

Liberty Christian Ministries Inc
“Creating a Biblically inclusive church”

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Elective seminar:

Churches, Same-sex ministries and the law: discrimination and religious freedom –

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Australia has recently seen a high-profile debate about whether someone can support a Bible-based view on sexuality on social media, without being sacked or suffering other penalties. Proposals to ban “gay conversion therapy” have arguably defined the term to include counselling or prayer. This presentation will review the law at the moment on whether it is unlawful to express Biblical teaching on these matters, or to offer help to someone who is wrestling with temptations in these areas. It will also flag possible future developments.

1. Introduction- the context

a. Christianity- No longer quaint or archaic, but evil

Welcome to this seminar on legal and religious freedom issues. I don’t suppose anyone here needs to be reminded, but we are now in an age when the orthodox Christian view on sexual morality is no longer regarded as merely “quaint” or “archaic”, but in fact is seen as positively evil. The Bible teaches, as we know, that God’s purposes for humanity are that sex is designed to be between a biological male and a biological female, within the context of the covenant of life-long marriage. Any other sexual activity is seen as wrong, and (to use the Bible’s terminology) “sinful”, in the sense of representing a rejection of God’s purposes for humanity and a rebellion against his authority as Creator to say what is best for human beings.

But as we know, not only is this view not accepted by the majority of our fellow citizens, it is often not even understood. For some modern commentators, it seems, the word “sinful” is reserved for only the most severe of moral transgressions, and the ultimate judgment of God (either referred to as “hell” or in some other way) is the sort of place where the only inhabitants would be Adolf Hitler, Stalin or Pol Pot. The Bible’s view is both more severe, and yet at the same time immeasurably more gracious. It is severe because it tells us that sin is any rebellion against God’s purposes, and that all people sin and are destined in their natural condition for hell and judgement. But it is wonderfully gracious because it tells us that our loving God sent his Son, the Lord, Jesus Christ, to die on the cross and pay for our sin, and to rise again and offer us new life for eternity.

Still, most of our community does not accept this. And the current discourse sometimes suggests that simply stating these views about sexual morality can itself cause harm. Different types of “harm” are identified. In the most extreme (but it has to be said, the least justified by any objective evidence)², we are told that same sex attracted youth will commit suicide if told that their behaviour is sinful. In other accounts, we are told that “dignitary” harm is a real thing- the harm of being told that one’s behaviour is wrong being an attack on one’s dignity as a person.

However these things are framed, Christians live in a world where we face laws which have a potential impact on Christian activities and teaching. In today’s seminar I have a fairly modest aim. I would like to give you an outline of the possible impact of the law of Australia and of NSW which may be relevant when a Christian church or organisation engages in (1) teaching the truth of the Bible on these matters of sexuality, and (2) behaving in accordance with that truth. I hope to help you to be aware of what the law says, and where the law may not be quite as bad as you fear it is! One aspect of this is to note that our legal system actually still

¹ The views expressed here are, of course, personal opinions and do not represent those of my institution.

² See <https://thefederalist.com/2019/06/27/ca-legislators-blame-religious-people-high-lgbt-suicide-rates/> (June 27, 2019) exploring the evidence on the point and concluding that there is no clear evidence for these propositions.

recognises that to some extent there is a legitimate difference of opinion on these matters, and provides what might be called “balancing clauses” to allow religious organisations (and sometimes religious persons) to live out their religious commitments.

Of course, the views I offer are intended to be general comments on the interpretation of the law, and at a high level of generality. I am not purporting to give concrete legal advice on specific situations, for which you will need to consult a real legal practitioner, not an academic. But I hope these general observations may be still be useful.

2. Overview- Australian laws on sexual orientation

The law of Australia since the 1970’s has made it unlawful to discriminate against people on the basis of certain “prohibited grounds”. The first laws addressed racial discrimination, and others have covered other grounds, not all the same at Commonwealth and State levels. In broad terms, we can say that the purpose of the laws was to discourage detrimental treatment of people on the irrelevant basis of some characteristic that they had, which was not connected with the purpose of the decision. Denial of someone of a job in a bank or the public service because of their ethnicity, or their gender, or their age, is the sort of decision which was being addressed.

