

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
IN THE COURT OF APPEAL**

No 3751 of 2005

BETWEEN

**CATCH THE FIRE MINISTRIES INC,
DANIEL NALLIAH and
DANIEL SCOT
and
ISLAMIC COUNCIL OF VICTORIA INC**

Appellants

Respondent

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| Date of Document: | 14 August 2006 |
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APPELLANTS' OUTLINE OF SUBMISSIONS

1. The outcome of this appeal turns on the construction of two provisions in the *Racial and Religious Tolerance Act* (the **Act**) concerning unlawful religious vilification:
 - 1.1. Section 8(1) of the Act prohibits conduct amounting to religious vilification in the following terms:
 - (1) *A person must not, on the ground of the religious belief or activity of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.*
 - 1.2. Section 11 of the Act provides “exceptions” to the prohibition, allowing in certain circumstances conduct that would otherwise contravene s 8:

A person does not contravene s 7 or 8 if the person establishes that the person’s conduct was engaged in reasonably and in good faith–

 - (a) ...

- (b) *in the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in, for-*
 - (i) *any genuine academic, artistic, religious or scientific purpose; or*
 - (ii) *any purpose that is in the public interest; or*
- (c) *in making or publishing a fair and accurate report of any event or matter of public interest.”*

2. In construing these provisions, the Tribunal was required -
 - 2.1. to further the objects set out in s 4(1) of the Act;¹ and
 - 2.2. to prefer a construction that promoted the purpose or object underlying the Act to one that did not.²
3. In determining the question of purpose, regard must be had to “the language of the relevant provision and the scope and object of the whole statute”.³
4. Furthermore, the provisions of international treaties are relevant to statutory interpretation. In the absence of a clear statement of intention to the contrary, a statute (Commonwealth or State) should be interpreted and applied, as far as its language permits, so that it conforms with Australia’s obligations under a relevant treaty.⁴

A. FACTORS RELEVANT TO THE CONSTRUCTION OF THE ACT

A.1 Preserving Freedom of Expression

5. The Act is premised on the notion that an incursion into freedom of expression should only be allowed to the extent that it is necessary to protect another important freedom or right.

¹ Section 4(2) of the Act.

² Section 35(a) of the *Interpretation of Legislation Act* 1984 (Vic).

³ *Project Blue Sky v ABA* (1998) 194 CLR 355 at 390-391.

⁴ *Royal Women’s Hospital v Medical Practitioners Board of Victoria* [2006] VSCA 85 at [75] (Maxwell P). The provisions of an international human rights convention to which Australia is a party can also serve as an indication of the value placed by Australia on the rights provided for in the convention and, therefore, as indicative of contemporary values [77].

6. The importance of preserving freedom of expression is recognised in the Act's Preamble and objects. It is also referred to in the Explanatory Memorandum and Second Reading Speech.⁵
7. The proscriptions in s 7 and s 8 of the Act therefore stand as exceptions to the general principle that people should enjoy freedom of speech and expression. That general principle is recognized as fundamental in a number of international instruments and in national constitutions.⁶ It has also long been recognized in the common law, albeit subject to statutory and other exceptions.⁷
8. The legislature did not intend to stifle debate, even acrimonious debate, on matters of public interest or importance. It sought to restrain incursion into freedom of expression by a number of means.

⁵ The Preamble recognises freedom of expression as an essential component of a democratic society and something that should be limited only to the extent that it can be justified by an open and democratic society.
The objects of the Act include maintaining the right of all Victorians to engage in robust discussion of any matter of public interest or to engage in, or comment on, any form of artistic expression, discussion of religious issues or academic debate where such discussion, expression, debate or comment does not vilify or marginalise any person or class of persons (ss 4(1)(a) and (b)).
The Explanatory Memorandum states that the Bill promotes the object of striking a balance by prohibiting racial and religious vilification while still ensuring that freedom of expression can be exercised.
The Second Reading Speech for the Bill states that the Bill strikes an appropriate balance with freedom of expression by imposing liability only upon the most repugnant behaviour which actively urges and promotes hate (Hansard, Legislative Assembly, 17 May 2001, page 1284).

⁶ Article 19 of the International Covenant on Civil and Political Rights states:
 19.2 *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
 19.3 *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 (a) *for the respect of the rights or reputations of others;*
 (b) *for the protection of national security or public order (ordre public) or of public health of morals.*

⁷ See Lord Coleridge CJ in *Bonnard v Perryman* [1891] 2 Ch 269 at 284.

9. Accordingly, the Act-
 - 9.1. only prohibits conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of *persons*; it does not render unlawful conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of *beliefs* or activities;
 - 9.2. limits freedom of expression only in relation to conduct of an *extreme* kind; and
 - 9.3. permits vilifying conduct that is engaged in for certain purposes or in the public interest

10. The purpose of promoting ‘religious tolerance’⁸ might appear to suggest that, by this Act, the legislature intends to encourage adherents of all faiths to accept and accommodate all other religious beliefs. Such an aim, whilst no doubt appealing to certain contemporary views of tolerance, and perhaps personal preference for religious pluralism, does not take into account nor respect the fact that religion is typically concerned with concepts of truth, hence falsity, and good, hence evil.

11. Further, it is in the very nature of religion that it may (but need not necessarily) be exclusivist in its outlook and fervently proselytising in its mission.

12. In this appeal the challenge for the civil courts is to interpret and apply the Act against a setting in which adherents of one exclusivist and proselytising faith are meeting the challenge of another faith perceived also to be exclusivist and proselytising; furthermore, in which the subject matter of that debate intersects with current topics of social and political debate.

A.2 Vilification of *persons* not *belief systems*

13. For these reasons it is vital to observe that the *means* which parliament has adopted to promote religious tolerance is expressly confined to prohibiting conduct that vilifies *persons* on the ground of religious belief or activity. There is a necessary (if difficult) distinction between the person and the person’s beliefs.

⁸ Section 1(a).

