paris Principles*, its power to engage with the state on the gender order is tenuous. If a ruling government is not supportive of the Commission and its objectives, it can easily undermine its power by taking away its material conditions without consultation with parliament. As Franzway, Court and Connell (1989) argue, resources are central to determining what can and cannot be done by organisations working towards social justice goals.

This chapter explores how the different federal governments between 1986 and 2008 engaged with the different networks of power by investigating the changes the governments made to the Commission's mandate and how generous they were in their funding of the Commission. While not all legislative changes to the mandate relate directly to the potential of the Commission to pursue women's progress, they are included to demonstrate the intent and capability of the different federal governments to weaken or strengthen the powers of the Commission and the conflict which occurred over the Commission's relative autonomy. Hence, they still relate to how the Commission was being problematised. To reiterate a point made earlier, my research is most concerned with the regime of truth that constructs the Commission as a 'problem'—as a threat to state sovereignty, a threat to neoliberal notions of 'rights', and a threat to the traditional, nuclear family and the gendered subjects this creates—as this has the potential of undermining the Commission's potential to contribute to women's rights

I argue in this chapter that this discursive shift involved more than just economic policies but was also about shaping problematisations in policymaking and identity categories (Bacchi 2009). Efforts by the Labor government to conceptualise a more 'inclusive' (Johnson 1996a) ideal of the 'individual' (Johnson 2000) in discourses of liberal politics by taking into consideration multiple-gendered, raced, and heterosexual and homosexual identities, were challenged by the Coalition government with its conceptualisations of the individual as the benchmark figure of a 'white, Anglo-Celtic, heterosexual, male' (Thornton 2006).

Hawke Labor government and the Commission 1986–1991

In this section I discuss the relationship between the Hawke government and the Commission that can be assessed in the 'effects' of the problematisations of the Commission. As Chapter five showed, the Hawke government created a stronger mandate for the 1986 Commission than the 1981 Commission, and this was sustained in the six years that followed its establishment. One of the significant changes to the Commission's mandate between 1981 and 1986 was the attachment of the SDA and the SDC, who is

responsible for the monitoring and the promotion of the articles of the SDA (for a detailed outline of the mandate and the changes between 1981 and 1986 see Chapter five). In this section, I show how the Hawke government's discursive strategy of a politics of 'consensus' and 'social harmony' (Johnson 2009) meant that its vision for Australia was one which drew on social-liberalism and discourses of capitalism, as it saw that a strong capitalist economy could provide for all Australians. The emphasis on 'consensus' for the Hawke government incorporated some recognition of disadvantaged positions of gendered, racial and ethnic groups as specific groups that needed attention (Johnson 2009).

The 'effects' of the Hawke government's discursive strategy is demonstrated in the positive relationship it maintained with the Commission. The Hawke government supported the relative autonomy, and hence independence, of the Commission by strengthening its mandate with three key legislative changes. This shows that despite its implementation of a 'watered-down form of neo-liberalism' (Johnson 2000, p. 26), it constituted social-liberalist discursive strategies in the commitment to broad equality goals (Chappell 2002b). In other words, its economic policy presented a sharp shift away from the welfare state, but the problematisations in social policy of the Hawke government reflected attempts to address inequality. According to Johnson (2009), there was no contradiction for the Hawke government between the economic and the social as it believed equity in the distribution of income and power comes from a strong national economy.

This analysis addresses the attempts to strengthen the mandate and the Commission's structure/functions as an effect of the positive problematisations of 'rights' protection within a framework of social-liberalism, but only examines those that had a significant impact on its powers/functions or those that relate to women's equality. The first legislative change was the creation of the *Privacy Act 1988,* which is underpinned by Article 17 of the ICCPR on the right to privacy (HREOC Annual Report 1989–1990, p. 14). The second addition to the Commission's mandate during Hawke's leadership was the additional grounds of discrimination included under the International Labour

Organisation *Convention Concerning Discrimination in Respect of Employment and Occupation* (ILO 111) (1989–1990 Annual Report, pp. 28–29). The third addendum to the Commission's mandate was strengthening the Racial Discrimination Act to include 'indirect discrimination' on the basis of race as a ground for complaint. These three additions to the Commission's mandate signify an effort by the Hawke government to strengthen the grounds to challenge discrimination and provide greater recourse for those who have suffered discrimination in the public sphere. This also articulates the discourses of 'equality', 'justice' and 'human rights' in the policymaking by the Hawke government.

The Hawke government also demonstrated its support of the Commission's work by increasing its budget. Where former President of the Commission, Ronald Wilson, explains how the reconfiguration of the 1981 Commission to the 1986 Commission—with the different structure of a small body of full-time staff—was in part attributed to the 'need for cost savings' (1989–1990 Annual Report, p. 13), the Hawke government actually increased its budget contributions to the Commission significantly between 1986 and 1991. The budget contribution almost doubled over a three-year period between 1988 and 1991 from $5.61 million (HREOC Annual Report 1989–1990, p. 161) to $10.65 million (HREOC Annual Report 1991–92, p. 181). Even with high inflation, this figure when compared to the budget contribution to the 1981 Commission in its last year—$4.76 million (1984–1985 Annual Report, p. 85)—demonstrates that the Hawke government intended to provide sound material conditions for the Commission to be able to fulfil its functions of pursuing 'equal opportunity', 'equality' and 'rights' for disadvantaged groups in Australia, including women. This supports the suggestion that the Hawke government made policy within a framework of social-liberalism as it invested resources into addressing inequality (Sawer 2003a) and worked towards the 'collective good' (Thorton 2006) of the nation. The addition of the Privacy Act to the Commission's mandate and the steady increase of complaints lodged with the Commission created the need for staffing increases and budget contributions.

My research of the changes to legislation, annual reports and other existing documents found no evidence of public concern over the employment or departures of the presidents

and Commissioners during the Hawke years. This could indicate that the government allowed the Commissioners to fulfil their roles and that they were employed on 'reputable' grounds.[35] It could also mean that nothing was reported publicly. It appears that the Hawke government respected the relative autonomy of the Commission and the power of its mandate to permit the Commissioners to comment on the government's actions and policies. However, it is noted that the Commission did not produce many reports that directly criticised the government's policies between 1987 and 1991. The inquiries included; *Aboriginal Juveniles and Police Violence*, *Aboriginal-Police Relations in Redfern*, *The Experience of Overseas Medical Practitioners in Australia*, *National Inquiry into Racist Violence in Australia*, *Provision of Health and Medical Services for Aboriginal Communities of Cooktown*, *Hopevale and Wujal Wujal*, *Toomelah Report*, *Race Relations in the Workplace*, *Insurance and the Sex Discrimination Act* and *Personal Information Digest*.

The first President of the 1986 Commission was Justice Marcus Einfeld, who was specifically interested in the disadvantage of Aboriginal Australians. This is evident in his leadership of the Toomelah Inquiry, which addressed the poor conditions of the Aboriginal residents of Toomelah, Goondiwindi and Boggabilla on the New South Wales-Queensland border (Annual Report 1987). Justice Einfeld resigned after three years as president on account of his already heavy workload as a Federal Court Judge (1989–1990 Annual Report, p. 21). Justice Einfeld was replaced by Sir Ronald Wilson, who was a former Senior Pusine Justice of the High Court of Australia. Wilson was appointed President on 7 February 1990 for a five-year term. This was extended for another three years, to 1997.

The existing documents show that in spite of the discursive shifts which took place during the Hawke government's reign with the adoption of neoliberal economic policies, his government attempted to maintain a 'social justice', 'social harmony' or 'social democracy agenda' (Crowley 2009, p. 120; Johnson 2000, p. 27; Mackinnon 2009,

[35] Later in this chapter I demonstrate that the Coalition government's interference with the work of the Commission and appointment of 'questionable' Commissioners threatened the independence of the Commission.

p. 47). The Keating Labor government pursued a similar 'social democracy agenda', although there was even greater pressure to balance this with the demands of globalisation and neoliberalism.

The Keating Labor government and the Commission 1991–1996

Wills (1995) suggests that the Keating government achieved most in the area of enabling individuals to exercise their rights by embodying those rights in legislation or enhancing those already protected. This is demonstrated in this section by the Keating government's treatment of the Commission in reference to its mandate, budget and employment or departure of its leaders that shows the 'effects' of the problematisations. While Labor's economic policies marginalised the minority—especially those who did not contribute to Keating's vision of merging the social with the economic (Castles 2001; Wiseman 1996)—his government legislated for equal opportunity in the workplace, constituting social-liberalist discursive strategies (as argued in Chapter three).

According to Johnson (2000), 'one of Keating's legacies was to develop a more inclusive conception of the Australian citizen (p. 49). This was attempted by including 'all groups, including business, trade unions, women, ethnic minorities, gays and lesbians into creating a new, restructured, post-Fordist, technologically advanced Australian economy that would face the challenges of globalisation' (Johnson 1996b, p. 103). The discourses of inclusion were also challenging dominant conceptions of Australia's 'national identity' as white, working class, and male. Curthoys (1993) suggests that Keating's 'national identity' sought to draw out the whole population by including Indigenous Australians, immigrants of all ethnic origins and women.

By applying Bacchi's (2009) approach to policymaking to frame my argument, I argue the Keating government articulated discourses of globalisation and citizenship identity in its policymaking. In these problematisations, multicultural policies and women's equality and neoliberalism complemented each other and therefore there is a need for stronger rights protection. Economic growth was seen to be reliant on the participation of all Australian citizens in the workforce (Johnson 2000). In other words, everyone in

Australia is equal and welcome if they can contribute to the economy and, to utilise Wills (1995) view, this is achieved by strengthening anti-discrimination mechanisms, such as through the Commission.

The Keating government strengthened the Commission's mandate significantly with the addition of powers to the Commissioners and grounds for discrimination in six separate pieces of legislation. Among the changes, several relate specifically to the SDA, which indicates the larger discursive strategies encompassing progression of women's equality *and* the women's policy machinery still had discursive power to influence federal policymaking. Other efforts to strengthen the mandate demonstrate how and when the Commission's powers were increased. Yet, there was some resistance and, in effect, these changes were overturned.

The first legislative change to the Commission's mandate by the Keating government was the *Disability Discrimination Act 1992*. As with the other anti-discrimination legislation, this Act was attached to the Commission's mandate with the assent of the *Human Rights and Equal Opportunity Amendment Act 1992* on 3 November 1992. This Act detailed the creation of a new office within the Commission which dealt with disability discrimination cases, as well as the employment of a Disability Discrimination Commissioner. This increased the Commission's membership to six (Commonwealth Bills Digest 1992a).

The second legislative change to the Commission's mandate by the Keating government was the Human Rights and Equal Opportunity Legislation Amendment Bill (No. 2) 1992 which proposed two key modifications to strengthen the mandate. The first was the establishment of an Office of Aboriginal and Torres Strait Islander Social Justice Commissioner within the Commission. The principal function of the Commissioner is to provide a yearly report to the Attorney-General on the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders (Commonwealth 1992b). The proposal of the office arose from the recommendations made in the *Royal Commission Inquiry into Aboriginal Deaths in Custody* (Labor Attorney-General Duffy, House of Representatives Hansard, 3 November 1992).

The second modification in this legislation was the addition of 'family responsibilities' to the SDA in relation to grounds of dismissal of a worker. This modification was a result of the federal government ratifying the *International Labour Organisation Convention 156* (Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities) and the establishment of an interdepartmental committee to coordinate the development of a strategy of implementation of the Convention. The addition of 'family responsibilities' to the SDA was the first stage of the implementation recommended by the committee. Attorney-General Duffy put forward a second stage that involved 'wide ranging consultations with a view, at this point, to a further amendment to the SDA to prohibit more generally discrimination in employment on the ground of family responsibilities' (House of Representatives Hansard, 3 November 1992). There were wide-ranging consultations by the federal government on how to strengthen women's equality (as outlined further in this section); however, the issue of family responsibilities was incorporated in these consultations and not treated as a separate issue as suggested in Attorney-General Duffy's announcement.

The third legislative change was made with the assent of the S*ex Discrimination and Other Legislation Amendment Act 1992* in May 1993. It is noted that Prime Minister Keating introduced the Act to parliament, instead of the Attorney-General, who usually introduces such legislation. This is expounded by Keating:

> It is unusual, Mr Deputy Speaker, for a Prime Minister to introduce legislation. I do so today to emphasise the importance of these amendments and to take the opportunity to restate and re-emphasise the Government's commitment to constant vigilance when it comes to improving the status of Australian women. (Prime Minister Paul Keating, House of Representatives Hansard, 3 November 1992)

This demonstrates the Keating government's prioritising of women's policy and legislation and the importance of the Prime Minister to be the lead actor constituting women's equality as a dominant discursive strategy of the government. This occurred within the context of larger neoliberal strategies of the government and how 'women's equality' fits with this agenda in the following statement made by Keating: 'We as a government recognise the important contribution to the Australian economy made by

Australian women, and we do all that we can to encourage their greater participation' (Prime Minister Paul Keating, House of Representatives Hansard, 3 November 1992). This supports Johnson's (2000) argument that Keating's commitment to women's equality is closely related to the pursuit of economic growth, as Keating linked women's greater participation in the public sphere with a national economic agenda and not a feminist agenda.

Although the framing of the need for this legislation may have been problematic from a feminist perspective, these changes to the SDA were significant for women's equality. The proposals in this Act were founded on the recommendations made in the report titled *Half way to equal: Report of the inquiry into equal opportunity and equal status for women in Australia, 1992* (Commonwealth 1992) conducted by the House of Representatives Standing Committee on Legal and Constitutional Affairs. This committee was chaired by MP Michael Lavarch, providing it with the alternative name of the Lavarch Report. The report was released on 30 April 1992 and was based on one of the most wide-ranging and comprehensive inquiries ever conducted into the status of women in Australia (until the 2008 inquiry conducted by the Rudd Labor government into the SDA). Included in this report were multiple recommendations for amending the SDA, and improving the functioning of the SDC and the Commission.

The recommendations which were adopted by the Keating federal government in this legislation included: strengthening the sexual harassment provisions by including harassment of staff by students and sexual harassment in the provision of goods and services; extending the provisions of the SDA to federal industrial awards and variations to federal awards made after the date of the legislation; and allowing complaints of victimisation (as result of pursuing a case of discrimination) to be dealt with by the SDC by conciliation.

Perhaps the most significant change was allowing the enforcement of determinations made by the Commission with the Federal Court. Where determinations made by the Commission previously had to be heard 'again' by the Federal Court to enforce the

decision, this legislation allowed for a determination to be registered with the Federal Court and have the effect of being an order of the court unless the respondent to the determination applies to the court within twenty-eight days for a review of the determination (Commonwealth 1992c). However, the amendment on the enforcement of the Commission's decisions raised constitutional concerns and was subsequently overturned.

The fourth legislative change to the Commission's mandate was presented in the Law and Justice Amendment Bill 1993. This Bill attempted to rectify some of the issues that arose from the Sex Discrimination and Other Legislation Amendment Act about the enforcement of determinations, and also to bring all anti-discrimination legislation in line. In relation to enforcement of determinations, this Act proposed that respondents would be allowed to apply for a review of the determination by the Commission *outside of the 28-day review period*, with the leave of the Federal Court (Commonwealth 1993b). Concerns were raised about the constitutional validity of the procedure enacted in the 1992 legislation because it effectively allows the Commission to exercise judicial power of the Commonwealth. This would be a breach of the separation of powers, which requires that judicial power be only exercised by the court (Commonwealth 1993b). This resistance was a result of the *Brandy case.* Mr Harry Brandy, an employee of Aboriginal and Torres Strait Islander Commission (ATSIC), challenged the constitutionality of the registration and enforcement provisions in a case where he was found guilty of unlawful discrimination under the Racial Discrimination Act. This Bill was assented in February 1994, effectively weakening the powers of the Commission which had been enacted in the Sex Discrimination and Other Legislation Amendment Act.

The fifth legislative amendment was presented in parliament in 1994, under the title Human Rights (Sexual Conduct) Bill. This Bill provided that sexual conduct involving consenting adults acting in private was not to be subject, by or under any law of the Commonwealth, a state or a territory, to any arbitrary interference with privacy. This legislation responded specifically to campaigns against the discrimination and persecution of gays and lesbians in some parts of Australia, specifically in the state of

Tasmania where homosexual acts were still a criminal offence in the early 1990s. This legislation overturned the *Criminal Act of Tasmania* so that sexual acts which were conducted in private could not be monitored by the state. The legislation was attached to the Commission's mandate so that it could monitor state and territory policy and actions and take complaints under this Act.

The sixth and last legislative change made to the Commission under the Keating government was the Human Rights Legislation Amendment Bill 1994 (1995). This was perhaps one of the most significant changes made to the Commission as, where other changes related to grounds of discrimination or particular processes, this was concerned with the powers, structure and functioning of the Commission. This legislation was based on a joint review conducted by the federal Department of Finance, Attorney-General's Department and the Commission on the role, functions, efficiency and effectiveness of the Commission (Commonwealth 1995). This report made a number of recommendations that formed the basis of this Bill and were predominantly structural in nature, which reflected the widening of the Commission's powers since it was created in 1986 (Commonwealth 1995). These recommendations included: shifting the general management of the Commission from the Human Rights Commissioner to a nominated Chief Executive Officer and making the Commission a body corporate; the operation of the Commission in a collegiate fashion; and re-writing all human rights legislation in plain language (Commonwealth 1995).

The other key recommendation related to the mechanism of enforcement of determinations which were implemented in the Sex Discrimination and Other Legislation Amendment Act. Where the Law and Justice Amendment Bill 1993 aimed to address the issue of constitutional validity by extending the review time, the High Court ruled the enforcement mechanism constitutionally invalid in the *Brandy v HREOC* case in February 1995. A consequence of the High Court ruling left the Commission without a mechanism to enforce its determinations, which this piece of legislation aimed to address. As Labor MP Lavarch states:

> to ensure that the victims of discrimination are assured of continued protection, the government has acted swiftly to secure the authority and credibility of the

> Commission. The amendments will reinstate the procedure for enforcement of determinations made by the Commission which operated prior to the enactment of the invalidated scheme. (House of Representatives Hansard, June 1995)

Lavarch is commenting here on how procedures for enforcement of Commission determinations were to revert to the pre-1993 position. The complainant has to go through two hearings in order to obtain an enforceable determination in a race, sex or disability discrimination matter.

The material conditions of the Commission under Keating indicate that there were a number of tensions as the Commission's functions were expanded but the federal government's budget contributions did not reflect or support this expansion. The legislative changes listed above necessitated an increase in resources and funding and although the budget increased over the period of Keating's leadership, it was not sufficient to accommodate the increase in complaints which occurred over the same period. President Ronald Wilson expresses this concern here:

> The most pressing issue facing the Commission is how to fulfil its charter when the demand for complaint-handling services has so dramatically outstripped our resources. During the past year the Commission has allocated a much-increased proportion of its budget to complaint handling and in the process has reduced its other activities. Nonetheless, there are now delays in complaint handling that are unacceptable to parties and to the Commission. These have occurred primarily because the limit of available funding has been reached. There is an old but worthy saying that justice delayed is justice denied. It is now patently obvious that the responsibility to deliver justice is not being met as well as it should be. (cited in HREOC Annual Report 1994–95, p. 5)

The government's contributions increased from $13.1 million in 1992 to $18.8 million in 1995, which was a significant boost (figures sourced from HREOC Annual Report 1992–93 and 1995–96). Evidently though, the longest serving president in the Commission's life-time (1990–97), considered this to be insufficient. This suggests that although the Keating government promoted discourses of equity and inclusion by legislating for minority rights and equal opportunity in the workplace, it did not provide the necessary material conditions for the legislative mechanisms to achieve the intended aims and goals.

The employment and departure of its Commissioners does not indicate a severe clash of interests under the Keating government (as will be demonstrated under the Coalition government). The relative autonomy is respected in this regard. Sir Ronald Wilson was the president throughout the period of Keating's leadership and led one of the most important inquiries conducted by the Commission—for reconciliation between Indigenous and non-Indigenous Australians on the past abuse of human rights in Australia by the Australian Government in its policymaking. The inquiry into the separation of Aboriginal and Torres Strait Islander children from their families and subsequent report *Bringing them home: The 'stolen children' report* (1997) led to extensive publicity of the issue which created greater lobbying of the government to address the recommendations in the report. It took eleven years for the government to address the recommendation of an official apology on behalf of the Australian Government; however, the report and a subsequent report produced to mark the ten-year anniversary of the initial report *Us taken away kids* (2007) contributed to the wide-reaching publicity and the Rudd government's apology on 13 February 2008.

The SDCs during the period 1991–1996 were Quentin Bryce and Susan Walpole. Bryce began her five-year contract as SDC in February 1988 and completed the term in February 1993. Bryce had spent much of her career in the areas of equal opportunity and women's equality initiatives as an academic lawyer. She was Director of the Women's Information Service in Queensland as well as women's representative to the National Committee on Discrimination in Employment and Occupation (ILO 111).[36] Susan Walpole was selected by the Attorney-General as SDC after Bryce in February 1993. I note that the position of SDC was filled consecutively with an appointee, and no time lapsed where Australia did not have an SDC (as has occurred at other times). Walpole's background is in law and industrial relations and she held the positions of Principal Executive Officer for the Women's Bureau and the Deputy Director of the Affirmative Action Agency prior to becoming the SDC. Both women are trained in law and have experience in the women's policy machinery.

[36] Quentin Bryce was appointed Governor-General of Australian on 13 April 2008.