The laws we are concerned with are those which ban detrimental treatment of persons on the basis of their “sexual orientation”. Now I am aware that this very category contains a number of assumptions that have sometimes been questioned on Biblical grounds, but for the purposes of the present discussion I assume that certain persons are born with an innate preference for sexual activity with persons of the same sex. These people are generally referred to as having the “sexual orientation” of homosexuality.

a. Discrimination on sexual orientation grounds

The law forbids detrimental treatment of persons on the ground of their homosexuality. There are two main laws dealing with the matter for those of us in NSW, the Commonwealth SDA and the NSW ADA.

i. *Sex Discrimination Act 1984 (Cth) (“SDA”), s 5A*

SEX DISCRIMINATION ACT 1984 - SECT 5A

Discrimination on the ground of sexual orientation

(1) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person's [sexual orientation](#) if, by reason of:

- (a) the aggrieved person's [sexual orientation](#); or
- (b) a characteristic that appertains generally to persons who have the same [sexual orientation](#) as the aggrieved person; or
- (c) a characteristic that is generally imputed to persons who have the same [sexual orientation](#) as the aggrieved person;

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who has a different [sexual orientation](#).

(2) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person's [sexual orientation](#) if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons who have the same [sexual orientation](#) as the aggrieved person.

(3) This section has effect subject to sections 7B and 7D.

I have given you the Commonwealth law first in the booklet, as it is the one which will “prevail” if there is any clash with the NSW one. It is worth noting that the Commonwealth did not formally prohibit this form of discrimination until relatively recently, in 2013, when a wholesale set of amendments to the main SDA (which was originally set up to deal with discrimination on the basis of sex) was enacted under the then Labor government.

The wording is complex, but the way it works is this. The main concept in s 5A(1) is “less favourable treatment” being afforded to a same sex attracted person than would be afforded to someone of a different “sexual orientation”. The question is then what the “reason” for the treatment was. Under sub-section (1) if the reason for the treatment was either one of the person’s own orientation, or some characteristic commonly associated with, or imputed to, persons of that orientation, then there is what is called “direct discrimination”.

Under sub-section (2) there is a separate prohibition on imposing a “condition, requirement or practice” on someone which puts persons of their sexual orientation at a disadvantage. This is what is known as “indirect discrimination”. This type of discrimination is different to “direct” discrimination because the treatment seems on its face to be “neutral”, but when examined it seems to single out people of a particular orientation. One important feature of this provision is that it is subject to s 7B, which provides that this form of “indirect discrimination” is not always unlawful, but may be justified if it is “reasonable in the circumstances”.

To complete the picture a bit more, while s 5A tells you what unlawful discrimination is, other parts of the SDA tell you in what circumstances it will actually be actionable. So, for example s 14 then says that it is unlawful to discriminate on the grounds of sexual orientation in **employment decisions**. If you decline to hire someone because they are same sex attracted, or fire someone on that basis, then you have a *prima facie* breach of s 14, unless some other defence provided by the Act applies. We will see in a moment that there is a defence which applies to religious organisations.

ii. *Anti-Discrimination Act 1977 (NSW) (“ADA”) s49ZG*

There is also NSW legislation to similar effect. It was introduced some time prior to the provisions above being incorporated into the Commonwealth Act.

ANTI-DISCRIMINATION ACT 1977 - SECT 49ZG

What constitutes discrimination on the ground of homosexuality

(1) A person ("**the perpetrator**") discriminates against another person ("**the aggrieved person**") on the ground of [homosexuality](#) if [the perpetrator](#):

(a) on the ground of [the aggrieved person's homosexuality](#) or the [homosexuality](#) of a [relative](#) or [associate](#) of [the aggrieved person](#), treats [the aggrieved person](#) less favourably than in the same circumstances, or in circumstances which are not materially different, [the perpetrator](#) treats or would treat a person who he or she did not think was a [homosexual](#) person or who does not have such a [relative](#) or [associate](#) who he or she thinks was a [homosexual](#) person, or

(b) requires [the aggrieved person](#) to comply with a requirement or condition with which a substantially higher proportion of persons who are not [homosexual](#) persons, or who do not have a [relative](#) or [associate](#) who is a [homosexual](#) person, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which [the aggrieved person](#) does not or is not able to comply.

