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By International Mail

25 August 2005

Hon. Philip Ruddock
Attorney General of Australia
Central Office - Robert Garran Offices
National Circuit, Barton Act 2600
AUSTRALIA

Dear Attorney General Ruddock:

Thank you for your letter dated 24 May 2005 and for your considered response to our inquiries. We recognize and commend your dedication to protecting individuals and groups from religious discrimination. However, Victoria's *Racial and Religious Tolerance Act of 2001* ("Act"), both facially and in application by the Civil and Administrative Tribunal violates, Article 18 of the *International Covenant on Civil and Political Rights* ("ICCPR"). We urge your office, once again, to intervene to restore Australia's well-deserved reputation as an international leader in defending human rights.

The Tribunal's Interpretation of Victoria's Racial and Religious Tolerance Act Offends Article 18.

Article 18 of the *International Covenant on Civil and Political Rights* ("ICCPR") declares that all persons have the right of freedom of thought, conscience, and religion. This right includes the "freedom either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." It further declares that no person "shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice." Consequently, these freedoms "may be subject only to such limitation as...are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

The Tribunal's decision violates Pastor Scot's and Pastor Nalliah's freedom to hold and express religious beliefs. By order of the Tribunal, they must publicly adopt and proclaim religious views that they explicitly reject as well as censor future religiously-motivated speech or risk incarceration for contempt of court. The pastors have since vowed to go to jail before violating their consciences. This is exactly the type of coercion Article 18 condemns. This sad result could have been avoided had the Tribunal not eviscerated the religious speech exceptions to the Act. Instead, Victoria has put Australia on the path of jailing religious believers for expressing their sincere beliefs.

Application of the Act Promotes Criminal Behavior.

The Act's infringements of religious liberty cannot be justified under the limitations to religious expression provided in Article 18, including alleged public safety concerns. The standard for limiting religious speech is not whether a judge subjectively believes that speech is offensive and "incites hatred." Rather, the standard is whether the speech advocates violence toward individuals based on religion. Peaceful yet controversial speech is clearly not violent speech and poses no threat to public safety.

Instead of promoting public safety, the Act encourages real criminals to hide behind the law to shield themselves from criticism of their criminal behavior. Such an eventuality might sound unlikely if it had not already occurred. A self-described "witch" recently sued the Salvation Army because he felt "threatened" by alleged negative references to witchcraft in the Salvation Army's Alpha Program. The witch sued under the Act *while in prison*, having been convicted of repeated child sex abuse, despite his protestations that he was merely "following the legal rites of a legal religion."¹ The Salvation Army was forced to waste precious time and money defending itself against this baseless suit. As a result, concerned citizens must think twice before discussing the danger posed by the illegitimate use of religion by this man (and others like him) as a shield for criminal behavior, lest they get sued under the Act for such talk.² Such fear of discussion helps no one but criminals who seek to hide their criminality behind the good name of religion, and who will use the Act to sue their critics into silence.

Application of the Act Destroys Community.

Instead of cultivating social order, the law encourages religious strife by pitting religions against each other. For example, Muslims are now scouting Christian worship services and Christians are retaliating by infiltrating Mosques—with each group *actively seeking* to be offended. As we have seen with the pastors' case, those seeking to be subjectively offended will invariably get what they wish for. The sad spectacle of neighbors spying on neighbors of different faiths is a direct result of the Act. The Act has proven to be anything but ecumenical, and the divisive lawsuits will only continue to multiply.

Application of the Act Represses Diverse Religious Expression by Turning the State into a Sermon Review Board and the Determiner of Orthodox Religious Belief.

The Act deals a blow to the fundamental rights of believers to hold and communicate religious beliefs.³ The ruling of the Tribunal illustrates the new role of the state as the establisher of religious orthodoxy and as sermon review board. In other words, Tribunals now have the

¹ Andrew Bolt, *Dump this law now*, HERALD SUN, April 27, 2005.

² Patrick Goodenough, *Witch's Complaint Renews Focus on Religious Hatred Law*, CNSNEWS.COM, April 25, 2005. Another relevant case involves a charge brought by Ordo Templi Orientis against Reina Michaelson, a child psychologist and a founder of the Child Sexual Abuse Prevention Program, who wrote an article connecting occult organizations with satanic ritual abuse, including eating human flesh, child sacrifice, murder, and torture. The suit has forced Michaelson to leave her current work with tsunami victims and defend her article in court instead.