This section has shown how the Keating government supported the work of the Commission in its problematisations that translated to positive 'effects' on its mandate and budget. Towards the end of Keating's leadership as PM, though, his government was criticised for not providing enough funding for all of the additional functions it was given (Wilson 1995). This section has demonstrated that the Keating government utilised both discursive strategies of social-liberalism and neoliberalism to produce an argument to strengthen the Commission so that everyone has the opportunity to participate in the global economy. This shows the increased utilisation of neoliberal logic that is taken further by the Coalition government. The following section shows, however, the Coalition government's constitution of neoliberal discourses takes on a different shape to the Hawke and Keating governments that is problematic for the Commission.

The Howard-Coalition government and the Commission 1996–2007

This section shows that the Howard-led Coalition government era was characterised as a period of conflict between the federal government and the Commission. Bacchi's (2009) WPR approach points to an important shift. Rather than view inequality of minority groups, including women, as a problem, the Coalition government represented *the Commission as a problem* for a number of reasons. The contestation between the Commission and the Coalition government is also explained by making links to the discursive shifts discussed in Chapter three. First, the Commission was framed as representing special interests that clashed with the federal government's claims of governing for the mainstream (Johnson 2000; Sawer 2003b, 2004, 2006). Second, it was seen as representing the interests of the international human rights community rather than Australia's sovereign interests (Sawer 2006). Third, it did not contribute directly to the economy and therefore did not support the neoliberal agenda that promoted the idea of a 'smaller government' (Thornton 2006). Instead of viewing the inequalities which exist in Australian society as a problem and therefore needing greater protections and policy in this area, the Coalition government cast the Commission as the problem. I argued in Chapter five that this regime of truth about the Commission can be found in earlier parliamentary debates about the Commission. I show in this section that the Coalition

government also utilises this regime of truth in its arguments for weakening the powers of the Commission.

As my methodology chapter (Chapter two) explains, I look at *multiple sites* to assess how/where the representation of the 'problem' is produced, disseminated and defended, as Bacchi (2009) suggests: 'The approach can be applied to debates surrounding policy issues in public venues such as parliaments or the media, to policy documents such as committee reports and to policy proposals in the shape of legislative or judicial decrees' (p. 265). This section draws on a range of sources and data to assess the 'effects' of the problematisations—especially the public and political debate that occurred over the actions of the Coalition government. This highlights the broader continued support of the Commission as well as the resistance to the regime of truth the Coalition government was circulating. As many others (Bailey 1999; Boniface 2003; Dasvarma 2003; Human Rights Council 2003; Stott Despoja 1999, 2003; Summers 2003) have demonstrated concern over the conditions of the Commission, I utilise existing critiques in this analysis but make a new contribution to knowledge by adding an analysis of legislation and the budget over the whole period the Coalition government was in power (1996–2007) with the application of Bacchi's WPR approach (2009).

The Coalition government made numerous attempts to weaken the mandate of the Commission and undermine its potential to contribute to women's equality by cutting its funding between 1996 and 2007. As suggested by Boniface (2003), when these proposed changes are viewed collectively, it indicates that the Coalition government was unhappy coexisting with the Commission. It is suggested that the efforts to weaken its powers were a response to various reports published by the Commission on issues such as the 'stolen children'; discrimination by sexual preference; detention of illegal immigrants and children; and discrimination and disability rights (Singleton 2000). These reports, and quite a few of the Commissioners during this period, were critical of the Coalition government's actions.

The Coalition government's response to this criticism within its first year of leadership was to significantly reduce the Commission's funding so that it had to shed one third of its staff (Tay 1998, p. 4) and to undermine its powers with attacks on its role as enforcers of Australia's federal anti-discrimination legislation. The cuts to the funding also meant the Commission had to consider its priorities, which were first and foremost its statutory obligations to complaint handling (Report by the Labor members of the committee, *Senate Legal and Constitutional Affairs Committee*, Sidoti cited in Bolkus & McKiernan 1997). This meant that inquiries into whether the government was meeting its human rights obligations in its policymaking were downgraded as a priority as it did not have the resources. As Franzway, Court and Connell (1989) suggest that, contestation over power within the state, or the 'shape' of the state, can be assessed on the basis of who has the resources for mobilisation; and in this instance, the Commission's powers were being severely undermined.

There is evidence of the Liberal government's long-term negative views of the Commission—or the regime of truth that had been circulating from earlier debates. In the Liberal/National parties' manifesto *Future directions: It's time for plain thinking*, it called for the Commission to be 'abolished' (1988, p. 34). This reflects the long-held views of the Liberal Party on welfare—that it should not be free—and because the Commission 'derives little or no revenue for the services they deliver' (1988, p. 34). In a later manifesto '*Fightback!*' (1991), the Liberal government pledged to cut the budget of the Commission; however Hewson lost the 1993 election to the Keating Labor government and therefore the Liberal government had to wait until re-election in 1996 to begin dismantling Australia's human rights protections. Applying Bacchi's (2009) approach, of assessing how problems are constituted in discourse, reveals that the Liberal government has historically prioritised economic policy over human rights policy as the Commission was established for the purpose of ensuring the government met its international human rights obligations, rather than to produce economic revenue from the services it provides. This was perhaps symptomatic of the shift to neoliberalism where 'nothing is of significance unless it has use in the market' (Thornton 2006, p. 154).

The Coalition government also proposed a number of structural changes. These proposals were not well-received in many sectors of Australian society indicating that, in spite of the discursive shift to neoliberalism and this emphasis on governing for the 'mainstream', some believed the protection of human rights and the separation of powers must remain a core focus of the government's agenda (former Democrat Leader Stott Despoja 2003, p. 165). Kelly (2005) also details how the Coalition government's attempted reforms were put under intense scrutiny by the opposing Labor, Democrat and Green MPs as each of the proposed changes went before the Senate Legal and Constitutional Committee, and were repeatedly rejected or had significant changes made to the Bills. The Coalition government did not have bi-partisan support on this issue. This section shows how the Coalition government cast the Commission as the 'problem' and challenged the relative autonomy of the Commission by making numerous attacks on its mandate to weaken its powers. Importantly, it did not succeed in making most of these radical changes, but highlights the contestation over rights protection in Australia. Then I explore the budget contributions, or cuts, and the controversy that occurred between the Coalition government ministers and the Commissioners during this period.

The first attempt to weaken the powers of the Commission was in the form of the Human Rights Legislation Bill 1996 (also called the 1997 Bill) that followed on from the Keating government's Human Rights Legislation Amendment Bill 1995 over determination issues produced from the *Brandy case*. This Bill proposed to amend the procedure for handling sex, race and disability discrimination complaints so that complaints not resolved by conciliation would be heard by judges, assisted by judicial registers, in the Federal Court. This was criticised as being 'unwieldy and will place all parties at a financial and temporal disadvantage' (Report by the Labor members of the committee, *Senate Legal and Constitutional Affairs Committee* Bolkus & McKiernan 1997, p. 3) because of the costs of the Federal Court. The Bill proposed that complaints handling be centralised in the office of the president to achieve greater efficiency[37] (but weakening the powers of the individual specialist Commissioners, such as the SDC). Again, this proposal faced

[37] It could be suggested that other arms of the state underwent this centralisation procedure, which was a significant feature of the Coalition government's efforts to minimise the levels of power so that it was manifested in smaller networks (Kelly 2005).

criticism from Senators Bolkus and McKiernan in their Senate report as the 'conciliation function will operate most effectively when it is under the control of a specialist Commissioner with the requisite experience in handling complaints of that type … [the] specialist Commissioner can also bring their growing body of experience' (1997, p. 4).

This Bill also proposed the introduction of the *amicus curiae* ('friend of the court') role of the specialist Commissioners to balance their loss of power in relation to conciliation and representation in the Federal Court. However, the same Commissioner who attempted conciliation could not appear as friend of the court if the matter were taken to the Federal Court. Debate on the Bill was not completed before the 39th Parliament was prorogued (*Bills Digest No. 115 1998–99*, Bills Digest Services Guest 1999). On 6 February 1997, the Selection of Bills Committee recommended, and the Senate agreed, to refer that Bill to the Senate Legal and Constitutional Legislation Committee for consideration. After two extensions of time, the Committee tabled its report on the Bill on 26 June 1997 (*Bills Digest No. 115 1998–99*, Bills Digest Services Guest 1999). In the Labor Members of the Committee Report, Bolkus and McKiernan (1997) claim that the Bill 'represents a fundamental attack on the rights of the disadvantaged and those who suffer from discrimination in Australian society' (p. 1). Therefore it contained a number of recommendations pending approval of the succession of the Bill through the Senate.

A Bill was presented under the name of Human Rights Legislative Bill (No2) 1998 (Cth) on 8 April 1998. This Bill followed on from the 1996/1997 Bill and included changing aspects of the Commission, such as its name to the *Human Rights and Responsibilities Commission*. Former Deputy President of the Human Rights Commissioner from the 1981 incarnation of the Commission, Peter Bailey (1999), was very critical of this proposed name change as he first of all questioned: 'where has the equal opportunity gone'? (p. 1). According to Bailey, 'equal opportunity' was added to the title of the Commission when the 1981 incarnation was reconfigured in 1986 as it represented Australia becoming a signatory to the *ILO Convention 111 Equal Employment Opportunities*. The former leader of the Australian Democrats suggests that dropping the 'equal opportunity' 'de-emphasises the important role of the Commission in promoting

both equality and equality of opportunity' (Former Democrat Leader Stott Despoja 1999, p. 3). Bailey (1999) suggests that by inserting the term 'responsibility' it instead turns the *responsibility* back onto the disadvantaged person or group: 'Hence the individual should take responsibility for their "lot in life" and if they are being discriminated against then that is their fault really' (p. 3). Bailey (1999) views the move by the government as reflective of the neoliberal discursive shift as the government withdraws from the enforcement of human rights and attempts to privatise the enforcement and parallels similar processes of other neoliberal states, especially Thatcher and Reagan.

Another proposal in the Bill was to restructure the Commission by abolishing the five specific Commissioners responsible for Aboriginal and Torres Strait Islander social justice, human rights and disability, and racial and sex discrimination, and replacing them with three deputy presidents with responsibility for human rights and disability discrimination; racial discrimination and social justice; and sex discrimination and equal opportunity (see criticism of this in discussion of the 2003 Bill).

The 1998 Bill also contained a proposal to create a requirement that the Attorney-General must grant approval before the Commission seeks leave of a court to intervene in a court proceeding related to human rights and discrimination. According to Boniface (2003), the capacity to intervene in cases which involve human rights and discrimination issues is a 'crucial function' (p. 8) of the Commission. This proposal was heavily criticised for undermining the independence of the Commission as outlined in the *Paris Principles*. The importance of the independence of the Commission is underlined by the fact that the federal government, at the time of this proposal, had been involved in eighteen of the thirty-five cases in which the Commission had intervened and in sixteen of these cases, the Commission presented a contrary view to the government (Dasvarma 2003). As noted in Chapter five, the independence of a human rights institution, as outlined in the *Paris Principles*, is reliant on the institution being given independent legal status to exercise decision-making (UN 1995b, p. 10). Placing a restriction on the Commission so that it has to seek permission of the Attorney-General severely impacts on this independence (Dasvarma 2003).

This Bill also restructured the functions of the Commission so that it made education, dissemination of information on human rights, and assistance to the general community its central function. As outlined in Chapter five, in the 1986 Act, its central function is to 'examine enactments for the purpose of ascertaining whether the enactment or proposed enactments are, or would be, consistent with or contrary to any human rights'. In opposition to this change, Labor Minister McKiernan states that:

> … [w]hile education plays an important role in developing greater compliance with our human rights obligations, such mechanisms do not provide immediate protection for individuals from, or gives them redress about, breaches of their human rights. Nor do they provide adequate ongoing independent scrutiny of compliance with Australia's international legal obligations in respect of human rights. (1999, pp. 4–5)

Labor Minister McKiernan (1999) is suggesting that rather than retain the focus on assessing the government's actions (such as it had been doing with the Stolen Generation report and the damning inquiry into refugee children in mandatory detention) its main focus should be on educating Australians about the need to respect each other's human rights. Here there is a significant shift away from engaging the federal government on its responsibilities to protect human rights. Labor Minister McKiernan (1999) is scathing of the government's proposals: 'the proposed amendment is nothing more than a hypocritical sham being perpetuated by this Government to justify its attempts to emasculate an agency it has always opposed' (p. 5).

Parliamentary debate on this Bill was not completed before the 38th Parliament was prorogued. The Bill was reintroduced as the Human Rights Legislation Bill (No. 2) 1999. Major aspects of the 1998 Bill were considered by the Senate Legal and Constitutional Legislation Committee in 1998 and 1999. The Committee's report was tabled on 17 February 1999. The Coalition government was successful in passing aspects of the Human Rights Legislation Amendment Bill 1999. Those aspects were those related to transferring all power to the Federal Court to hear complaints of discrimination and for all complaint-handling powers to be given to the President of the Commission. The role of *amicus curaie* was also assented. Significantly for this project, this undermines the power of the SDC to receive, investigate and conciliate complaints of discrimination

under the SDA, removing the expertise of those experienced in understanding women's unique social and political position (Chappell 2002c).

Following this successful undermining of the powers of the Commission, the Coalition government proposed legislation that would weaken the SDA in the form of the Sex Discrimination Amendment Bill No. 2 (2000). This Bill outlined that states and territories can discriminate on the basis of marital status in the provision of assisted reproductive technology services. At the time Howard claimed 'he was protecting the rights of children' and the SDA would be amended to reflect the 'reasonable expectation' that children required the 'affection and care of both a mother and a father' (Howard cited in Haslem et al. 2000). In this legislative proposal, Howard was attempting to shape family formation by denying single women and same-sex couples access to IVF treatment. As Howard claimed, he is a 'fairly conservative white-picket fence man' as 'there is not the slightest doubt that it is more desirable that children grow up in an intact marriage with both mother and father as a role model' (Howard cited in Hewett 2002). This also supports Smart's (1996) suggestion that governments patrol the boundaries of 'proper' motherhood, as in this amendment, the Coalition government determined that neither single women nor lesbians could be proper mothers who would provide an appropriate upbringing for children on their own.

The Coalition government did not encourage the pursuit of women's rights as his government refused to sign the *Optional Protocol* to CEDAW in the same year. The *Optional Protocol* seeks to strengthen women's human rights by giving women the option of seeking direct support from the UN Commission on Status of Women (UNCSW) if CEDAW is breached by the signatory state. It also provides the UNCSW the opportunity to directly investigate complaints made by women in a signatory state. The reasons given by the Coalition government for not signing were that Australia did not need any more protection mechanisms for women's rights as the ones we have are sufficient; and it was unhappy with the UN complaints mechanisms (cited in Chappell 2002c, p. 485).

Maddox (2005) also points out that Howard pitted rights against each other—rights of the child versus women's rights, or some women's rights to be more specific (Chappell 2002c). The SDC at the time, Susan Halliday, was outraged over the proposal. The majority report from the Senate Legal and Constitutional Committee concluded it would restrict the rights of some women without creating any real rights for children (Maddox 2005, p. 80). Comparisons can be made between this effort to pit the rights of children against rights of women with earlier parliamentary debates on the need for a human rights agency as discussed in Chapter five. The rights of 'unborn' children were raised in the debates for the 1981 Human Rights Commission; and these rights achieved dominance, just as in the debates of amendments to the SDA in 2000.

The Coalition government had some success in weakening the powers of the Commission with the 1999 legislation; however, it introduced further legislation in 2003. This third attempt was labelled an 'ideological obsession of the Howard government at taxpayer expense' (Report by the Labor members of the committee, *Senate Legal and Constitutional Affairs Committee* Bolkus et al. 2003, p. 69) by the dissenting senators of the Senate Legal and Constitutional Committee. The 2003 Bill featured many of the 'most contentious aspects' (Human Rights Council 2003) denied in earlier legislation such as a name change, removal of specialist Commissioners, seeking approval of the Attorney-General before intervention in the courts, the central function of education, removing the Commission's powers to recommend the payment of compensation to remedy or reduce loss or damage suffered by a victim of discrimination, and repeal of existing provision for establishing the Community Relations Council and Advisory Committees under the Race Discrimination Act. According to some, such as the Australian Council of Social Services (ACOSS), these changes would have the effect of producing a 'lame watchdog' (2003, p. 1).[38]

The removal of the specialist Commissioners is one aspect of the earlier Bills that had been especially unpopular, just as it was again in 2003. ACOSS (2003) claimed that this

[38] ACOSS is the peak body of the community services and welfare sector and the national voice for the needs of people affected by inequality.

would lead to fewer Commissioners with those remaining having 'a broader range of human rights area to cover—a kind of "no name/no frills" outcome' (p. 1). Dasvarma (2003) suggests one consequence of having 'generalist commissioners' would be the 'pitting one disadvantaged sector of the population against another' (p. 146) as the groups struggled for representation of their rights. This is supported by Gaze and Schmidt (2003) as they suggest the Commissioners would not have the same resources, time or expertise to dedicate as the specialist Commissioners had been given. The Senate Legal and Constitutional Committee Report of 29 May agreed to the change of name of the Commission and the reduction of the number of Commissioners. However, it refused to agree to change the intervention powers of the Commission (Boniface 2003).

Despite all of these efforts to weaken certain powers of the Commission, the Coalition government did make some positive changes to the Commission. In 2004 it passed legislation that made discrimination on the grounds of age unlawful in the *Age Discrimination Act 2004*. It also signed the *Convention on the Rights of the Disabled* in March 2007. However, the Commission did not appoint a specific Age Discrimination Commissioner; rather the SDC was given a double load by taking on these responsibilities too.[39]

However, the positive value placed on this action could be undermined by the Coalition government's further effort to weaken the SDA in 2004. It proposed and passed a clause to the Act that Catholic Schools could offer men-only teaching scholarships (Eveline & Todd 2009). Research produced in the early 2000s showed a shortage of male teachers, which some suggest is problematic as male students are missing out on important male role models (Balchin 2002) while others strongly refute these claims about male role models in the classroom (Martino & Kehler 2006).

Resourcing the Commission effectively demonstrates that the government is supportive of the Commission's work. This was not the case with the Coalition government; as

[39] It was not until 2011 that the Commission appointed a specific Age Discrimination Commissioner, so both Goward and Broderick fulfilled these double duties. The first Age Discrimination Commissioner is Susan Ryan, who pushed for the Sex Discrimination Act in the 1980s as featured in Chapter five.

already stated, it made harsh cuts to its budget, effectively reducing it by 36 per cent over two years (Guest 1998). The budget peaked at $19.198 million in the last year of the Keating government and dropped to $13.098[40] million in Howard's first Budget, 1997–98. The report by the Labor members of the Senate Legal and Constitutional Affairs Committee into the Human Rights Legislation Amendment Bill 1996, states that they 'deplore the Government's decision to cut over 43 per cent from the budget … because it will directly affect the ability of the most powerless and disadvantaged in our community to enforce their rights. These cuts should be condemned by all fair and decent minded people' (Bolkus & McKiernan 1997).

However, the cuts became increasingly severe. In 2001–02, the budget dropped to $10.730 million.[41] It then increased to $11.137 million in the 2002–03 Budget, where it remained stable at approximately $11.900 million until the 2005–06 Budget when it increased again to $12.702 million and then to $14.820 million in the Coalition government's last Budget (2006–07). The increases in the budget were due to the increased work-load of the complaint-handling department as a consequence of *Work Choices* legislation.

In the Senate inquiry into the 2003 Bill, questions were specifically posed about the significant long-term cuts to the Commission's budget and the impact this had on the activities and staffing of the Commission. The Commission revealed that sixty positions were cut and the positions of Disability Discrimination Commissioner and Race Discrimination Commissioner were not filled when they became vacant. The most significant cuts affected the corporate and policy areas that meant that policy staff of each Commissioner was substantially reduced, with all Commissioners reprioritising their activities (HREOC 2003).

[40] These figures reflect the base appropriation received from the government. The Commission often receives additional funding from other sources; however, this funding is often project specific and results in uncertainty for staff. The Commission expressed concern that these alternate sources of funding comprise up to 20 per cent of its total revenue (HREOC 2008).

[41] All budget figures sourced from Australian Human Rights Commission Annual Reports 1996–2007

The controversy which existed between members of the Coalition government and the Commissioners took place publicly in the media. Many of the Commissioners took their role as critics of the government seriously, often to their own detriment. Sawer (2003b, 2004, 2006) and Johnson's (2000, 2005, 2007) analyses of the discursive shifts, suggest the Commissioners were probably viewed as the 'new-class' elite or 'bleeding hearts' who represented the special interests of the minority groups who under Keating received a majority of the attention, to the detriment of the dominant 'mainstream' group. This disputation is revealed in the appointment and departure of a number of the Commissioners.

This tension was not restricted to just the SDC over issues of women's rights and equality, as many of the other Commissioners and a number of the presidents during Howard's time in power (1996–2007) also came under attack by Howard or his ministers. This shows that the Coalition government appeared to attack the very foundations of our liberal-democratic governance system that historically has meant that there is freedom for dissent because of the protections embedded in the separation of powers (Maddison and Hamilton 2007). This was framed in an earlier chapter as the discursive strategy of 'silencing dissent' (Maddison and Hamilton 2007) and I argue the tensions between the Commissioners and the Coalition government demonstrates the Coalition government's efforts to undermine the Commission's powers and independence.