(2) For the purposes of subsection (1) (a), something is done on the ground of a person's [homosexuality](#) if it is done on the ground of the person's [homosexuality](#), a characteristic that appertains generally to [homosexual](#) persons or a characteristic that is generally imputed to [homosexual](#) persons.

As you can, it is very similar, and there is probably no real difference between the type of actions forbidden by both provisions. Without going into the messy details, these two provisions, the Commonwealth and the State, are intended generally to operate in parallel, and

people who claim they have been discriminated against are free to use either one or the other. But if it does emerge that there is a clash, then under s 109 of the Constitution the Commonwealth law will prevail. I have argued in some other things I have written that this means that, if a defence under State law is narrower than a defence under the Commonwealth law, it is the Commonwealth law that applies, and the State law will be inoperative.³ There is no clear case directly on point for sexual orientation discrimination law, but this seems to flow fairly clearly from other cases dealing with s 109.

b. Speech and sexual orientation

In addition to provisions dealing with actions (like employment decisions, or denying “goods and services”, there are some laws around the country which penalise certain forms of speech relating to sexual orientation. There is no such law at the Commonwealth level, but there is a law of this sort in NSW.

i. *Anti-Discrimination Act 1977 (NSW)*

Homosexual vilification unlawful

49ZT (1) It is unlawful for a person, by a [public act](#), to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the [homosexuality](#) of the person or members of the group.

(2) Nothing in this section renders unlawful:

- (a) a fair report of a [public act](#) referred to in subsection (1), or
- (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the [Defamation Act 2005](#) or otherwise) in proceedings for defamation, or
- (c) a [public act](#), done reasonably and in good faith, for academic, artistic, religious instruction, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

As you can, the title to the provision refers to “homosexual vilification”, but the term “vilification” is not explicitly used in the text. I think we are meant to see that speech of the sort described in s 49ZT(1) is what Parliament means by “vilification”. That is, speech in public designed “to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons” on the grounds of their sexual orientation.

It will be noted that there are also some quite wide-ranging defences applicable. In particular, as we will come back to shortly, there is a defence which covers “religious instruction” and other purposes.

The provision, of course, limits free speech. That does not mean it is bad for that reason alone- there are a number of laws that already limit free speech in the interest of other interests, such as the law of defamation (which is partly, but not wholly, picked up in s 49ZT(2)(b).) But there are serious issues around whether as a matter of policy laws like this are constitutionally valid. It has to be noted, though, that there was one challenge mounted to the law on constitutional grounds which failed.⁴

ii. *No Commonwealth law of this sort, but there are equivalents in most States and Territories*

³ Neil J Foster, "Protecting Religious Freedom in Australia Through Legislative Balancing Clauses.pdf" *Occasional papers on Law and Religion* (2017) available at: http://works.bepress.com/neil_foster/111/ at 23-26.

⁴ *Sunol v Collier (No 2)* [2012] NSWCA 44 (22 March 2012).

As noted, there is no such provision in Cth law at the moment, though most States and Territories do have equivalents.

- iii. In addition, *there is a particularly bad provision in Tasmania*, s 17(1) of the *Anti-discrimination Act 1998* (Tas) which makes it unlawful to “offend, humiliate, intimidate, insult or ridicule” someone on the basis of their sexual orientation
 - 1. This was used in an attempt to sue a Roman Catholic Archbishop for sending material to students at Roman Catholic schools setting out the orthodox Christian moral view of sexuality
- iv. Thankfully the *Tasmanian law cannot be enforced in other jurisdictions*.⁵
- v. Note however the *serious criminal offence* under the *Crimes Act 1900* (NSW) s 93Z:

93Z(1) A [person](#) who, by a [public act](#), intentionally or recklessly threatens or incites [violence](#) towards another [person](#) or a group of [persons](#) on any of the following grounds is guilty of an offence: ...