³ Additionally, the free speech rights of secular speakers will be infringed, as they, too, will self-censor in order to avoid lawsuits. So, for example, news outlets will be tempted to curb their speech to avoid costly suits like the one recently filed by a Christian against a TV station and the entire Australian Broadcasting Network after claiming a television show insulted his religion.

power to review sermons and arbitrarily punish interpretations of holy texts or faith doctrines they find “unreasonable.” This means that they now determine the boundaries of “acceptable” Christianity, Islam, Hinduism, etc. as a matter of law. The effect is State suppression of peaceful religious speech on the one hand and State coercion of belief on the other. Believers can no longer express the dictates of their consciences if they contradict the State-approved body of religious beliefs—worse still, they may be forced to affirmatively reject their beliefs if caught. Many “lawbreakers” will never renounce their beliefs and will be forced to take their beliefs underground or, like in the pastors’ case, will face an unjust jail sentence.

Like you, we had hoped that the exemptions in the Act would “ensure that debate can occur freely in respect of matters of legitimate public interest,” yet the Tribunal has proven that our hopes were tragically misplaced. The fact remains that nothing is more legitimately in the public interest than a pastor preaching to his flock, and nothing is more chilling to this endeavor than the dark shadow of an amorphous law hanging over each and every teaching moment. Unfortunately, the threat of believers being haled into court for their religious speech⁴ is now so palpable that it is as if the exemptions in the Act never existed. The Victorian Tribunal removed any doubt that the Act’s religious exemptions fail to protect sincere religious discussion. But the Tribunal may yet be overturned by a higher court with the help of your intervention.

Members of the International Community Note the Invalidity of the Act.

Members of the international community recognize the many problems posed by the Act. Similar legislation pending in the U.K. Parliament is close to being derailed due to references to the many unintended and, frankly, embarrassing consequences emanating from Victoria’s Act.⁵ In fact, the Muslim Council of Britain, a strong advocate for the U.K. legislation, has resorted to defending the legislation by describing it as “fundamentally different” from Victoria’s Act.⁶

Religious Criticism Fundamentally Differs from Race-based Criticism and Indicates a Healthy, Free Society.

In support of your assertion of the validity of the Act, you analogized to the *Commonwealth Racial Discrimination Act of 1975*, but there is a crucial distinction between race and religion. While a person’s race is innate and immutable, a person’s religion is a matter ultimately and fundamentally left to the conscience and thus is free to change. Therefore, a criticism based on race targets a person’s unchangeable identity and attacks a person simply for being. In contrast, criticism of religious doctrines is by definition an evaluation—though sometimes negative or inaccurate—of a person’s *ideas and beliefs*. The ability to evaluate beliefs in this way is indispensable to individual persons in making informed religious choices and is in fact the hallmark of healthy, free societies.

⁴ Once they arrive in court, they face the burden to prove their sincerity, reasonableness, and good faith, all of which are presumed absent.

⁵ Brendan Carlin, *Hatred Bill goes ahead despite Church protests*, THE DAILY TELEGRAPH, July 12, 2005, at 006. Simon Carr, *A cast-iron guarantee of nothing; the sketch*, THE INDEPENDENT, June 22, 2005, at 19. Hannah Strange, *U.K. religious hate law revolt fails*, UPI, June 22, 2005. *New effort to ban religious hate*, BBC NEWS, June 11, 2005. Polly Toynbee, *My right to offend a fool*, THE GUARDIAN, June 10, 2005.

⁶ Sher Khan, *We want the same as Jews and Sikhs*, THE GUARDIAN, June 14, 2005.

In light of international law and the regrettable consequences of the Act, we again ask you to intervene in this matter. Australia has fostered an open, diverse, and vibrant public square. We urge you to hold fast to this noble tradition and work to undo the unintended damage inflicted the Victorian Tribunal and the *Racial and Religious Tolerance Act*.

Sincerely,

A handwritten signature in black ink, reading "Anthony R. Picarello, Jr.", written in a cursive style. The signature is positioned above a thin vertical red line.

Anthony Picarello
President & General Counsel
The Becket Fund for Religious Liberty

cc: His Excellency Michael Thawley – Australian Ambassador to the United States