Former president, the late Ronald Wilson, was 'at odds' with the government over key recommendations of the national inquiry into the separation of Aboriginal and Torres Strait Islander Children (Guest 1999). The Coalition government declined the request to extend his term, which ended in July 1997[42] (Guest 1999). Alice Tay replaced Ronald Wilson as president, which was expressed to be a positive move by the Coalition government and demonstrated the 'appointment of such a senior academic reflects the importance of the Commission's work and the government's determination to maintain

[42] It is suggested elsewhere that Howard was not happy about Ronald Wilson's Stolen Generation report and in fact, the efforts to weaken the Commission's mandate with the proposed legislation from 1996 onwards was motivated by this. The Labor Legal Affairs spokesperson, Senator Nick Bolkus claimed 'I actually think it's John Howard's agenda to stamp on the Commission. I think it's a spiteful revenge after its stolen generation report' (cited in McCabe 1998).

that role' (Sidoti cited in Harvey 1998). Tay (2000) presented at times a supportive position of the Coalition government's changes to the mandate as she stated in the 1999–2000 Annual Report about losing determination powers, 'Far from stripping the "teeth" of Commission effectiveness, its loss is freeing the Commission to focus its resources and capacities on to conciliation, education and inquiries for which the Commission is especially well-equipped and ready' (p. 5).

However, as the Coalition government made further attempts to weaken the Commission's powers, Tay changed her position as she claimed the Commission would 'fight to the death' the attempts to remove the intervention powers in the 2003 Bill (Tay cited in Banham 2003). Here Tay is referring to the intervention made by the Commission into the mandatory detention of asylum seekers, especially children and the conditions in the detention centres. Tay suggests in this same article: 'It's not for me to read the minds of the government, the Cabinet, the Attorney-General and the Department of the Attorney-General, but there's no doubt that intervention in the last couple of years on detention issues have been an irritant to the Government' (Tay cited in Banham 2003).

After Alice Tay, John von Doussa was appointed the President of the Commission in June 2003. Von Doussa showed concern with the changes proposed by the Coalition government and was outspoken on a number of issues. In his first Annual Report, he commented on the 2003 Bill suggesting it was an unnecessary proposal of the Coalition government to abolish the specialist Commissioners and implement generic human rights Commissioners (Annual Report 2003, p. 8). Another issue of concern to von Doussa was the government's counter-terrorism response that he interpreted as breaching specific human rights laws, such as the right to a fair hearing, in the name of national security (Annual Report 2004, p. 6).

The Coalition government's response to the threat of terrorism transpired from the 11 September 2001 and London 2003 attacks, and the Commission was actively involved in ensuring that the government achieved the balance between national security and individual human rights (von Doussa Annual Report 2004, p. 6). Von Doussa commented

on the government's counter-terrorism response, specifically in the introduction of the Anti-Terrorism Bill (No.2) 2005.[43] He placed importance on the role of Australia's leaders in promoting human rights and criticised Howard's leadership on the Tampa crisis as, 'the leadership did not take us down the road to universal observance of human rights' (von Doussa 2006, p. 19). Von Doussa also commented on the restrictive budget under the Coalition government (Annual Report 2005, p. 8) and the Rudd government (Annual Report 2008, p. xiii).

The first Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Dodson, ended his term by making public statements that the Coalition government was 'using overt racism to draw the battle-lines for a race-based election' (Dodson cited in McCabe 1998). Dodson questioned the motivations of the Coalition government: 'As I come to the end of my term, I wonder: where are we being led as a nation' (cited in McCabe 1998). He went so far as to call the Coalition government 'bloody idiots' (Dodson cited in McCabe 1998).

Susan Walpole was already in the role of SDC when the Coalition government took over leadership in 1996. Walpole resigned eleven months prior to the expiration of her contract. She cited personal reasons; however, in a press interview several weeks later, she warned that a policy vacuum was developing in the government's approach to women's human rights and discrimination (Walpole 1997b). Her resignation came shortly after the public debate occurred over the Attorney-General's proposal to abolish specialist Commissioners, with a specific focus on the status of the SDC (Guest 1998). Moira Scollay replaced Walpole as acting SDC between June 1997 and April 1998, until Susan Halliday was appointed. The Labor opposition criticised the Coalition government for taking so long to find a permanent replacement 'The Sex Discrimination Commissioner's position has been vacant for over 12 months; it's intolerable that the position hasn't been filled' (Bolkus cited in Harvey 1998).

[43] This Bill included provisions for preventative detention orders, control orders and special police powers to stop, search and question people (Von Doussa 2006: 7–8). Strong messages were being sent to Arab Muslin communities with these anti-terror laws as it was this sector of Australian society which was being targeted by these laws (and many proven to be falsely accused and targeted) and which Von Doussa interpreted as a threat to multiculturalism as well as enjoyment of human rights (2005: 8).

Even though Halliday was a Coalition government appointee, which meant that it was assumed she would not challenge the Coalition government in ways that other Commissioners had, she was very critical of the Coalition government (Gunn 2001a). Halliday stated early in her term how she saw her role as Commissioner:

> I am not a bureaucrat; I am a Commissioner of an independent statutory authority and as the incumbent of an independent statutory position, my role differs quite extensively from that of a bureaucrat. On accepting this position, I agreed to inform federal Ministers of issues relating to their portfolios that arise in the course of my work *irrespective of the complexion of the government of the day*. (1998: Speech given at Women and Management breakfast)

Halliday was particularly critical of its success to weaken the SDA with changes to IVF legislation. With three months left to serve of her three-year term, Halliday claimed that she was distressed that the 'rights of single women … may be less as she leaves her job than they were before they were when she began' (cited in Gunn 2001b). Halliday expressed publicly that she was outraged that she was not consulted about the proposed changes and she is the 'public face of the Act' (cited in Haslem et al. 2000). Elsewhere in criticism of the changes to the Act, she stated: 'We can now record into the Australian history books of the Twenty-first Century, continued attempts by men to control women's bodies' (Halliday 2001).

On leaving the position at the end of her three-year term, Halliday announced that: 'There's only so long before the brick wall you're hitting your head against starts to leave bruises' (cited in Gunn 2001b). She described the wall giving her such grief 'was "a small group of powerful men" in the Coalition government' (Halliday cited in Gunn 2001b). The Coalition government not only made numerous efforts to weaken the Commission's powers, it also maintained contentious relationships with the key people representing the interests of the Commission—upholding Australia's human rights legislation.

This is probably why the next SDC was viewed with great scepticism by feminist networks. As Chapter three outlined, the Coalition government had abolished or undermined numerous women's policy initiatives or departments indicating it did not

prioritise the pursuit of women's equality (Chappell 2002c; Whip 2003). For John Howard, the feminist battles had been won (cited in Hewett 2002). Hence, weakening the powers of the Commission was just part of this larger strategy of the backlash to feminism, and the appointment of Pru Goward was seen as intrinsic to this plan. By the end of John Howard's first year in government, Goward had been appointed as head of the federal Office for Women and was the only non-ministerial voice speaking about women in the Coalition government (Summers 2003, p. 130). This supports McIntosh's (2007) argument as featured in Chapter three that the Coalition government made very selective appointments of those running these statutory authorities and removed dissenting voices.

Prior to Goward's appointment to a historically femocrat position, she had established herself as a public figure with a successful career in the media and communications roles, such as managing the media communications for the 2000 Sydney Olympic games. Goward admitted that she did not see her role as Head of the Office for Women as being 'an 'advocate for women', rather a member of the Government's administration' (1999). Further to this, she stated: [the Head of the Office] isn't there to publicly criticise government, she is there to work within Governments and she should be able to make things happen' (Goward 1999).

Anne Summers, who was a part of the femocracy in the late 1970s and early 1980s and also advised Keating on women's policy in the early 1990s, was especially critical of Goward's appointment. Summers (2003) was outraged when Goward was previously appointed head of the federal government's Office for Women, stating: 'Howard chose to ensure that the OSW would become politically impotent by appointing at its new head a woman with absolutely no qualifications or credentials to do the job' (p. 127). According to Summers, Goward 'liked to tell people that she was a close friend of the Prime Minister' (pp. 127–128) as Goward and her husband, David Barnett, co-authored a biography of John Howard.

However, Goward rejects this, saying that co-authoring the book 'has unfairly led to her being labelled in the media as a friend of the Prime Minister' (Goward cited in Skelton 2006). This was perhaps because when she was first appointed, she identified herself publicly as being a friend of John Howard: 'I am a friend of the PM's and I am honoured I'm a friend of the PM's and I hope that friendship is no barrier to appointments' (Goward cited in Bryden-Brown 2001).

The criticism of Goward is problematic as it raises issues about whether it was her male relationships that were the basis for the criticisms, and if so, what does this imply about the contemporary state of women in politics. In my interview with SDC Elizabeth Broderick (2007–current), she observed that Goward's political affiliations made 'people wary at the beginning … but she demonstrated that she was a courageous Commissioner' (2007). Broderick thinks that Goward 'got a harder deal than she would have if she hadn't had any existing relationships with them' (2007). Of all of the SDCs thus far, Goward received the most attention in the media. The messages were a mixture of wariness about her support for the conservative Coalition government and troublesome rumours about her competence and relationships.

One finding of my investigation is that Goward was not only frequently judged on her relationship with John Howard, but also on her marriage to a former Liberal advisor to Malcolm Fraser. In an interview on ABC radio with Julia Baird, she talks openly about how marrying him led to her demise as a journalist at the ABC many years earlier as it was assumed that she would be influenced by his political views (Goward 2006b). Baird also questioned her about racist and sexist comments her husband had made a week earlier, as though Baird was seeking an apology from her on his behalf. Goward was not able to be judged on her actions, rather was judged according to her male connections as being a 'political apparatchik' (Cox cited in Bryden-Brown 2001).

A founder of the Women's Electoral Lobby, Beatrice Faust was also openly critical of Goward's appointment as the Head of the Office for Women as she states: 'Pru Goward has proven herself to be an international embarrassment by daily failing to familiarise

herself with women's issues' (cited in Reiner 1998, p. 2). In defence of Goward's position, the then Minister for Social Security Jocelyn Newman (1998), claimed 'I can only assume that the government's appointment of Pru Goward to head the Office of the Status of Women was such a good choice that the sisterhood feels the need to try to undermine her excellent reputation, or is it just a case of sour grapes' (p. 8).

Contributing to the scepticism surrounding her appointment (during her time as Head of the Office for Women) Goward questioned the value of sex-discrimination legislation and affirmative-action legislation, suggesting they might be 'damaging the employability of women' (cited in Summers 2003, p. 128). Her critics viewed such comments as contributing to her selection in the role as SDC, as it appeared she would be less critical of the Coalition government than previous Commissioners had been. However, Goward was openly critical of the Coalition government's industrial relations legislation, dubbed *Work Choices*, as she predicted it would undermine PML provisions and contribute to a drop in fertility (Goward 2005d). Goward (2001) also claimed only a few days into the job that, although she did not want to be a 'trouble-maker', rather a 'problem-solver', she believed she had more freedom to express her views than in her former role: 'In this job, I can have my own views and they don't have to conform with those of the government of the day' (cited in Harvey 2001, p. 6). After the release of her proposal for PML *A time to value* (2002), the criticism of Goward dwindled as social commentators suggested that 'Goward was always the only woman to do the job of challenging the conservative side of politics' (Symons 2002). Even Eva Cox, who had been scathing of Goward a year earlier, congratulated her on a 'bloody good report' (cited in Symons 2002).

Goward was appointed as SDC for a five-year term from July 2001 until June 2006. She also took on the role of Age Discrimination Commissioner, fulfilling the dual roles from 2005 onwards. Goward remained in the job after June 2006, without an official announcement of renewal, took a leave of absence from November 2006 and resigned in March 2007 to pursue a career in the New South Wales Parliament. The fact her appointment was not officially announced was criticised by a Labor Minister, Nicola Roxon who stated: 'I think the Government have done her (Goward) no favours by

keeping secret an appointment that they normally announce. And it is a bit suspicious whether they're trying to give her a safety net in case she doesn't win the pre-selection, trying to keep it secret to help her try and win … ' (Roxon 2006).

President John von Doussa acted as SDC between 4 November 2006 and 10 September 2007 when Elizabeth Broderick was appointed by the Coalition government. Broderick left her partnership at law firm Blake Dawson Waldron, where she and other female colleagues established family-friendly workplace policies and conditions as three out of the six female lawyers went on maternity leave at the same time (Summers 2007). Broderick was also a recipient of the Telstra Business Woman of the Year in 2001.

The delay in Broderick's appointment was criticised on the grounds that 'while the position hasn't been filled, issues for women and working families are becoming increasingly more serious … ' (Burrows cited in Elks & Karvelas 2007). The delays made in appointing Commissioners by the Coalition government further indicate that it did not prioritise a human rights agenda. The appointment of Broderick received much support within feminist networks, particularly Catherine Lumby who stated that the appointment was 'genius' (cited in Elks & Karvelas 2007) and Wendy McCarthy who was surprised the Coalition government appointed someone 'as smart as she is' (cited in Elks & Karvelas 2007). Broderick was SDC for only three months when the Coalition government lost the election in November 2007 and she was not especially critical of the government that appointed her. However, she did identify some months into the Rudd governments leadership that when she was at the 52nd Session of the UN CSW, that 'there was a general view that Australia in recent times had moved away from its ground-breaking role it had previously played for the rights of women … ' (Broderick 2008c).

Broderick (2008c) revealed in our interview that she thought the independence of the Commission, and hence her role as SDC would be 'really clear cut', yet she felt that it was more complex as the Commission has to navigate its relations with the federal government on an 'issue by issue' basis. Broderick suggests the Commission needs to be

careful about being outspoken in the media as it has to be seen to be 'constructive' and not 'destructive' (2008e). Here she talks about the Commission's independence:

> We have a role to advise government. To be giving advice we need to be seen as someone who is interested in the issue, independent and constructive, so it is kind of quite a fine line that you walk. Having said that I think, we answer to parliament and we, in a sense have a judicial-like function, where we should be kind of—weighing up evidence and then coming to a considered approach. So we are not firing off or a knee-jerk reaction—it's on the basis of evidence that we take a view. (Broderick 2008e)

However, Broderick (2008e) also states she is not afraid of adopting a view that is 'unpopular' with government and using the media as a platform to voice this view (2008e). Broderick's comments reveal the complex situation of the Commission as a statutory authority with relative autonomy as addressed in earlier chapters.

This section has shown that the contentious relationship between the Commission and the Coalition government, due to it being represented as 'the problem', created limitations on what the Commission was *able to say* which is significant for the central aim of my research to investigate the limitations and possibilities of the Commission to contribute to women's progress. 'Stacking' (McIntosh 2007) the Commission with people who would not challenge the conservative neoliberal and anti-feminist views of the Coalition government can also be regarded as a limitation of the Commission's potential to contribute to women's progress. Evidently, the Coalition government attempted to place various limitations on the Commission by reducing its main function to that of educating Australia to take responsibility of their own human rights and substantially cut its funding so that its inquiry function was undermined. The constitution of a neoliberal logic is evident as the Liberal government historically denied the need for greater human rights protection because it did not produce economic gain for the country and would instead involve funding a body that was concerned with increasing the rights of special interest groups (Johnson 2000).

However, although the attacks were consistent and strong throughout the period 1996–2007, the Coalition government did not achieve the radical changes it intended. I have shown that there was strong opposition to the negative regime of truth about the

Commission from Labor Party, Democrat and Green Party Ministers, who defended the Commission each time a proposal was presented in parliament to weaken it. Even though the Coalition government articulated fears about the power of international human rights relationships on state sovereignty (Kelly 2005), perhaps the earlier problematisation of the Liberal Fraser government discussed in Chapter five over Australia's standing in the international human rights community had some influence. Possibly this stopped the Coalition government from pushing harder with these changes also. Howard's failure to make the radical changes gives weight to my argument for a poststructuralist approach to the power of the state, as it shows that the state was not being run as a monolithic entity with a coherent and unified agenda but that the state is a set of arenas or apparatus whose interests often over-lap and intersect but do not always coincide. This is also shown in Pringle and Watson's (1992) argument that the outcomes of particular policies will depend on the limits placed by 'structures' *and* the discursive struggles that define and constitute the state and specific interests, from one moment to the next (p. 63).

The next section assesses the relationship between the Commission and the Rudd Labor government. One of the central themes of the analysis is the contradiction that existed between the material and discursive aspects of the relationship as Rudd denounced neoliberalism in speeches and other texts but made economic decisions that continued to be in line with a neoliberal logic. As argued in Chapter three, the Rudd government promoted greater opportunities through education, training and employment, but it did not radically alter the economic or social welfare policies of the Coalition government (Mendes 2009). In the next section I show how this problematisation has 'effects' on the material conditions of the Commission.

The Rudd Labor government and the Commission 2007–2008

Australia had a change of government in 2007 as the Coalition government lost to the Rudd Labor government. Chapter three outlined how the discursive strategies of the Rudd government were the creation of a 'new government that was social-democratic', and the GFC of 2008. This shows that there were contradictions in the Rudd government's reformist practices, as on the one hand it set about inquiring into how human rights

protections and the SDA could be strengthened; on the other hand it cut funding to the Commission. As suggested earlier, this highlights the value of applying a poststructuralist approach to the state's power as this shows that the state governs through discourses as well as well as through material resources (Franzway, Court and Connell 1989; Pringle and Watson 1992) and sometimes these contradict each other.

As Rudd championed the pursuit of social justice at international forums (2008), his government launched the inquiries into how human rights mechanisms in Australia could be strengthened. First, the government conducted an intensive, national inquiry into Human Rights protections in Australia with the *National Human Rights Consultation* to determine whether human rights are sufficiently protected (Commonwealth 2008).[44] This signalled that the Rudd government was serious about the 'the pursuit of social justice (which) is founded on the argument that all human beings have an intrinsic right to human dignity, equality of opportunity and the ability to lead a fulfilling life' (Rudd 2009, p. 25).

Second, the government conducted an *Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in Eliminating Discrimination and Promoting Gender Equality* (Commonwealth 2008a) which made many recommendations to strengthen the Act in regard to the powers of the Commission, the SDC and the grounds and definition of discrimination. However, there was evidence of the Rudd government using the GFC as an excuse to delay implementing the proposed changes. The Senate Legal and Constitutional Affairs Committee completed its report on the findings of its inquiry into the SDA on 12 December 2008. The report had not been tabled in parliament, nor had the government released its response to the report by the end of my data collection period (Committee Member Senator Hanson-Young 2009).[45]

[44] A number of important recommendations were made and subsequently the Rudd government launched its *Australia's human rights framework* in April 2010.

[45] According to Sawer (2010), it took until May 2010 for the government to respond to the report. It was missing a number of important recommendations including the ability of the SDC to be able to inquire into discrimination cases without a request.

The assessment of 'the extent to which [a government] provide equal opportunity' and not 'how lightly they touch our purse' (Sawer 2003a, p. 1) indicates whether socialist-liberal or neoliberal strategies are being implemented. This lens is blurred, however, at a time of recession or economic crisis, as the government's framework for prioritising economic and social policies is altered. Rudd implemented economic policies to address the effects of the global crisis in its stimulus package which have contributed to the construction and service industries (Richardson 2009). This indicates that the Rudd government did not hold onto the purse strings too tightly. However, as outlined below, it cut funding to the Commission, which could be attributed to the GFC.

Even though Rudd made claims to distance his government from neoliberal economic policy (Rudd 2009), based on its budget contributions to the Commission, it could be charged with following a similar neoliberal strategy to the Coalition government. According to the Commission, its budget contributions from the current federal government had decreased by 12.5 per cent in 2008–09 from 2007–08. The Commission stated that this was the greatest decrease since 1996 when the Commission's total funding base was reduced by 40 per cent over four years (HREOC 2008). The Rudd government cut additional funding for complaint handling resources in 2008 ($450,000 half-year effect in 2007–08 and $1.8 million 2008–09); overall staffing numbers within the Commission were reduced, and cuts were once again made to other areas of the Commission to ensure that complaint handling remained a priority and complaints resolved in a timely manner (HREOC 2008). The reason for the cut in funding to the complaint-handling department was the winding back of *Work Choices*. The Commission's funding was increased under the Coalition government with the abolition of unfair dismissal laws. One of the first actions of the Rudd government was to 'roll back' *Work Choices* and this meant cutting the mechanisms related to the legislation, such as this funding to the Commission. However, as von Doussa (2008) states, the number of complaints continued to grow in spite of this and he found he had to cut funding by 14.5 per cent from each department (p. xiii). The actual budget figures for these periods were $14.981 million in 2007–08 and $13.550 million in 2008–09.

The Commission also revealed that in comparison to other Australian Public Service (APS) positions, the average Commission salary is much less, and this impacts on the capacity to attract and retain employees. For example, in taking the position of SDC, Elizabeth Broderick left her job as a partner of a prestigious law firm, and took a 50 per cent cut to her pay (Farouque 2007).

The Rudd government approved the name change on 4 September 2008 to 'Australian Human Rights Commission' with the subheading 'Everyone, everywhere, everyday'. This is similar to the Coalition government's changes, as 'equal opportunity' has been dropped from the title (as Howard proposed, but he wanted to add 'responsibilities' to the name, and his subheading was 'for everyone'). Taking into consideration Bailey's (2003) suggestion that this could imply that it puts the onus on 'us' to be responsible for our human rights, this amendment by the Rudd government shows some contradiction with his pursuit of social-democratic principles.

Following John von Doussa, Catherine Branson was appointed President of the Commission on 7 August 2008, the first Rudd appointment. Branson started her five-year term on 14 October 2008, which was just after the announcement of the name change mentioned above. Branson seemed in support of the shift in image as she said in her first Annual Report (2008–09):

> I am particularly proud to have inherited a Commission guided by a new and powerful vision statement and strong strategic plan. Our vision statement can be seen with our logo on the cover of this report. It is: *human rights: everyone, everywhere, everyday*. That statement is an important reminder that human rights are about us all. We all have human rights and for this reason we should all respect the human rights of others. (Branson 2009, p. x)

A characteristic of contemporary public sector organisation and government is evident here in the vision statement and the strategic plan. Branson appears to use it to align the Commission with more mainstream perspectives on good organisational governance.