14. A construction of s 8 of the Act that prohibits conduct that generates strong feelings against a *set of beliefs* or a *religion*, would interfere with the exchange of ideas that is necessary to help shape ideas in the community, make the secular courts the arbiter of acceptable and unacceptable ideas, or right and wrong interpretation of different religions, and interfere with the practice and teaching of religion itself.
15. A law prohibiting vilification of persons, where the religious *belief* of the person is adopted as the relevant subject matter for unlawful conduct, is inherently liable to collide with freedom of thought, conscience and religion. A construction must be adopted and applied that least interferes with such freedoms, whilst still giving effect to the objects of the law. Such an approach to construction is required to give effect to Article 18 of the International Covenant on Civil and Political Rights.⁹
16. The Act is therefore aimed at protecting “persons” – specifically their right to participate equally in society. It is not directed towards protecting from criticism – however severe, unfair or immoderate - any religion, beliefs or ideology.
17. While adherence to a set of religious beliefs or practices may be inextricably intertwined with personal identity of many people, the Act is predicated upon the maintenance of a distinction between vilifying a person, on the one hand, and vilifying that person’s ideas/beliefs/religion, on the other. While the former is

⁹ Article 18 of the ICCPR provides:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

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

prohibited by the Act, the latter is not. The law recognises that you can hate the idea without hating the person.¹⁰

18. Such a distinction is vital to prevent the Act from operating as a *de facto* law against blasphemy and requiring the civil courts to adjudicate in doctrinal controversies.

A.3 Vilifying conduct must be “extreme”

19. The Act is intended to balance competing rights. The competing right preserved or enhanced by burdening freedom of expression, is the right of all persons to participate equally in society.¹¹ However, the competing right is not a “right” to be immune from criticism, offence, or lampooning, from being the subject of public debate or being the subject of some degree of communal ill-will – being potentially susceptible to such things is a characteristic of any citizen in a free, democratic and open society.¹²

¹⁰ *Fletcher v. Salvation Army* [2005] VCAT 1523 at [7]. In this context, it is necessary to observe that there are inherent difficulties in using the model of racial vilification for religious vilification: while race is a biological given, religion is a system of beliefs or ideas that are chosen. Criticism of people on the basis of the choices that they make ought to be open in a democratic society, providing that it does not result in a breach of public order.

¹¹ The Preamble to the Act states that vilifying conduct is contrary to democratic values because of its effect on people of diverse ethnic, Indigenous and religious backgrounds in diminishing their dignity, sense of self-worth and belonging to the community, and in reducing their ability to contribute to, or fully participate in, all social, political, economic and cultural aspects of that society as equals.

The objects of the Act include promoting the full and equal participation of every person in a society that values freedom of expression and is an open and multicultural democracy.

¹² See, per French J, in *Bropho v Human Rights & Equal Opportunity Commission* (2004) 77 ALD 331 at [69]: “As a general principle freedom of expression is not limited to speech or expression which is polite or inoffensive. The European Court of Human Rights observed in the *Handyside* case that Art 19 of the ICCPR applies not only to information or ideas that are favourably received or regarded as inoffensive but, also subject to par 2: ‘those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broad mindedness without which there is no ‘democratic society’: *Handyside v United Kingdom* (1976) 1 EHRR 737”

20. Being the subject of criticism, offence, lampooning or ill-will *per se* is apt to deter some from participating in society to a greater or lesser extent, particularly those who are already marginalised and powerless. However, in a free, democratic and open society the level of deterrence must be high before the conduct is prohibited.
21. Consistently with its stated aim of limiting freedom of expression only to such an extent as may be justified in an open and democratic society, Parliament has confined the prohibition to conduct which is-
 - 21.1. of an extreme kind;
 - 21.2. apt to produce an extreme emotional response in the reader, listener or observer; and
 - 21.3. likely to result in other conduct that deters the person or persons against whom the expression is directed from participating equally in society..
22. The words of the Act - “incites”, “hatred”, “serious contempt”, “revulsion” and “severe ridicule” – suggest that only the most extreme conduct is prohibited by the Act.
23. Evidence of Parliament’s intention to limit the prohibition in this way is found -
 - 23.1. In the Explanatory Memorandum: the Bill promotes the object of prohibiting “extreme behaviour” that denies the right of Victorians of all racial backgrounds and religious beliefs to participate as equals in the community;
 - 23.2. The Second Reading Speech refers to:
 - **the most noxious form of conduct** which incites hatred or contempt for a person or group on the basis of their race or religion;

- conduct that, objectively, promotes **the strong emotions** of hate, revulsion or contempt against the person or group on the basis of their race or religion;
 - **the most repugnant behaviour** which actively urges and promotes hate;
 - **extreme behaviour** which has no regard for the rights of others to participate in society.
24. The Second Reading Speech also states that the Bill was not intended to target trivial comment, impolite remarks or “legitimate discussion”.
25. A failure to properly accord to the relevant words the intensity Parliament intended them to have results in the failure to maintain the correct balance between freedom of expression and the competing right or freedom to participate in society and live free of the fear of threats.

A.4 Vilifying conduct may be lawful

26. Section 11 of the Act describes the circumstances in which conduct that incites hatred etc. against a person or class of persons does not contravene s 8. The provision is not simply a “fair speech exception” to s 8 but, rather, defines and limits the extent to which s 8 restricts freedom of expression. It is to be interpreted broadly.¹³
27. In line with s 11, the scope of the freedom is, in part, delineated by reference to the purpose for which the communication is made and the context in which it is made. Failure to give proper consideration to the purpose and context is apt to result in the prohibition having too wide a reach.

¹³ *Bropho* (supra) at [72]-[73]

B. ERRORS OF LAW: THE PROPER CONSTRUCTION AND APPLICATION OF SECTION 8

B.1 “...on the grounds of...”¹⁴

28. The expression “on the grounds of the religious belief or activity of another person or class of persons” directs attention to the connection between the relevant religious belief and the conduct of the inciter.¹⁵ It does not draw a connection between the relevant religious belief or activity and the feelings of hatred etc that may be incited by the conduct.¹⁶
29. There are several indicia in the Act that “on the grounds of” signifies a causal connection between religious belief and the conduct rather than religious belief and the feelings of hatred etc. incited in the reader or listener:
- 29.1. the position of the phrase in the structure of s 8(1) itself; and
 - 29.2. section 9(2), which clearly points to the relevant connection being between the religious belief and the conduct of the inciter.
30. Although Judge Higgins expressly adopted the view that the causal relevance of the religious belief was to the conduct¹⁷, his Honour in fact applied a test more consistent with the view that the relevant connection was between religious belief

¹⁴ Question of Law (b)(ii) and Ground (b)(iii).