(c) the [sexual orientation](#) of the other [person](#) or one or more of the members of the group, ...

Maximum penalty:

(a) in the case of an individual--100 penalty units or imprisonment for 3 years (or both), or

(b) in the case of a corporation--500 penalty units.

(2) In determining whether an alleged offender has committed an offence against this section, it is irrelevant whether the alleged offender's assumptions or beliefs about an attribute of another [person](#) or a member of a group of [persons](#) referred to in subsection (1) (a)-(f) were correct or incorrect at the time that the offence is alleged to have been committed.

(3) In determining whether an alleged offender has committed an offence against this section of intentionally or recklessly inciting [violence](#), it is irrelevant whether or not, in response to the alleged offender's [public act](#), any [person](#) formed a state of mind or carried out any act of [violence](#).

(4) A prosecution for an offence against this section is not to be commenced without the approval of the Director of Public Prosecutions.

(5) In this section: ...

"public act" includes:

(a) any form of communication (including speaking, writing, displaying notices, playing of [recorded](#) material, broadcasting and communicating through social media and other electronic methods) to the public, and

(b) any [conduct](#) (including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia) observable by the public, and

(c) the distribution or dissemination of any matter to the public.

For the avoidance of doubt, an act may be a [public act](#) even if it occurs on private land. ...

"sexual orientation" means a [person's](#) [sexual orientation](#) towards:

(a) [persons](#) of the same sex, or

(b) [persons](#) of a different sex, or

(c) [persons](#) of the same sex and [persons](#) of a different sex.

This seems a fair law and should be supported by Christians, in my view. It will only operate where there is threatened violence, or the incitement of violence, which itself has to be done “intentionally or recklessly”. Someone would really have to be misusing the Bible to claim that it justified such actions.

⁵ See *Burns v Corbett* [2018] HCA 15 (18 April 2018), although in theory the Tasmanian provisions could be enforced against residents in other jurisdictions if Tasmania amended its law to allow these cases to be run in the courts as opposed to an administrative tribunal. But to my knowledge that step has not been taken.

3. Protection of religious freedom

So there are a number of provisions which penalise treating people detrimentally on the grounds of their homosexuality, or inciting hatred or contempt on such grounds. We will come shortly to consider how a Christian organisation whose mission includes teaching the Bible's view on sexual behaviour, or whose staff are required to show that they comply with the Bible's teaching on these matters, might be subject to a possible action under these provisions. But first I would like to provide something of an overview about aspects of these laws that protect religious freedom.

By way of background, why do we have these provisions? Historically, it has been recognised since the law started to protect the characteristic of "sexual orientation" in this way, that there would be a problem with major religious groups who continue to believe that God calls on people to only have sex within a man-woman marriage. But in addition, Australia has a broad protection of "free exercise" of religion in s 116 of our Constitution (though this does not apply to State laws). And as a nation we have signed up to the *International Covenant on Civil and Political Rights*, article 18 of which says that all people have the right to hold and live out their religious beliefs, subject only to specific limitations protecting other "fundamental rights". So, there are good general policy reasons for the law to protect religious freedom.

a. Balancing clauses protecting religious freedom

In discrimination laws, there are often what I have called "balancing clauses" in the legislation, because they are designed to "balance" the right to religious free exercise with the right not to be discriminated against unjustly.⁶ (Others call them "exemptions" or "exceptions", but I dislike that terminology, as it seems to imply that these are narrow, "privileged" derogations from the main important right. This is not the case- both rights need to be balanced fairly.)

i. SDA s 37

Religious bodies

- (1) Nothing in Division 1 or 2 affects:
- (a) the ordination or appointment of priests, ministers of religion or members of any religious order;
 - (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
 - (c) the selection or appointment of persons to perform duties or [functions](#) for the purposes of or in connection with, or otherwise to participate in, any religious observance or practice; or
 - (d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion....