The *Strategic Plan* launched in September 2008, which is aimed at building a better human rights culture, shows that there is a greater focus on the Commission's education function as opposed to it inquiring into government's actions or policies (as proposed in

earlier legislation under Howard). It identified that the 'new' focus of the Commission is 'providing leadership on human rights issues in Australia; educating a more diverse group of people in Australia to understand the relevance of human rights to their everyday lives; and engaging those people to help create a stronger human rights culture in Australia' (2009, p. 2). The role of the Commission in engaging the government is neglected in this 'new' focus that means possibilities to achieve progress for women through the state are constrained. The claims made by the Rudd government to reject neoliberalism as a framework for policymaking are undermined in actions such as this, as it should be creating the conditions for an equal focus on the Commission's role in inquiring into government policy and legislation. This shows the disjuncture between the discursive strategy or problematisations of the Rudd government and the material 'effects'. The neoliberal logic is much stronger than perhaps Rudd had anticipated and actively challenging it involved greater hurdles, including managing the economy through the GFC.

Conclusion

Chapter six addressed the second research question: what are the effects of the state's problematising of human rights on the Commission's legislative and material conditions. I have provided an analysis of what occurred regarding the independence of the Commission in four federal governments in the periods of Hawke, Keating, Howard and Rudd (between 1986 and 2008) utilising Bacchi's question five: *What effects are produced by this representation of the problem?* This chapter applied the evolution of policy logic from liberal to neoliberal as it relates to the problematising of human rights, again utilising Bacchi's question three: *How has this representation of the problem come about?* As pointed out in the introduction, the point of asking this important question is to argue that the Commission does not exist in a vacuum but rather is constrained by its discursive and material relationship within the state. This influences *what it can say* in its problematisations in policymaking. This chapter has also shown that applying a poststructuralist approach to the state's power provides a hopeful account of the possibilities for the Commission to contribute to women's progress.

In this chapter I have demonstrated that there has been much contestation over the Commission's independence—which is central to its power as an apparatus of the state—over the period 1986–2008. Chapter five first addressed the importance of the Commission's independence within the state so that it can fulfil its functions properly, which includes commenting on the federal government actions that is further explored in this chapter. Both the Hawke and Keating governments supported the Commission's independence, as the funding was increased along with the additional responsibilities or functions of the Commission. Both governments strengthened the mandate with additions of other discrimination legislation or by strengthening the provisions of existing legislation, such as the SDA with the addition of 'family responsibilities'. Even though I argue that the Hawke and Keating governments adopted a neoliberal discursive strategy in their policymaking and form of governance, this competed with the ALP's historical roots of social-liberalism. This produced a form of governance where both governments were implementing neoliberal strategies through privatisation and deregulation while at the same time constituting social-liberal discourses of 'rights' and 'equality' by supporting equal opportunity strategies, such as the Commission.

The Coalition government on the other hand, made continual efforts to weaken the powers of the Commission. I argued that this is reflected in its construction of the Commission as 'the problem' instead of problematising the reasons for the need for increased human rights protection. For the Coalition government, the Commission represented a body that did not sufficiently contribute to the economy, was run by elites who were only interested in representing the rights of the special interest groups and posed a threat to state sovereignty due to its ties to the international human rights community. Hence, the 'effects' of this problematisation was to cut the funding to the Commission and make continual efforts to weaken its powers and reduce its functions.

In this chapter I have shown that the consequence of funding cuts by the Coalition government meant that Commission staff lost jobs, and it focused its resources on individual complaint handling and away from inquiring into government policy or legislation. This undermined the Commission's potential to contribute to women's

equality by informing women's policy, one of the intended central functions and powers of the 1986 mandate. The *Paris Principles* proposed that for a human rights institution to have strong independence from its government, it needs to have secure budget arrangements, so that the leading government is not able to undermine its functions and powers as has been demonstrated by the Coalition government as well to some extent by the Rudd government.

The disagreement over the Commission's independence was also revealed in the Coalition government's efforts to weaken its powers by changing its mandate and by demanding the Commission seek the Attorney-General's permission to intervene in a human rights case. As many of the cases in which the Commission has intervened have involved the federal government as the opposing party, this means that the federal government has greater power to constrain the Commission, again limiting its independence and impacting on its potential to contribute to women's equality.

The Commission's position as an administrative, statutory body that works within the federal government creates limitations on its contribution to change as its material existence depends on its support from the government. In addition, it is not a judiciary body, which means that even though it has the responsibility of mediating very important legislation, it is unable to enforce its determinations and those who experience discrimination have to go through the process of seeking compensation and recognition twice. The Coalition government's efforts to weaken the powers of the Commissioners, including those of the SDC, by taking away their function to conciliate discrimination cases produced another constraint for the pursuit of women's progress.

I observed that during the period 1996–2008 even though there was great resistance to many of the Coalition government's efforts to threaten the Commission's independence and weaken its powers to be a dissenting voice from within the government, gradually the Commission has taken on a different 'face'. The changes to the Commission during the period of Rudd's leadership to have a 'new' focus on education and human rights culture and less of a focus on engaging the state and inquiring into policy was a central part of

the Coalition government's proposals. There has been a shift towards personal responsibility of rights, rather than the state's responsibility, which limits possibilities to achieve progress for women through the state demonstrating the power of a neoliberal logic guiding state policymaking. Lastly, in applying a poststructuralist approach to understand how power works within the state, I have argued that there is evidence of competing interests rather than the success of one ruling government implementing a negative regime of truth about the Commission.

Chapter 7
Problematisations of paid-maternity leave

> Given that you've had four fairly colourful reports there, let me assure you the Commissions will be less colourful, they always are, why is it do you think that those four reports have failed to achieve the objectives that you've set out? What has happened over the last period of time since the late 1990s to the present time that has forestalled the introduction of a paid-maternity leave scheme, because in a sense, four reports are a lot. (A question posed to Sex Discrimination Commissioner Elizabeth Broderick by Presiding Commissioner Robert Fitzgerald AM Productivity Commission Inquiry into Paid Parental Leave 2008d)

This chapter addresses my third research question: how does the Commission construct motherhood in its policymaking, focusing on PML policy specifically, keeping in mind that I am particularly concerned with the regime of truth, or 'conceptual logics' (Bacchi, 2009, p. 35) of the 'good' mother that are circulated by the state and constitute problem representations in policy. Chapter seven maps the shifts in problematising PML as evident in the work of SDCs; Quentin Bryce, Susan Walpole, Susan Halliday, Pru Goward, John von Doussa and Elizabeth Broderick.

The question above posed by Presiding Commissioner Robert Fitzgerald AM at the Productivity Commission[46] Inquiry into Paid Parental Leave captures one of the central issues addressed in this chapter: Why was the Commission initially not successful in persuading the government to implement a government-funded paid-maternity or parental scheme? How was the Commission representing the need for the scheme? Evidence shows that that it was not until the Productivity Commission represented the need for a scheme in fiscal terms with a large emphasis on the health and wellbeing of families (with gender equality benefits hidden in the middle of the report) that the Rudd Labor government agreed to reverse the reservation in CEDAW to PML and implement a paid-

[46] The Productivity Commission was established as a statutory authority within the federal government by the Coalition government in 1998. It promotes itself as being an 'independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its focus is on ways of achieving a more productive economy' (sourced from the Productivity Commission's website). If the federal government wants a cost-benefit analysis conducted of a proposed policy, such as paid-maternity leave, it gives it to the Productivity Commission to assess its economic cost and benefit.

parental leave scheme. Was this further evidence of the state pitting rights against each other? Examining problematisations of PML provides a critical analysis of the work of the Commission. Still being interested in the issue of independence of the Commission, my analysis shows that the Commissioners, although constrained by anti-feminist and neoliberal values, contributed to evolutionary policy change. The chapter also utilises Bacchi's question one: 'What's the problem represented to be in specific policy?' by considering what the Commissioners '*can and cannot say in the representation of problems*' (Bacchi 1999) in PML policy documents and debates.

Drawing on the theoretical framework I outlined in Chapter four, Chapter seven also utilises Bacchi's question seven to ask: *What presuppositions underlie this representation of the problem?* Significantly, for my concern for women's progress over the studied time period, I have discerned a shift in the framing from one of maternity leave for the maternal citizen to advocacy for parental leave, incorporating men in the caring role. This mapping is demonstrated by utilising Bacchi's question three: *How has this representation of the policy come about?* Analysing discontinuities in policy logics supports my argument for a deconstructive equality (Scott 1997) approach that is, and can be further, adopted by agents of the state (such as the Commissioners) to consider policy problems.

Chapter seven also builds on my examination of the possibility of the Commission—as an arena of the state—to contribute to women's progress by exploring the Commission's cultural politics and hence its function to educate and inform the public as well as inquire into and advise the federal government of policy matters, with a specific focus on women's equality. My analysis here offers new knowledge, and builds on the extensive critiques of Australia's major legislative protection for women from discrimination in the workplace and public sphere, in the SDA (Chappell, Hill & Chesterman 2009; Charlesworth 2004, 2007; Gaze 2005; Guest 1999; Magarey 2004; Sawer 2010; Thorton 1990, 2006, 2010). Specifically my analysis contributes to knowledge about the Commission's potential to influence policymaking. Chapter seven examines policy

proposals as well as annual reports, speeches made by the SDCs; submissions to federal government inquiries and media articles.

Chapter five outlined that the Commission's power to monitor women's human rights is founded in Australia signing and ratifying CEDAW. When Australia signed CEDAW in 1980, it did so with a specific reservation or exclusion of a national scheme for PML. But then, PML is one of the most symbolically important policies a government can make to recognise women as workers as well as mothers, and especially recognising women's attachment to the workforce (Work and Family Policy Roundtable 2007, p. 10). Hence, this chapter also examines how the different SDCs and the Commission framed the need for either PML, or pregnancy or family responsibility legal mechanisms, which would support the participation of women in the workforce as well as their role as parents, as a means to achieve greater equality for women. I focus on the specific SDCs as social actors who 'use language in the service of specific goals' (Bacchi 1999, p. 45), while at the same time acknowledge the 'embeddedness' (p. 45) of the SDCs in the political institution that limits what can be said or done. I argue in this chapter that the SDCs and the Commission adopted a pragmatic approach in its framing of the need for PML because of larger discursive strategies and shifts occurring in the state.

This chapter considers whether the Commissioners open up alternative subject positions for women other than the 'good' mother; alternatives that take into account the different experiences of women based on socio-economic, race/ethnic, sexuality or religious differences. Discussions about motherhood issues are too often framed by reference to a middle-class norm, which laminates over women's socio-economic differences especially (Yeo 2005). The Australian Government has a long history of constituting maternal citizenship in its family policymaking, casting women as mothers first and workers second. As Yeo (2005) points out, working-class mothers have always had to work. The state has the potential to regulate and encourage specific family formation, which has been the male-breadwinner norm (Cass 2005). PML is viewed as an important policy supporting families with young children for the benefit of the health and wellbeing of mother and child (Productivity Commission 2008). However, it can also be framed as

supporting women's human rights and their 'effective right to work' as outlined in Article 11(2) of CEDAW:

> In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their *effective right to work*, States Parties shall take appropriate measures: (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances. (CEDAW 1979)

My analysis investigates whether the Commissioners challenged the patriarchal discourses of motherhood—and hence the constitution of the gendered subject—in their policy proposals for these legal mechanisms. Does the Commission promote subject positions for women that are normalised and considered the most 'truthful' to women in twenty-first century Australia? As Smart (1989) suggests; we need to think in two parallel mechanisms about power: the power of the law, and the power of 'truth' in discourses. An interesting theme revealed in my analysis is that each of the SDCs also argues that legislation, the law, is not enough to achieve gender equality as we also need significant cultural change in the home as well as in public life.

I argued in earlier chapters that women's equality is constrained by assumptions that 'motherhood' is 'compulsory' (Cassidy 2006, p. 40), relevant to women's practices and behaviour at all times, and that such assumptions could be challenged through the notion of 'deconstructive equality' (Nash 2002; Scott 1997). Specifically, in Chapter four I argued that women's equality demands the 'continual disruption of gendered practices and identities without penalty or disadvantage to any person' (Nash 2002, p. 421) which requires challenging binary logic that has trapped feminist concerns into relying on either arguments for sameness *or* arguments for difference, but not both (Walby 2009; Nentwich 2006; Guerrina 2001). I use a 'deconstructive equality' lens in this chapter to assess whether the Commission disrupted gendered practices and identities in its problematisations of PML and women's equality as well as whether there is evidence of the Commission moving beyond the binary logic.

My research into the inquiries and policy proposals conducted by the different Commissioners reveals that since 1997, the Commission has made numerous

recommendations in its reports to the federal government to retract the reservation and introduce a federally-funded PML scheme. These reports are: *Glass Ceilings and Sticky Floors: Barriers to the Careers of Women in the Australian Finance Industry* (Susan Walpole 1997a), *Pregnant and Productive: It's a Right not a Privilege to Work While Pregnant* (Susan Halliday 2001), *Valuing Parenthood, Options for Paid Maternity Leave: Interim Paper* (Pru Goward 2002b), *A Time to Value: Proposal for a National Paid-maternity Leave Scheme* (Pru Goward 2002c)*, It's About Time: Women, Men, Work and Family* (Pru Goward 2007) and *Gender Equality: What Matters to Australian Women and Men* (Elizabeth Broderick 2008f). This chapter examines how the SDCs raised various issues related to women's dual roles of worker and parent, contributing to the momentum and support for the eventual passing of the Paid-Parental Leave Scheme in 2009 by the Rudd government.[47] This chapter shows that the pursuit for women's policy initiatives involved a long-term *struggle* within the institutions of the state involving contestation of meanings about women's equality with rights receding and advancing. As an example, Probert (2005) details how Goward's *Valuing Parenthood* discussion paper brought all the 'complex interests and ideologies that shape the lives of working mothers today into open play' (p. 2).

By way of summarising, the central questions addressed in this chapter are:

- How have the different SDCs contributed to women's equality by challenging gender norms/patriarchal discourses of motherhood in their problematisations of PML?
- Does the Commission argue for the implementation of support mechanisms for women with families on the basis that they would support women's human rights and 'their effective right to work'?

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[47] The federal government announced on 12 May 2009 that it would implement a paid parental leave scheme based on the findings of the *Productivity Commission's Inquiry into Paid Parental Leave: Support for parents with newborn children* (Commonwealth 2009). This is a monumental victory for many who have advocated for a paid-maternity leave scheme. However, the Rudd government committed itself to a total cost of $260 million per year instead of $450 million, as recommended by the Productivity Commission. At the time of its announcement, the Rudd government said 'the scheme would come into effect when the economy is expected to be recovering and the economic outlook improved' (Swan cited in Karvelas 2009). The current SDC predicted 'gender equality (is) an optional extra in tough economic times' (Broderick 2009), which was evidenced in the delay of these gender equality initiatives.

- Or, does it reinforce 'essentialist' constructions of womanhood that link to notions of the 'good' mother by constituting family discourses and rights of the child that have been long-term strategies of the state?
- Is there a possibility of the pursuit of a deconstructive equality approach in the work of the Commission that could bring about greater progress for women? Can the Commission move beyond the dichotomy of equality/difference in its problematisations of PML?

Before I engage in my analysis, I provide a short account of how PML has been problematised by the state. The purpose of this account is to highlight the competing problematisations already in circulation by the state that cast women as maternal citizens.

The need for paid-maternity leave: family policy/women's equality

I noted in Chapter three that the need for PML has been framed by three key arguments by state and non-state actors. Curtin (2003) argues that the first is on the grounds of gender equality objectives that support women's economic independence through retaining their attachment to the workforce. The second argues for the provision of services for health and wellbeing of mothers and their babies. The third argues for addressing the apparent fertility crisis in Australia, which was observed early in the twenty-first century. Curtin (2003) argues that the last two arguments for PML offered little challenge to the traditional view of woman as 'citizen mother' (p. 18). Kevin (2005) argues that Australia has a long history of cultivating a relationship between maternity and female citizenship as 'biological determinism played a critical role in women's claims to rights and in the state's attempts to compel women to perform their national duty by bearing children' (pp. 3–4). Examples include the *White Australia Policy* and the policies of eugenics promoted during this period. Kevin (2005) shows how the apparent fertility crisis spurred the Coalition government to encourage more women to have children, fulfilling their *social function*. However, in recent years there has been significant effort to reframe the problem.

Baird (2004) provides a thorough analysis of how debates converged on a number of 'orientations' that defined the different approaches to PML, in terms of a 'welfare

orientation', an 'industrial orientation' and a 'business orientation'. A welfare orientation conceptualises women's primary role within the family but supported by the state, such as the Maternity Payment which then became the Baby Bonus. An industrial orientation regards PML as an entitlement or working condition that must be bargained for, and which is often traded off for other benefits. A business orientation aligns PML with the needs of business and organisations as opposed to the needs of the employees. Baird (2004) proposes an alternative orientation which advocates for feminist goals and which she named the 'new equity orientation … which places the needs and rights of working women at its core and that better and consistently serves the interests of all female employees' (p. 270). This orientation advocates for a universal government-funded PML scheme which is available to all working women, and which has always been the basis of the Commission's proposal.

This chapter refers to these frameworks provided by Curtin (2003) and Baird (2004) to argue that the SDCs—Quentin Bryce, Susan Walpole, Susan Halliday, Pru Goward, John von Doussa and Elizabeth Broderick—adopted these orientations in their advocacy for a PML scheme and for other initiatives that would help women better balance their dual roles. However, these orientations for PML competed for dominance at different times. The discursive arguments adopted by the different Commissioners demonstrate Bacchi's (1999) argument about the importance of analysing *what can and cannot be said* in analysing the struggle for power. This chapter also argues that human rights discourses provided opportunities to argue for rights for women at a time when there was a discursive shift away from feminism in Australia, as addressed in Chapter three.

For this reason, this chapter has framed the responses of the Commissioners into the broader categories of *family policy, rights of the child* and *women's equality*. As I noted in Chapter three, in spite of feminism's efforts to challenge biological determinism, the different federal governments have cast women in the role as mothers first and foremost. There were greater efforts during the Hawke and Keating governments to make other subject positions available, such as by having separate women's policy machinery that assessed strategies for supporting women's workforce participation. This included the

establishment of a comprehensive childcare system as well as direct assistance payments to the carer in the family (Cass 2005).

The Coalition government has been critiqued for emphasising the role of 'women as carers, rather than earners' (Brennan 2007, p. 3) in its policymaking, thereby promoting the breadwinner family. This was achieved through the greater benefits given to single-income families than to dual-income families, such as the Family Tax Benefit system, the Maternity Payment (or Baby Bonus) and the Childcare Benefit (Hill 2006). The Coalition government also shifted the *Office for Women* into the *Department for Families*, placing women and family issues together. This chapter assesses whether the Commission places greater significance on the implications for families in their promotion of PML, or on the individual woman's economic security through attachment to the workforce, which would assist her ability to have similar freedoms as men.

This is not to say that there needs to be a separation between feminist discourses and family discourses, as much of what feminism has been fighting for has been about providing greater choices for women to better balance their family responsibilities (Pocock 2001, 2003, 2005, 2006). Smart (1996) suggests that motherhood has been central to feminist work on two accounts. First, motherhood is identified as a source of oppression because of the responsibility for care and the need to leave the workforce. Second, motherhood has been understood as a source of women's strength and uniqueness. Reiger (1999) details how complicated and fraught feminist debates have been in Australia around the relationship between citizenship and motherhood, and specifically how claims for freedom from the constraints of motherhood were interpreted as anti-family or anti-motherhood. Reiger (1999) claims that the tension in these debates creates a division which 'risks making feminism irrelevant to many women's lives' (p. 594) as motherhood has traditionally been a source of women's self-esteem. Smart (1996) shows that motherhood has been a politically contested site for much longer than feminism has been around, giving this division between pro-or anti-maternal citizenship a historical framework that does not constitute feminist discourses.

However, Rowbotham (1989) claims that feminism gave women the space to question the inevitability of motherhood. As an example, Betty Friedan, in *The Feminine Mystique* (1963) states: 'the release of dissatisfaction challenged the propaganda of motherhood' (cited in Rowbotham 1989, p. 83). This is evidenced in such quotes as: 'When motherhood, a fulfilment held sacred down the ages, is defined as a total way of life, must women themselves deny the world and the future open to them?' (Friedan 1963, p. 51), or as de Beauvoir (1949) warns: 'From infancy woman is repeatedly told she is made for child bearing and the splendours of maternity are forever being sung to her' (p. 473). In these early feminist discourses, women were given an opportunity to question negative aspects of mothering without feeling a sense of failure (Rowbotham 1989).

On a related theme, feminist debates about motherhood have had to contend with those advocating for the wellbeing of children and the rights of the child, which potentially pitting women's rights against children's rights. Chapter five demonstrated that the state has historically used children's' rights as a strategy such as those used in arguments to reject the proposal for the establishment of the Commission in the late 1970s. The 'children overboard' affair also drew on this discourse, when the Coalition government claimed a boat of asylum seekers were throwing children overboard, which was then used to explain why Australia should not accept 'people of that type in Australia' (Howard cited in Saunders 2001) in rejecting the needs of a desperate minority group who needed assistance.

Feminist arguments for women's progress are also often constrained by the same/difference bind which creates a situation where women either argue for greater rights or benefits on the basis of their unique contribution to society, or 'fuller political subjectivity in the form of individualist discourse' (Kevin 2005, p. 4). I argue that we need to draw on the range of feminist tools to think through the 'troubled relationship between maternal embodiment, choice and freedom' (Kevin 2005, p. 4).