¹⁵ In dealing with differently expressed anti-discrimination provisions Justice McHugh, see *Waters v Public Transport Corporation* (1991) 173 CLR 349 at 400-401, and Justice French, see *Bropho* (supra) at [71], construed words such as “because of” or “on the ground of” as referring to a causal connection of this kind.

¹⁶ Compare, in respect of s.20C(1) of the *Anti-Discrimination Act* (1977) (NSW), where the New South Wales Administrative Decisions Tribunal interpreted similar words, differently placed in the structure of the provision, as relating to the ground on which the reader was incited to hatred, not the ground on which the relevant Act was performed. See *Kazak v John Fairfax Publications Limited* [2001] NSWADT 77 at [69] – a view that appeared to be adopted on Appeal, see *John Fairfax Publications Pty Ltd v Kazak* [2002] NSWADTAP 35 at [16].

¹⁷ See Reasons at [12] and [13].

and the feelings of hatred etc that might be incited.¹⁸ In so doing, his Honour erroneously adopted and applied a *Kazak* test.¹⁹

31. Section 9 of the Act provides that the inciter's motive in engaging in any conduct is irrelevant, and that it is also irrelevant whether the race or religious belief or activity of the victim was the only or dominant ground for the conduct, so long as it was a substantial ground. Accordingly, s 8(1) must be construed with s 9(1) so that the ground for the inciter's conduct is the religious belief or activity of the victim, but the inciter's motive in engaging in such conduct is irrelevant.²⁰
32. No issue is taken by the appellants with the proposition that Islamic beliefs and practices were a substantial ground for the making of statements at the Seminar, and the publication of the Article and Newsletter.
33. However, the subtle (and difficult) distinctions between the concepts of "ground" in s 8, "motive" in s 9, and "good faith" in s 11 must be grasped in order to assign the proper meaning to "good faith" in s 11. Essentially, by excluding motive from the concept of ground in relation to the conduct itself, the legislature has reinforced the fact that "good faith" in s 11 is directed to something more than simply the conduct itself – rather, to the conduct in the setting of its purpose²¹.

B.2 Hatred against etc the person, not the belief.²²

34. The error caused by misconstruing or misapplying the correct causal test framed by the words "on the grounds of" is related to and compounded by the error of

¹⁸ This may be illustrated by passages in the Reasons at [81], [379], and [380].

¹⁹ The test referred to in the second sentence of para 28 above. See also the decisions referred to in note 16 above.

²⁰ See discussion Kiefel J. in *Creek v. Cairns Post Pty.Ltd.* (2001) 112 FCR 352 at 357 referring to the reasoning of Dawson J. in *Australian Iron and Steel Pty.Ltd v Banovic.* (1989) 168 CLR 165, Kiefel J. said that the inquiry "considers what was in truth likely to have given rise to it [the conduct], when regard is had to all the circumstances, and this would include the nature of the conduct and the words and expressions used".

²¹ See below, Sections C2 and C3.

²² Questions of Law (b)(i) and (v), and (c); Grounds (b)(i), (ii) and (x).

failing to pay proper regard, in the construction of s 8, to the words “that other person or class of persons”.

35. The Tribunal failed to make the vital distinction between an attack on a set of religious beliefs, on the one hand, and a personal attack on the adherents of a particular religious belief, on the other. As discussed, that distinction is not only apparent in the words of the section but is critical to a construction of the section that –
 - 35.1. respects the intention of parliament to only make such inroads into citizens’ “essential” freedom of expression as may be justified in an open and democratic society; and
 - 35.2. accords with the preservation of freedom expression and freedom of religion in conformity with Australia’s obligations under Articles 18 and 19 of the ICCPR.
36. The Tribunal’s erroneous approach is demonstrated by its considerable focus on statements made by the appellants about Islamic belief and practice²³ and the implication it drew that an attack on the belief-system equates to unlawful incitement against Muslim people, as people.²⁴
37. Erroneously interpreted, the Act can be employed so that the State, through its judiciary, becomes the guardian of correct interpretation and teaching of religious doctrine, or the protector of perceived religious orthodoxy.

²³ See many of the statements summarised in paragraphs [80] and [379] and [390] of the Reasons.

²⁴ See [6] of Judge Higgins ruling of 21 October 2003 [AB E2] where his Honour, in summarising the defence, refers to vilification “of the Islamic religion”. Compare *Fletcher v Salvation Army* (supra) at [14] & [15].

38. That such an error has been made in this case is amply demonstrated by the form of the orders made in this case: the injunctive orders limit the scope of religious opinion that can now be expressed.²⁵
39. Moreover the error is further demonstrated by the completely inadequate regard paid by the Tribunal to those matters which bore directly upon the question of what feelings were being incited toward Muslim people (as distinct from the Islamic system of belief) by the conduct.
40. In reaching its conclusion, the Tribunal made only passing reference²⁶ to the extensive statements made at the Seminar, in the Newsletter and the Article exhorting listeners and readers to accept, tolerate, reach out to, and love Muslim people, and to the careful distinction made to the attitude one should have to the people as distinct from the belief-system²⁷. Such an error was not one of fact; it betrays an errant construction of the section and amounts to a failure to take into account relevant matters.
41. In its findings the Tribunal rolled up numerous statements made in the Seminar, Newsletter and Article and concluded, in each case, that such statements, taken together, gave rise to the unlawful incitement. Insofar as any specific statement may have had a capacity to incite the relevant extreme emotions against *persons* rather than belief, the Tribunal made no finding that such statement(s) would have had such an effect.

²⁵ See the Orders made in paragraph (d)(i),(ii) and (iii) [AB E9-10] and the subject matter proscribed in paragraph [80] of the Reasons, especially sub-paragraphs (i), (ii), (iii), (iv), (vii), (viii), (ix), (xi), (xiv), (xvi) and (xvii).

