



**Second Annual Religious Freedom Conference,
“Freedom of Belief, Freedom of Action”
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“Freedom of Belief: Freedom to provide religious instruction in Australian schools”

Associate Professor Neil Foster¹
The University of Newcastle

There are many different aspects in which religious freedom needs to be protected in Australia, a number of which have been considered by other papers delivered at today’s conference. The one I want to focus on in my paper is the question whether parents are entitled, if they choose, to have their children taught about religion from the perspective of a particular religion, in conjunction with their ordinary secular schooling.

The practice of setting a short period of time once a week at a school for someone from a specific religious group to come into the school and teach the children of parents who consent, about that religion, has been a part of growing up in Australia for many years. At least in NSW where I was growing up, it was called “Scripture”, but it goes by a number of different “official” names- again, in NSW, SRE for “Special Religious Education”.

That parents can choose to have their children learn about a religion in this way reflects the generally accepted human right for parents to be able to teach religion to their children. In art 18(4) of the ICCPR we read:

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Of course, this instruction happens in the home, and at churches, and in youth groups, but for many years a very important adjunct to these has been the ability of parents to allow their children to attend “scripture” classes at school.

But in recent years there has been a ferocious attempt by some groups, especially one called in Orwellian fashion “Fairness in Religion in Schools” (FIRIS), to get rid of these classes from public schools. The group’s name sounds at first as if they accept the idea of “religion in schools”, but simply wish to ensure that each religion gets a “fair go”. Their stated goal is:

‘Fairness in Religions in School is a group of parents and citizens who want education about religions in state schools that is Inclusive, not divisive or discriminatory.’

The meaning of these loaded terms, then, is the issue. There is already an even-handed opportunity for all religious groups to provide classes, not just Christian groups. A number of non-Christian groups offer these classes. Where there are volunteers available, classes in secular ethics are also available. But FIRIS seems determined, not to provide “fairness”, but to get rid of **all** religion taught by its own practitioners from

¹ BA/LLB (UNSW), BTh (ACT), DipATh (Moore), LLM (Newc); comments welcome:
neil.foster@newcastle.edu.au .

schools. (The idea that any teacher can provide “neutral” comments on a religious world-view with no input from their own world-view is of course very problematic.)

In this paper, I thought it would be useful to actually document some efforts that the group has made in recent years, sometimes with success, sometimes without, to persuade governments to remove the right of parents to choose this avenue of religious education for their children. This account may help to illustrate the sort of tactics that are being used, and raises a number of important issues. Not least of those issues is why it seems that officials in Education bureaucracies are allowing themselves to be driven into radical anti-religious decision-making by the threat of publicity from a small and unrepresentative lobby group.

Schools and the Separation of Church and State in Australia

Perhaps it is best to start off with the background in Australia on the question of the relationship between “church and state”. That is because many, even in Australia, have the impression that all Western countries have erected a high “wall of separation” between the two spheres, getting that impression from US TV shows and comments from the US on the internet.

The fact is that even in the United States, the theory that there is this high wall (said to be mandated by the First Amendment to the *US Constitution*, which says that “Congress shall make no law respecting an establishment of religion”) has been seriously challenged by many scholars. Still, the effect of the “establishment clause” in the US has been felt in decisions holding that there can be no public prayer offered in public schools, for example.

But, while s 116 of the *Commonwealth of Australia Constitution* seems at first glance to be similar, there are a number of important differences between the way that the Australian provision has been interpreted by the courts here, and the reading of the US First Amendment offered in that country.

Section 116 provides, on this issue:

The Commonwealth shall not make any law for establishing any religion..

The history of interpretation of the provision makes it clear that, unlike the situation in the US, this is not a prohibition on State, as opposed to Federal, action (so in theory a State is free to even “establish” its own religion, although in fact such a decision would not be politically acceptable today.) In addition, the important decision of the High Court of Australia in *Attorney-General (Vic) ex rel Black v Commonwealth* (1981) 146 CLR 559 (sometimes known as the *DOGS case* for the group which sponsored the challenge, “Defence of Government Schools”) held that s 116, far from mandating a “wall of separation”, was not breached by direct Commonwealth funding of Catholic schools. This view was reaffirmed more recently in *Hoxton Park Residents Action Group Inc v Liverpool City Council* [2016] NSWCA 157 (5 July 2016), where the right of an Islamic school to receive federal funding for mainstream courses was upheld by the NSW Court of Appeal.²

The interpretation given to the prohibition on establishment of religion in s 116, then, is very narrow. Relying on the phrase “for establishing”, the majority of the High Court in *Black* held that the prohibition would effectively only be breached by a law

² For comment on the decision see my blog post “Establishing Religion and Islamic schools in NSW” (July 7, 2016) <https://lawandreligionaustralia.blog/2016/07/07/establishing-religion-and-islamic-schools-in-nsw/> .

the very *purpose* of which was to set up something like a “state church”. Hence there would be no breach of the establishment clause by a moderate engagement with, and even-handed support for, religion in schools. This has been regarded as the settled meaning of the term for many years, which is presumably why, for example, when the “school chaplaincy” scheme was challenged in the High Court over the last few years, those making that challenge did not even attempt to argue that the “establishment” clause was breached by the Government providing funding to private religious organisations to allow the placement of “chaplains” in Government schools.

The cases challenging the scheme, *Williams v Commonwealth* [2012] HCA 23, (2012) 86 ALJR 713 and *Williams v Commonwealth of Australia (No 2)* [2014] HCA 23, were successful in that they led to the Court declaring the schemes invalid as then constituted. But the invalidity was on the grounds of the direct funding arrangements that had been adopted, not on a breach of s 116, despite some inaccurate press reports of the decisions.

In this paper I do not propose to comment on the “chaplaincy” arrangements in place in schools under various sources of funding. While chaplains may be doing an excellent job of social support, the conditions under which they are appointed usually require them not to actually share their faith with children while acting in that official role.³ Instead, what I am discussing are the arrangements whereby representatives of different faiths are allowed by legislation to come into schools during school hours and to offer instruction in that faith, with permission of parents.

The campaign to remove SRI from Victorian schools

The first major campaign conducted by FIRIS was their mostly successful attempt to remove Special Religious Instruction (“SRI”) from public schools in Victoria.

One strategy that seems to have been adopted, unsuccessfully, was to argue that the provision of SRI in Victorian schools was “discriminatory”, as those children who did not attend felt excluded and left out from the classes. (The relevant legislation, the *Equal Opportunity Act 2010* (Vic), makes discrimination on the basis of religion unlawful.)

In *Aitken v The State of Victoria, Department of Education & Early Childhood Development (Anti-Discrimination)* [2012] VCAT 1547 (18 October 2012), parents of children at a State school objected to the fact that Scripture classes (“special religious instruction”) were offered at the school their children attended, but their children were “singled out” because they had withdrawn them from the class. The Tribunal found that there had been no “adverse impact” on the children, and hence that there was no breach of the Victorian Charter of Rights or the legislation on discrimination. Children were often separated from their class-mates for other activities, and there was no evidence of

³ A fact commented upon by Heydon J in his dissenting judgment in *Williams v Commonwealth* [2012] HCA 23, (2012) 86 ALJR 713, where at [307] he pointed out the irony that those called “chaplains” had very little role in disseminating their faith: “In ordinary speech a “chaplain” is the priest, clergyman or minister of a chapel; or a clergyman who conducts religious services in the private chapel of an institution or household. Those who are “school chaplains” under the NSCP’s auspices fall outside these definitions. Their duties in schools are unconnected with any chapel. They conduct no religious services. Perhaps those supporting validity committed an error in calling the NSCP a “chaplaincy program” and speaking of “school chaplains”. The language is inaccurate and may have been counterproductive. Some vaguer expression, more pleasing to 21st century ears, like “mentor” or “adviser” or “comforter” or “counsellor” or even “consultant”, might have had an emollient effect.”

any bullying or harassment of those who did not attend SRI. There was no detriment in giving the non-SRI children other useful activities to do while SRI was taught.