One of the most important for current purposes is s 37 of the SDA. (In the context of Christian schools, s 38 is also significant, but I will leave that to one side for present purposes.)

⁶ For detailed analysis, see N Foster, "Freedom of Religion and Balancing Clauses in Discrimination Legislation" (2016) 5 *Oxford Journal of Law and Religion* 385-430.

The original operation of the provision when first inserted, I think, and when “sex” as such was the main ground of discrimination covered by the law, was to provide a reason why the Roman Catholic Church could continue to only ordain men to be priests. (Of course, it also protected other churches whose doctrines led to that result.)

But the provision now operates in the context of the sexual orientation discrimination provisions introduced in 2013, and it will provide protection for churches and organisations in appointing staff and generally in carrying on ministries in accordance with their views of the Bible.

ii. ADA s 56

NSW also has a similar balancing clause, in s 56 of the ADA. There are minor differences in wording but none that seem important for present purposes.

56. Religious Bodies

Nothing in this Act affects:

- (a) the ordination or appointment of priests, ministers of religion or members of any religious order,
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order,
- (c) the appointment of any other person in any capacity by a body established to propagate religion, or
- (d) any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

It is worth noting that s 56 formed the basis of a decision of the court and tribunals who considered the question whether the Wesley Mission, an evangelical wing of the Uniting Church, could implement a policy that they would not place foster children with same sex couples. The ultimate ruling, applying the provision correctly in my view, was that the Mission *were* entitled to implement this policy, as it was in conformity with the “doctrines” of their religion.⁷

b. Other laws protecting religious freedom?

- i. Very few, especially in NSW (eg the Commonwealth Constitution s 116 prohibiting interference with “free exercise” of religion, does not apply to State Parliaments).

c. Who are protected?

i. Organisations

1. Yes, both SDA s 37 and ADA s 56 apply to groups. In the SDA such a group, to receive the widest protection, has to be “a body established for religious purposes”. Churches and para-church organisations concerned with ministry to same sex attracted persons from an explicit Biblical perspective should satisfy this description. In NSW it is a “body established to propagate religion”, which may on some views be slightly narrower, but not in my opinion by very much.
2. However, the decision in Victoria in *CYC v Cobaw* should be noted as another approach to the definition of a “religious”

⁷ See *OW & OV v Members of the Board of the Wesley Mission Council* [2010] NSWADT 293 (10 December 2010). I discuss this case in the article noted above at n 4.

organisation.⁸ In that case the Christian Youth Camps organisation had declined a booking from a same-sex youth support group who had planned to run an event which it was said was presenting “the view that homosexuality or same sex attraction is a natural part of the range of human sexualities... [the] project would be conducting workshops etc over the weekend to plan ways to raise awareness” (at [28]). Part of their defence against a claim for “sexual orientation discrimination” was to rely on balancing clause in the relevant Victorian legislation which applied to “a body established for religious purposes”.⁹ The Victorian Court of Appeal took the view that they were not such a body, despite clear commitments to Christian values in their rules, because they undertook the business of renting camp accommodation to “secular” as well as to “religious” groups, and because their website did not mention their religious connections.¹⁰

3. The experience of the CYC here suggests that religious organisations engaged in “secular” activities need to be very explicit about the connection between their religious views and their non-religious activities, if they are to rely on relevant balancing clauses.

ii. Individuals?

1. There are, however, very few protections for individual religious freedom in these discrimination laws. One which does exist and is worth noting, however, is s 84 of the *Equal Opportunity Act 1984* (Vic), which allows “discrimination” if “the discrimination is reasonably necessary for the [a] person to comply with the doctrines, beliefs or principles of their religion.” But this Victorian provision is not (yet) replicated in other jurisdictions.
2. One protection which applies to employees who are dismissed on the grounds of religious belief is found in the *Fair Work Act 2009* (Cth) s 772, preventing termination on a number of grounds, including “religion” (this is the litigation being relied on in the Israel Folau case).¹¹
3. But this provision is of most relevance in the current context where a Christian organisation might want to dismiss an employee whose sexual orientation (and related sexual activity) was such that they were demonstrating an opposition to Biblical sexual standards. In such a case, while s 772(1) would *prima*

⁸ *Christian Youth Camps Limited v Cobaw Community Health Services Limited* [2014] VSCA 75. For detailed analysis see Neil J Foster “Christian Youth Camp liable for declining booking from homosexual support group” (2014) available at: http://works.bepress.com/neil_foster/78/.