²⁶ And only then to the secondary evidence of the witness, Matthews: [81] of the Reasons.]

²⁷ See relevant statements extracted from the Transcript of the Seminar [AB C1184-1314], the Newsletter [AB A11-18] and the Article [AB A19-24] set out in Appendix 1 to this Outline.

B.3 “...engage in conduct that incites...”²⁸

42. Unlike anti-discrimination provisions, anti-vilification provisions such as s 8 of the Act involve three parties – not just two – that is, the inciter, the incited and the objects of the feelings thus incited. The active use of the verb “incites” indicates that, for the contravention to be proved, there must be proof that persons were actually incited to hold the very strong emotions referred to in the section. Such a view is supported by comparing the expression used in s.8 (“that incites hatred against...”) with the language in s 25(1)(a) (“...is likely...to incite hatred against...”).
43. The word “incites” does not simply mean “cause”²⁹, nor only to “convey”³⁰, but connotes “inflame” or “set alight”.³¹
44. Furthermore, proper regard to the extreme nature of the vice that is to be guarded against, on the one hand, and the acknowledged need to maintain the correct balance between competing freedoms of citizens, on the other, supports the construction that actual incitement must be proven.
45. The Tribunal interpreted the words in s 8 as importing an objective test of whether the conduct would incite an “ordinary reasonable reader”³² or whether they had a “tendency to incite”.³³
46. In doing so the Tribunal was in error. The authority relied upon concerns legislation with materially different words and without the contrasting language that appears in the Victorian Act.³⁴

²⁸ Question of law ((b)(iii), (vi) and (vii); grounds (b)(iv), (v), (vi), (vii) and (xi).

²⁹ *Fletcher v Salvation Army* at [5].

³⁰ *Burns v Dye* [2002] NSWDT 32 at [20].

³¹ *Fletcher v Salvation Army* at [5].

³² Reasons at [14] and [15].

³³ Reasons at [21] and [22].

³⁴ *John Fairfax Publications Pty Ltd v Kazak* [2002] NSWADTAP 35; But see *Fletcher v Salvation Army* at [6]: note, there is some ambiguity in the term “objective” – does it refer to the state of mind of the inciter or the incited?

47. Alternatively, if the proper test of incitement is one that incorporates an objective element, then, for the same reasons, the attributes of the “ordinary reasonable reader” should be more closely aligned to the attributes of the likely audience of the impugned communication. The Tribunal erred in attributing to the ordinary reasonable reader broad, general characteristics and ascribing the relevant social and historical context of the conduct as that which may be presumed to be part of the ordinary reasonable reader’s knowledge and experience of human affairs.³⁵
48. Further, by asking whether an ordinary reasonable reader would “understand he or she is being incited to hatred” or “would be inclined to hatred”³⁶, the test of incitement was even further weakened and removed from the true test required by the language of the section.
49. In any event, the Tribunal erred in having regard to the evidence of Jackson, Eade and Thomas (the three complainants represented by the Islamic Council of Victoria) as to their feelings and reaction to the statements (both spoken and printed)³⁷. It misapplied the decision of *Jones v Scully*,³⁸ a case concerning the bi-partite behaviour of offending, insulting, humiliating or intimidating another person, as being relevant to the tri-partite conduct of incitement of third persons.

B.4 “...hatred against, serious contempt for, revulsion of or severe ridicule of...”³⁹

50. The Tribunal interpreted these words as having a milder meaning than that intended by the legislature. The ordinary meaning of the words themselves demonstrates the very high threshold of emotion that must be incited.⁴⁰ Moreover each of the words points to a separate and distinct emotion.⁴¹

³⁵ Reasons at [14]-[16].

³⁶ Reasons at [14], [16] and [380].

³⁷ Applied by Judge Higgins at paragraphs [76] and [77] of the Reasons.

³⁸ (2002) 120 FCR 243.

³⁹ Question of law (b)(iv); Ground (b)(viii) & (ix).

⁴⁰ Significantly, the Victorian provision, unlike incitement provisions in other States, includes the word ‘revulsion’ amongst the other words – a particularly strong word meaning ‘violent dislike or aversion’: Macquarie Dictionary. Compare: *Anti-*

51. Although the Tribunal considered the dictionary meaning of the individual words⁴², at no stage did it acknowledge the extremely high threshold that each of those states of mind required. Nor did it give any consideration to the differences in nature of the particular emotions or analyse which of the particular responses was, or would likely have been, incited by the offending words or conduct. Rather, with one exception, it treated the words as embracing a single, indistinct notion⁴³ that lacked the necessary rigour required by a proper and careful construction of the words.
52. The exception relates to particular findings that the applicants incited ridicule⁴⁴ although, again, the example given of conduct said to constitute the ridicule⁴⁵ reveals a construction of the expression “severe ridicule” that is too soft. None of the findings made by the Tribunal that the applicants incited “fear of” or “mockery of” or “ridicule of” Muslims and/or their religious beliefs was sufficient to constitute incitement of either “hatred against”, “serious contempt for”, “revulsion of”, or “severe ridicule of” Muslim people if those terms were properly construed and applied.

B.5 Appropriate standard of satisfaction⁴⁶

53. Given the serious nature of the conduct alleged, the particular occupation of the applicants, and the public ignominy likely to be attended by any finding of breach, the Tribunal should have, but failed to, adopt as the requisite standard of persuasion that which is classically stated in *Briginshaw v Briginshaw*.⁴⁷

⁴¹ *Discrimination Act 1991* (Qld) s 124A; *Anti-Discrimination Act 1998* (Tas) s 19; *Racial Vilification Act 1996* (SA) s 4; *Anti-Discrimination Act 1977* (NSW) s 20C.

⁴² *Kazak v John Fairfax Publications Limited* [2000] NSWADT 77 at [40]-[42].

⁴³ Reasons at [18] – Note: his Honour did not consider the meaning of ‘revulsion’.

⁴⁴ Reasons at [81], [376], [380] and [390].

⁴⁵ Reasons at [81] and [379].

⁴⁶ Reasons at [81].