Feminists have long observed that women's issues are aligned with the family by the state (Allen 1990; Franzway Court & Connell 1989; Walby 1990). For instance,

pronatalist discourses that have dominated policymaking in Australia privilege the idea of ensuring future generations and the reproduction of citizens (Pateman 1988). Such views care little about women's workforce participation, and only focus on women's positions in the family. In which case, to advocate for improvement in women's lives means suggesting that there are implications for the family. On the other hand, advocating for changes in the workplace to accommodate women's family responsibilities is now regarded as progressive, as it challenges a male dominated construct of work (Pocock 2003), destabilising the masculine and feminine binary which has acted like 'straightjackets' constraining both men and women (Derrida 1984 cited in Caputo 1997, p. 105). Challenging the notion of the male-ideal worker is just as important as challenging the idea of the 'good mother' (Connell 2005a).

My analysis acknowledges that the advocates for PML, such as the Commission, have adopted arguments that they anticipated would be more popular or persuasive than others, such as the emphasis on the health and wellbeing of mothers and babies as opposed to gender equality objectives. The shift from a welfare state policy logic to neoliberal in Australia, as outlined in Chapter three, also inform my analysis, which maps the down-grading of gender equality as a priority by the federal government, meaning that state-actors advocating for such rights had to be strategic about how they constituted the problem of women's inequality. During the Coalition government era, family policy was promoted as 'society's stabilizer which would take pride of place' (Howard 1994, p. 23) and pitted women's and children's rights against each other over other issues, such as access to IVF (Maddox 2005). However, those patriarchal discourses of motherhood that framed these debates contributed to the maintenance of a patriarchal culture more generally in Australia, a culture that the SDCs were given the task to challenge. As already suggested in Chapter five, this is outlined specifically in Article 5(a) of CEDAW which suggests state parties shall take all appropriate measures:

> [t]o modify the *social and cultural patterns* of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

A pragmatic approach may produce policy or legislative change, but I question what impact this has on the meaning-making system that must accompany efforts for social change. As Watson (2000) claims, 'the attention to discourse makes us aware how crucial, amongst other things, written documents—such as laws and policy reports—are in constructing particular subject positions for particular individuals' (p. 75).

In the same vein as the preceding chapters, Chapter seven is arranged in chronological order according to the time period of individual SDCs and supports Bacchi's genealogical approach inscribed in question three: *How has this representation of the problem come about*? While PML may not have been a central policy issue of all individual Commissioners, I can still find evidence of the constitution of discourses that contribute to the problematisations with reference to 'pregnancy', 'family responsibilities', or even in suggestions for challenging the construction of gender norms in workplace culture that has implications for the way motherhood is constituted.

Career barriers for women: Quentin Bryce and Susan Walpole

While the Commission conducted various inquiries into ways that the workplace can assist women better balance their dual role of worker and mother, it also demonstrated concern about the disparities between women's and men's career opportunities. For example, SDC Quentin Bryce (1988–1993) raised the disparity in women's participation in the workforce in the 1991 Annual Report that she attributes to both *cultural* and historical reasons. Bryce (1991) says:

> The fact that women have traditionally borne the major responsibility for child rearing clearly limits their ability to participate fully in the paid labour force, but other factors such as 'women's work' and 'men's work' and discrimination about how their perceived differences should be valued also play out in pay inequities. (HREOC 1991, p. 76)

Bryce placed this disparity in women's workforce participation on the agenda of the Commission, which was then further pursued by Susan Walpole (1993–1997) in her inquiry into discrimination against women in the finance industry. Bryce also successfully advocated for changes to the SDA to include 'potential pregnancy' as a form of discrimination in 1989 (Annual Report 1989–1990, p. 78) which was then taken up in

Halliday's inquiry into pregnancy discrimination. Many years before such discrimination was successfully incorporated into the Act, Bryce promoted the idea of adding 'family responsibilities' as a form of discrimination,[48] as well as promoting a greater role for fathers in the care of children. As she stated:

> The second step requires the acceptance and recognition of the fact that men should share equally in family responsibilities. The introduction of measures that will enable men to assume this role without sacrificing their careers will serve to help remove the coercive nature of existing stereotypes and *reduce the expectation that it will be the mother who continues to have the major responsibility for childcare* [my emphasis] even beyond the child's first year. (Bryce in HREOC Annual Report 1989–1990, p. 78)

Challenging men to increase their participation in unpaid work in the home was also taken up later by Goward's work/life balance discussion (2005e).

In a later annual report, Bryce referred to an inquiry into pregnancy discrimination conducted in New South Wales which she said highlights the 'need for educational programs and information on the responsibilities of pregnant employees as well as challenge the discriminatory attitudes directed at women participating in the workforce' (Annual Report 1991–92, p. 81). This need was later addressed by Susan Halliday in her inquiry into pregnancy discrimination. As well as creating building blocks for further research and strengthening the SDA, Bryce made efforts to challenge the harmful discourses which essentialise women's roles as mothers by promoting women's greater participation in the workforce and men's increased contribution to unpaid work in the private sphere.

In collaboration with researcher Leonie Still from Edith Cowan University, Walpole conducted an inquiry into the disparity in women's opportunities for career progression in the finance industry and released the report in 1997. This disparity was, and still is, reflected in men maintaining greater senior and higher-salaried positions across the industry, creating a 'glass ceiling' for women. Walpole's focus reflected her strategy of

[48] As outlined in Chapter six, the Keating government added 'family responsibilities' to the SDA, in reference to direct discrimination only. Many have suggested adding 'on grounds of "indirect" discrimination' to strengthen this protection.

working collaboratively with the ACTU and the Affirmative Action Agency (as it was called in the late 1990s) to bring about change in the workplace through strengthening the industrial relations system to better manage discrimination issues (Halliday in HREOC Annual Report 1997–98, p. 98).

The report also has a strong focus on the cultural construction of gender norms as a barrier to career progression for women. On the first page of the *Glass Ceilings and Sticky Floors* report, Walpole states:

> Of great interest is the difference in the perceptions of men and women in the industry. In particular, the report shows that the attitudes of senior managers, the vast majority of whom are men, continue to limit women's opportunities, *particularly those women with children or caring responsibilities* [my emphasis]. (1997a, p. 1)

Additionally, the female participants of the inquiry reported that they felt the same assumptions were being made about them:

> Women participants felt that *being married and having children* [my emphasis] presented a career barrier that was almost insurmountable because of cultural attitudes embedded deeply in the organisations. The matter of a woman's pregnancy seemed to play a large part in determining whether a woman was considered to have career potential. (Walpole 1997a, p. 3)

Walpole's (1997a) report challenges essentialist views of women that equate womanhood to motherhood, or assume that a woman's behaviour and identity is defined by her child-bearing capacity. As a central strategy for addressing this disadvantage, she promotes 'gender awareness' programs as 'managers needed to be made aware of their attitudes towards women in the workforce and promotion positions, and the women's reactions to those attitudes' (p. 4). Walpole (1997a) suggests that the 'greatest career hurdle' (p. 66) for women is a workplace culture that regards women's *potential pregnancy* as a significant problem. As an example, the culture of the banking industry is based on the male-worker ideal that demands a twelve-hour-day commitment, which disadvantages women with children. Walpole's contribution to debates about what needs to change for women to have the same freedoms as men to engage in work shows that she opened up other subject positions for women that competed with the 'good mother'. Arguing for cultural change is consistent with a deconstructive equality approach in the pursuit of women's progress because of the emphasis on the role discourses play in the construction

of reality (Walton 1996). For Walpole, legislation is not enough and we also need to challenge the gender norms of the workplace, a key site for cultural change.

Pregnancy discrimination: Susan Halliday

In the 1999 Inquiry '*Pregnant and Productive: It's a Right not a Privilege to Work While Pregnant'*, Susan Halliday (1998–2001) explores the causes of discrimination against pregnant women (and potentially pregnant women) in the workplace. I found that Halliday's problematisations in this report rehearses both discourses of women's equality (same arguments) and family policy (difference arguments).

First, Halliday (1999a) argues, that a lack of a federally-funded scheme for working women contributes to discrimination in the workplace and she recommends a reservation to Article 11(2)(b) of CEDAW be removed by the federal government (p. 244). She refers to the objectives of anti-discrimination laws, specifically the SDA, in relation to discrimination on the grounds of pregnancy and potential pregnancy in employment, to remove unlawful discrimination so that 'women can realise the right to work in jobs that are appropriate to their abilities *irrespective of whether they wish to have children or not'* (p. 9). This shows that Halliday seeks to open up other subject positions for women that do not rely on patriarchal discourses of motherhood and challenges the regime of truth of the 'good mother'.

Halliday (1999a) argues that there have been 'changes in attitudes of women, with many asserting their right to economic independence' (p. 10). Hence, the possibility of women's economic independence, (i.e not being dependent wives and mothers), is being made available as a subject position by Halliday. There is also a challenge to essentialist renderings of 'womanhood' in the suggestion that 'factors which define and separate men and women are the different constructions of their sexuality and their relationship to home and family' (p. 11).

Halliday identifies dominant discourses that have impeded women's equal access to the workplace in her labelling of the workplace as a 'masculine construct' (p. 11). As she stated:

> 'work' is fundamentally a gendered construct. The arrangements for work in industrialised societies were made by and for the benefit of a 'male breadwinner', even though this model may well fit uncomfortably for significant numbers of women and men today. (1999a, p. 11)

She also argues that 'policies and laws that promote the harmonisation of work, pregnancy and family responsibilities must apply and be seen as applying equally to men and women' (p. 11). In the context of pregnancy and work, it is 'essential that policies and laws treat pregnancy and family responsibilities as neither a disability nor a liability, rather as part of the normal life cycle encountered by many workforce participants' (p. 13). There is an emphasis in this statement on gender neutrality, which should apply to policies in reference to 'workforce participants', not 'women' or 'mothers'. For Halliday, womanhood is not defined by an 'essence', as she supports CEDAW's article for women's effective right to work and human rights. There is evidence from this report that Halliday aimed to challenge the regime of truth about the 'good mother' during her time working for the Commission.

However, elsewhere in the report, Halliday's representation of problems makes reference to the needs of the family or society as she states: 'The importance of pregnancy as a *social function* and the right of women to combine work, pregnancy and family are fundamental principles underpinning the SD Act. The need, over time, to reproduce as a society is also of fundamental importance to Australia, both socially and economically' (1999a, p. 13). This is then closely linked to a declining fertility rate (1999a, p. 14), which shifts the focus away from the individual woman's 'effective rights to work' (CEDAW 1979) and instead to women's biological capacity to procreate for the benefit of society. The discourses of maternal citizenship are still being enacted here, supporting Kevin's (2005) suggestion that 'women's bodies continue to be produced as both obstacles to, and insurers of, the future of the nation' (p. 3). This reflects a strategy of pragmatism adopted by the SDCs and the Commission to persuade the government to make policy that would achieve progress for women.

Halliday put forward alternative subject positions to the 'good mother' on various occasions, without rejecting women's role as a maternal citizen outright. In a speech given on 'management', she details how 'there is a growing recognition that some of the core competencies shared by successful women, stem from "traditional skills and roles" but now we're starting to identify and value these competencies, rather than exploit them' (2001). Of the list in which she outlines what defines a successful woman, two qualities promote the balance of women's roles as worker and carer:

> Someone who personally balances the demands of work and family, and involves other key figures in her life to play an integral role in ensuring the balance is achievable.
> Someone who is honest with herself when identifying what she values, desires and needs and makes decisions on her personal values, rather than other people's values, or what others think or expect of her. (Halliday 2001)

This ideal of a successful woman challenges the meaning of the 'good mother' which prescribes that a woman dedicate herself exclusively to her child(ren) and resist developing motherguilt (Hocshchild 1990, 1997, 2003; Pocock 2001, 2005, 2006). The reference to women identifying how they want to live their lives without being defined by society's expectations is an important strategy for negotiating and contesting the 'good mother' discourses. This strategy is also evident in her promotion of the pregnancy discrimination guidelines. As Halliday (1999d) stated: '[c]reating a workplace culture that is amenable to the diverse choices people make, a culture that is open to options rather than quick to pass judgments based on stereotypical assumptions and personal characteristics, is the primary objective'. Even though she invokes discourses of individual choice that are inherent to political liberal theory, or more specifically, as I argued in Chapter three, neoliberalism, Halliday is not referencing choice through the marketplace, rather choice through greater acceptance of people's diversities in the workplace.

Halliday (1998, 1999, 2001) also addresses the differences between women which avoids casting these problems of inequality as only experienced by white, middle-class women. For example, in addition to the pregnancy discrimination guidelines, the Commission

produced culturally specific material for Indigenous women (HREOC 1999). Elsewhere, Halliday talks about taking an 'intersectoral' approach as she is 'mindful of the perspectives of particular groups of women, including women of non-English speaking background, Indigenous women and rural and remote women' (Halliday cited in HREOC Annual Report 1998). She also held focus groups with migrant women and refugee women that 'assisted the Commission to understand better the range of experiences of women who suffer disadvantage and discrimination on the basis of race in Australia' (Halliday cited in HREOC Annual Report 2001).

Paid-maternity leave/paid-parental leave: Pru Goward and Elizabeth Broderick

As Chapter six noted, Goward (2001–06) was under feminist scrutiny on her appointment as SDC (Reiner 1998; Summers 2003). Goward did identify herself as a feminist later in her term, although she would have found herself at odds with socialist feminists, as she believes 'equality between men and women can best be achieved within a capitalist democracy' (2006). She was critical of the elitist strand of feminism 'which only ever talked about women on boards' (ABC 2006), which could be compared to John Howard's rejection of 'elitist' feminist groups (Sawer 2004, 2006). Drawing on the work of Lynch (1984) and Franzway (1986), my analysis also aims to problematise aspects of women entering the government as policy actors on feminist terms.

As I stated in Chapter six, Goward was seen to be the best person for the job of SDC in the Coalition government as she was a 'libertarian, yet never anti-conservative' (Symons 2002). The Coalition government's emphasis on family policy, as well as Howard's personal view that feminism was no longer needed, appears to have shaped Goward's approach to her job and the framing of issues that Australian women were facing. As an example, when reflecting on how the need for PML was framed, she stated:

> It was also important to recognise that Australia was in the early stages of a debate about work and family, and that any public measure proposed must be demonstrably of assistance to children, and, better, to babies, those most vulnerable human beings. It would not be enough to argue that such a scheme was in the interests of women alone, even if the occupational health and safety issues were overwhelming. (Goward 2005a, pp. 178–179)

Goward was open about her strategy to convince the public and the government of the need for PML, given that many women had expressed their problems to her:

> The debate had made it so clear that Australia was still struggling with the concept of mothers working as a moral issue; there was no point in muddying the waters further by devising a scheme that could be dismissed because it was "unaffordable". (Goward 2005a, p. 179).

Goward was careful not to present herself politically as a TIGER (threat to ingrained gender roles) but more often as a 'mother' (Sawer 1986); as she represented the interests of families and mothers and she also spoke of her own role as a mother in the media (ABC 2006).

Broderick (2007–current) adopted a similar approach to Goward by talking about her role as mother and worker, with the intention of providing a role-model for other working mothers (Interview 2007). Broderick also identified as a feminist, yet she views this, not in political terms, but as being concerned with specific issues, such as economic independence, and the ability for women to live free from violence, harassment and discrimination (cited in Farouque 2007). Broderick treads carefully in regard to being affiliated to a specific 'brand' or 'strand' of feminism, yet her comments on gender inequality resonate with a radical strand of feminism concerned with the social construction of gender roles. Regarding the differences between men and women she states:

> Some people may think that things will never change—we should just accept that women and men are different and these traditional roles are the natural order of things. From my own life experiences, and from the many men and I have discussed these issues with, I am not convinced that it needs to be the natural order. (Broderick cited in Faroque 2007)

How then did both Goward and Broderick frame the need for PML, or for legal mechanisms that would provide women with greater support for their need or want to work? Goward and Broderick adopted similar arguments: the health and wellbeing of mothers and babies (difference arguments) compete for dominance with women's attachment to the workforce (same arguments) at different times. Alternatively, Halliday (1999) did not mention health and wellbeing issues, rather she constituted 'women's

equality' as the key concern. In Halliday's report *Pregnant and Productive: It's a Right not a Privilege to Work While Pregnant* (1999), she featured a post-pregnancy section where she advocated for PML on the basis that it would meet 'global standards for the equality of women' (1999a, p. 243) as well as alleviate the 'considerable difficulty (workers face) from being without their income during maternity leave' (p. 244).

Yet, in Goward's first publication on the need for PML, *Valuing Parenthood, Options for Paid Maternity Leave: Interim paper* (2002b) she identified the four themes of gender equity, health and wellbeing of families, benefits to marketplace, and benefits to society. Baird (2002) gives a complimentary assessment of this discussion paper. She claims it demonstrates 'astute thinking by the authors' (p. 2) as the paper frames the need for the policy on the basis that it assists women's need to combine the roles of mother and worker (p. 2), as well as other themes, such as health and wellbeing. Former head of the Women's Electoral Lobby, Eva Cox (cited in Symons 2002) was also complimentary about the final report, *A Time to Value: Proposal for a National Paid-Maternity Leave Scheme* (2002c). The consideration of the health of families, the social benefits and the fertility rate demonstrates Goward's (2005a) own admission that she needed to be careful about alienating an audience that was already resistant to women combining motherhood and work (p. 178–179).

Perhaps it was this strategy that led Goward to refer to motherhood as a 'woman's basic social function' at the public forum I attended in 2002 (as described in Chapter 1 as one of the inspirations for my research). To apply Hall's (1997) explanation of the power of discourse here in terms of individuals positioning themselves within discourses that makes sense to us, feminist discourses of motherhood made the most sense to me. Hence, Goward's strategy to persuade those opposed to feminist ideals, such as supporting working mothers, alienated another audience. In other speeches, Goward adopted another tactic, using the phrase that mothers are the 'centre-piece of the family'. I found this in three speeches:

> Each little girl progresses from dolls to boyfriends and then on to real life babies, confident not only that she will be the *centre-piece* [my emphasis] of her family, but that she must be. (Goward 2005b)

> A waiting list that often never turns your number up. So poor old ladies live in pain and discomfort for the final years of their lives. They don't go for walks, because their knees hurt, they don't wash every day, or tidy every day, because their shoulder joints or their hips are damaged. Yes they live, but their quality of life is severely compromised by those years of unpaid caring, those years of being the *centre-pieces* (my emphasis) of their families. (Goward 2005c)

> Feminism is about choice. The right of men and women to the same range of life choices, irrespective of gender. The right to choose an education, a career, a life in professional sport, or politics or at the Bar or on the Bench or the right to choose to be a devoted parent, carer and home-maker, the family *centre-piece* [my emphasis]. (Goward 2006a)

A semiotic analysis (Thwaites et al. 2002) of the phrase 'centre-piece' invokes images of elaborate floral arrangements on dining tables and symbolises notions of fragility, immobility and emphasised femininity. In which case, motherhood becomes the 'centre' of women's lives and the other elements—work, leisure, play, friendships—are peripheral to their 'central' role. This trope is also problematic because it assumes all 'women' are in heterosexual family formations and will pursue a life with a long-term male partner. Although Goward uses this phrase critically in the first two speeches, the connection between being the 'centre-piece' and a 'devoted parent' constitutes discourses of essentialised motherhood (Diquinzio 2006).

Goward also demonstrated an awareness of the patriarchal meanings of motherhood, which act as a constraint, as evidenced in the following statements:

> Because I do think, particularly in Australia, we still see women primarily as mothers. You know, I mean we are quite Irish, I think, in the value we place on motherhood and whilst that value is a wonderful thing there's also very harsh judgment for any woman found wanting. (Goward 2006b)

> Many of those gaps start to open up when women have children; having children becomes the source of considerable economic disadvantage for women, when in fact they should be cause for celebration. Pregnancy discrimination remains a frequent cause for complaint to the Commission. (Goward 2006a)

Goward's representations of the problem of the need for PML draws on the three frameworks identified by Curtin (2003): gender inequality based on the need to retain women's attachment to workforce (same argument); health and wellbeing (difference argument); and fertility rates (maternal citizenship), which compete for dominance at

different times. Goward's representations of the problem can also be assessed as to whether they promote same/difference arguments (Nentwich 2006). The Coalition government's response to the PML proposal was not to retract the reservation to CEDAW or to implement a PML scheme. Instead, the government increased the Baby Bonus (which was just an increase of the maternity welfare payment Keating had introduced) to $3,000 and then $5,000 which it saw as more appropriate to meeting the needs of all women—including those who are not working—to care for their child(ren) (Howard cited in Dunlevy 2002). The Coalition government thought that implementing a payment for working mothers discriminates against women who do not work. Quoting Howard: 'We shouldn't deride the choice made by those who wish to have a mother or father home full-time to care for infant children' and we shouldn't assume that 'every family in Australia now has the situation where both parents have equal full-time career aspirations' (Howard cited in Dunlevy 2002). The Baby Bonus is structured as a welfare payment, fitting Baird's (2004) 'welfare orientation'.

Broderick saw that the Coalition government's response to Goward's PML proposal to implement the 'Baby Bonus' was not enough as it was 'missing a really important element which was the workforce attachment element' (Interview 2008e). She then continues by stating that 'the main objective of any scheme needs to be the health and well-being of mothers and babies'. This seems like a contradiction, as it had been put to Broderick by Commissioner Fitzgerald in the Productivity Commission inquiry (2008d) that this could be achieved by increasing the Baby Bonus amount instead of implementing a new scheme all together. In response to this, Broderick referred back to the need for keeping women 'attached to the labour market'. This demonstrates that Broderick represented the benefit to the family, rights of the child, as well as gender equity objectives. It also signifies that Broderick was demonstrating the flexibility promoted by the advocates of a deconstructive approach to equality to shift from one approach to another depending on the specific context (Nentwich 2006).