The decision of the Tribunal was upheld on appeal in *Aitken v State of Victoria* [2013] VSCA 28 (22 February 2013). The Court held that the Tribunal had made no errors of law in its decision. For example:

25 The judge accepted the teachers' evidence that students who did not attend SRI were supervised and undertook activities of educational value, including 'reading, finishing off school work, or making use of computer literacy, or numeracy programs', during the time that other students were receiving SRI. Since the children undertook 'educationally valuable activities' during SRI time, it could not be established that the children had suffered any detriment or deprived of any benefit. He noted that:

Both students who attend SRI, and those who do not, are engaged in activities that are not curriculum related or secular instruction.

There are other occasions during the school schedule when time is spent on activities, which are not core curriculum activities.

The evidence does not establish that the SRI has a direct connection with the core curriculum. The complainants have not established that the SRI syllabus has any real connection with the VELs, or the core curriculum. The statement in the prescribed Form, that SRI builds on the core curriculum, does not mean that it involves instruction in the core curriculum. Any program activity that involves reading or drawing, or interacting with other children, as the CRE SRI syllabus appears to do, will assist children develop skills, which are part of the VELs curriculum. But the same could be said of many of the activities undertaken by students not attending SRI.

(Interestingly, it seems that this failed "discrimination" argument may be run again, this time in New Zealand. A case is being run in that country by the "Secular Education Network" before the Human Rights Review Tribunal, arguing that "the Education Act allows religious favouritism in state schools, which it says is prohibited under the Bill of Rights".⁴)

Despite the failure of the formal claims of "discrimination" in Victoria, a more popular campaign proved politically successful. [This piece](#) notes that in August 2015 the Victorian Minister for Education announced that SRI could no longer run during school hours.⁵ It explicitly points out that the campaign that achieved this result had started with a call for the classes to be made "opt in" instead of "opt out". Removal of the classes from core school time, so that they could only be offered in lunchtime or after school, saw a dramatic collapse in numbers.⁶

It has more recently been reported that some lunchtime classes are growing, and SRI is not completely "dead" in Victoria, but it has been seriously wounded.⁷

Banning books in "Scripture" classes in schools in NSW

Attempts were also made to attack SRE in NSW.

⁴ See "Government knew religion in schools potentially discriminatory" <http://www.radionz.co.nz/national/programmes/checkpoint/audio/201844729/government-knew-religion-in-schools-potentially-discriminatory> (22 May 2017).

⁵ See also <http://www.theage.com.au/victoria/religious-instruction-scrapped-from-curriculum-20150820-gj425e.html> (*The Age*, Aug 21, 2015).

⁶ See <http://www.theage.com.au/victoria/schools-drop-religious-instruction-after-government-changes-ban-teaching-during-class-time-20160219-gmyrnf.html> (*The Age*, Feb 19, 2016).

⁷ See K Payne, "Not dead yet: religious instruction in Victoria severely wounded, but still kicking" *Eternity*, Sept 9, 2016 <https://www.eternitynews.com.au/australia/not-dead-yet-religious-instruction-in-victoria-severely-wounded-but-still-kicking/>.

For some years the law of NSW has required that a small amount of time be set aside each week in public schools for SRE. It is a voluntary system, in that parents are free to remove their children from the classes if they so choose. It is not meant to be general information about the concept of religion and “world religions”- that is “General Religious Education”, to be provided by the ordinary class-room teacher. (Under s 30 of the *Education Act* 1990 that is classified as part of the “secular education” which is to be provided by the schools.) But s 32 of the Act allows representatives of various religions to come into the schools and provide religious instruction from their own faith perspective, to children whose parents are willing to allow this.

32 Special religious education

(1) In every **government school**, time is to be allowed for the religious education of children of any religious persuasion, but the total number of hours so allowed in a year is not to exceed, for each child, the number of **school** weeks in the year.

(2) The religious education to be given to children of any religious persuasion is to be given by a member of the clergy or other religious teacher of that persuasion authorised by the religious body to which the member of the clergy or other religious teacher belongs.

(3) The religious education to be given is in every case to be the religious education authorised by the religious body to which the member of the clergy or other religious teacher belongs.

(4) The times at which religious education is to be given to children of a particular religious persuasion are to be fixed by agreement between the **principal** of the **school** and the local member of the clergy or other religious teacher of that persuasion.

(5) Children attending a religious education class are to be separated from other children at the **school** while the class is held.

(6) If the relevant member of the clergy or other religious teacher fails to attend the **school** at the appointed time, the children are to be appropriately cared for at the **school** during the period set aside for religious education.

As noted, SRE has been an accepted part of life in NSW schools for many years. But there have been loud voices expressing opposition. One development saw complaints by parents who withdrew children from SRE classes, that they were not doing useful work. The suggestion was made that there should be an alternative class offered in Ethics, from a non-religious perspective. This is now authorised by s 33A of the Act, where it is “reasonably practicable” to offer the alternative class. (This will usually depend on there being motivated and qualified local volunteers willing to take the classes.)

But a more recent development then saw a campaign to remove SRE from public schools altogether.⁸

A **press report** of Wednesday May 6, 2015 suggested that a textbook being used in SRE promoted the messages of “sexual abstinence outside a “lifelong relationship” and the doctrine of male headship and female submission.” That a Christian organisation should want to present standard features of Christian doctrine which have arguably been in the Bible for millennia seems to have been a surprise to some of those quoted. The book which was most strongly challenged was one called *Teen Sex by the Book*, produced by Patricia Weerakoon, a highly qualified Christian sex expert and lecturer on the topic at the University of Sydney. This book was not, in fact, actually on the official reading list for SRE classes. It was published by the same organisation that published the SRE materials, but it was not an SRE text.

⁸ For a contemporaneous media report, see <http://www.abc.net.au/news/2015-05-27/moore-religion-still-has-a-worthwhile-place-in-the-classroom/6500248> (Natasha Moore, *ABC- The Drum*, June 5, 2015).

Yet the article misleadingly suggested, if it did not quite state, that it was part of the formal curriculum. A representative of the lobby group was quoted:

“We call on the (DEC) to remove all of these materials from schools immediately and conduct a parliamentary review into how this damaging curriculum was able to become available to SRE teachers,” she said.

Few who read the article would have predicted how alarmingly quickly this call was to be heeded by an apparently compliant Department of Education and Communities, the body responsible for schools. On [Thursday May 7](#) it was reported that SRE teachers arriving at schools to teach their classes were abruptly informed by local school principals that the Department had sent around a warning about three books: one of them the *Teen Sex* book, and two others: *You*, by Michael Jensen, and *A Sneaking Suspicion*, by John Dickson. Both of these authors are currently serving Anglican rectors but also well-known Christian authors. (Actually, there was some confusion as to whether the books themselves were to be “banned”, or the study guides which accompanied the books, but the intention seems to have been to ban both.) It was not clearly stated why the two latter books were targeted, although the most obvious reason is that they formed the basis for some of the courses taught to high school students, and generally supported Christian morality on sex.

This sudden censorship was, frankly, astonishing. As far as can be determined from the authors concerned, and from the body administering SRE on behalf of the Anglican church in Sydney, there had been no consultation or discussion on the matter. An extract from one of the emails received by the schools says that:

SPECIAL RELIGIOUS EDUCATION – RESOURCES

It has come to the attention of the Department that resources being delivered to support Special Religious Education (SRE) in schools may be in conflict with departmental policy and legislative requirements. One such resource is:

- Teen Sex By The Book by Dr Patricia Weerakoon, Christian Education Publications.

Additional resources that may also be used by SRE providers in schools that do not comply with departmental policy include:

- You: An Introduction by Michael Jensen, Christian Education Publications.
- Your Sneaking Suspicions by John Dickson, Christian Education Publications.

The Department's Religious Education Implementation Procedures state that approved providers of SRE must provide information about the content of lessons when requested by principals. Would you please contact approved providers of SRE in your school to ascertain if the resources listed above are being used.