⁴⁷ Question of law (d); Ground (b)(vii). (1938) 60 CLR 336, per Latham CJ at 343-4, Rich J at 354 and Dixon J at 362-3; *Dept of Health v Arumugam* [1988] VR 319 at 441 (Fullagar J). See also *Sharma v Legal Aid Queensland* [2002] EOC 93-191, and on appeal [2002] EOC 93-231; *Macedonian*

B.5 Findings not open on the evidence⁴⁸

54. The appellants do not pursue grounds 3(b)(xiii), 3(b)(xiv), 3(b)(xvi) in the Notice of Appeal, except to challenge the attribution of the following bald statements to the third appellant:

54.1. In paragraph [80] of the Reasons – items 5, 6 and 10:

- Muslims lie for the sake of Islam and that it is “all right”, they have to hide the truth
- Muslims are demons
- Muslims intend to take over Australia and declare it an Islamic nation

54.2. In paragraph [379] of the Reasons – items 4, 6, 9 and 11:

- Muslims are liars
- Muslims are demons
- Muslims have a plan to overrun western democracy by the use of violence and terror, and to replace those democracies with oppressive regimes
- Muslims intend to take over Australia and declare it an Islamic nation

55. Reference to specific statements made in the transcript of the Seminar shows that the attributed statements are a mischaracterisation of what was said or omit an important qualification which affects the meaning of the statement:

55.1. in relation to Muslims not telling the truth, the statement is limited to telling the truth about the teaching of Islam: see pp 10-11 of the transcript;⁴⁹

Teachers Association of Victoria Inc v HREOC (1999) 91 FCR 8, and on appeal (1999) 91 FCR 47.

⁴⁸ Question of law (g); Grounds (b)(xiii) – (xvi).

⁴⁹ [AB C1196-7].

- 55.2. in relation to Muslims being demons, the statement was that Allah sent a group of demons to Mohammed and they became Muslims: see pp 13 of the transcript;⁵⁰
- 55.3. in relation to Muslims “taking over” Australia, the statement refers to a report in the Sydney Jewish newspaper “Macabees”; see p 23 of the transcript.⁵¹
56. In any event, Pastor Scot’s lack of credibility as a witness (if properly found) could not constitute a breach of s 8 of the Act as held by the Tribunal.⁵²

C. ERRORS OF LAW: THE PROPER CONSTRUCTION AND APPLICATION OF SECTION 11

C.1 Generally

57. Section 11 is similar in form to s 18D of the *Racial Discrimination Act 1975* (Cth.). Section 18D describes the circumstances in which conduct is not unlawful, notwithstanding that it is done because of the race, colour or national or ethnic origin a person and is likely to offend, insult, humiliate or intimidate that person.
58. By parity of reasoning, s 11 applies to conduct engaged in on the ground of the religious beliefs or activities of a person that incites hatred etc. of that person. That conduct is *prima facie* vilifying conduct.

C.2 “... reasonably and in good faith ...”

59. Whether a person’s conduct has been engaged in “reasonably and in good faith” can only be ascertained by reference to one or more of the activities mentioned in ss 11(a), (b) or (c) - for example, by reference to a purpose mentioned in (b).⁵³
60. A construction of the terms “reasonably” and “in good faith” divorced from the “purposes” leads to error – an error made by the Tribunal in this case. It first

⁵⁰ [AB C1200].

⁵¹ [AB C1216].

⁵² Reasons at [381].

⁵³ Reasons at [80]; *Deen v Lamb* (2001) QADTP 20, unreported, page 7 of 8.

considered the meaning of “reasonably” and “good faith” in a vacuum and, having found them not to be made out on the facts, then held it was unnecessary to consider the meaning and application of “genuine religious purpose” or “purpose in the public interest”⁵⁴.

61. Having found that the conduct of the Seminar breached s 8 because it was “not a balanced discussion”⁵⁵ and presented an interpretation of the Qu’ran that “represented the views of a small group of fundamentalists”⁵⁶, the Tribunal then considered s 11 and found that the Seminar was not conducted “reasonably” because it was “‘excessive’...a one-sided delivery of a view of the Qu’ran and Muslim beliefs, which were not representative”.⁵⁷
62. Furthermore, because it was “the presentation of an unbalanced Seminar, albeit purporting to express the views of a particular individual...it was not an exercise of good faith”.⁵⁸
63. The resulting error was that the Tribunal merely re-considered whether the impugned conduct was “reasonable” in its view. Not surprisingly, having regard to its findings in relation to breach, it found that s 11 did not apply.
64. In determining whether the impugned conduct was engaged in “reasonably”, the Tribunal ought to have considered whether the conduct bore a rational relationship to a genuine religious purpose or other purpose in the public interest.
65. Similarly, it ought to have asked whether the impugned conduct was engaged in by the appellants in “good faith” for a genuine religious purpose or other public interest purpose, words that themselves require proper construction. Such enquiry first required the identification and consideration of such purposes and thereafter an examination of the conduct in the light of those identified purposes. This was not

⁵⁴ Reasons at [386].

⁵⁵ Reasons at [380].

⁵⁶ Reasons at [383].

⁵⁷ Reasons at [385].

⁵⁸ Reasons at [385].

done. The available evidence of religious purpose for each of the Seminar, Newsletter and Article is discussed below.

66. Further, the requirement of good faith should have been interpreted as requiring only the absence of dishonesty or colourable purpose in engaging in the impugned conduct⁵⁹. A person doing an act which incites hatred or contempt is acting in “good faith” within the meaning of s 11 when the act is done in order to fulfil one or more of the purposes permitted by the section.
67. In this case, there was no finding of subjective dishonesty on the part of Pastor Scot as to whether he was honestly pursuing or fulfilling the religious purpose of the Seminar.⁶⁰
68. In *Bropho*⁶¹, French J held that the requirement of “good faith” demanded:
- 68.1. a conscientious approach to the task of honouring the values asserted by the Act; and
- 68.2. an endeavour to have regard to and minimise the harm the conduct would, by definition, inflict.
69. In line with the requirements identified by French J in *Bropho*, the Tribunal ought to have enquired whether Pastor Scot had taken a conscientious approach to minimising the risk of incitement of hatred etc. against Muslims – that being the necessary value which the Act required to be “honoured”. Such an enquiry necessarily concerned whether Pastor Scot made appropriate endeavours to distinguish between people and belief, and to avoid incitement of strong feelings against people, insofar as he could do so whilst pursuing the genuine religious purpose that he was free to pursue.