Broderick also publicly argued that 'paid-maternity leave is not about being nice to working women, but is about addressing the inequality experienced by women workers

relative to men as a result of childbirth' (2008b). Later she said: 'This is especially important for women in lesser paid jobs or casual employment who don't have access to any paid-maternity leave' (2008a). When I raised the issue that PML has been construed as 'middle-class welfare' (Finance Minister Nick Minchin in the Coalition government cited in Kearney 2002) in our interview, Broderick passionately responded that a government-funded scheme would actually meet the needs of women from lower socio-economic areas:

> When I was on the [listening] tour I heard from women who were back at work one week within having their baby. They weren't back at work to try and stop their client base from disappearing, which is what a lot of corporate women, lawyers that I know are back at work quickly because of that, these women were back at work because of financial necessity of having to be back, they could not afford to not be there. (2008e)

Broderick is clear about who needs a government-funded care scheme the most. And it is not women from the middle-classes who already have access, such as those who 'are earning over $75,000, or who work for government, state or federal, or who are in large organisations, 500 and over. So, it's those two thirds of women who are missing out who are actually the women who do need it' (Interview 2008e). Broderick also opens up other alternative subject positions for women based on race/ethnicity and religious difference as she discusses how the Commission conducted projects with Muslim women, as well as working closely with the Race Discrimination Unit and Race Discrimination Commissioner, Tom Calma, on issues affecting Indigenous women (2008e).

She acknowledges that many women in Australia experience multiple layers of discrimination because of their sexuality, race/ethnicity, religion, age, disability and socio-economic status (Broderick 2008e). This is significant to my project. 'An effective gender equality agenda must recognise and illuminate the particular disadvantage faced by different groups of women, just as it must address the shared experiences of women as a whole' (Broderick 2008e). This could be compared to a 'coalitional feminist politics' (Stone 2004) suggested in Chapter four as way of pursuing specific changes that provide greater freedoms for women without assuming all women experience life in the same way. Commissioner Broderick's construction of 'womanhood' provides a more inclusive

approach to women's gendered identities. Broderick argues for the rights of women from lower socio-economic groups and other minority groups, and positions 'womanhood' within the public sphere of work directly. She is offering a more hopeful construction of womanhood, one that represents women as workers, as well as mothers, which could produce better results for women's progress in Australia.

Once the debate had been re-framed with the Inquiry into Paid–Parental Leave conducted by the Productivity Commission (2008) under the Rudd Labor government, Broderick adopted this new terminology in her representation of problems as well. In her first Annual Report submission:

> If there is one thing that will progress gender equality across the country, it is to support parents to share the paid and unpaid caring for children and other loved ones across the life cycle. Paid leave for new parents is an essential part of achieving this goal. (AHRC 2008, p. 140)

This signifies a shift in the framing of the PML scheme to paid-parental leave, making the reference gender-neutral and incorporating men into the caring role. Broderick also states that the Commission's submission to the Inquiry 'recognises paid maternity leave as a basic human right for working mothers' as well as recognising 'the entitlement of fathers and other supporting parents' (Broderick AHRC 2008, p. 142). Broderick adopted different approaches in her arguments for PML that reflects a deconstructive approach to equality (Nentwich 2006).

Work/life balance: Pru Goward, John von Doussa and Elizabeth Broderick

In her *Clare Burton Memorial Speech*, Belinda Probert (2002) argues that we have not seen enough of a shift in Australia's gender culture since the 1950s with its breadwinner/housewife model. She claims that we need to move in the direction of a dual-breadwinner/dual-carer model in which child rearing is seen as the responsibility of the family. She believes that we are not moving fast enough. My analysis of the Commissioners' work on balancing work/life shows that Goward, von Doussa and Broderick make strong arguments for this model in the report titled, *It's About Time: Women, Men, Work and Family* (2007) as well as in Broderick's report on her listening tour titled, *Gender equality: What matters to Australian Women and Men* (2008). Goward

resigned from her position as SDC not long after the release of the *It's about Time* report, leaving von Doussa to fill the role temporarily. This involved promoting the report and its recommendations to the government.

In the discussion paper that preceded *It's about Time* (2007), Goward's framing of the need for policy change emphasised women's greater burden of unpaid work, more men expressing a desire for greater time with their children, and the expectations of shifting parenting to an intensive model (such as is outlined by Hay 1996 as 'intensive mothering') (2005e, p. 4). The discussion paper identifies 'how we measure and incorporate the value of care into Australian society' as the core issue of the paper (2005e, p. 4). In the final report, the Commission advocates for a 'shared work-valued care approach' (2007, p. 42) which is not a 'single model for dealing with paid work and care, but a flexible approach that recognises that preferred arrangements will change over time as family/carer circumstances change' (2007, p. 43). The Commission promotes a flexible arrangement for women and men to balance their work and care responsibilities, which challenges the nuclear-family breadwinner model.

In our interview, Broderick points out that it comes down to 'how can we re-invent the workplace so it values motherhood?' (Interview 2008e). Broderick advocates for change in the workplace so that women and men can better balance their family responsibilities by suggesting 'more flexible workplace arrangements and redefining what work means or the systems which under-pin work so they are appropriate for people with caring responsibilities' (Interview 2008e). On this point, Broderick is not gender specific, as she says 'mothers, yes but also fathers'. Broderick is concerned about how best to engage men as fathers but also engage them on gender equality (Interview 2008e). This focus on men is also supported by von Doussa, as he states:

> If you are really going to change the patriarchal structure, you have to change culture. You have to change the position of men. Until you can change attitudes and work conditions of men, you are not actually going to effect the desired range of choices necessary to put women on equal conditions. (von Doussa 2007)

Women's progress through a deconstructive approach to 'gender' and 'equality'

All of the Commissioners acknowledge that anti-discrimination legislation is not enough to protect women's rights in the workplace—that legislative change needs to accompany cultural change concerning the construction of gender norms. In which case, advancing a 'deconstructive equality' approach also demands a focus on the meaning-making system, and specifically how society makes meaning about gender that then informs work practices and structures. As outlined in Chapter four, deconstructive equality involves calling into question and interrogating the truth claims and making visible the meaning-making produced from binaries that are harmful for women's progress. *A deconstructive approach to gender construction* allows us to rethink gendered power by challenging binary thinking that creates the hierarchy between masculinity and femininity. There is congruence between a deconstructive equality approach and human rights as Nash (2002) points out that Article 5a of CEDAW addresses the need for changes to the 'cultural patterns of conduct of women and men'.

I found evidence of many SDCs arguing for changes in Australian culture that advance a 'deconstructive' approach to gender. For instance, Halliday speaks of a need to change workplace culture so that more men would be able to increase their participation in the care of children (1999a, 1999b). In my interview with John von Doussa QC, he spoke frequently of the need for attitudinal and cultural change (Interview 2007). When I asked von Doussa what impact the SDA has had on women's lives, he spoke of how it has slowly challenged the 'old dichotomy between women who stay at home and raise children and men go out to work', which he regard as 'primarily a cultural issue' (Interview 2007).

In her report on her listening tour, *Gender equality: What matters to Australian women and men* (2008f) Broderick flags 'changing attitudes is key to achieving long-term gender equality.' She outlines how, of all the policy and project ideas provided to the Commission, the need for education in order to change attitudes and build skills was the most apparent. She says:

> Underlying these suggestions was a clear message from the community that gender inequality is a pervasive and deep-rooted phenomenon that will not be successfully addressed without significant attitudinal change. Attitudes underpin every concrete action we take to make the world a more equal place for women and men. (Broderick 2008f)

Broderick's view on the need for cultural change is further supported in our interview where she stated that the Commission can contribute to societal, attitudinal and cultural change:

> through our public education, advocacy of what do healthy relationships look like—in terms of school and education right from the early years on. The education around what can women do—they can be mining engineers … really it's creating a world where men and women do share power, where women are paid equally to men, where because they are paid equally to men, where men and women are free to choose whether they want to share the unpaid work and share their lives together. And I think boys and girls think that anything is possible. (Interview 2008e)

A deconstructive approach to equality accounts for flexibility according to the context—so that there is freedom to pursue a strategy that argues women are treated the same as men as well as that their differences need to be acknowledged without having to adopt an either/or approach because of the history of the framing of the same/difference dilemma. My major observation of the representation of problems in the Commission's various policy proposals shifted from one of women's equality to emphasis on the family and then to gender equality, with a focus on also challenging men's roles in the workplace and family.

This highlights how both strategies of 'sameness' and 'difference' were adopted in the problematisations, supported in the work of Guerrina (2001) and Nentwich (2006) who suggest that rather than limit the discussions to adopting one approach over the other, policymakers need to be flexible and shift from one approach to another depending on the specific context. The application of a 'deconstructive equality' (Scott 1997) approach by the Commission can be regarded as accommodating the multiple contexts of women's lives, through making arguments for both women's economic independence and health and wellbeing. The task for the Commission is to think both equality and difference together and contextually, without falling for the blackmail of the binary opposition.

Conclusion

To conclude, I return to Commissioner Fitzgerald's question to SDC Broderick about why the Commission was not successful in persuading the government to implement a paid-maternity scheme. The Commission produced four reports that all advocated for the reservation to PML to be retracted, but as I argued earlier, the Commission had to navigate the larger competing discursive strategies of the government. I found that women's rights discourses were not as successful in claims for PML as discursive strategies that focused on the *wellbeing* of families.

This chapter has addressed the third research question: how does the Commission construct motherhood in its policymaking, focusing on PML policy specifically? The anti-feminist discursive shift that occurred with the Coalition government helps explain the modification that occurred in framing the need for legal mechanisms to support the dual roles of worker and mother. Such anti-feminist sentiment influenced the shift from constituting the need for women's equality in Halliday's report, to a greater emphasis on the rights of the child and value for the family, constructing the subject position of the maternal citizen.

Each of the inquiries or reports aimed specifically at PML or balancing work and life submitted for consideration to the Coalition government failed. Instead the Coalition government strengthened the Baby Bonus, which does not challenge notions of maternal citizenship. Instead, women were rewarded economically for producing a future citizen or worker. The Coalition government adopted the 'welfare orientation' rather than the 'new equity' orientation (Baird 2004) as promoted by the Commission in its multiple reports.

The Rudd Labor government adopted a new equity orientation (Baird 2004) on completion of its own inquiry through the Productivity Commission (2008) that adopted the arguments of child and maternal welfare, impact on the labour market, and social and cultural issues (which encompassed 'greater opportunities for fathers' and 'gender equity objectives'). In the *Draft Inquiry Report* (2008), child and maternal welfare is explored over a whole chapter (46 pages), and gender equity objectives are surveyed over four

pages. Even under a government that promoted itself as pursuing 'social justice' and 'equal opportunity' (Rudd 2009, p. 25), gender equity was not a dominant discourse in the arguments for paid-parental leave. The success of the Productivity Commission's representation of problems in economic terms, and the failure of the Commission's reports, demonstrate the power of neoliberal discourses. As outlined in Chapter three, neoliberalism prioritises economic policies over social concerns (Woodards 2005). The Rudd government's strategy to problematise paid-parental leave in fiscal terms also shows that Rudd's denouncing of neoliberalism was mostly rhetorical.

The Commission's contribution to the implementation of paid-parental leave in its policy proposals (*Pregnant and Productive: It's a Right not a Privilege to Work While Pregnant* (Susan Halliday 2001), *Valuing Parenthood, Options for Paid Maternity Leave: Interim Paper* (Pru Goward 2002b), *A Time to Value: Proposal for a National Paid-maternity Leave Scheme* (Pru Goward 2002c)*, It's About Time: Women, Men, Work and Family* (Pru Goward 2007) and *Gender Equality: What Matters to Australian Women and Men* (Elizabeth Broderick 2008f) can be explained by a poststructuralist account of state power. The Commission is one arena of the state that problematised the need for paid-parental leave within a human rights framework that was trumped by the framing of another arena—the Productivity Commission. The dominant neoliberal logic with its emphasis on economic gain had greater persuasion than arguing for greater rights for women. In an earlier chapter, I argued that the state can be regarded as a 'by-product of political struggles whose coherence is as much established in discourse as in shifting temporary connections' (Pringle and Watson 1992, p. 22) that is reflected in competing arenas that make policy within different frameworks.

On a positive note, my analysis shows that in spite of the dominance of anti-feminist and neoliberal discourses since 1996 in Australia, the Commission has successfully struggled within the state over the implementation of paid-parental leave and other legal mechanisms which would offer women greater freedom to navigate the public sphere. If change occurs in an evolutionary manner, even though the earlier reports produced by the Commission did not achieve policy change, they contributed to the long-term

contestation over the need for paid-parental leave. If the implementation of the Baby Bonus meant Australia was a step closer to policy change and Goward's success to put the debate 'into open play', to use Probert's words (2005, p. 2), the Commission played a vital role in the implementation of paid-parental leave. Evidently, the Commission was strategic about its representation of problems, as it constituted both discourses of the maternal citizen and citizen worker.

This demonstrates that the approach pursued by the Commission reflects a deconstructive approach to equality as it made *both* same *and* difference arguments for PML. The Commission problematised PML on the basis that women should be supported to retain attachment to the workforce to have the 'same' rights as men to work *as well as* having their unique function as 'mothers' recognised for the benefit of the health and wellbeing of child and mother. The Commission moved beyond binary thinking in its approach to PML as well as how women's progress should be pursued. Chapter seven demonstrates that the Commission also pursued a deconstructive approach to gender as there is an emphasis by the SDCs on challenging the gender norms that rely on a hierarchical binary between women and men through cultural change.

Chapter 8
Conclusion: Towards a contemporary feminist politics in the state

I begin my conclusion with a few autobiographical remarks about the central problem identified in my thesis. As established in my introduction, the motivations for my research originate from my concerns about the regime of truth of the 'good mother' that is circulated by the state. When I began this research, I was a childless late-twenty-something woman and ambivalent about motherhood. I found this apparent 'trend' of ambivalence discussed by social commentators, feminists and non-feminists, and of course, by our politicians. Conservative commentators held the view that second-wave feminist mothers had poisoned the minds of their daughters against 'choosing' motherhood (Buttrose 2005; Hausegger 2005). Some politicians were worrying about the declining fertility rate as they struggled over the reasons why middle-class women are apparently not having babies. And feminist sociologists continued to put women into categories. Was I a 'waiter and watcher', that is, a woman with a profoundly undecided and ambivalent attitude towards motherhood (Cannold 2005), or a 'postponer', a woman who thinks she wants to have children, but is hoping for an over-whelming strong urge or desire to make the decision for her? (Titjens-Meyers 2001). I held serious concerns about how I would juggle both parenthood and a career—so that neither negatively impacted on the other—and found the analysis of Australian sociologists Jane-Maree Maher and Lisa Saugeres (2007) most useful in summing up the reasons for my ambivalence:

> Dominant constructions of good mothering suggest that mothers need to be intensely focused on child rearing, and this construction of mothering may be seen as engendering guilt in women who mother and encouraging women without children to view mothering as an all-encompassing and potentially engulfing experience. (pp. 7–8)

The following questions arose from this identification of the causes of my ambivalence: When feminist initiatives and movements have been undermined by a neoliberal logic and rise of conservatism in Australia, what groups or organisations have the social-cultural-political powers to challenge the constructions of the 'good mother'? Who can shape policymaking so that raising of children is framed as a parenting issue, rather than a

mothering issue, involving men more explicitly? This led to my focus on the Commission after attending a forum on why the federal government should implement a universal PML scheme. What started as a disappointment in an individual political figure, a former SDC (for her comments that motherhood is a woman's basic social function), grew into a broader analysis of the feminist struggles within the contemporary neoliberal gendered state. Hence, the feminist struggle I became most concerned with is how the contemporary state defines women as maternal citizens; and how this is articulated in human rights discourses.

*Many years have passed while I have worked on this research. As I write this conclusion, I am now eight-months pregnant. My ambivalence turned into something else as I made greater sense of the constructions of the 'good mother' that I can identify as being derived from both cultural and material spaces. I learned from Foucault that I could resist or challenge the subject position of good 'mother' in the workplace. So far this has meant that I have made strategic choices about how my pregnancy has been managed. I have made efforts to challenge assumptions that I need 'special treatment' because of the pregnancy where I have deemed it unnecessary and potentially damaging. I am very fortunate to work in an organisation that offers their female employees, what are considered in comparison with other workplaces, generous PML arrangements. Importantly, this includes room for negotiation about how I will return to the job and what workload I adopt. Things look good from this vantage point—but of course my experience is not a universal experience rather most likely a reflection of a tertiary educated, middle-class experience. The Commission (2013) recently announced it is conducting another inquiry into pregnancy discrimination in the workplace (fifteen years after the first inquiry by former SDC Susan Halliday) as the current SDC Elizabeth Broderick stated: '*The number of complaints received by the Commission and Fair Work Australia in these areas indicates that discrimination in relation to pregnancy and return to work after parental leave is a continuing problem in Australia' (Broderick 2013).

Even though I have moved beyond ambivalence to now committing to parenthood, I am also still left wondering: How will the 'good mother' discourses impact on my

subjectivity? How I am going to feel about myself as a parent? Will I be struck by motherguilt when leaving my child in someone else's care when I return to work after six months? Will my employers assume I am not as serious about an academic career—influencing my potential for promotion? This may not be evident in formal discrimination practices, but what about the informal, indirect forms of discrimination that occur in the workplace? If pregnancy discrimination is still being commonly reported, then too many Australian workplaces have evidently not changed substantially. One of my key arguments in Chapter seven is that we still need greater cultural change that challenges the construction of gender norms that equates femininity with motherhood and masculinity with a male worker and positions them in a hierarchical binary. Can the Commission do this policy work in future?

In this final chapter I want to revisit and summarise my contribution to the central aim of my research, that is, to investigate the possibilities and limitations of the Commission to contribute to women's progress. In doing so I provide a summary of my policy analyses to each of the three key questions I proposed in the opening chapters. As such I summarise my understanding of the contested nature of motherhood in the work of the Commission during the period 1977–2008. As my thesis provides a genealogy of how human rights and motherhood discourses have shifted in Australia during the period 1977–2008 my thesis provides a brief account of the shift in political philosophy in Australia from a social-liberal logic to neoliberal. My thesis provides an account of how the Australian state understands 'human rights', 'motherhood' 'women's progress' and 'equality' that are very much determined by shifting frameworks or regimes of truth that operate as the dominant political philosophy at any time (Foucault 2007, 2008; Johnson 2007; Fraser 2013). Those interested in contemporary government, or 'governmentality' to invoke Foucault here, pretty much agree on the relatively recent shift to a 'neoliberalising' (Peck & Tickell, 2002) policy logic for all social policy arenas. What is less clear though is how this logic manifests in specific social policy spaces such as the Commission. Whilst it easy enough to say that '[n]eoliberalism seems to be everywhere' (p. 380), we still need more research into the specific strategies of neoliberalism as a starting point to thinking past neoliberalism, and in my case, thinking about the future of

struggles for women's progress in the neoliberal Australian state. With that in mind, the final chapter also ponders Bacchi's question four: *What is left unproblematic in the problem representations* of human rights and motherhood by the state and by the Commission. Bacchi's question asks us to think about whether there '*are any silences in the problematisations'* and if the '*problem' can be thought about differently*'. Bacchi's question also provides another opportunity to explore the potential of the Commission to contribute to women's progress in the future. I conclude this chapter with some recommendations for the Commission and for future research in feminist struggles and the Australian state.

Central aim of research: to investigate the possibilities and limitations of the Commission to contribute to women's progress

In this thesis, I have investigated both the limitations and possibilities of the Australian Human Rights Commission to contribute to women's progress. To address the central aim of the research I developed the following three research questions:

- First, how was the need for a human rights agency problematised by different federal governments between 1977 and 2008 and how was motherhood constructed in these problematisations?
- Second, what are the effects of the state's problematising of human rights on the Commission's legislative and material conditions during the period 1977–2008? Third, how does the Commission construct motherhood in its policymaking, focusing on PML policy specifically?

My thesis contributes new knowledge about the conflict over women's human rights discourses that manifest in the relationship between the different federal governments and the Commission by analysing the discursive and material struggles within the state, and specifically how the Commission was problematised by the different federal governments between 1977 and 2008. Methodologically, Bacchi's WPR approach, provided a set of generative questions to enact my analysis. I will not rehearse all of these questions again here. In regard to Bacchi's question regarding *what is left unproblematic in the problem representations*, it is clear that human rights discourses have been re-framed inside of neoliberal logics adopted by the Australian state, impacting on what the Commission *was*

able to say in its own problematisations in the time period studied. A neoliberal logic involves off-loading demands made on the state to other sectors, and especially to the market, and increasing steering capacity through taxation, and residualising institutions active in civil society (Offe 1987), such as the Commission. This logic is applied to all areas of public policy, including women's progress, which ushers in a new paradigm for productive work and public sector provision; both are opened up to the logic of the market. Not only does this policy logic transform structures and enact new technologies of control but the logic also involves the transformation of values and cultures of the public sector, and also the formation of new subjectivities (Rose 1999). On this theme, my research demonstrates a privileging of neoliberal logics in the success of the framing of PML within a productivity agenda, rather than a human rights framework as represented by the Commission. As well, an antagonism towards the Commission gathered momentum, constructing what I have referred to throughout this thesis as a negative regime of truth. The Coalition government advanced a neoliberalising logic that the Rudd government did little to contest, most significantly in its funding of the Commission.

