NSW *Conversion Practices Ban Act* 2024- risks to religious freedom

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The *Conversion Practices Ban Act 2024* (No 19 of 2024) (the "CPB Act") was rushed through both Houses of Parliament, receiving final approval on Friday March 22 after an all-night debate in the Legislative Council, and received the Royal Assent on 3 April 2024. It commences operation in 12 months, on 3 April 2025.

Legislation of this sort has been introduced in other jurisdictions around Australia and elsewhere. The aim of banning oppressive and violent practices designed to "convert" someone's sexual orientation from homosexual to heterosexual is good, of course. But those practices, while they may have existed some time ago, are really no longer around. The problem with these laws now is that their drafting can be so broad that they interfere with the ordinary teaching of religious doctrines and life within families. These laws are also often premised on the assumption that "gender transition" is a good thing which should be freely available to children, whether or not with parental permission. They raise important issues of concern to all those interested in the welfare of children.

There are several serious problems with the CPB Act. It is at least better than some others which have passed, especially the very bad Victorian law. But none of the suggested amendments put forward by faith groups and the Opposition and other members were accepted by the government, which had the numbers with the Greens to push it through unchanged.

So, churches and other religious groups will need to consider carefully where the line can be drawn between counselling which urges someone to live in accordance with God's will (by not engaging in sex outside a man/woman marriage, or by living in line with one's biological reality), and counselling which "suppresses" a person's "sexual orientation" or "gender identity". The Act when it commences will also put a thumb on the scales of advice to those wrestling with gender confusion, in favour of "affirming" treatment, when the scientific evidence is becoming increasingly clear that for young people, puberty blockers and other such treatments are not shown to be of help, and lead to massive bodily changes which can usually not be reversed.

It may be best to be clear at the outset: I do not think we needed this legislation. The sort of horrific practices that most of us think of when we hear the words "conversion therapy" only ever happened on a very small scale and were mostly illegal when they happened. However, since the current NSW government made a promise to introduce such a law before they were elected, it was always likely that NSW would have one. If we do have to have one, the version provided by this Bill at least provides some basic protections for religious freedom and the interests of children. But it could be much clearer.

[1] Views expressed here are of course my personal views, not those of my institution.

1. How the Act operates

(a) Enforcement

The Act contains two major Parts, one creating criminal offences, and the other setting up a civil scheme where complaints can be made leading to an investigation and a possible award of damages. I won't go into the mechanisms of enforcement in detail.

I just mention briefly that **Part 3** of the Act creates criminal offences where deliberate "conversion practices" can be shown to have led to substantial mental or physical harm (or to endanger a person's life) (s 5) or where a person has "transported" someone to a different jurisdiction for "conversion practices" to be performed (s 6). In the case of these criminal offences, the consent of the person to whom the practices are applied is not a defence. (However, the general exclusion of "consent" as a defence found in other jurisdictions does not apply to the civil scheme, as discussed below.) Note that this criminal offence cannot be committed by a minor, so it will not catch conversations between young people under 18 (see s 5 (5).)

Criminal cases are likely to be fairly rare. **Part 4** of the Act is more likely to be invoked, where a civil complaint mechanism is provided, based on a breach of s 8:

> **8 General prohibition on conversion practices**
> An entity contravenes this Act if the entity provides or delivers a conversion practice.

The word "entity" picks up individuals, corporate bodies, and "an unincorporated body or organisation" (see the Sched 2 Dictionary)- presumably it is used because some churches and other community bodies operate without being formally incorporated.

Civil complaints are made first to the President of the Board established under the *Anti-Discrimination Act* 1977 (s 14) but may later be escalated to a hearing before the NSW Civil and Administrative Tribunal (NCAT) (s 27).

(b) What is a "conversion practice"?

The concept of a "conversion practice" is the key area where the Act sets out what activities are prohibited, and most of the rest of this paper deals with that notion and its exemptions.

The Act defines "conversion practices" as follows, in s 3:

> 3 Meaning of "**conversion practices**"
> (1) In this Act, a ***conversion practice*** means a practice, treatment or sustained effort that is—
> (a) directed to an individual on the basis of the individual's sexual orientation or gender identity, and
> (b) directed to changing or suppressing the individual's sexual orientation or gender identity.