⁵⁹ See, for example, *Deen v Lamb*, note 53 above.

⁶⁰ At page 121 of the Reasons Higgins J entertained “doubts” whether what Pastor Scot told the seminar was his real beliefs about the Qu’ran, but he did not make a positive finding of dishonesty in that regard.

⁶¹ *Bropho* (supra) at [95], [96] and [102].

70. Such analysis would therefore have required an examination of the steps Pastor Scot took to –
- 70.1. distinguish between people and their belief; and
 - 70.2. protect against the risk of any adverse reaction by the audience towards Muslim people beyond what was reasonably necessary to pursue the genuine religious purpose.
71. This last analysis also required having regard to the context (including the character of the audience and their likely expectations) because the steps required to minimise the risk of incitement in one context may be greater or lesser than the steps required to minimise that risk in a different context.
72. It is submitted that it may be regarded as more probable than not that members of a religious group whose primary precept is “love God and love your neighbour”, and who are brought up on the story of the Good Samaritan, would be inclined to resist, as one possible interpretation of a speaker’s message, that it was exhorting them to hate people. Accordingly, such an audience is not likely to require much by way of reminder that there is a difference between hating a belief and hating the believer, and that they can and should love the Muslim person even when detesting Islamic belief.
73. In summary, the Tribunal failed to consider –
- 73.1. whether the impugned conduct had a religious purpose;⁶²
 - 73.2. the content of the seminar to see whether it was rationally connected to that religious purpose (largely because the Tribunal did not identify the purpose);

⁶² Although, see the statement by Higgins J at the end of paragraph [81], presumably based on the evidence summarised at [253] and [254]: “although I have serious reservations about the explanation about witnessing to Muslims, I am prepared to accept that, viewed objectively, it could be accepted as such. However that fact does not justify what was otherwise said by Pastor Scot.”

- 73.3. Pastor Scot’s subjective intent in connection with the identified religious purpose;⁶³
- 73.4. whether Pastor Scot had taken any steps to minimise the prospect of inciting hatred against persons (partly because it did not make the distinction between belief and people); or
- 73.5. the content of the Seminar which referred to the distinction between Muslim people and Islam and the positive attitude that Christians were exhorted to have towards Muslims, which was likely to negate any implication that could be drawn from Pastor Scot’s criticisms of Islamic belief and practice that Christians should hate Muslim people.
74. Cognate errors were made in respect of the Newsletter and the Article.
75. Furthermore, the Tribunal erred in finding that Pastor Scot’s lack of credit as a witness in the proceeding⁶⁴ meant that the Seminar itself was not conducted in good faith.⁶⁵ It made the same error in respect of Pastor Nalliah in connection with the publication of the Newsletter and Article.⁶⁶
76. In the result, the approach of the Tribunal robbed s 11 of its intended exculpatory effect and meant that it merely reapplied the same or similar analysis that resulted in a finding of breach under s 8. Construed in the manner adopted by the Tribunal, s 11 offers no “exceptions” to the prohibitions in s 8 at all.

C.3 “conduct engaged in for a genuine religious purpose”

77. As discussed, the Tribunal did not make any findings as to whether the impugned conduct arising from the Seminar, the Newsletter and the Article was engaged in

⁶³ And, in any event, did not make any positive findings of dishonesty.

⁶⁴ See Reasons at [276] and [377].

⁶⁵ Reasons at [385].

⁶⁶ Reasons at [389] and [390].

for a genuine religious purpose or other purpose in the public interest because it erred in its construction of “reasonably and in good faith”.

78. The Act defines a “religious belief or activity” as –
- (a) *holding or not holding a lawful religious belief or view; and*
 - (b) *engaging in, not engaging in or refusing to engage in a lawful religious activity.*
79. The Act does not define a “religious purpose”. According to the plain meaning of the words, a religious purpose would include the purpose of engaging in, furthering or promoting religious beliefs or activities.⁶⁷
80. The International Covenant on Civil and Political Rights expressly protects the right to “freedom of religion”, being a person’s freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and *teaching*.
81. Accordingly, a “religious purpose” would include holding religious seminars and publishing articles in which Muslim teachings are interpreted and compared to Christian teachings. Such activities would not cease to be activities carried out for a religious purpose because they were conducted from an irreducibly religious viewpoint and involved the assertion that the theological claims of Christianity were true, and that certain theological claims of Islam were not.

⁶⁷

In distinguishing a religion from a non-religion, a religious from a non-religious purpose and in determining what constitutes a religion for the purpose of gaining immunity from payroll tax, the High Court has identified the indicia of a religion as including:

- belief in a supernatural being, thing or principle;
- acceptance of canons of conduct in order to give effect to that belief;
- ideas that relate to humanity’s nature and place in the universe and its relation to things supernatural;
- acceptance that adherents constitute an identifiable group or groups; and
- participation by adherents in practices believed to have supernatural significance.

See *Witnesses Inc v Commonwealth* (1943) 67 CLR 116 at 124; *Church of the New Faith v Cmr of Pay-Roll Tax (Vic) (Scientology case)* (1983) 154 CLR 120.

However, for the purposes of the Act, a religious belief or activity includes the opposite of those indicia, eg a belief that there is no supernatural being, thing or principle.