The letter then continued:

**If these resources or any other resources ...
are being used in schools... principals are
required to direct SRE providers to cease
using them immediately.**

This action was clearly contrary to the way that the SRE system was meant to work. As noted above, s 32(3) of the Act specifies that it is the **religious education provider** which is to determine the content of what is offered in these classes. The Department's **internal policy** said at the time:

NSW DEC Religious Education Policy

§1.3 Curriculum for general religious education is provided as part of the Board of Studies NSW syllabuses.

Curriculum for special religious education is developed and implemented by approved providers.⁹

Another Departmental document indicated:

Responsibilities of providers**Lesson content**

It is the responsibility of an approved provider to:

- authorise the materials and pedagogy used by special religious education teachers;
- provide an annual assurance to the NSW Department of Education and Communities that authorised teachers are only using materials and pedagogy authorised by the provider;
- make lesson content accessible on a website or at least provide a program outline and curriculum scope and sequence documents.

In other words, the content of lessons and how they are taught are meant to be the responsibility of the SRE provider, not the Department! It can hardly be supposed that with all these responsibilities carefully set out, the intention of Parliament, or even of the Department, was to allow a single bureaucrat to decide without warning to “ban” the use of certain texts in response to a one-sided press report, with no consultation. Yet this seems to be what happened.

While one can perhaps imagine that a prescribed text which urged, for example, believers to immediately wage war on, and kill, unbelievers, could be the subject of such urgent action, it beggars belief that matters of Christian morality which have been taught for millennia could overnight have become so immediately harmful that they had to be withdrawn without due process and opportunity for explanation.

(For further comments on these events at the time, see [here](#) and an interview with one of the authors, [here](#).)

On 19 May 2015, after a strong public reaction to the Department’s actions, the Minister for Education [wrote](#) to the Anglican Archbishop of Sydney to advise that there was no longer any ban on “two books, and their accompanying student handbooks, namely, *You: An Introduction* by Dr Michael Jensen and *A Sneaking Suspicion* by Dr John Dickson”. The minister confirmed that the third book mentioned in the previous Departmental email, Dr Patricia Weerakoon’s *Teen Sex by the Book* was not on the list of reading for SRE.¹⁰ That the Minister was forced into a humiliating backdown by the actions of the Department illustrates the extent to which, it seems, Departmental officers are either themselves supportive of the “secularising” aims of the lobby group, or else inordinately concerned about possible bad publicity in the press.

Two issues were raised by this whole sequence of events- the “process” issue as to how these events unfolded, and the “content” issue as to whether the material allegedly being taught was harmful.

The Minister in his letter “regrets” the lack of prior consultation and assures the Archbishop that “if similar concerns are raised in the future [the Department] will immediately discuss the matter with SRE providers as a first step”. That is a very minimal obvious step which was not taken! It is disappointing that there was no frank acknowledgement that what had been done with no prior warning was clearly

⁹ The current policy is available at <https://education.nsw.gov.au/policy-library/policies/religious-education-policy>. It contains the same statement.

¹⁰ The letter indicated that this book may have been used in some government schools outside Sydney; I have seen no independent confirmation that this is so, but of course it is not impossible.

wrong. As it is arguable that what was done was completely outside the lawful authority of the Department mere “regret” seems fairly weak.

On the “content” issue, it seems that the Department still harboured some doubts. The closest we came to understanding why these books were a concern was as follows:

the original memorandum was issued by the DEC on advice that there was a potential risk to students in the delivery of this material, if not taught sensitively and in an age appropriate manner.

This language seems to conceal more than it reveals. What sort of “risk”?

Some hints may be obtained from a post by one of those who strongly supported the ban. A member of the Greens political party who supported the original ban posted a document which, if it was not the very one that was used to persuade the Department, seems likely to have been similar. The complaints about the material include that they contained “negative views about abortion”, “outdated and sexist female headship views” (presumably the intention was to refer to Biblical views about male headship), and of course the dangerous proposition that sexual relationships are meant to be reserved for marriage:

The lessons reinforce that love is only between a man and woman and that men and women are designed to perfectly complement each other. This sends a message that anything other than a heterosexual relationship within the bounds of marriage is wrong.

The document also includes without comment an article entitled “Thank God for the Gift of Cancer”, which was intended to be used as a discussion starter with senior students. No doubt it is challenging to read, but equally there are no doubt many books accessible in high school libraries dealing with illness and death. There are then comments labelled as “homophobic” such as the suggestion that the Gay and Lesbian Mardi Gras is “promoting sexual selfishness, triviality and unfaithfulness”.

There is then the following sequence of *non sequiturs*:

- This lesson is designed to instruct the student that sex outside marriage is wrong according to God, teaches as fact that extramarital sex is bad and sex within marriage is sublime.
- Purity culture is one in which young people – particularly young girls and young women – are expected to remain sexually chaste until marriage.
- Abstinence only sex education is linked to higher teen pregnancy rates and higher STD rates.

The first statement seems unobjectionable as a summary of Christian morality; the second defines a modern term “purity culture”, which as far as can be seen is not used in the book in question; and the third makes the massive (and totally unjustified) leap to suggesting that the book somehow is suggesting a program of “abstinence only sex education”. Whatever the detriments of the latter as a general way of educating teenagers about sex, that is not what this book was about. It is not a “sex education” book; it is a book which discusses aspects of life from a Christian perspective, and accurately reports the Biblical view of sexual morality among a large number of other topics.

Finally, the summary somehow turns a passing allusion to Genesis 34 and the incident of the rape of Dinah into a comment “equating rape with sexual promiscuity and shame”. Just to be clear, the Biblical [chapter](#) concerned records a dreadful incident of rape, but does not in any way suggest it was produced by Dinah’s “sexual promiscuity”.

I have noted these allegations in some detail in order to illuminate the chasm that seems to be emerging between some views of modern Western morality and traditional Christian beliefs. The books being attacked here are not at the fringes of Christianity, they are squarely in the mainstream of Biblical thought. The views being attacked are central to the Christian faith. Yet they now being characterised as “harmful”.

Even if many now think those views are wrong, why was it necessary to prevent them being taught by representatives of a religious group which has legislative permission to provide religious education, to young people whose parents are willing for them to have such education? Values of both freedom of religion and freedom of speech count in favour of an ongoing dialogue on these issues, instead of an attitude which enforces one “acceptable” line and treats young people, who are exposed to a huge range of competing views through the media and the internet, as too fragile to be told that the Bible’s teachings differ from those of their general community.

In the late 60’s and early 70’s Australia was shaken by controversy as a radical book for students, “[The Little Red Schoolbook](#)“, was distributed by left wing activists to high school students. It presented a view of sexual behaviour which was at odds with the majority community consensus. But many on the left loudly supported the circulation of the book, in line with principles of free speech and free thought. The tables seem to have almost completely turned. Views of “free love” and sexual liberation outside marriage are now the current orthodoxy, while books that support chastity and sex within long-term committed marriage are now the ones under attack. Students are entitled to hear points of view at odds with the majority culture. Rather than the heavy-handed enforcement of majoritarian sexual orthodoxy, why not allow other views to be heard and evaluated?

Australia is a country with a wide range of views on religious and other matters. It doesn’t seem unreasonable for religious groups to be able to teach the children of those who want them taught, the views of those religions.

Queensland developments

Developments in Queensland then also indicated another part of a campaign to remove religious education from schools.

Press reports (e.g. “[Qld govt to review religious education](#)“, *Courier-Mail*, 7 June 2016) indicated that a school Principal in Queensland had written to parents at his school indicating that he was cancelling the usual Religious Instruction (RI) classes, on the basis that he had discovered the lessons involve “proselytising” (a term which he said refers to “soliciting a student... to change their religious affiliation”). The [Queensland Government](#) in response to the press reports then almost immediately indicated that it would be reviewing materials used to ensure they comply with relevant rules.