The concept of "changing" sexual orientation seems fairly clear. There is a definition of "sexual orientation" in the Dictionary to the Act (Schedule 2) as follows:

> ***sexual orientation***—
> (a) means an individual's sexual orientation towards—

> (i) individuals of the same sex, or
> (ii) individuals of a different sex, or
> (iii) individuals of the same sex and individuals of a different sex, and
> (b) includes having a lack of sexual attraction to any individual of any sex.

It seems clear that the term refers generally to a predisposition to be sexually attracted to one sex or the other, or to neither. This is unsurprising but significant in comparison with the Victorian legislation, the *Change or Suppression (Conversion) Practices Prohibition Act* 2021, where the definition of "sexual orientation" (through a cross-reference to the *Equal Opportunity Act* 2010 (Vic)), means "a person's emotional, affectional and sexual attraction to, or **intimate or sexual relations** with, persons…" This means that, on its face, the Victorian Act identifies any sexual activity as a person's "orientation", and hence, as I said in my previous blog post on that law:

> This definition will mean that… any encouragement to someone to practice chastity and not to engage in sexual activity, can be seen as an inducement to the person to "suppress" their "sexual orientation" (even if there is no intention to address the emotional attractions that the person feels.)[2]

So, the NSW Act is much closer to the common understanding of "sexual orientation", and makes much more sense.

However, the phrase "gender identity" contains several questionable assumptions. Does everyone in the community have a "gender identity"? The definition of this term in the NSW Act (in the Dictionary, Sched 2) follows a confusing pattern found in other laws dealing with this issue:

> ***gender identity*** means the gender-related identity of an individual, which may or may not correspond with the individual's designated sex at birth.

If this seems to be circular, that is because it is! The word "gender" seems as hard for drafters to define as the word "woman" has been hard to pin down recently. We are also given the notion of a person's "designated sex at birth". The truth is that no-one "designates" a child's sex- it is present prior to birth (which is why we have ultrasound scans for expectant parents keen to discover this) and is observed as a genetic and biological fact rather than "designated" (or "assigned") by anyone.

Of course, one of the ironies of this type of law combining a prohibition on "conversion" based on both sexual orientation and "gender identity" is that determined proponents of "gender theory" are keen to allow a "transition" from one sex to another (if that were possible)- a transition which one may as well call a "conversion". It could be strongly argued that these **two phenomena are completely different** and should be dealt with in separate pieces of legislation if at all. There is mounting evidence that so-called "gender affirming" medical treatments have been provided to children and to others with no sound scientific basis showing that they are any real benefit to the people concerned.[3] Certainly in the case of children, it is clear that young people ought not to be encouraged to make damaging medical decisions which they will need to live with for the rest of their lives. The UK National Health

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[2] See https://lawandreligionaustralia.blog/2021/01/15/victorias-conversion-practices-bill-is-as-bad-as-they-say-it-is/#attraction-sexualactivity (Jan 15, 2021).
[3] See the "WPATH files", https://environmentalprogress.org/big-news/wpath-files (March 4, 2024).

Service have recently announced they will no longer support provision of "puberty blockers" to minors.[4]

However, as in other such laws around the world, this issue of "gender identity" is dealt with under the Act. Here it is done by carving out an explicit exception to the ban on "conversion practices" for a health practitioner "genuinely assisting an individual who is exploring the individual's … gender identity or considering or undergoing a gender transition" (note after s 3(3)(a)(ii).

While this example is given in the context of a sensible exemption applying to registered health practitioners (see s 3(3)(a)), it seems to be worded in a way which favours so-called "gender transition", and does not refer, for example, to a practitioner who may be assisting a person who has undergone prior medical intervention and now seeks to "de-transition" (an increasingly large group). The issues in this area are so complex, and sound medical advice in such flux, that it would have been far better for the **whole question of "gender identity" to be removed** from this Act and dealt with, if needed, in another piece of legislation. However, as this has not happened, we will note below some of the implications for those seeking to counsel others based on Biblical teaching.

An important feature in the above definition is the **use of the word "suppress"**. The word is not defined, and in Victoria (coupled with the very broad definition of "sexual orientation" to include sexual activity, noted above) arguably any advice to anyone to comply with Biblical sexual morality (that sex is only right when between a man and a woman who are married to each other) might be regarded as "suppressing" sexual orientation. Even under the NSW Act such a view might be arguable, though less clear (as noted below).