⁹ Section 75(2) of the *Equal Opportunity Act 1995* (Vic).

¹⁰ See pp 6-8 of the paper at n 8 above for more details.

¹¹ For comments on this case see my blog post here (2 June 2019): <https://lawandreligionaustralia.blog/2019/06/02/further-reflections-on-the-israel-folau-affair/> and a previous post linked there.

facie prevent dismissal on the ground of “sexual orientation”, under s 772(2):

Fair Work Act 2009, s 772(2) However, [subsection](#) (1) does not prevent a matter referred to in [paragraph](#) (1)(f) from being a reason for terminating a person's employment if:

- (a) the reason is based on the **inherent requirements** of the particular position concerned; or
- (b) if the person is a member of the staff of an institution that is [conducted](#) in accordance with the **doctrines, tenets, beliefs or teachings of a particular religion or creed**-the employment is terminated:
 - (i) in good faith; and
 - (ii) to avoid injury to the religious susceptibilities of adherents of that religion or creed. (emphasis added)

4. What is it acceptable to do, and what it is not?

Finally, let me bring together some of these principles by discussing some common situations and the present legal response.

a. Teaching the Bible's view on sexual morality

The Bible does, it seems clear, teach that homosexual activity is contrary to God's will, not only in Old Testament passages such as Leviticus 18:22, but also in a number of New Testament passages reflecting this teaching: see Romans 1:26-27, 1 Corinthians 6:9-11, 1 Timothy 1:10. Is it currently unlawful to present this teaching because it amounts to “homosexual vilification”?

i. In church

1. Preaching on Romans 1 or Leviticus 18:22 in a church service should clearly be allowable under NSW ADA s49ZT(2)(c) “religious instruction”.
 - a. The other requirements to access this “balancing clause” are that the teaching (the “public act”, which would include any church service open to the general public), be done “reasonably and in good faith”.
 - b. There is some ambiguity in those words. I would argue that a sincere attempt to present the teaching of the Bible, not done by way of a “sham” aimed at causing harm to someone, would be covered by these words.
 - c. I have some concern, however, at how the courts have read the notion of “reasonably and in good faith” here. In a couple of decisions the component parts of this phrase have been “unpacked”, and the view taken that for a comment to be “reasonable” it must have a rational basis- in other words, the court must be satisfied that it is true or “makes sense”.¹² I think the compound expression simply means that someone must be sincerely making an attempt to offer a religious view without any “ulterior” motive, which is a very different thing to a court deciding whether some religious teaching is “rational”.

¹² See *Durston v Anti-Discrimination Tribunal (No 2)* [2018] TASSC 48 (4 October 2018) at [93]-[94]; also *Ekermawi v Nine Network Australia Pty Limited* [2019] NSWCATAD 29 at [152].

2. And of course, even apart from this explicit “balancing clause”, it is clear that a sensible exposition of the Bible would not amount to “hatred towards, serious contempt for, or severe ridicule of” same sex attracted person. The Bible’s perspective is that all human beings are made in the image of God, and worthy of respect as such; but also that we are all sinners in different ways, and hence all need grace and forgiveness. There is no room for hatred or contempt or severe ridicule to be justified by the Bible’s teachings, in which we read that the Lord Jesus told his people to “love your enemies”.¹³

ii. At schools in Scripture

1. Can the Bible be presented in “scripture” classes (Special Religious Education in NSW)? As for church, such places are designed for “religious instruction” and so should be protected by s 49ZT(2)(c) ADA. Again, even were this not so it seems that the Bible’s teaching does not lead to hatred, contempt or ridicule.

iii. In a public forum?