Religious Instruction in Queensland schools

In broad terms, the same framework as in NSW is in place in Queensland, with minor variations. Under the *Education (General Provisions) Act 2006 (Qld)*, [s 76\(1\)](#) provides:

76 Religious instruction in school hours

(1) Any minister of a religious denomination or society, or an accredited representative of a religious denomination or society, which representative has been approved by the Minister for the purpose, shall be entitled during school hours to give to the students in attendance at a State school who are members of the denomination or society of which the person is a minister or the accredited representative religious instruction in accordance with regulations prescribed in that

behalf during a period not exceeding 1 hour in each week on such day as the principal of that school appoints.

The slightly odd variation is that under s 76(2) “special Bible lessons” may *also* be provided by the school itself, although under s 76(4) such classes are “not to include any teaching in the distinctive tenets or doctrines of any religious denomination, society or sect”. But s 76(4) is **not** a qualification on s 76(1), which assumes that instruction provided by religious ministers or representatives will in fact be in accordance with the doctrines of that religion.

This provision was supplemented by more detailed regulations in the *Education (General Provisions) Regulation 2006* (Qld), where among other things [reg 27](#) provided:

27 Authorised religious instruction

A minister of religion or an accredited representative may give only religious instruction approved by the religious denomination or religious society the minister or accredited representative represents.¹¹

The clear assumption is that materials to be used in RI are to be those approved by the relevant religious group. Parents, if they send their children to RI classes, know that they are being taught by representatives of the religious group running the classes. However, since in some cases a group may be too small in a particular area to run its own classes, under former cl 29 parents could send children to a class other than their own religion, or “students may attend classes arranged for students of more than 1 denomination or society by agreement of the ministers of the denominations or societies concerned”.¹²

This second type of arrangement, where there is a co-operative agreement between different clergy to allow teaching to children from a number of different denominations, lay behind the confusion evident in the decision by the Principal noted above.

The Ban on RI at Windsor State School

The Principal of Windsor State School, Matthew Keong, had written a letter to parents (a copy can be seen [here](#).) A number of the statements made in the letter are worthy of comment.

The letter opened by Mr Keong saying that

contrary to my previous understanding, none of the programs used in Religious Education (RI) provided by any faith group are approved or endorsed by the Department of Education and Training.

Clearly this should not have been a surprise to Mr Keong. The legislation previously quoted makes it clear that religious groups, not the Department, determine the content of the teaching given in RI classes.

Mr Keong went on to say that he had now carefully reviewed the “Connect” resources used in RI at the school. He concluded that the program “contravenes policy that prohibits proselytising”.

Unfortunately, Mr Keong had misread the relevant policy. There is no reference to a prohibition on “proselytising” in the Act or the Regulations. The “policy” he

¹¹ Since these events this regulation has been replaced by the *Education (General Provisions) Regulation 2017*, cl 28 of which is in almost identical terms.

¹² See the current 2017 Regulation, cl 30.

seemed to be referring to was a Departmental statement of the way that RI was to be administered, which can be found [here](#), entitled “Religious instruction policy statement”. (It should be noted, of course, that Departmental policy guidelines cannot over-ride the explicit terms of the Act of Parliament and the Regulations made under legislative authority.)

But even reading the policy guidelines, it is clear that they did not apply in the way that Mr Keong had read them. He went on in his letter to say that “proselytising” meant “soliciting a student for a decision to change their religious affiliation”. And he then said that he viewed the RI materials, which called on students to “develop a personal faith in God and Jesus”, as falling within this definition.

But this was just not the case. The policy guidelines contained the following provision on a separate page entitled “[Considerations for faith groups establishing and implementing religious instruction](#)”:

Advise religious instructors that they are not to [proselytise](#) in a cooperative arrangement.

But what is a “cooperative arrangement”? Earlier on that same page there was a link to this [definition](#) of the term:

Cooperative arrangement

When religious leaders of two or more faith groups that have right-of-entry agree to work together to provide religious instruction as joint faith groups.

In other words, this was the sort of arrangement envisaged under [reg 29](#), where ministers agree they will work together to present RI to students from different faith groups. And in *those* circumstances (not in general classes) the guidelines say that instructors are not to “proselytise”. This explains why the term has such an odd definition. The word is being used to refer to an attempt by a minister from one faith group (say, the Presbyterians) to persuade Anglican students who might be in a “cooperative arrangement” class, to become Presbyterians! That is why the very specific terms of the [definition](#) of the term are used:

Proselytising

Soliciting a student for a decision to change their religious affiliation.

The word “affiliation”, in that context, is perfectly apt to describe an attempt to persuade (or “solicit”) a student to change religious groups in a cooperative arrangement. But it is clear that the term used in this specialised sense has *nothing* to say about material which present a general challenge to follow Jesus. If such is the implication of the teaching authorised by the religious group concerned, then the RI system allows that material to be presented to children. Of course, it should not be presented in a manipulative, dishonest way or with undue pressure. That would clearly be wrong. But that is not what the word means in this particular context.

Excursus on “proselytising”

It seems worth saying a few things about the somewhat odd word “proselytising” which is regularly used in debates on school RI or SRE. As we have seen, the word can be used in different ways in different contexts. Here it was used to refer to changing “denominations” in a “mixed” class.

What does the word generally mean? The *Oxford English Dictionary* offers the following definition:

“To make, or seek to make, proselytes or converts”.

The noun “proselyte” is used in the Old Greek translation of the Old Testament, the Septuagint (e.g. in Exodus 12:48) and in the Greek author Philo. It also occurs in the Greek New Testament; the English word is simply a transliteration of the Greek. In Matthew 23:15, as part of a condemnation of the Pharisees, Jesus says:

“Woe to you, scribes and Pharisees, hypocrites! For you travel across sea and land to make a single **proselyte**, and when he becomes a proselyte, you make him twice as much a child of hell as yourselves.”

The Greek word is προσήλυτον, which the OED traces back to the aorist stem of προσέρχασθαι “to come to, approach”. The sense seems to be that this was someone who was “far away” and has now “come to” the new religion. The word is used three times in the book of Acts (2:11, 6:5, and 13:43) to refer to converts to Judaism who had previously been Gentiles.

Does it describe, then, something neutral or something intrinsically wrong? The answer is pretty clear: in earlier days, especially in the NT in reference to converted Gentiles, it was a reasonably neutral description of someone who had changed from being a Gentile to a Jew. **But** in today’s world this is not a “neutral” activity, it is clearly something which is seen as bad.

An example of a use from 1916 given by the OED (*The Times*, 3 May) may be helpful:

“Religion is not **forced down the men’s throats**, nor is there any attempt to **proselytize**; but there is an effort to make the whole atmosphere such as to appeal to the spiritual side.”

It seems fairly clear that the author thinks that the first phrase is a reasonably close definition of the word - an attempt to “convert” someone in a forceful or overbearing way (we might call this “P1-proselytism”).

Sometimes Christians, understanding this clearly negative sense of the word, have undertaken not to “proselytise” in the bad, P1, sense, still intending to continue sharing the good news of their faith, but knowing that they do not want to do so in overbearing or dishonest or disrespectful ways. In my view, however, this is not a good idea. That is because the word “proselytise” has *shifted* in modern discourse away from its core meaning being “forcing views down men’s throats”, over to “attempting to persuade someone else of the truth of one’s religion”.

If this more modern definition of the terms is adopted (what we might call “P2-proselytism”), then a rule which denied the ability of religious adherents to ever attempt to persuade others of the truth of their faith would be one which undercut a fundamental aspect of religious freedom. Kirby J in the High Court of Australia, in *NABD of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 29; (2005) 216 ALR 1; (2005) 79 ALJR 1142, at [121], offered clear support for the view put forward by the European Court of Human Rights in *Kokkinakis v Greece* (1993) 17 EHRR 397 at 418, where that Court affirmed that religious freedom includes the freedom:

“[T]o manifest one’s religion ... not only exercisable in community with others, ‘in public’ and within the circle of those whose faith one shares, but can also be asserted ‘alone’ and ‘in private’; furthermore, **it includes in principle the right to try to convince one’s neighbour ... through ‘teaching’, failing which ... ‘freedom to change [one’s] religion or belief’ ... would be likely to remain a dead-letter.**” (emphasis added)

In short, appropriate and respectful sharing of one's faith with others is an important religious freedom right. Rather than undertaking not to "proselytise" (an undertaking which may be misunderstood), the best approach would be to come to a more precise agreement about what will not be done; listing the behaviours that will not be tolerated such as "harassment", "undue pressure", and "offering material or social inducements".