Faith leaders in NSW did recommend some amendments to the Bill prior to its passing to make its operation clearer, and this is one example.[5]

> In the Second Reading speech, the Attorney General said that the key term suppression, which is not defined in the Bill, has its ordinary dictionary meaning, being "'to keep in or repress' something or 'put an end to activities'." This is too broad, and could include any recommendation or exhortation to restrain behaviour, including: telling a young person to reserve sex until marriage; counselling a married, heterosexual man to not have an affair with another woman; encouraging a homosexual person who wants to live accordance with their religious beliefs to remain celibate; [or] consensual prayer with an individual along the lines of "Please, God, help X stay faithful sexually".

They then made the sensible request: "**Define *suppress* as "attempt to eliminate"**". This should have been done but was not. I comment below on the impact of this uncertainty around the word.

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[4] See this note in the British Medical Journal: "NHS services in England are told to stop routine prescribing of puberty blockers" *BMJ* 2024; 384 doi: https://doi.org/10.1136/bmj.q660 (Published 14 March 2024).

[5] See https://contactyourmp.org.au/wp-content/uploads/2024/03/Conversion-Practice-Ban-Bill-2024_combined-heads-of-faith-letter.pdf .

2. Areas where the Act provides protection for religious freedom and the welfare of children

The Act contains a number of clear "carve-outs" from the overall definition, which do have the effect of providing some protection for the interests of religious freedom and children's safety. They are contained in sub-sections 3(3) and (4).

One, noted above, in s 3(3)(a), applies to a **registered health practitioner** where treatment has been assessed as clinically appropriate in the practitioner's reasonable professional judgement, and this "(ii) complies with all relevant legal, professional and ethical requirements". While there is some lingering doubt about who gets to establish those "professional and ethical" requirements, on the whole this seems a sensible provision. It will allow a medical practitioner who regards active "gender transition" as inappropriate for a young person who may have a range of issues, to give that advice without it being regarded as a "suppression" of "gender identity".

Under s 3(3)(b) we see that a conversion practice does not include:

> genuinely **facilitating an individual's coping skills**, development or identity exploration to meet the individual's needs, including by providing acceptance, support or understanding to the individual

This seems fine, though as the Faith Leaders pointed out it would have been improved by making it very clear that a person's "needs" are not to be determined by someone else who thinks that they "need" not to have advice about how to live in accordance with their Christian faith. They said:

> When a person seeks assistance or support, the person from whom they are seeking support needs to be able to respond to the expressed needs, without having to second guess what a court might determine was a true "need" in retrospect.[6]

Hence the sensible suggestion that s 3(3)(b) should have been amended to refer to "meeting the individual's needs **or request**". Still, even in its current form, a court or tribunal (or other decision-maker) should give priority to the expressed needs of a person, especially where the person has a genuine religious faith, and is seeking counsel to live in accordance with their faith.

Then under s 3(3)(c) there is an exemption concerning **expressions of religious faith**. These are said not to be "conversion practices":

> the following expressions if the expression is not part of a practice, treatment or sustained effort, directed to changing or suppressing an individual's sexual orientation or gender identity—
> (i) an expression, including in prayer, of a belief or principle, including a religious belief or principle,
> (ii) an expression that a belief or principle ought to be followed or applied.

While sub-paragraphs (i) and (ii) are sensible, the effect of the whole paragraph is undermined somewhat when the introductory words are considered, which in effect say

[6] Above, n 5 .

merely that something is not a conversion practice if it is not a conversion practice! To quote the Faith Leader's letter:

> The effect of this section is to say, "a religious teaching is not a change or suppression practice unless it is a change or suppression practice". This makes the exemption circular and risks a lack of clarity as to how it will be interpreted by a court or tribunal. Combined with the overly broad definition of *suppression*, this renders the exemption meaningless, giving no certainty as to whether a particular religious exhortation is a "suppression practice".[7]

Since the formally circular reference has been retained, a court or tribunal will need to do the best it can to interpret the definition rationally. It seems that the sense of the provision could be captured by exempting the relevant expressions "so long as they do not form part of an oppressive and sustained effort directed at an individual". So, it seems that even in an individual counselling session, where one of the issues that arises is that someone would like to know and obey the Bible's teaching on sexual behaviour, the pastor or small group leader can present the Bible's teaching and encourage the person to live in accordance with that teaching.

The Act then provides a number of **further examples** of things that are not conversion practices, in sub-section 3(4):

> (4) To avoid doubt, the following are examples of what does not constitute a conversion practice under this section—
> (a) stating what relevant religious teachings are or what a religion says about a specific topic,
> (b) general requirements in relation to religious orders or membership or leadership of a religious community,
> (c) general rules in educational institutions,
> (d) parents discussing matters relating to sexual orientation, gender identity, sexual activity or religion with their children.