My research offers a theoretical account of the Australian state, specifically how gender politics happens through a neoliberalising state, and how we can assess the potential of competing arenas (Pringle & Watson 1992) of the state. The work of the Commission provides a case study into the complexity of working within the state as a state-funded agency, and the dilemmas this creates. Working against the gendered state to advance women's progress meant being in conflict with a neoliberalising logic that created limitations on the Commission and its efforts for social justice for women.

On this theme, prominent feminist philosopher, Nancy Fraser (2013) recently argued that she is hopeful that the strangle-hold of neoliberal logic on the political-economy of late-capitalist societies such as Australia is just a passing phase. She proposes '[h]istorians will eventually explain how the neoliberalising forces succeeded, for a time at least, in defusing the more radical currents of second-wave feminism—and how (one hopes) a new insurrectionary upsurge managed to reanimate them' (p. 1). In line with my thesis,

Fraser (2013) argues that one of the tasks for feminism is to 'ascertain which … conceptions of *equality* and *difference* [emphasis added] are likely to be most fruitful for future engagements' (pp. 1–2). How discourses of 'equality' have been reconfigured within a neoliberal logic though are of particular concern for the future of an organisation such as the Commission. In Chapter three I argued that the discursive strategies of neoliberalism encourage individual responsibility by invoking 'freedom' and 'choice' over 'equal opportunity for all' and 'collective rights' as foregrounded by social-liberalism. Whilst Kevin Rudd himself wrote critiques of neoliberalism (e.g. Rudd, 2009), the first Rudd government implemented neoliberal policy in all social policy arenas, and the Commission was negatively affected in ways that I attribute to the power of neoliberalism.

My research also contributes to contemporary policy analysis of the Commission and specifically on how women's issues are represented in policy contestations/ problematising. A focus on a state agency, such as the Commission, allows for an investigation of the gendered neoliberal state's procedures, structures and discursive strategies. I have examined the Commission from the standpoint of Australian feminist engagement with, and within, the state through the women's policy machinery or femocracy. I argue that Australia's liberal social-democratic roots created opportunities for women's progress. Feminist dissent and the courage to pursue sectional interests within government meant women had a voice that, most importantly, was being heard by some and acted on within the state apparatus. I am not casting earlier periods in Australian political history as a nostalgic utopian period for feminism. However, I want to emphasise the benefits of liberal feminist struggles, and the possibilities that the state can be sympathetic to women's specific, or coalitional disadvantage (Stone 2004), and can implement laws and policies to address such inequality. These possibilities were challenged by my research into the policymaking of the Coalition and Labor governments.

Analyses of women's policy are now more problematic with the mainstreaming of gender. To take from Bacchi (1999) directly on what her approach offers political projects that have tackled with the downgrading of women's policy initiatives:

> Recognising the role of the policy community in discursively constructing 'problems' (through policy proposals and political debate) produces a very different vision of the political process. For one, it confirms the incoherence of the intervention/non-intervention dichotomy. That is, we need to recognise the active role (and hence intervention) of governments in discursively constructing social problems as *not* [emphasis in original] requiring intervention. This indeed forms part of the neoliberal logic. (pp. 200–201).

Bacchi's point about 'non-intervention' (1999) is addressed in question four of her WPR (2009) approach: *What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?* I have shown how the Coalition government enacted a strategy of 'non-intervention' through the downgrading of women's policy because of deliberate intent to shift the focus away from 'special interest' groups, such as feminists (Johnson 2005). If a government determines that there is no *need* for resources to be invested in something, then this is an obvious strategy of 'non-intervention'. Fraser (2013), like Bacchi, argues that we should focus on the way that 'needs' are framed within policy to observe the contestation of political claims. She highlights how a neoliberal framing of 'needs' dictates that the marketplace is the best site for meeting needs and not the government (Fraser 2013, p. 53). A neoliberal framing of 'needs' in Australia has consequences for an organisation that aims to address disadvantage that also relies on government funding. The strategies of the Coalition—to actively not invest resources in women's policy—reflects a strategy of non-intervention on the basis that there is no 'need'.

Bacchi also highlights the importance of considering the power of the state in political feminist analysis:

> … our lives are shaped inevitably by the ways in which policy problems are discursively constructed. My argument therefore is that feminists have little option but to engage with the state, and with extra-state institutions such as the law and the medical profession, in contesting constructions of problems which work to disempower women. (Bacchi 1999, p. 204)

I draw on nuanced accounts of the Australian state developed by Franzway, Court and Connell (1989), Pringle and Watson (1992), and Kantola (2006), that reject an inherently, monolithic view of the patriarchal state, and instead opt for a theory that accommodates both material and discursive aspects of state power, and where the state is made up of competing arenas. I also adopt Chappell's (2002a) account of the state that views 'interaction between gender interests and the state as dynamic and co-constitutive' (p. 3). In which case, if there is space for contestation, there are possibilities for progress for women. As well, I borrow from poststructuralist views of the state that emphasise discursive struggles that are concerned about why *one statement appears over another* in legislation, and understands policy discourses as constructing particular subject positions (Watson 2000). A poststructuralist account of the state also acknowledges the complex nature of the gendered state and its impact on efforts to engage the state for women's interests. In which case I can understand the Commission as an arena that has potential to contest patriarchal discourse of motherhood that contributes to the regime of truth about the 'good mother'. Later in this chapter I sum up my argument on whether the Commission realised this potential.

I now turn to summarising the conclusions drawn to my three research questions.

Research question 1: how was the need for a human rights agency problematised by different federal governments between 1977 and 2008 and how was motherhood constructed in these problematisations?

To investigate the possibilities and limitations of the Commission to contribute to women's progress I needed to analyse how different governments represented the need, or not, of a human rights commission. As well, I needed to analyse how the concept of motherhood itself has been problematised. In Bacchi's (2012) approach, we are governed through problematisations, that is, how government defines what is problematic. Policies devise strategies on the basis of these problematisations. Her approach also suggests 'rather than reacting to problems, governments are active in the creation (or production) of policy problems' (Bacchi 2009, p. 1).

My analysis of earlier problematisations of the Commission, such as under the Fraser, Hawke and Keating governments, revealed rationales for a strong human rights protection mechanism. As well, there was some antagonism towards the Commission (that I have referred to as a 'negative regime of truth' in earlier chapters) that emerged in the debates over the establishment of the 1986 Commission, and that was further circulated by the Coalition government when it came to power in 1996. This contestation over the Commission's mandate between 1977 and 2008 also demonstrates struggles within and between different arenas of the state. This conflict shows that different arenas within the state had, and do have, competing interests, and that the different federal governments either supported the pursuit of human rights or renounced their importance by weakening the legislative protections. This insight is consistent with Franzway, Court and Connell's (1989), and Pringle and Watson's (1990) claim that the state is not a monolithic entity with unified interests. Therefore, we need to be concerned about the long-term future and potential of the Commission. The Commission was created by an Act of federal Parliament, and can just as easily be dismantled.

My analysis of the many years of debates in Parliament about the need for a human rights agency, or how much power it should have, revealed that it never received bi-partisan support. There was always some resistance to give the Commission the functions and powers it required to have strong independence from the executive arm of government, but also to have some judicial power to enforce its decisions. For instance, in Chapter five, I examined how the competing interests of the state led to a delay in the establishment of the 1981 Commission by the Liberal Fraser government. Anti-abortion politics gained some dominance in these debates. Arguments were proposed from senators from both sides of politics about how the Commission could function as an advocate of pro-life discourses in its interpretation of the ICCPR's article on the 'right to life'. Significantly for women's rights, motherhood discourses that defined a woman by her biological functions were circulated in these anti-abortion debates. Choice for women was curtailed and the only subject position available in pro-life perspectives was that of the (biological) 'mother'. Consequently, this proposal delayed the establishment of a

human rights agency as both sides of the Senate wanted to avoid a situation where the Commission would get caught up in complaints about abortion issues.

Other struggles over the mandate occurred when the Hawke government re-drafted the legislation. Members of the Coalition struggled against the proposed powers and functions, in spite of the previous support it received with the 1981 mandate. Some within the Coalition, as well as conservatives within the community, would have been happy for the Commission to wither away altogether on the grounds that it was limiting free speech and promoting 'propaganda' about ideas of equality. Other opposition included references to the threat of Communism, feminism and the breakdown of the traditional family. This fear was incited in response to the proposed attachment of both CEDAW and the SDA to the Commission's mandate in 1986. These views can also be considered within the broader debates about the creation of the SDA in 1984 (see Thornton 2010). I argue that such problematisations contribute to the state effectively defining women as maternal citizens within the traditional nuclear family. Discourses that endorse this specific family form were mobilised in these debates to argue that the Commission's promotion of women's rights would lead to its breakdown. It is clear from the texts of these parliamentary debates that a very particular form of family was seen to be at risk if women's maternal roles were challenged.

My analysis also shows how, during the Hawke and Keating governments, women's inequality was represented as a problem whilst the Coalition government, on the other hand, represented the Commission itself as a problem. Such a strategy fits with shifting government attention away from 'special interest groups' such as women or agencies that represented the rights of such groups. Such problematising is also consistent with the shift to neoliberalism that emphasises the logic of the market in all social policy areas. The Coalition government repeatedly attacked the Commission's mandate through its proposals to centralise power with the President of the Commission (which would take power away from specialist Commissioners), replace the specialist Commissioners with 'generalist' Commissioners, change its name to something that implies it is an individual's responsibility to look after their rights, remove its function of inquiring into

Commonwealth legislation or policy, and minimise its remaining function to educate the Australian community on human rights. In which case the Coalition government's aim was to silence the critical and dissenting voices of the Commission so that it could no longer monitor how the government was meeting, or not, its human rights obligations.

My research also examines the struggles against the legislative changes to the Commission proposed by the Coalition government by key players from the ALP and the Democrats in the Senate Legal and Constitutional Legislation Committee. The most significant was during the debates on the 1999 Bill, in which the Coalition government successfully undermined the powers of the individual Commissioners by transferring all complaint-handling powers to the President. Also, the 2003 Bill led to a name change and the reduction of the number of Commissioners. However, the Coalition was unsuccessful in making other changes, because a few Senators were not prepared to vote with the government. Some members of the government were willing to engage in a struggle to protect the Commission and its important function of pursuing human rights in Australia, challenging the negative regime of truth in circulation about the Commission. Again, the state is not a monolithic body, but rather made of competing interests.

Research question two: what are the effects of the state's problematising of human rights on the Commission's legislative and material conditions during the period 1977–2008?

To investigate the possibilities and limitations of the Commission to contribute to women's progress I also needed to examine the material, legislative or structural 'effects' of the problematising of the Commission. Bacchi's question two: *What effects are produced by this representation of the problem?* was analysed in Chapters five and six to reveal the effects of the problematising of the Commission. My study focuses on two different 'effects'. The first are the discursive effects that relate to the presuppositions and assumptions that underlie representations in policy that put forward certain 'truths' and ignore or disregard others. The second are those that relate to the material impacts of problem representations (Bacchi 2009, p. 17). Bacchi (2009) makes a connection between problem representations and the material in her suggestions that 'one way to simplify the

task (of identifying the problem representation) is to see how funds are targeted within a proposal' (p. 4). My study focuses on the legislative and material effects of the problematisations of a human rights agency.

The importance of assessing the material 'effects' of the Commission is that *resources are central* to determining what can be done in efforts for social change (Franzway, Court & Connell 1989). The material effects therefore can limit what the Commission can do, and because its budget is based on the generosity of the federal government, also limits *what it can say*. This also means the Commission's policymaking role is impacted by the material effects as the Commission may refrain from challenging the federal government out of fear of economic retribution.

I assessed the budget contributions by the different federal governments and argue that the shift to a neoliberal logic, and hence to one that privileges a cost-benefit analysis as a key determinant for government spending (through agencies such as the Productivity Commission), actually undermines the possibilities of the Commission. Under such logic, the federal government can claim being cautious about investing money into any initiative where there is limited 'return' for its investment. The shift away from social-liberal ideals about looking after one another (or the state looking after its citizens or 'strangers', such as refugees, through social policy) means that the Commission's budget has been increasingly insecure and undermined in recent years under both the Howard and Rudd governments. Perversely, the GFC, that I understand as an outcome of neoliberal policy logic, has been used as an excuse for not investing in Australia's only state-funded human rights body. Neoliberalising discourse promotes the idea that people are responsible for their own disadvantage (Rose 1999). If we are all responsible for our 'lot in life', and that includes being born female, then we do not need agencies such as the Commission to defend or promote our rights. But it is important for the Commission to have a secure budget, which is also in accordance with the *Paris Principle* guidelines for human rights institutions.

A material 'effect' of recent problematising of the Commission relates to structural location or structural processes of the Commission within the state as a statutory authority. As a statutory authority, the Commission has been given a certain independence that fulfils the doctrine of the separation of powers that provides it with opportunities to pursue women's progress within the state. According to the *Paris Principles*, its mandate rates well. The Commission has clearly stated functions and powers and it has independent legal status, autonomy over day-to-day operations, and has authority to work with inter-governmental agencies and other government departments. These powers and functions were implemented in both the 1981 and the 1986 mandate.

According to the *Paris Principles*, the Commission should be able contribute directly to UN Committee's reports on how the government is meeting its human rights obligations (for example, the CSW). It was not until 2010 that the Commission could contribute an independent report to the CSW, yet the federal government maintains this exclusion on the Commission. Further direction by the UN in the *Paris Principles* guidelines on the powers and structure of state human rights institutions has also been ignored, so that the Commission is unable to achieve the independence it needs to be protected from the interests of different federal governments. The Coalition government demonstrated that it rated state sovereignty more highly than its international human rights relationships (Kelly 2005) when it contested the *Paris Principles* as just another set of principles dictating how the government should be run.

My research examined the material 'effect' of the legislative changes, or attempted changes, that occurred due to the different problematisations of the Commission. Although women's specific rights were not included in the 1981 mandate, there were significant efforts to strengthen protections for women by the Hawke government from 1983, and the Keating government from 1991. Hawke and Keating not only strengthened the Commission's mandate from 1986 onwards but also increased its funding significantly. The addition of *ILO Convention 111*, CEDAW and the SDA to the 1986 mandate gave the Commission greater possibilities to contribute to women's progress. Locating the SDC and her legislation within the same bureaucratic structure of the

Commission and with the other Commissioners gave her the potential to draw on the same funding and resources to inquire into issues relating to women as well as to represent them in sex discrimination cases. I argue that this is congruent with broader feminist efforts to engage the Australian state during this period, and the Hawke and Keating government's willingness to listen to the needs of women. This also reflected a social-democratic strategy that was competing with the emergence of neoliberal logic. Even though the Hawke and Keating Labor governments were implementing economic rationalist policies, they still pursued rights as rendered by social-democratic ideals and values in agencies such as the Commission. For the Hawke and Keating governments, women's inequality of access to the public sphere and to work was 'represented as a problem' (Bacchi 1999). I argue that the Commission was provided with strong opportunities to pursue women's progress under the Hawke and Keating governments.

The first Rudd government also endorsed a number of inquiries into how the Commission's mandate could be strengthened. The Rudd government conducted an inquiry into how human rights mechanisms could be strengthened in the national inquiry into Human Rights protections in Australia with the *National Human Rights Consultation* in 2008. A second inquiry focussed on how the SDA could be strengthened. These inquiries demonstrate that the Rudd government was intent on at least wanting to look like it was doing something to pursue social justice (or social inclusion), an aim that was aligned with the promotion of a Labor government that wanted to maintain some connection to a social-democratic history.

In Chapter six I detailed how the Coalition government utilised a range of strategies to undermine the potential of the Commission to contribute to women's progress. It weakened women's legislative protections by pitting the value of women's rights against those of children's rights. As well it made changes to the SDA by allowing states and territories to discriminate on the grounds of marital status, and excluding single women and lesbians from using IVF. In which case we can see the state patrolling the boundaries of 'good' motherhood (Smart 1996), and circulating patriarchal discourses of motherhood. The Coalition government also refused to sign the CEDAW *Optional*

Protocol that aimed to strengthen women's rights protections by providing another avenue for women to seek direct support from the UN. These strategies of the Coalition government impacted on many social policy initiatives and the Commission came under similar attacks to other statutory authorities and the women's policy machinery.

Antagonism towards the Commission by the Coalition government contributed to one of the more serious limitations on the Commission's role to pursue women's progress—the issue of its autonomy. The case in point relates to the Commissions capacity to take up specific instances of discrimination as defined by its mandate. The Commission could hear and conciliate discrimination cases, and make recommendations for compensation, but its decisions were not legally enforceable. If the complainant wanted to make the Commission's decision legally binding, they had to take the matter to the federal Court and have the case heard again by a different judge, one who would be less likely to have a background in discrimination cases against women. This issue of determination is one that subsequent governments struggled over as the Commission's quasi-judicial function was first strengthened, and then later reduced. For example, under the Keating government, this function to determine cases was found to be in conflict with the rule of the separation of powers, so this power was taken away from the Commission. The issue of 'independence' has been examined in my thesis and the changes to the Commission's legislative mandate demonstrate why it is so important for the Commission to have sufficient legitimacy to be able to contest the federal government.

Research question three: how does the Commission construct motherhood in its policymaking, focusing on paid-maternity leave policy specifically?

One of the most significant strengths of the Commission is its contribution to federal policy debates and hence to pursue women's progress through policymaking. The third research question took a specific and carefully chosen case study of policymaking by the Commission. Given the contemporary significance of PML to Australian women, this case provides my thesis with an example of policymaking that is very germane to my investigation into how the Commission was constructing motherhood. This example also fitted Bacchi's question number one: *What's the problem represented to be in specific*

policy? I was able to examine various problematisations of PML as articulated by the SDCs in numerous policy recommendations. In my thesis, I take the approach that the SDCs are not outside of policy discourses but rather, they are positioned by, and are able to also utilise, the discourses that are available to them. The SDCs are also constrained by the discursive strategies adopted by the different federal governments. I have been especially interested in how a feminist project has competed with dominant patriarchal discourses in policy debates in the Australian state.

My focus on the SDCs is concerned with which voices in government are speaking out for women's rights. The struggles analysed in Chapter seven focused on '*what are the Commissioners able to say*?' For example, SDCs Susan Walpole and Susan Halliday openly identified as feminist and had not been fearful of publicly challenging the Coalition government's policymaking, demonstrating intent to engage the state on women's interests. Howard then appointed an SDC (Pru Goward) whose brand of feminism was particularly conservative. Pru Goward admitted to adopting a conservative and pragmatic approach to selling the Commission's PML proposal; making an effort to avoid being a threat to the gendered state and its interests regarding women as maternal citizens. Importantly though Goward's political work, laid the ground for adoption of a PML scheme.

The Commission's problematising of PML leading up to the Productivity Commission's inquiry contributed to important debates for the federal government, as well as in the public sphere. Former SDC Goward was a very active campaigner for the Commission's proposals and she put a lot of energy into ensuring that the media took up her messages. PML was a household topic by the time the Productivity Commission began its inquiry, or as Probert (2005) argues: it was Goward's *Valuing Parenthood* discussion paper that brought all the 'complex interests and ideologies that shape the lives of working mothers today into open play' (p. 2).

The social conservatism of the Coalition government and the force of neoliberal logic presented obstacles and challenges for the Commission at this time. The Coalition

government constructed feminism as unnecessary, and attempted to sideline women in historically feminist positions, such as the SDCs. The SDCs were consequently limited in what *'they were able to say*' (Bacchi 1999; 2009). The Commission's problematising of PML shifted from arguing for support for women's human rights and 'their effective right to work' (as outlined in CEDAW), to the health and wellbeing of mothers and babies. Although there was a strong emphasis on both problematisations in the Commission's proposals—that was not apparent in the Productivity Commission's report—evidently women's rights discourses were not as successful in claims for PML as strategies that focused on the *wellbeing* of families. It seems clear that Commission sustained a regime of truth about the 'good mother' that utilised discourse of the family and the social function of women, as a way of gaining support by the state for PML provisions.

I have argued in this thesis that challenging the constructions of the 'good mother' is difficult. The ideas of the Enlightenment that shape the construction of the gendered subject, and in my research this connotes the 'good mother', have been contested by feminism, but as Ramazanoglu (1993) argues these discourses 'have remained powerful in affecting common-sense assumptions about what is true and how we discover the truth' (p. 23). Drawing on the work of Foucault (1982), I have argued that the dominant discourses of the 'good mother' are shaped by assumptions that are informed by configurations of knowledge that draw on scientific truths and liberal theory. Put simply, the gendered subject in twenty-first century Australia is constituted in 'regimes of truth'. To quote Foucault (1991): 'each society has its regime of truth … that is, the types of discourses which it accepts and makes function as true' and which is 'centred on the form of scientific discourse and the institutions which produce it' (pp. 72–73).

I provided examples of how the regime of truth about the 'good mother' draws on scientific paradigms and specifically knowledge that asserts that children will suffer psychologically if not cared for predominantly by their mother. Such scientific 'truth' claims a connection between a woman's biology and her destiny, in which case it is possible to render motherhood biologically, (and not culturally). In the Commission's problematisations of PML, *the emphasis on the health and wellbeing of the mother and*

baby utilises similar scientific truth claims and unfortunately constitutes a limiting discourse of the 'good mother'. In which case PML would support the 'intensive care' by the mother in allowing her the time away from work. Of course, I am not arguing that the health of women should not be supported by the state. Rather, that because this argument dominated competing arguments for women's attachment to the workforce, feminist arguments were overshadowed and the subject position made available to women is narrowly conceived of in terms of the 'good mother'.