To come back to the Queensland situation: the rules set out by the Department did **not** prohibit RI teachers presenting, in a gracious and age-appropriate way, the claims of the Christian faith to the children whose parents have sent them along for instruction in the tenets of the Christian faith. If those rules did prohibit such an activity, it would be arguable that they went far beyond, and indeed were contradictory to, the provisions of the legislation establishing the scheme, which entrust decisions about the content of lessons to the religious teachers undertaking the instruction. That this is the case is all the more a reason for reading the policy guidelines, if ambiguous, in a way which preserves the operation of the principles of religious freedom.

But in fact the guidelines, when read in context, were not ambiguous, and did not prevent teaching about the claims of the Christian faith. If parents are concerned about their children receiving such teaching, then they can of course withdraw their children from the RI classes. But if they are happy to enjoy the benefits of someone from a faith group helping their children to understand the implications of their faith, then school authorities and departmental officials should not stand in the way of this happening.

Queensland authorities later agreed that there was no ban on "proselytising" in a general sense under the RI legislation. However, another tack was then taken. Comments made by the Queensland government in its review of the scripture materials offered in many Queensland schools, then became the basis of a campaign directed at NSW schools. (The controversial material was produced in the Anglican Diocese of Sydney, but had been adopted in many of the Queensland schools.)

Allegations of "grooming" in NSW

Over the course of three days (Jan 31-Feb 2, 2017) the local *Herald* newspaper in Newcastle (NSW) published a series of misleading and inflammatory articles designed to put pressure on the NSW Government to stop offering SRE in public schools. A particularly inflammatory accusation implied or made in these articles, was that SRE material somehow supported "grooming" of children for sexual purposes. These accusations were completely false and should not have been made in the first place.

Each of the recent articles referred to comments from FIRIS, described once in the articles as a "parents' group", but elsewhere more accurately as "a group challenging the application of scripture guidelines across three states". The articles were written by a highly respected Newcastle journalist, Joanne McCarthy. Ms McCarthy has in the past done a great service to the local Newcastle community, and to Australia generally, by her courageous campaign to expose clergy child sexual abuse, especially in the Roman Catholic church. Her work has been acknowledged by a number of journalism awards, including the prestigious [2013 Gold Walkley](#) award. But it has to be said that this current "crusade" was a very different matter.

The "shocking" claims made by the articles about the context of SRE materials produced by the Sydney based Youthworks organisation, and published by Christian Education Publications, CEP, were mostly either trivial or easily rebutted. Youthworks

issued a press release doing so: see [“CEP response to misleading SRE claims”](#) (1 Feb 2017). (See also an excellent response to the issues by Murray Campbell, [“Post-truth hits NSW”](#), 2 Feb 2017).

But one element of these articles was so dangerously powerful as an allegation, especially when brought by a journalist of Ms McCarthy’s reputation, that it must be addressed in more detail. This is the use of the word “grooming” in connection with the SRE materials. The word appears in the following contexts in the articles:

- referring to the Connect content as ‘including lessons consistent with “possible grooming behaviour”’ (*Herald*, Jan 31, 2017, p 1.)
- Bishop Peter Stuart of Newcastle Anglican Diocese was said to ‘back’ the view that the material was “of great concern”, ‘after a review raised serious concerns, including questions about “possible grooming behaviour” linked to some material taught to children’ (*Herald*, Feb 1, 2017.)
- The phrase was repeated in the same article, when citing the views of Greens MP David Shoebridge, who ‘strongly criticised lessons consistent with “possible grooming behaviour” after more than three years of evidence from the Royal Commission into Institutional Responses to Child Sexual Abuse’ (*Herald*, Feb 1, 2017).

Definition of “Grooming”

The word “grooming” of course, in this context, carries the most serious of overtones of possible pedophile activity. Among the definitions of the verb “to groom” in the *Macquarie Dictionary* is included the following:

to establish a trusting relationship with (a child), as a preliminary to obtaining their compliance in sexual activities

So, an allegation that material is related to “grooming” is a serious allegation of preparation for pedophilia. Was this allegation at all supported by the available evidence? No, it was not!

Do the SRE materials amount to “grooming”?

Consider the context in which SRE lessons take place. They are not conducted at church premises or behind closed doors. A normal SRE class is conducted by a community volunteer (these days, not usually a member of the clergy, though of course some are), on school premises, in broad daylight, usually in the presence of the normal class teacher, for about 30 minutes once a week. It is frankly ludicrous to suggest that sexual misconduct could take place in these circumstances, or indeed that a teacher could establish an inappropriate connection with one child out of the 20-30 or more in the class.

Where, then, did this suggestion using the repeated phrase “possible grooming behaviour” come from? This is very clear. A [Review of the “Connect” Religious Instruction Materials](#) was conducted by the Queensland Education Department, and released in August 2016, following the events noted previously. The overall finding of that careful and exhaustive review was as follows:

“The review of the *Connect* materials did not find major inconsistencies with departmental legislation, policies, procedures or frameworks. It is envisaged many of the issues identified could be addressed through negotiation with the publisher and advice for instructors about departmental requirements” (at p 16.)

What of the “grooming” issue, then? At pages 10-11 of the Report, two passages from the material were mentioned.

- “Just as Jesus used everyday events to disguise his secret, ask each pair to discuss and then write a story to disguise their own secret” (Upper Primary, A2, Lesson 2, p. 28).

Here, in a lesson dealing with the well-known fact that Jesus did not reveal his identity as Messiah to all those around him immediately, and hence kept it a “secret”, a somewhat laboured class exercise involved the children discussing how they might keep a “secret” that they have. Children from all ages and times have had perfectly innocent “secrets”, such as where they keep their chocolate collections. The exercise had absolutely no sexual overtones, and did not even involve the “secret” being shared with the teacher.

- Use of the term ‘special friends’ – “Jesus was asking Matthew to be one of his special friends” and “Jesus calls us to become one of his special friends” (Lower Primary A2, Lesson 10, p. 92-3).

Here the explanation offered by the publishers, CEP, makes perfect sense:

The use of the term “Special friends” was used in the context of describing someone who is a follower of Jesus – “Jesus was asking Matthew to be one of his special friends” and “Jesus calls us to become one of his special friends”. Education Queensland acknowledged that while they understood the context – a child-friendly translation for Jesus’ disciples – the term was unsuitable in context of child protection, and asked CEP to use an alternative (p. 11 of the Education Queensland Review). There is no suggestion in the material that students should have special friendships with adults. The term has taken on a particularly insidious connotation since the Royal Commission into Institutional Abuse and will be removed from future SRE material. (from the CEP Facebook page.)

In fact in neither of these cases were there any sexual overtones, and neither passage at all justified even the highly qualified description used in the Queensland Report of “possible grooming behaviour”. But here are the two comments included in the Report on the topic:

For a wide range of reasons, including that students of all ages should see teachers and school staff as trusted adults and feel safe to share information, this content is not appropriate. In general, activities should not teach or encourage students to keep secrets, particularly secrets between a child and an adult. Creating secrets with a child is identified as an example of *possible grooming behaviour* within the Department’s Student Protection Guideline....

When considered in a protective behaviours context, the use of the term ‘special friends’ should be avoided where possible and where there is a suitable alternative. Whilst the context in this instance is understood, in terms of student protection, adults creating ‘special friendships’ with children is viewed as an example of *possible grooming behaviour*.

In effect the Report simply noted that the terms “secret” and “special friend” may suggest inappropriate behaviour. But the first comment ignored the fact that the notes did not encourage “secrets” between adult and child; they suggested children discuss secret-keeping (not even the content of secrets) which each other! And the second explicitly said “the context in this instance is understood”- that is, as CEP explains, the term “special friend” was simply used as a way translating the more difficult word “disciple” for younger children. In **neither** case was there any serious suggestion of actual “grooming”- hence the word “possible”, and the reference to “examples”. But when people are reading quickly, “buzzwords” like “grooming” catch attention despite the qualified context.