These are very helpful. Simply presenting the teaching of the Bible on sexual morality, and the goodness of God's creation of us as either of one biological sex, or the other, will not be prohibited, whether in sermons, small groups, or private conversations. "General" requirements or rules under paragraphs (b) (for leadership positions in religious groups) and (c) (for rules established in faith-based schools) should not in any event be seen as conversion practices.

Paragraph (d) makes clear what the Victorian law very much leaves up in doubt- parents can have clear conversations with their children about living in accordance with their faith in these areas. The right of parents to raise their children consistently with their moral and religious beliefs should be respected. This right is recognised in international law, under the *International Covenant on Civil and Political Rights*, art 18(4). Considering this accepted human right, para (d) should be read as not just saying that abstract "discussions" are acceptable, but that parents may also set family rules and behavioural standards.

As the Faith Leaders noted, this paragraph would have been better if it applied to a "wider range of familial and care relationships".[8] But the fact that parents are specifically mentioned, does not mean that such discussions cannot be held with aunts and uncles and family friends. Sub-section 3(4) is explicitly said to be "to avoid doubt", and this common legislative

[7] Above, n 5 .
[8] Above, n 5.

expression means “we are giving you specific examples, but these examples would have already been covered by the previous provisions.” So, conversations with other family members can still be lawful if they fall generally under s 3(3)(b) (providing help for needs) or s 3(3)(c) (religious conversations.)

3. Some specific examples of how the Act impacts religious speech

It may be helpful, finally, to provide some specific examples of the Act’s operation in some areas of religious life. I stress that these are hypothetical examples, and of course are given prior to judicial interpretation of the law (which will not commence until April 2025). But the law is meant to provide guidance for action, so these are some suggestions as to what the law means in practice.[9]

(a) Teaching in church, small groups

It seems clear that the general teaching of the Bible on sexual activity and sexual identity, when presented in a sermon directed to a congregation, or in a small group, will not amount to a “conversion practice”. This would certainly be the case where topics taught and discovered ranged over a wide area of the Bible’s teaching or different topics, and questions about sexual activity or identity were only addressed as they came up in that program, rather than being a major theme week after week.

This would seem to be so in terms of the definition of “conversion practices” in s 3(1) alone. The teaching of general Biblical truth would not amount to a “practice, treatment or sustained effort” devoted to any specific goal other than conveying, as Paul put it in Acts 20:27, “the whole will of God”. In addition, such group teaching will not be “directed to an individual”, and nor will it be given “on the basis of the individual’s sexual orientation or gender identity”.

In addition, such teaching will fall outside the definition of “conversion practice” by virtue of s 3(3)(c) as it would be either “(i) an expression, including in prayer, of a belief or principle, including a religious belief or principle, or “(ii) an expression that a belief or principle ought to be followed or applied”. (So long as it did not form a “practice, treatment or sustained effort, directed to changing or suppressing an individual’s sexual orientation or gender identity”- teaching as part of an overall program of Bible teaching directed to a group would not fall within this expression.)

Finally, teaching in a congregation or small group is a “for avoidance of doubt” example of what is not a conversion practice given in s 3(4)(a): “stating what relevant religious teachings are or what a religion says about a specific topic”.

(b) Counselling one-to-one

It will also be possible to lawfully offer one-to-one counselling or advice about the Bible’s teaching and how to observe it, so long as the following points are observed. The example we

[9] And, of course, these comments are not to be regarded as legal advice for specific individuals. If issues arise, a practising lawyer should be consulted.

will use is a youth pastor approached by a young person who is same-sex attracted, or feels confusion around gender identity, and is asked to advise on what the Bible says, and to help the young person live in accordance with Biblical teaching.

First, this situation may satisfy *some* of the parts of the definition of "conversion practice" in s 3(1). There might be a series of meetings to discuss the issues, which may look like a "sustained effort". Is this "directed to an individual on the basis of the individual's sexual orientation or gender identity" (s 3(1)(a))? While an individual is involved, the first response to make is that the same answers can be provided *whether or not* the person feels they are attracted to members of the same sex as an "orientation". The focus of the counselling will be on behaviour, rather than feelings. The "basis" of the teaching is the word of God and God's perfect standards for human life, which apply whatever our current feelings.