1. What about some other public forum? Well, as I always tell my law students, “It depends”. Arguably in a context where a lot of comments are made on religious issues the comment could be seen as “religious instruction”. In my opinion the Instagram feed of a highly religious celebrity footballer, for example, who regularly posted memes about the Christian faith, could be regarded as a venue for “religious instruction”.
2. Arguably even without this aspect there are comments made in public which could be said to be “for other purposes in the public interest, including discussion or debate about and expositions of any act or matter”.
3. As noted already, though, I am somewhat concerned about a narrow reading of “done reasonably and in good faith”, if interpreted to mean “the court or tribunal must agree with the statement”.
4. In short, it seems to me that most contexts where the Bible’s view was presented seriously and honestly (rather than being a cover for some type of ugly personal attack), would be protected by the provisions of s 49Z(2) from being unlawful, even outside a specific “church” or “religious meeting” context. But of course I always have to issue the caveat that a court has to provide the interpretation of these provisions, and so nothing is certain.

b. Only employing those who are committed to Biblical views of sexual morality

- i. What about the situation where a church, or a Christian para-church organisation, adopted a policy that it would only employ persons who demonstrated a commitment to Biblical views of sexual morality?
- ii. At the moment SDA s 37(1)(d) would generally allow this as “an act or practice that conforms to the doctrines, tenets or beliefs of that religion

¹³ Matthew 5:44; Luke 6:27, 35.

or is necessary to avoid injury to the religious susceptibilities of adherents of that religion”.

- iii. See the NSW decision of *OV & OW v Wesley Mission* which upheld this decision-making by the Wesley Mission for foster carers.¹⁴ A similar principle would seem to operate for a youth ministry which declined an application to be a youth worker from someone who openly lived contrary to the Bible’s values- whether a heterosexual person who lived with their opposite sex *de facto*, or a homosexual person who lived with a same sex partner, or had entered into a same sex marriage.
 - iv. But there can be challenges even here: see the *CYC v Cobaw* case where the question of what is a “religious body” was raised, and then there may sometimes be issues about what amounts to a part of the “doctrine” of the group, and what the doctrine requires.
- c. Helping willing participants avoid sexual sin**
- i. Finally, let’s consider “Gay conversion therapy” and “concept inflation.”
 - 1. It is clear that “electro-shock therapy” for unwilling participants is bad and condemned by all.
 - 2. But with “concept inflation” something we all agree is bad comes to be extended to cover other, non-objectionable, practices.¹⁵
 - 3. So, there are people who make the claim that “gay conversion therapy” is present whenever someone asks a religious person to help them not give in to same-sex sexual temptation, even if it just through bible study and prayer.
 - ii. Current law, as far as I can tell- there seems no legal reason at the moment to say that helping someone who wants to resist sexual temptation through counselling and prayer is unlawful.
 - iii. But the proposed laws on the topic offer the real danger that even counselling and prayer which is requested by the person concerned would be unlawful- Christians need to be alert for possible law changes, as these have been framed very broadly.

5. The future

- a. Possible religious discrimination laws- proposals following the Ruddock Panel likely to be released later this year.
- b. Possible laws clarifying balancing clauses for schools- will possibly follow an ALRC inquiry due to report in March 2020; but they may recommend no change.
- c. The ultimate future involves the new heavens and the new earth! There all will be made new and God’s people taken to be with him forever. In the meantime:

I urge that supplications, prayers, intercessions, and thanksgivings be made for all people, 2 for kings and all who are in high positions, that we may lead a peaceful and quiet life, godly and dignified in every way. 3 This is good, and it is pleasing in the sight of God our Saviour, 4 who desires all people to be saved and to come to the knowledge of the truth. (1 Tim 2:1-4)

¹⁴ Above, n 7.

¹⁵ See this article illustrating the point: <https://quilllette.com/2019/02/14/the-boy-who-inflated-the-concept-of-wolf/> (Feb 14, 2019).