It should be stressed that these unconvincing examples were the **only** pieces of evidence which were noted by the Queensland Report to justify the use of the word

“grooming”. No independent evidence was offered in recent *Herald* articles, which relied heavily on the Queensland Report.

No evidence at all of possible “grooming”

In short, there was no evidence at all that *any* “grooming” of children for sexual activity took place at all in SRE classes. It is a great shame that the respected journalist Ms McCarthy, whose work in exposing genuine child sexual abuse was so important, chose to associate herself with these spurious allegations, which were so completely unfounded. By implication many readers would trust her views on these matters. Simply referring to the Royal Commission in the same article as SRE would create doubts in the minds of many. But those doubts were not supported by *any* evidence.

SRE classes are **not** conducted by dark-robed clergy in cupboards at church buildings after hours. They are run, where parents choose to send their children along, by a large group of mostly volunteer parents and grandparents and dedicated Uni students who want to serve the community by helping children understand the religion that has shaped their lives. All teachers have “working with children” checks conducted before teaching. Classes are conducted usually for half an hour at time, in open classrooms, under the watchful eyes of local teachers. All SRE teachers and providers are more than happy to discuss the content of lessons with parents. Where inappropriate words or lessons are used, the publishers of material have been happy to take on board concerns and revise it to make it clearer.

Yet the “smear” campaign that ran here may have left an unhealthy association behind it, even amongst those who followed it carefully.

Later events in Queensland- playground evangelism ban

Later, attempts to reformulate rules to restrict what students could say to each other were clearly motivated by a desire to restrict what would be taught in the RI classes.

Can kids tell other kids about Jesus at school?

Astonishingly, the answer to the question posed here, provided by the Queensland Department of Education and Training was: No! In their further reviews of material used in SRI offered in public schools in that State, they asserted as follows:

While not explicitly prohibited by the [relevant legislation], nor referenced in the [Departmental published] RI policy statement, the Department expects schools to take appropriate action if aware that students participating in RI are evangelising to students who do not participate in their RI class, given this could adversely affect the school’s ability to provide a safe, supportive and inclusive environment for all students.

(This statement is found both in the [Report on the Review of the GodSpace Religious Instruction Materials](#), March 2017, at para 3.1.1 on p 5, and in the [Report on the Review of the ACCESS ministries’ Religious Instruction Materials](#), Feb 2017, at para 3.1.1 on p 6. The two reviews are also linked on a page headed “[Religious instruction policy statement](#)”. There seems no doubt that schools would see this as part of authoritative guidance from the Education Department.)

Again, this over-reaching bureaucratic imposition was not justified by the law governing the Department’s activities, and indeed was probably illegal.

It will be recalled that previously a local Principal had decided to cancel SRI because the materials seemed to support “proselytising”, which he interpreted as encouraging students to follow Jesus. I have explained why the Principal was wrong-

both because the Departmental policy he was reading did **not** prohibit SRI teachers from encouraging students to become disciples of Jesus, and because for wider reasons a ban on such activity would be contrary to the legislation and generally to recognised human rights principles. It seems that the Department accepted that interpretation, for in their later report on the *Connect* materials (produced by the Anglican Diocese of Sydney but often used in general Protestant SRI, or “scripture”, classes around Australia) we find the following comment:

Although outside the scope of this review, it is noted that legal advice provided by faith groups has indicated the view that there is no legislative basis for prohibition of proselytising in the EGPA or EGPR. The Department’s Legal and Administrative Law Branch supports this view.

(See [Report on the Review of the Connect Religious Instruction Materials](#) (August 2016) at para 4.0, p 6).

So, to be clear, the Department conceded, in accordance with the law, that SRI teachers were able to teach the Bible to children whose parents want them to do so, and that this teaching includes telling children that Jesus invites them to become his followers.

Reviews of the Godspace and Access materials

The Department then released, by way of follow-up to its former review of the *Connect* materials, its review of the *Godspace* materials (written by authors connected to the Baptist Union) and *ACCESS* materials (written by another Protestant ministry).

The good news for SRI teachers using the materials was that the overall conclusion of the reviews was as follows:

The review did not find significant inconsistencies with the Department’s RI policy statement. (*Godspace review*, p 5; *ACCESS review*, p 5.)

There were then some minor suggestions made on matters which the reviewers suggested need more careful handling in presenting Biblical materials to children. I will not spend much time here discussing those, although I must say that most of them seem to be really trivial issues, to vastly over-state the possible “emotional” and other harm that may come to children from recounting historical events in the Bible, and to not in effect understand what the material in the Bible is actually teaching. I must comment on one particularly egregious example, however, as evidence of how poorly the Bible is understood among those people making these decisions.

One of the lessons examined in the *Godspace* materials was a study of the story in the Old Testament book of *Daniel*, concerning four Israelite youths who were taken to Babylon after the invasion of Israel by that country. As part of their training they were required to eat the food and wine supplied by the king of Babylon to all such “trainees”. But some of this food would be contrary to Jewish food laws. So Daniel, their leader, requested permission for he and his colleagues to only eat vegetables and water, and said that the officer in charge could assess whether this regime was keeping them healthy by comparing their state of health after 10 days with that of the other trainees. (See the incident in full at [Daniel 1:8-16](#)).

The purpose of the lesson, in context, is to describe the obedience that these Hebrew youths showed in a particular situation in Biblical history. This incident is part of a pattern of such events in the Bible. But the specific issue of food is, as the Bible unfolds, seen to not be the point. In the New Testament Jesus abolished the Old Testament food laws- see [Mark 7:14-23](#), esp v 19). So it is really not likely that this

incident has been included in the *Godspace* materials for the Christian teachers to urge the students to become vegetarians! But this seems to be the concern of the Departmental reviewers, who say this, starting with a quote from the materials:

“Feed us only vegetables and water and then you can see how strong we are.” Three years later, after eating vegies only: “Yes! It was Daniel and his friends. They were the strongest, the healthiest and also the wisest men of all.” (Purple 2, p. 43). This is inconsistent with the balanced and healthy eating promoted under the Department’s Smart Choices – *Healthy Food and Drink Supply Strategy*. (at p 7)

Incredibly, the reviewers saw this material as urging a vegetarian diet! In doing so they show themselves to be very poorly equipped to assess the impact of Biblical teaching materials. ([This article](#) from *Eternity News* contains a graphic from the lesson which shows clearly that the point of it is really obedience to God despite the orders of competing secular authority, not diet issues.) One wonders why they did not focus on the story of Daniel in the lion’s den and not express concern that children would be encouraged to breach zoo enclosures!

Forbidding playground evangelism

However, by far the most serious issue raised by the reports was the paragraph quoted above, where the Department expressed its “expectation” that “appropriate action” be taken if students doing RI classes were “evangelising” their classmates who do not attend. This suggested both that SRI materials were not to encourage such activity, and also that principals were to stop pupils engaged in religious discussions in the playground. This was a piece of astonishing bureaucratic over-reach, for at least five reasons.

1. This “expectation” was not supported by legislation

The first and most obvious reason why this “expectation” was inappropriate is that it was not supported by the law governing the Department’s activities! The Department itself conceded that the activity of evangelism was “not explicitly prohibited by the EGPA or EGPR, nor referenced in the RI policy statement”. In that case what gave the officers of the Department any authority to direct SRI teachers, schools or pupils to behave in accordance with their “expectations”? In our Westminster system of government, public officials have the powers given to them by the elected representatives of the people in Parliament, in laws interpreted by the courts. They do not have the power to make up their own rules and expect other people to abide by them. This is a straight-forward issue of the “rule of law” as it operates in our country.

Of course, there are many areas where guidance or clarification may be issued by the Department to schools on non-controversial matters. But on this issue, a question of regulating the free speech of school pupils while chatting with their friends in the school playground, the Department had no authority to impose this sort of rule.