Suppose, however, it is thought that s 3(1)(a) is satisfied. The next question will be, is the advice "directed to changing or suppressing the individual's sexual orientation or gender identity" (s 3(1)(b))? The answer will depend on the advice given. It may be thought that the underlying feelings need to be addressed. In that case there may be a desire to change the individual's orientation, based on the teaching of the Bible. If so, other exclusions may be needed (discussed below). Alternatively, the person giving advice may conclude that, as a matter of Biblical teaching, it is not a question of "orientation" but behaviour and present the goodness of God's purposes for human sexual activity without needing to address the underlying orientation issues.

In either case the question will arise as to whether the advice given amounts to "suppressing" the individual's sexual orientation. Views will differ here. It is possible that a court or tribunal might take the view that "suppressing" a sexual orientation is the same as advising a person they ought not to have sex.[10] In that case we will need to consider the specific exemptions.

One that will apply which we have not considered in detail so far is s 3(3)(b):

> genuinely facilitating an individual's coping skills, development or identity exploration to meet the individual's needs, including by providing acceptance, support or understanding to the individual…

This provision is precisely on point here. The pastor has been asked to assist someone with a felt **need**. They are asking for help to **cope** with issues around their deep faith commitments and their sexual temptations. The pastor can provide the assurance that God **accepts** and loves them, and that he will forgive them as they turn to put their trust in Jesus and will **support** them in obeying God's word by providing the Holy Spirit. The pastor can also provide that acceptance and support as they live out their identity as a forgiven child of God.

The other provisions we have noted above support the view that providing advice and counsel in these circumstances does not amount to a "conversion practice": expression of a religious belief or principle and encouragement to put it into practice (s 3(3)(c)); "stating what relevant religious teachings are or what a religion says about a specific topic" (s 3(4)(a)).

[10] See, for example, Lady Hale in *Bull & Bull v Hall & Preddy* [2013] UKSC 73 at [52]: "Sexual orientation is a core component of a person's identity which requires fulfilment through relationships with others of the same orientation." This comment was quoted with approval in *Christian Youth Camps Limited v Cobaw Community Health Service Limited* [2014] VSCA 75, by Maxwell P at [60].

(c) Applying requirements for leadership

A couple of provisions in s 3(4) make it clear that general policies adopted by some faith-based organisations will not be regarded as "conversion practices". Paragraph 3(4)(b) exempts:

> general requirements in relation to religious orders or membership or leadership of a religious community…

So a "religious community", such as a church, may put in place a policy that anyone who has a leadership role (such as a priest or a pastor or an imam) should live in accordance with the teachings of the faith, and so not enter into a same-sex marriage or relationship, or live otherwise than in accordance with their biological sex. Having such a policy will not be regarded as a "conversion practice".

To be frank, it seems hard to imagine how having such a policy could in any case have been regarded as a conversion practice. But it does not hurt to spell this out "for the avoidance of doubt". Of course, whether such a policy is lawful may depend on other legislation. At the moment we have "balancing clauses" in Commonwealth and NSW laws which allow religious groups to operate in accordance with their faith commitments without this being regarded as unlawful discrimination.[11] Hopefully these will continue to be in place.[12]

(d) School rules

Another "avoidance of doubt" provision appears in s 3(4)(c), excluding from the definition of "conversion practices":

> general rules in educational institutions…

This makes it clear that faith-based schools, for example, will not be engaging in a "conversion practice" by requiring staff to adhere to the faith commitments of the school, or by setting out rules for student behaviour consistent with their faith. Again, as noted above, whether or not these practices are otherwise unlawful is not addressed by this Act, but will be determined under relevant discrimination law.[13]

4. Concluding comments on interpretation

I have tried to offer what I regard as the best interpretation of these provisions. The fact that texts can support different interpretations for different people, should come as no surprise to believers used to debates about Biblical interpretation! But those debates also remind us that,

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[11] See s 37, *Sex Discrimination Act* 1984 (Cth); s 56, *Anti-Discrimination Act* 1977 (NSW).

[12] There are some proposals which may see these helpful provisions removed- but they go beyond the scope of this paper. For more details see my comments on the recent ALRC report on the Commonwealth law, https://lawandreligionaustralia.blog/2024/03/23/challenges-to-religious-freedom-conversion-practices-law-passed-alrc-report-released/ (23 March 2024), and the NSW private member's Bill, *Equality Legislation Amendment (LGBTIQA+) Bill* 2023, currently subject to examination by a Parliamentary committee: https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=18460 .