I also identified how liberal theory contributes to the regime of truth about the 'good mother' that constrains the Commission's potential to challenge the gendered subject in its problematisations. Enlightenment ideas about human nature and the 'individual' have been problematic for feminist efforts to extend conceptions of the *individual* to include the female (Porter 1991) against a normalising of masculine values. In liberal theory, 'rights' of the individual to be free and equal are addressed in the public sphere. The problem here for women is that women have historically been relegated to the private sphere to fulfil their biological and social function, and hence these 'rights' have not applied to them. A liberal conception of 'rights' and the 'individual' relies on a binary between the public sphere and the private sphere that has meant that women have had to argue for the 'same' rights to apply to them so they have the same freedoms to engage in the public world as men. Such thinking represents the 'equality' approach I discussed earlier in this thesis—for women to have *equality*, they need to have the same opportunities as men. In the Commission's problematisations of PML, the argument that the scheme *would support women's effective right to work and help them retain their attachment to the workforce* utilises liberal discourses of rights that gives them the same opportunities to men in the public sphere. The problem with this reasoning is that women are required to be masculine to compete in the public sphere and in the world of work. Obviously I support arguments that women have a 'right' to employment, but in this framework, an assumption of gender neutrality is adopted and discourses of motherhood are silenced or denied. What feminism does not want to do is ignore differences.

But then of course, women are not the same as men. This is one of the sticking points for liberal feminism. Women's biological *differences* to men become an issue when the matter of pregnancy and childrearing is presented in discussions about equality in the public sphere. This represents the 'difference' approach outlined earlier in my research—women's biological differences need to be accommodated if women are to participate and compete in the public sphere and the world of work. The *difference* approach is also evident in the Commission's problematisation of PML, especially in the arguments for *emphasis on the health and wellbeing of the mother and baby.* Motherhood discourses are well and truly out in the open here but this approach 'essentialises' womanhood.

As I have argued, contemporary Australian policy debates for women's progress are now framed in this equality/difference dilemma, binary or dichotomy. And according to this framing you cannot have both. The contemporary 'regime of truth' about motherhood in twenty-first century Australia sounds like this: *You cannot make arguments for equality in the name of wanting to be treated the same as men. But then in your twenties or thirties you want special treatment because you are pregnant or have a child. You have to make a choice—women can't have it all (Campo 2005). This means you probably won't be able to work the long hours required for the job and we will have to schedule meetings around your childcare hours. And if you choose to invest time in your career, be careful your child is not damaged by your absence because your child's development and happiness is dependent on how much time and love you invest in the home.*

Problematic also is the assumption that something is lost or sacrificed by making a choice for 'equality', or a choice for 'difference'. If you choose 'equality', you are saying that you do not care for motherhood. If you choose 'difference', you discount all of the hard work liberal feminism has put into fighting for women's rights through legislation. Hence feminism is left in a bind—which is the most viable strategy to pursue for women's progress? On this point, as argued earlier, Walby (2009) offers a useful insight: 'Just because the concept of gender or women's equality is contested, it does not mean that there are not some commonalities between the different approaches' (p. 36). Rather,

feminist politics has usually involved a 'complex combination of the different approaches including equality and difference' (p. 46).

Bacchi (1999) addresses this dilemma in her explanation of what her approach offers to feminist strategy: 'It does not suggest that particular framings can be dispensed with but rather *that a sharp eye to their effects can provide a basis for interacting with them* [emphasis in original] … A key point here is the need to recognise that feminist interventions will be shaped by context' (Bacchi 1999, p. 205). Contrary to other views, Bacchi's (2012b) approach 'does not leave us wallowing in a sea of representations, with little precise direction as to the political agenda we ought to be following' (p. 152), rather it encourages a focus on the 'realities' feminists create and to assess the political fall out accompanying those realities' (p. 152)

I have argued throughout the thesis that the concept of 'deconstructive equality' (Scott 1997) moves the debate about women's progress past the equality/difference bind and offers a strategy for the Commission to adopt in its problematisations. A deconstructive equality approach aims to undermine the binary logic or thinking that has contributed to two problems: first, that feminism is forced into thinking it needs to make a choice between the pursuit of 'equality' or 'difference'. Second, that gender identities constructed by a masculinity/femininity binary are fixed and universal. The problem with the binary relationship is that although any binary represents opposites, each term derives its meaning from the other. For example, to be female means not being male. A hierarchy also often exists between the two terms, that is, one term is attributed a higher status than the other. As I have argued earlier, feminists have long been concerned with the higher value placed on male aspects of the binary.

What is proposed in a deconstructive equality approach that has been useful to my research is the acknowledgement that setting up the two approaches as opposites and antithetical to one another actually hides the connection between the two approaches. As Scott (1997) argues: 'we do not have a situation where equality is not the elimination of difference, and difference does not preclude equality' (p. 761). What a deconstructive

equality approach proposes then is to challenge the notion that an either/or approach needs to be adopted and instead make decisions about the most appropriate strategy according to the context. Hence, this strategy would challenge the potential of danger or disadvantage in adopting one approach or the other, as the hierarchy—what has greater value—has been removed. As Nentwich (2006) suggests, ultimately what we are dealing with in these debates over equality/difference are 'tensions inherited from feminist theory' (p. 515). What I have aimed to do in my analysis of the problematisations of PML by the Commission is cut through the feminist tensions by not privileging one approach over the other. Instead, I assessed how the gendered subject was being constituted in the problematisations that connotes the 'good mother'. I have argued that the Commission has on occasions successfully adopted a deconstructive equality approach. By way of an example, the Commission argued for PML on the grounds that women should have equal rights to work *as well as* the state supporting the health and wellbeing of mothers and babies. This reflects Scott's poignant and very relevant example of applying a deconstructive equality approach:

> there are moments when it makes sense for mothers to demand consideration of their social role, and contexts within which motherhood is irrelevant to women's behaviour; but to maintain that womanhood is motherhood is to obscure the differences that make choice possible. (1997, p. 767)

Taking a contextual approach to pursuing women's progress through policymaking involves recognising that a 'one-size fits all' approach will constrain the subject positions being made available in policies. Instead of thinking that something is lost in framing the need for a leave-scheme on the basis that women's *differences* should be recognised, or that women should have the *same* rights to men in the workplace, a deconstructive equality approach suggests that we consider the value of both arguments and adopt either where it is considered most fruitful for women's progress.

Earlier in the chapter I also asked whether the Commission can shape policymaking so that the raising of children is framed as a parenting issue, rather than mothering issue, involving men more explicitly. This would achieve another goal of deconstructive equality of unsettling the binary that produces harmful gender identities that constrain women's progress. As argued in Chapter seven, a number of the SDCs (Broderick 2008e;

Goward 2007; von Doussa 2007) made comments about the importance of setting up working conditions that allow men greater freedom to participate in caring for their children. I also address how the problematisation of a leave scheme shifted from arguing for PML (addressing mothers) to paid-parental leave (addressing both mothers and fathers).

The final aspect to consider here in relation to how PML was problematised by the Commission or the state is applying Bacchi's question four: *What is left unproblematic in problem representations of PML?* As I have already focused on the problematisations of the Commission, I turn to the worrying silences in the report of the Productivity Commission (2008). As this was the view that the federal government favoured and that led to the implementation of the scheme, considering what is left unproblematic offers further insight for those involved in women's progress in the future. I identify two lines of inquiry. The first focuses on how the need for PML was framed in economic terms. In which case there is a danger that the government could cut funding because it is too expensive and a cost-benefit analysis could sway back the other way. For example, investing in women returning to work does not produce 'profits' for the economy. The government could then opt for investing in other measures to address the needs of the health of mother and baby. The Baby Bonus was abolished under the Gillard government, but this was the favoured policy of the Coalition government because it did not discriminate between working women and stay-at-home mothers. The second is the near-silence on aspects that relate to supporting women's attachment to the workforce. As supported in CEDAW's article on the 'effective right to work', this view should have had greater focus in the report by the Productivity Commission.

Limitations

The limitations of my research include restricting my data collection period to the end of 2008, when politics has undergone significant changes since this period. Most significantly for my questions on women in politics, Australia had its first woman Prime Minister in Julia Gillard. Gillard experienced negative scrutiny on becoming leader that could be regarded as specific to her gender, although as she claims herself, 'does not

explain everything' (Gillard 2013) about the criticism she has received. This includes the expectation Gillard would hold the flag for feminism, or the constant comments on her appearance (Baird 2010; Pilger 2012; Wright 2012). In a very controversial move by the ALP, Kevin Rudd was recently reinstated as Prime Minster. The reasons for Rudd's resurrection are accounted for on the basis of Gillard's poor public support after a long period of negative polling. This raises further questions about women in politics and I am sure will form the topic of much future feminist research. Early critiques of her 'beheading' blame the media and Kevin Rudd for not being able to let go of the leadership after being toppled himself (Coorey 2013). Sawer's (1986b) work on women in Parliament offers useful tools for analysis as Gillard would have been categorised as a feminist, particularly after her 'misogny' speech in Parliament (Gillard 2012). Her presence as Prime Minister would have been considered a threat to 'ingrained gender roles' (Sawer 1986b, p. 536) by many within the gendered state as well as those who in public life who hold patriarchal views about women.

I note that in the time that Gillard was leader of the federal government, there was much conflict between the Commission and the federal government over the rights of asylum seekers in Australia. The Gillard government proposed the 'Malaysia Solution' as a way of 'managing' asylum seekers who enter Australia's waters by boat. As Malaysia is not a signatory to the *UN Refugee Convention*, sending the asylum seekers to Malaysia would therefore mean that the Australian Government is breaching its human rights obligations. Since returning to office, Rudd has implemented an even more extreme refugee policy by making a deal with the Papua New Guinea Government to accept responsibility for all refugees arriving by boat. How will the Commission respond to this announcement given the policy is in breach of the UN *Refugee Convention*? I am sure this will also be the topic of much future research also and demonstrates that the Rudd government, in its 2013 incarnation, has shifted even further away from a social-liberal logic that utilises discourses of human rights.

Importantly though, in the same week that Gillard was replaced, the Commission announced its latest inquiry into pregnancy discrimination in the workplace (Boderick

2013) which was publically endorsed by Gillard. There were also positive signs that the Gillard government constructed women as workers and mothers in its *Women's Statement 2012 – Achievements and Budget Measures* (Commonwealth 2012), opening up multiple subject positions for women in 2012 through its policymaking. Such policies include increasing funding to childcare, the pay equity decision to increase the pay of workers in the social and community sector, reforms to the *Equal Opportunity for Women in the Workplace Act 1999* and a commitment to a minimum of forty per cent representation of women and men on Australian Government boards (Commonwealth 2012, p. 4).

Another limitation of the research was the decline by Pru Goward to be interviewed for the project, as she could have provided important insights into the workings of the Commission. Goward was the SDC during the period in government when a conservative, pro-traditional family discursive strategy was being utilised. Goward had to navigate her way through anti-feminist sentiment within the state, that I have argued would have been a difficult task. However, there was enough on record in existing documents for me to assess Goward's problematisations of PML to offer new analysis and knowledge of her work.

Recommendations

My thesis suggests two key recommendations that would strengthen the work of contributing to women's progress by the Commission.

1. To fulfil two important aspects of the *Paris Principles* regarding 'independence', first, the Commission's funding arrangements should be secured. How this would be managed is not considered in the *Paris Principle* guidelines, which argues that funding security offered is an important aspect of maintaining independence. Perhaps another independent committee could be established that reviews the Commission's budget each year and makes an assessment. Of course, the same issues of the Commission's 'relative autonomy' are concerned, as the committee would have to be elected by the federal government. Second, the Commission should also have the opportunity to contribute directly to the federal government's report on how it is meeting its obligations under

CEDAW to the CSW and not be excluded from the process by having to submit a separate report.

2. At the beginning of this chapter I highlighted how my research offers an analysis of the role the Commission can play in the future in contributing to the policymaking process. Based on my research, I argue that the SDCs need to consider their political strategies, on a contextual basis (Walby 2009b), and use 'certain arguments in certain discursive contexts, without, however, invoking absolute qualities for women and men' (p. 47). I also argue that the SDCs have clear instructions in CEDAW to challenge the symbolic codes that produce disadvantage for women as Article 5(a) of CEDAW addresses the 'prejudices', 'ideas', 'stereotypes' that I translate to being reflected in culture and the meaning-making system. Legislation is not enough to create the changes needed for women's progress in the public sphere and the world of work. We also need challenges to the 'common-sense' that circulates in the public sphere about gendered practices and roles.

I also make two key recommendations regarding the methodological and epistemological insights from my research:

1. Methodologically, I recommend that Carol Bacchi's (1999, 2009) WPR approach could be used in other feminist policy analysis for the valuable insights it offers into how we are governed through competing discourses and problematisations. There has been a long history within feminist theory of concern with how categories and binaries are used to justify a damaging patriarchal culture. Rather than regard Bacchi's (1999) approach to policy analysis as 'impractical and utopian' (p. 203), I support her claim that it produces a very different vision of the political process (p. 200). Contesting the traditional policy approach that looks for 'evidence' of a reality, Bacchi's (1999) approach offers feminist research a way of considering its own political agenda.

2. My thesis has also tangled with the contested nature of feminist theory over questions of the primacy of the material or the discursive. To quote from Butler and Athanasiou

(2013), '[c]irculating among progressive intellectuals during the 1980s was an objection to abandonment of the materialist project. It was the moment at which poststructuralism was demonized as politically paralyzing' (p. 38). Butler and Athanasiou identify the dilemma that I explored earlier in my thesis over relative significance of cultural politics and/or struggle over material conditions. Or put more simply, do we give prominence to struggles over words or things (Sheridan 2002). I argue that rather than position culture and the material domains as adversaries, I believe it is more fruitful to consider both the material and cultural aspects of women's progress. I have attempted this approach throughout my research. Butler and Athanansiou (2013) fear that:

> at the present moment in left intellectual and political history that discourse [of demonising poststructuralism] might regain a currency, as neoliberalism compels us all to a renewed acknowledgement and affirmation of the so-called primary of economy. The current moment might be portrayed as a new and reinvigorated incitation to economic discourse. (pp. 38–39)

My assessment of the problematisations of motherhood by the Commission in its policymaking demonstrates the importance of struggle in the cultural domain and hence to the meaning-making in the public sphere around this category.

As I have stated previously, there have been numerous accounts of how the anti-discrimination legislation mediated by the Commission could be strengthened, but there is a gap in knowledge in regard to how the Commission can contribute to cultural changes. I have provided further examples of the SDCs highlighting the need for greater 'cultural changes' in Chapter seven that demonstrates their recognition of the importance of the working within the cultural space for women's progress. Other examples of the cultural work of the Commission include current SDC Elizabeth Broderick's 'Listening Tour' when she was first appointed in 2007 as well as the opportunities the SDCs have of giving speeches on issues the Commission consider important. The Commission is endowed with the power and function to provide public comment, inform and educate Australian's by using available media and educational resources. As well as policymaking, it is this role that provides them with the potential to contribute to cultural change.

Future research

In regard to the possibilities for future research, there would be value in conducting a comparative study with the UK Equality and Human Rights Commission. The UK Commission has functioned as a statutory authority since 2007 when three separate equality Commissions were merged into the one Commission. There would be value in assessing the limitations and possibilities in regard to the mandate, funding and key players, as well as exploring how the UK Commission compares in fulfilling the *Paris Principles*.

There are possibilities for future research in relation to the policy implications of the paid-parental leave scheme implemented by the Rudd government. After long-term struggle for a universal scheme, and the emphasis that has been placed on the positive effect it will have on retaining women's attachment to the workforce and hence women's independence, it would be valuable to study the impact of the scheme on women's actual circumstances. The questions worth asking include:

- Does the scheme improve women's material circumstance?
- How do women feel about their dual-roles of worker and parent?
- Has there been a symbolic effect in terms of women having more positive feelings about their dual roles of worker and parent?
- Is there a reduction in 'motherguilt'?

Final words

My research shows how, in spite of the hopes of some of those in federal parliament for the Commission in the 1980s and early 1990s (which was for the eventual passing of a Bill of Rights[49] and for the Commission to mediate such legislation), these have not been fulfilled. We have seen attacks on our democratic system within the state with efforts to silence dissent through such agencies as the Commission. However, I reiterate a comment made by former Deputy President of the 1981 Commission, Peter Bailey, that it is

[49] I am aware of the important contemporary discussions on the implementation of a Bill of Rights, especially since the Rudd government's inquiry into Human Rights Protection in 2008. I have chosen not to focus on such proposals as they detract from the already tenuous important work and position of the Commission.

'something of a miracle that governments are prepared to establish bodies whose primary function is inevitably to criticise their actions' (1999, p. 148). This body has been undermined at times, but it retains the possibilities as a statutory authority to contribute to incremental changes that occur through policy debates. Human rights discourses have been successfully mobilised to promote a feminist agenda, which could continue to be a powerful strategy for pursuing cultural and material progress for women in Australia. Social changes often occur incrementally, an insight that provides a more hopeful view of social change, in which case we need to celebrate small victories, such as attitudinal shifts that occur in the policy debates over time.

Making women's policy within a framework of human rights held initially strong possibilities. My research has been guided by an important question: If feminism is out of favour, can we fight for the same rights under the banner of women's human rights? Chinkin (2000) argues that we can as 'rights discourses provide a powerful language of empowerment and visibility' (p. 25). However, I retain concerns over whether human rights language can be used to argue for women's progress with the reconfiguration of rights and equality discourses as a consequence of neoliberalism.

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Appendix 2: Email response from Pru Goward

From: Rebecca Reid [Rebecca.Reid@parliament.nsw.gov.au]

Sent: Tuesday, 24 July 2007 3:13 PM

To: Sarah Hattam; suzanne.franxway@unisa.edu.au

Subject: Interview with PRu

Dear Sarah,

Thank you for your request for an interview with Pru Goward MP. Unfortunately due to her commitments as a new MP and Shadow Minister she is unable to schedule a time at this stage. Pru resigned from her role at HREOC in April 2007 and consequently it would not be appropriate for her to comment.

Thank you again for your enquiry.

yours sincerely

Rebecca Reid

Office of Pru Goward MP
Goulburn Electorate Office
Ph: 02 4861 3623
fax: 02 4861 3546

Appendix 3: Interview Questions

1. What are the key issues being addressed by the Human Rights and Equal Opportunity Commission in relation to Australian mothers?
2. How would you assess the outcomes of the policy proposal and campaign for paid-maternity leave?
3. In what ways do you think the federal Sex Discrimination Act (1984) represents, or not, the rights of mothers?
4. In what ways do you think the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) represent the rights of mothers?
5. How would you assess the affiliation between the Sex Discrimination Act (1984) and CEDAW?
6. Has the Federal/State governments influenced key issues addressed by the Human Rights and Equal Opportunity Commission in relation to mothers?
7. What do you think has been the impact of the Federal Industrial Relations legislation —Work Choices—on Australian mothers?
8. What strategies have been adopted by HREOC in relation to representing the rights of mothers from minority groups (Indigenous mothers, mothers from low socio-economic groups or mothers from ethnic backgrounds)?
9. How would you assess the responsibilities of the Sex Discrimination Commissioner? Have these responsibilities changed over time?
10. What would have to change for men and women to be equal in Australia?

Appendix 4: Amendments to the 1981 Australian Human Rights Commission Bill

The original Human Rights Commission Bill introduced in 1979 was described at the time by all, except the government's most blindly loyal supporters, as being weak, empty, superficial and dangerous. It has not improved since that time and the opposition despairs that it will never be improved … the opposition believes that this bill should be withdrawn, rethought, redrafted. I move (for the following amendments):

its application to the laws and practices of the States and the Northern Territory;

the full application, without reservations and declarations embodied in Australia's ratification, of the rights contained in the International Covenant on Civil and Political Rights;

the specific adoption in judicially enforceable form (along the lines of the 1973 Human Rights Commission Bill) of the rights contained in the International Covenant on Civil and Political Rights;

the extension of the Commission's jurisdiction to enable it to investigate and report upon possible breaches of the International Covenant on Economic, Social and Cultural Rights (which includes guarantees of the rights to form and join trade unions, social security, an adequate standard of living, work, physical and mental health, education and to take part in cultural life);

The extension of the Commission's jurisdiction to enable it to enforce the rights contained in the UN Convention on the Elimination of All Forms of Discrimination Against Women;

the expansion of the powers and functions of the Commission to give it a more effective enforcement role, especially in relation to civil and political rights; and

in relation to racial discrimination matters, the retention of the independent status and functions, and especially the power to report directly to Parliament, of the Commissioner for Community Relations' (cited in Evans (Labor Senator), Senate Hansard, 12 March 1981).

Appendix 5: Functions of the Commission as featured in Section 9 of the 1981 Act

To examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactment or proposed enactments are, or would be, inconsistent with or contrary to any human rights, and to report to the Minister the results of such examination;

to inquire into any Act or practice that may be inconsistent with or contrary to any human right, and – where the Commission considers it appropriate to do so – endeavour to effect a settlement of the matters that gave rise to the inquiry;
and where the Commission is of the opinion that the Act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect a settlement of those matters – to report to the Minister the results of its inquiry and of any endeavours it has made to effect such a settlement; on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or actions that should be taken by the Commonwealth, on matters relating to human rights; when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Covenant, of the Declarations or any other relevant international instrument; on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination; to promote an understanding and acceptance, and the public discussion of human rights in Australia and the external Territories;

to undertake research and educational programs, and other programs on behalf of the Commonwealth for the purpose of promoting human rights and to co-ordinate any

such programs undertaken by any other persons or authorities on behalf of the Commonwealth; to perform – any functions conferred on the Commission by any other enactment; any functions conferred on the Commission pursuant to any arrangement in force under section 11; and any functions conferred on the Commission by any State Act or Northern Territory enactment, being functions that are declared by the Minister, by notice published in the Gazette, to be complementary to other functions of the Commission; and to do anything incidental or conducive to the performance of any of the preceding functions