Their only justification for doing so is that they claimed that this “could adversely affect the school’s ability to provide a safe, supportive and inclusive environment for all students.” Of course, if there were a serious (not a speculative and far-fetched) danger that the playground would erupt into fights when some issues were discussed, then principals would be able to deal with this on a case by case basis. But to assume as a blanket rule that a mild discussion about religion will automatically create a lack of safety is ridiculous. Far more likely that children will fight over whose football team or preferred pop singer is better! And we find no proposal to bar discussion of football or pop music from the playground.

The words “supportive and inclusive” may suggest that the Department thinks that if one child tells another child that his or her religion may be wrong, there will be

some major emotional trauma. But the fact is that human beings of all ages are well used to finding that others disagree with them on a number of important issues. And it hardly seems “inclusive” to tell a Christian pupil, who sees his or her identity as a child of God saved by Jesus, that they are forbidden from telling others about this news, which they regard as the best news of all. (The [excellent post](#) from Nathan Campbell makes this point very well.)

Indeed, this leads on the second reason why this is a bad policy.

2. This “expectation” was probably illegal as discriminatory

The Departmental “expectation” was directed only to the sharing of religious views with others. It did not address itself to the child who wishes to discuss climate change, or the desirability of fracking, or immigration policy. Of course, it is clear that these matters do not often find themselves at the top of chatter around the handball court. But there was clearly a singling out of “religious” topics as one which cannot be discussed by pupils with others.

The Queensland *Anti-Discrimination Act* 1991 makes it unlawful to discriminate against a person on the basis of “religious belief or religious activity”—see [s 7\(i\)](#). According to the [Dictionary](#) to that Act, “**religious activity** means engaging in... a lawful religious activity”. One area where such discrimination is unlawful is the “educational area”. Section 39 of the Act provides:

39 Discrimination by educational authority in student area An educational authority must not discriminate—... (d) by treating a student unfavourably in any way in connection with the student’s training or instruction.

A blanket prohibition of students sharing their faith with fellow students, when other students who are passionate about specific non-religious issues are at liberty to discuss them with others, would seem to clearly be treating a student unfavourably on the basis of their lawful religious activity. It is worth noting that under s 3 of the ADA, the Act binds “the Crown in right of Queensland”.

3. The “expectation” was illegal as contradicting the head legislation

In addition, it seems clear that another reason the purported “expectation” (which clearly amounted to a directive to schools) was illegal, is that it not only was not supported by any power given by the empowering legislation, but it actually contradicted that legislation. As noted above, cl 27 of the EGPR provided that the content to be delivered must be that “approved by the religious denomination or religious society”. The authority to determine the content of the Biblical material presented to children was not given to the Department, but to the religious providers.

Of course, the Department could intervene if it became clear that material based on religious documents was being used to support exhortations to violence or hatred. But the simple “expectation” or preference of Departmental officers that children should not be encouraged to speak to others about their faith, falls very far short of that. The material presented by the religious groups is not to be “watered down” to meet the personal preferences of public servants. Parents who are happy for their children to be instructed in a religious faith, will be able to determine if what is being taught goes beyond their beliefs, and have conversations with their children or withdraw them from the classes. But the ultimate arbiter of content in these classes cannot be the Department; the legislation gives the authority to the religious group. That is as it should be, in a country which generally supports the idea that governments are “neutral” when it comes to support or opposition of particular religious views.

4. The “expectation” undermined free speech of pupils

Even at a young age, it seems contrary to the value our legal system places on free speech for the Department to forbid school pupils from discussing certain topics with others in the playground. Indeed, this is another reason for suggesting the expectation is not lawful.

While there is no free-standing right to free speech in Australia, the principle of free speech is an important underlying value of our common law legal system. The High Court has held that this is such an important principle, that under the so-called doctrine of “legality”, legislation will be interpreted not to allow the taking away of the right to free speech unless it does so clearly and unambiguously. In the decision in *Attorney-General (SA) v Corporation of the City of Adelaide* [2013] HCA 3 (the “*Adelaide Preachers case*”) the Chief Justice, French CJ, noted at [43]:

the construction of [the relevant legislation] is informed by the principle of legality in its application to freedom of speech. Freedom of speech is a long-established common law freedom. It has been linked to the proper functioning of representative democracies and on that basis has informed the application of public interest considerations to claimed restraints upon publication of information. (footnotes omitted)

The Court there held that the relevant legislation, a regulation made under a broad statutory power, was valid as it dealt with traffic issues, but that it would **not** be a valid exercise of the power given to the Council to prohibit verbal activity because the officers disagreed with the *content* of what was said- [46]. Here it seems clear that it is precisely the religious *content* of the conversations which is being targeted. In light of the principle of legality, such an “expectation” from the Department cannot be justified as a legitimate exercise of Government discretion, given that it has such a serious impact on freedom of speech.

5. The “expectation” undermines religious freedom for pupils

Finally, though perhaps most obviously, the Departmental expectation was a fundamental impairment of the free exercise of religion by school pupils. Again, at the moment there is no over-arching protection of this value in Australia.¹³ It is to some extent protected by the discrimination law noted above. But at a more general level, the value of religious freedom may on occasions provide a further reason for supposing that a broad legislative power to lay down guidelines, was not intended to allow a radical restriction of religious freedom.

A case of particular interest here is the decision of the Federal Court in *Evans v NSW* [2008] FCAFC 130. In that 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. But the Court also noted that another principle it could refer to, in interpreting legislation, was 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*. These two principles operating together meant that a restrictive NSW law aimed at preventing persons being “annoyed” was held to be invalid, as going beyond the power given by the relevant statute. All the more would such combined principles operate to challenge an administrative “expectation” not supported by any legislation at all.

¹³ For an overview of religious freedom protection in Australia, see my blog post and linked paper at <https://lawandreligionaustralia.blog/2017/07/12/religious-freedom-protection-in-australia-2017-update/> (July 12, 2017).

While international conventions are not directly binding in Australia, Australian courts often refer to them in interpreting similar rights that are given under Australian law. In that context, it is worth noting again, as mentioned above, that there is firm international support for the view that the ability to freely speak to others in a polite and respectful way about one's religion, and to hear others speak, are significant aspects of religious freedom.

Later Developments on playground evangelism

After a period when the issues were not being discussed in public, a front page article in *The Australian* newspaper on 27 July, 2017 [proclaimed](#) "Jesus unwelcome in schoolyard crackdown". It reported on the edict from the Queensland Education Department required schools to take "appropriate action" where students who had been attending Religious Education classes were "evangelizing" other students who didn't take part in those classes. I was quoted in the article, commenting along the lines of my previous remarks above.

Later in the day, after a fair amount of outrage at this proposition even from mainstream media sources like [The Today Show](#), the Queensland Minister for Education issued a firm denial that anyone had been "telling a child what they can and can't say in the playground".

The Minister issued a [statement](#), then, on 27 July 2017, which in effect overrides the earlier Departmental "expectations". The whole statement is as follows:

No change to religion in Queensland state schools

There had been no change to religious instruction policy in Queensland schools, said education Minister Kate Jones. Ms Jones said the Palaszczuk Government supported religious instruction in state schools in consultation with parents.

"No one is telling a child what they can and can't say in the playground," she said. "There has been no change to the religious instruction policy in state schooling.

"We are an inclusive education system that aims to provide a good education for all students of all faiths. The policy in place in Queensland state schools today is exactly the same as the policy in place under the former Newman Government and has been the same for more than 20 years.

"Our government made it very clear last year that we support religious instruction in schools where the parents and school community decide they want that for their children. Principals continue to be responsible for approving the programs of RI in their local school and work closely with parents in their local community to ensure the religious instruction taught in their schools meets legislation and departmental policy."

There were two follow-up articles in *The Australian*: see

- ["Education officials playing god with schoolyard policy"](#) (July 28, 2017) and
- ["Christians put Palaszczuk into damage control over schoolyard Jesus policy"](#) (July 28-29, 2017.)