[13] Currently s 38 of the *Sex Discrimination Act* 1984 (Cth); the NSW ADA 1977 does not presently apply to private faith-based schools. See above n 11 for challenges to these current arrangements.

however much we may disagree, in many cases a decision has to be made about a text's meaning to allow, or not allow, action to take place.[14]

In this context, one principle of statutory interpretation that courts apply, which should be taken into account in this context, is that as a matter of judicial discretion in interpreting ambiguous legislation, the courts should presume that Parliament would intend to comply with international law (see *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273.) There is also a principle that courts will lean towards upholding fundamental common law rights (such as freedom of speech) in interpreting such laws.

One case where international obligations provided at least one reason for the decision was *Evans v NSW* [2008] FCAFC 130. In this decision a major ground for overturning restrictive NSW regulations that had prohibited the 'annoying' of Catholic World Youth Day participants was that they interfered (without explicit Parliamentary authority) with the fundamental common law right of freedom of speech.

Branson & Stone JJ commented:

> 74 Freedom of speech and of the press has long enjoyed special recognition at common law. Blackstone described it as 'essential to the nature of a free State': *Commentaries on the Laws of England*, Vol 4 at 151-152. …
> 76 In its 1988 decision in *Davis v Commonwealth* (1988) 166 CLR 79, the High Court applied a principle supporting freedom of expression to the process of constitutional characterisation of a Commonwealth law. … In their joint judgment Mason CJ, Deane and Gaudron JJ (Wilson, Dawson and Toohey JJ agreeing) said (at 100):
> Here the framework of regulation … reaches far beyond the legitimate objects sought to be achieved and impinges on freedom of expression by enabling the Authority to regulate the use of common expressions and by making unauthorised use a criminal offence. Although the statutory regime may be related to a constitutionally legitimate end, the provisions in question reach too far. This extraordinary intrusion into freedom of expression is not reasonably and appropriately adapted to achieve the ends that lie within the limits of constitutional power…
> 78 The present case is not about characterisation of a law for the purpose of assessing its validity under the Constitution of the Commonwealth. The judgments in *Davis* 166 CLR 79 however support the general proposition that freedom of expression in Australia is a powerful consideration favouring restraint in the construction of broad statutory power when the terms in which that power is conferred so allow.

The evidence in that case disclosed that Evans and other members of the public were planning to demonstrate against what they perceived to be bad policies and doctrines taught by the Roman Catholic Church. The challenged regulations would have restricted their right to do so by requiring them not to 'annoy' participants. The Federal Court held that these regulations should be struck down on the principle that the head legislation enacted by the NSW Parliament should not be interpreted, in the absence of express words, as allowing regulations to be made which interfered with this fundamental common law right.

This principle, known somewhat obscurely as the "principle of legality", was also applied by some members of the High Court in *Attorney-General (SA) v Corporation of the City of Adelaide* [2013] HCA 3 and in a related case concerning freedom of speech, *Monis v The Queen* [2013] HCA 4.

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[14] For those interested in a comparison between Biblical interpretation and statutory interpretation in the courts, see Neil J Foster "Statutory Construction and Biblical Hermeneutics- law in the service of the Gospel?" *St Mark's Review* Vol. 252 Iss. 2 (2020) p. 106 – 128, available at: http://works.bepress.com/neil_foster/137/ .

The Federal Court in *Evans* also referred to the value of religious freedom, supporting this by reference to the general terms of s 116 of the *Constitution*, and to Art 18 of the *Universal Declaration of Human Rights*:

> 79 In the context of World Youth Day it is necessary to acknowledge that another important freedom generally accepted in Australian society is freedom of religious belief and expression. Section 116 of the Constitution bars the Commonwealth from making any law prohibiting the free exercise of any religion. This freedom is recognised in the *Universal Declaration of Human Rights* and in the *International Covenant on Civil and Political Rights* which, in Art 18, provides:
> 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
> 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
> 3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

The CPB Act, of course, is not merely a regulation, but an Act of the NSW Parliament. But the general principle that the courts will interpret legislation so as to not interfere with fundamental common law or other values of society, is highly relevant. Where there is uncertainty in the wording of an Act, the best interpretation is the one which gives effect to the words Parliament has used, but with least impact on important values such as free speech and freedom of religion. It is to be expected that courts and tribunals in NSW will take this approach in interpreting the CPBA.

8 April 2024