82. A genuine religious purpose may therefore include the purpose of asserting (strongly) that a particular religion is the true way and that any other way is false.⁶⁸
83. The religious purposes of the Seminar were described by Pastor Scot, and apparently accepted by Judge Higgins⁶⁹ as being –
- 83.1. to explain to Christian people certain aspects of Islamic teaching; and
 - 83.2. to encourage and equip Christian believers to share their faith with Muslims.
84. Those religious purposes may also be discerned from an analysis of the structure and content of the Seminar set out in Appendix 2. They are also evident in numerous statements made by Pastor Scot in the course of the seminar, as extracted in Appendix 3.
85. The religious purposes of the Newsletter and the Article are to be discerned from the statements set out in the relevant parts of Appendix 3.
86. On the evidence, it was open for the Tribunal to find that –
- 86.1. The impugned conduct was directed towards exhorting more active or assertive Christian practice and the promotion of Christian beliefs, both in the political and private spheres, in order to counter the influence of another set of religious beliefs on Australian society; and/or
 - 86.2. The impugned conduct was directed towards teaching a Christian audience about Islam (or a version thereof) in order to encourage the more active promotion of Christian beliefs and practices, and in order assist Christians to ‘witness’ to Muslims;
 - 86.3. Accordingly, the impugned conduct was engaged in for religious purposes and/or for public interest purposes.

⁶⁸ *Fletcher v Salvation Army* (supra) at [9].

⁶⁹ Reasons at [253], [254] and [81].

87. Accordingly, the Tribunal ought to have found that –
- 87.1. There was a rational relationship between the impugned conduct and the religious purposes of Pastors Scot and Nalliah; and
- 87.2. The conduct of the Seminar and the publication of the Newsletter and the Article were engaged in in good faith for a genuine religious purpose.

D. CONSTITUTIONAL VALIDITY⁷⁰

88. A constitutional challenge to the validity of s 8 of the Act is raised by the appellants if –
- 88.1. Section 8 is construed to prohibit incitement to hate etc. religious beliefs and practices; and
- 88.2. Section 11 is construed to require the conduct which is exempted from the prohibition to be ‘reasonable’, ‘balanced’, and not ‘excessive’ or ‘one-sided’.
89. If those constructions are adopted, s 8 will operate to impose an absolute bar on what might qualify as ‘political communication’, because s 11 so construed offers no “exceptions” to the interdiction in s 8 at all. Under the Constitution, a law that, *without qualification*, makes it unlawful to utter or publish certain types of words cannot validly apply to such words that are uttered or published in the course of making statements concerning political or governmental matters.⁷¹

D.1 Implied Freedom of Communication

90. In *Levy v Victoria*⁷², Gaudron J. said:

“If the direct purpose of the law is to restrict political communication, it is valid only if necessary for the attainment of some overriding public

⁷⁰ Question of law (a); Ground (a).

⁷¹ *Coleman v Power* (2004) 220 CLR 1 at [35] per McHugh J.

⁷² (1997) 189 CLR 579 at 619.

purpose. If, on the other hand, it has some other purpose, connected with a subject matter within power and only incidentally restricts political communication, it is valid if it is reasonably appropriate and adapted to that other purpose.”

91. Section 8 of the Act arguably has a direct purpose of restricting communication, including communication that may qualify as political communication. On the test articulated by Gaudron J in *Levy*, s 8 will only be valid if “necessary” for the attainment of some overriding public purpose. It would not satisfy this test.⁷³ Insofar as it “incidentally” restricts political communication, s 8 is valid only if “reasonably appropriate and adapted” to its purpose. In practice, the courts have applied a variation of this second test when considering fetters on communication of the kind contained in the Act.

91.1. In *Coleman v Power*⁷⁴, Gleeson CJ said that a law will infringe the relevant constitutional freedom where it effectively burdens communication about governmental or political matters, and either the object of the law is incompatible with the maintenance of the constitutional system of representative and responsible government or the law is not reasonably appropriate and adapted to achieving its object.

91.2. In *APLA Ltd. v. Legal Services Commissioner (New South Wales)*⁷⁵ the test for determining whether a law infringes the implied freedom to communicate concerning political and governmental matters was more precisely formulated as follows:

“When a law of State or Federal Parliament or a Territory legislature is alleged to infringe the requirement of freedom of communication imposed by ss. 7, 24, 64 or 128 of the Constitution, two questions must be answered before the validity of the law can be determined. First, does the law effectively

⁷³ It would be difficult to establish that the object of promoting “the full and equal participation of every person in ... society” “necessitated” a law prohibiting political communications. There would be many other less draconian means of promoting that object or securing that end.

⁷⁴ *Supra* at [24]; See also *Lange v. ABC* (1997) 189 CLR 520 at 567-568.

⁷⁵ *APLA Ltd. v. Legal Services Commissioner (New South Wales)* (2005) 79 ALJR 1620 at [58] per McHugh J.

burden freedom of communication about government or political matters either in its terms, operation or effect? Second, if the law effectively burdens that freedom, is the law reasonably appropriate and adapted to serve a legitimate end in a manner which is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government and procedure prescribed by s. 128 for submitting a proposed amendment to the Constitution to the informed decision of the people?”

92. Section 8 of the Act burdens communication by expressly prohibiting certain forms of expression. The Tribunal found that certain statements of the appellants were prohibited by s 8 of the Act. Two questions then arise:
- 92.1. Were some or any of the impugned statements communications about government or political matters?
- 92.2. If so, was the prohibition of such conduct by s 8 of the Act reasonably appropriate and adapted to serve a legitimate end in a manner which is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government?

D.2 “... government or political matter ...”

93. The meaning of the expression is imprecise.⁷⁶ However, the content of the expression is to be found in the source of the implied freedom of communication, specifically arising from ss. 7, 24, 64 and 128 of the Constitution.⁷⁷

⁷⁶ *APLA* (supra) at [27].

⁷⁷ As McHugh J. said in *APLA* at [61]:

The freedom of political or governmental communication, identified in Lange, is tied to the specific provisions of the Constitution that deal with the requirement for free and direct elections of the Houses of Parliament, executive responsibility to Parliament and the referendum procedure for amending the Constitution. The freedom is necessary to give effect to the requirements of direct elections for the Senate and the Houses of Representatives in ss. 7 and 24 respectively, the involvement of electors in a referendum under s.128, the exercise of executive power by Ministers who are members of the House of Representatives or Senate and thus responsible to the electorate under ss. 62 and 64, the control of supply to the Executive by the Parliament in s. 83 and the sittings of Parliament protected by parliamentary privilege under ss. 6 and 49 of the Constitution.”