There were also a number of helpful comments from other commentators: see

- John Sandeman, ["Playgrounds become a "no Jesus" zone"](#) (*Eternity*, July 27, 2017)
- Murray Campbell, ["Queensland Education Department is afraid of Jesus?"](#) (July 27, 2017)
- Nathan Campbell, ["When 'secularism' defaults to 'atheism' and why that might be a problem for Christian kids \(or the government\)"](#) (July 27, 2017).

The Minister's statement was very welcome, with its emphasis on children's freedom of speech and the stress that, where parents consent to RI in schools, it will continue. It should perhaps be noted that the Minister says that principals are responsible for "approving the programs of RI", which seen in the context of the legislation quoted previously does **not** mean that principals sign off on the content of the teaching, but simply that the principals will co-ordinate when it is offered and make

sure that the teachers are appropriately trained and approved by the RI providers. The Minister's assurance that Government "policy" has not changed, must mean that the previous "expectations" issued by the Departmental reviews are no longer to be implemented.

Still, given the official status of the previous reviews on a page headed "policy", and the Minister's constitutional role as head of the Education Department setting policy, it would seem to be wise for the "expectations" noted above to be removed or clearly marked as not binding in some way. Hopefully this may be an outcome of further reported discussions that are taking place with representatives of RI providers.

In short, it was good to see that the Queensland SRI materials under review generally met the Department's guidelines, and where changes to the material are possible without compromising the religious teachings involved, I am sure the providers will be willing to co-operate with the Department.

The previous "expectations" of the Department, however, that students would not be told that it is a good thing to share their faith with others in a polite and respectful way, have now been rejected. This is a good outcome, as it seems fairly clear that they were in any event not legally justified and not binding.

To remove teachings about sharing one's faith from the SRI material, when it is clearly justified by the Bible, would be to substantially interfere with the religious freedom given by the Queensland legislation to the providers, to determine the religious content of the instruction. It would also amount to a serious impairment of free speech and religious freedom rights of pupils. That aspect of the guidance given by the Department is unlawful and ought to be withdrawn.

As Nathan Campbell has noted in [his comment](#) on these issues, Australia is not a "secular" country in the sense that all religions must be excluded from all public life:

Secularism does not mean atheism; it does not mean 'freedom from religion' but 'freedom to hold *any* religious belief'. It doesn't mean religious beliefs should be excluded; but rather that all religious (and non-religious) beliefs should be *included*.

For later news on the Qld situation see K Payne, "A win for Religious Instruction in Queensland" (18 Aug 2016) at <https://www.etsnews.com.au/top-stories/a-win-for-religious-instruction-in-queensland/>.

An "inclusive" school system, as now supported by the Queensland Minister, will signal that all religions are welcome, and in the process lead to greater understanding between children and parents of each other's views, which must be good for a society that wants to see peace and tolerance.

The campaign continues- South Australia

The campaign against religious instruction in schools seems to be continuing.¹⁴ A press report from South Australia indicates some changes to the operation of SRE in that State: see "Parents must give consent for students to take part in religious seminars

¹⁴ For a recent series of statements designed to raise the issues again in NSW, see "Parent group that ousted scripture from schools in Victoria to fight for ban on NSW Special Religious Education" <http://www.smh.com.au/national/education/parent-group-that-ousted-scripture-from-schools-in-victoria-to-fight-for-ban-on-nsw-special-religious-education-20170210-gua89l.html> (*Sydney Morning Herald*, Feb 15, 2017),

in public schools under proposed legislation” (Oct 13, 2017).¹⁵ Under the recently introduced *Education and Children's Services Bill 2017*, s 82 specifies as follows:

82—Intercultural instruction and/or religious instruction

(1) The principal of a school may set aside time for the conduct of intercultural instruction or religious instruction (or both) by a person, or a person of a class, prescribed by the regulations for the purposes of this section.

(2) However, a student who is a child may only participate in such instruction if a person responsible for the student expressly consents to such participation in accordance with any requirements set out in the regulations.

The provision seems designed to ensure a positive step of consent, which may imply an “opt-in” system. In addition, there seems to be a discretion given to principals which may mean that not all schools will allow religious instruction. Both these developments (opt-in, and devolution of authority to local principals) are strategies that have been used in other States to undermine local religious instruction.

Conclusion

This paper has been a broad overview of developments over the last few years, and there have been many other issues not mentioned. But from these I think we can see that there is a concerted effort to see the removal of religious instruction from public schools. There are some disturbing developments in these events for those concerned with religious freedom in Australia.

One feature of these events is the seemingly rapid acceptance in some circles that what has been presented as part of traditional Christian teaching for thousands of years, is now regarded as inherently “harmful” and “risky”. This can be seen in the attempted banning of resources in NSW on the explicit basis that they taught that sex should be reserved for a heterosexual marriage relationship. It may be illustrated more recently by the report from the UK that a Church of England primary school (notionally committed to the Christian faith, of course) has been forced by parents to ban ministry from a Christian group that taught about sin and eternal judgment:

The move comes after some parents complained that representatives of CrossTeach had been upsetting children by teaching them about sin.

One parent said that children were being taught about sin and told that if they did not believe in God "they would not go to a good place when they died".¹⁶

Clearly these are basic Christian doctrines; and while they could be taught badly and inappropriately, it is very disturbing to find that parents who had chosen to send their children to a school run by a church, objected to children being taught these things.

The discourse of “harm”, then, is an important part of this debate. In particular we are now in a situation where a person may define their identity as “homosexual”,

¹⁵ See <http://www.adelaidenow.com.au/news/south-australia/parents-must-give-consent-for-students-to-take-part-in-religious-seminars-in-public-schools-under-proposed-legislation/news-story/3b007b2ed80a3e5ced824a09a6651ec2>.

¹⁶ See “Church of England headteacher hits out at parents who forced ‘extremist’ Christian group out of the school” http://www.telegraph.co.uk/education/2017/10/17/church-england-headteacher-hits-parents-forced-extremist-christian/?WT.mc_id=tmg_share_fb (*The Telegraph*, 17 Oct 2017).

and be deeply upset by a doctrine which says that this choice is not consistent with God's purposes for humanity.

Another aspect of these anecdotes is the role of Government departments. It is of great concern that some public servants seem to treat legal rights granted by legislation as impediments that can be overcome by administrative directions. Parliaments around Australia have allowed parents the option of their children attending scripture classes, the content of which is (within very broad limits) to be determined by the religious groups. Those who manage these departments need to ensure that the law is followed, and defend the rights given by legislation even where they are unpopular with lobby groups. As noted above, when formal "reviews" were conducted of material in Queensland no serious problems with the material were identified. More recently, in NSW, a formally commissioned review of SRE found no major issues with the way the program was being run.¹⁷

While school "scripture" was, as it perhaps in the past was, a mere presentation of morals and some popular Bible stories, then perhaps it was seen as harmless. In more recent years, to their great credit, Christian churches have aimed to provide better Christian education in these classes, and to seriously present the life-changing good news of the gospel of Jesus Christ. Perhaps it should then not have been unexpected to find, as Jesus himself said in John 17:14 -

I have given them your word, and the world has hated them because they are not of the world, just as I am not of the world.

But for the sake of preserving a society where religious freedom is protected, those who are interested in this area should continue to resist attempts to remove the option parents now enjoy, to have their children learn about religions by hearing from those committed to that religion. Both proponents and opponents of scripture in schools clearly see the key role played in the shaping of society by what children learn when they are school. In my view, religious freedom and society at large will be best served when children are able to learn about religion, as part of the same context where they learn other important lessons about life, and are so equipped to make their own decision about these significant matters.

¹⁷ See <http://www.dec.nsw.gov.au/about-us/statistics-and-research/public-reviews-and-enquiries/special-religious-education-review> . The NSW Government considered but did not accept some of the recommendations for minor change: see "NSW government rejects findings of independent review into scripture in schools" <http://www.smh.com.au/national/education/nsw-government-rejects-findings-of-independent-review-into-scripture-in-schools-20170411-gvis1c.html> (*Sydney Morning Herald*, April 11, 2017).