94. It is therefore not a general freedom of communication of the kind protected by the First Amendment to the Constitution of the U.S.⁷⁸
95. Nonetheless, the High Court has taken a reasonably broad view of what may constitute a communications about a political or government matter-
- 95.1. Freedom of communication in relation to public affairs and political discussion cannot be confined to communications between elected representatives and candidates for election on one hand and the electorate on the other⁷⁹; such communication also between electors themselves is central to the system of representative government⁸⁰;
- 95.2. The concept is not limited to matters relating to the government of the Commonwealth;⁸¹
- 95.3. The concept is not exhausted by political publications and addresses which are calculated to influence choices. Political speech refers to all speech relevant to the development of public opinion on the whole range of issues which an intelligent citizen should think about;⁸²
- 95.4. The concept also includes discussion of the political views and public conduct of persons who are engaged in activities that have become the subject of political debate, e.g. trade union leaders, Aboriginal political leaders, political and economic commentators;⁸³
- 95.5. While it is difficult to draw a satisfactory and workable distinction between political discussion and other forms of expression, it should be possible to develop, by means of decisions in particular cases, an

⁷⁸ *Coleman v. Power* (2004) 220 CLR 1 at [90]; *APLA* at [27] and [69].

⁷⁹ *Australian Capital Television Pty.Ltd. v. The Commonwealth* (1992) 177 CLR 106 at 139, per Mason J.

⁸⁰ *Lange* at 560

⁸¹ *Theophanous v. Herald & Weekly Times* (1993) 182 CLR 104 at 122.

⁸² *Ibid* at 124, per Mason CJ, Toohey J. and Gaudron J, referring to Barendt, Freedom of Speech (1985) p 152.

⁸³ *Ibid* at 124.

acceptable limit to the type of discussion which falls within the constitutional protection.⁸⁴

96. On a narrow view, a relevant communication is one that may inform the federal voting choices of its likely audience. Even on such a view, many of the impugned communications qualify as communications about political matters for the purposes of the implied freedom of communication:
- 96.1. Whilst the Seminar concerned a challenge brought by one exclusivist and proselytising religion to another, that challenge raised issues concerning the influence of Muslims and Islamic religion on Australian society, in circumstances where the speaker (the third appellant) clearly took the view that that position of influence –both political and religious- should be occupied by Christians and by Christian doctrine;
- 96.2. The Newsletter was focussed on the same challenge and contained numerous exhortations for Christians to stand for elected office;
- 96.3. The Article, perhaps most clearly of all, discussed the highly political issue of responses to Islam by western societies and the alleged dangers of “religious pluralism” to democratic societies.

D.3 “... appropriate and adapted ...”

97. A restriction on the communication of government and political matters must be appropriate and adapted to “*serve a legitimate end in a manner which is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government ...*”.
98. The ‘ends’ of the Act are to promote racial and religious tolerance and to promote full and equal participation of every person in society. It is not disputed that these may be legitimate ends for State legislation. However, construed in the manner of the Tribunal, the Act is not appropriate and adapted to serve this end, because it

⁸⁴ Ibid at 123.

simply outlaws ‘unreasonable’ and ‘unbalanced’ political views. In a vibrant democracy, the expression of such views – be they correct, just, fair or not – must be allowed.

99. The High Court has also said that a distinction should be made between restrictions on communications which target ideas or information and those which restrict an activity or mode of communication by which ideas or information are transmitted. Only a compelling justification will warrant the imposition of a burden on free communication by way of restriction.⁸⁵

E. ORDERS TOO WIDE⁸⁶

100. Section 136 of the *Equal Opportunity Act* 1995 provides the Tribunal’s jurisdiction for making orders. The orders in paragraphs (a), (b) and (c) of the order made 22 June 2005⁸⁷ are beyond the jurisdiction of the Tribunal, alternatively not open to be made on the facts before the Tribunal, because the orders are not apt to redress any loss, damage or injury suffered by the complainant.

100.1. The statement required to be made pursuant to paragraphs (a), (b) and (c) of the order made 22 June 2000⁸⁸ makes no reference to any loss, damage or injury suffered by the complainant. It is not in the form of an apology or admission or anything that is referable to hurt or injury suffered by the complainant as a result of the impugned conduct.

100.2. Rather, it appears to take the form of ‘corrective advertising’, such as is sometimes ordered under the Trade Practices Act 1974 (Cth)⁸⁹.

100.3. The EO Act confers no power on the Tribunal to make such an order.

⁸⁵ ACTV (supra) at 143.

⁸⁶ Questions of law (k) ;Grounds (e)

⁸⁷ [AB E9].

⁸⁸ [AB E11].

⁸⁹ Section 86C(2)(d).

101. The orders made in paragraphs (d) and (e) are, in their terms and effect, too wide and unqualified, and not sufficiently precise.
- 101.1. The relevant orders restrain the appellants from making publishing or distributing statements, information, **suggestions** and **implications** to the same or **similar effect** as those found to have breached the Act.
- 101.2. The appellants are placed in the invidious position of having to decide what is a statement, suggestion or “implication” to the “same” or “similar” “effect” as those found to have breached the Act.
- 101.3. An injunction ought not to be granted that places the recipient in a position where he cannot be sure of what he is obliged to do or not to do.⁹⁰
- 101.4. Furthermore, the orders seek to restrain future breaches of the Act by the appellants. It is inappropriate to enjoin a person to obey a statutory prohibition. If, in the future, the appellants engage in conduct that that contravenes the Act, the Act provides its own remedies.⁹¹

Dated: 14 August 2006

C. C. Macaulay
Owen Dixon Chambers West

K. L. Emerton
Latham Chambers

⁹⁰ *ICI v Trade Practices Commission* (1992) 38 FCR 248; *Optus v Boroondara* [1997] 2 VR 318 at 336 (Charles JA); See also *In the Marriage of English* 85 FLR 9 at 18-19 and Meagher, Gummow and Lehane, Equity: Doctrines and Remedies, (4th Ed.) 2002 at [21-505].

⁹¹ The effect of the orders enjoining the appellants from making statements in the future to the same or similar effect from the statements identified by the learned Judge is to expose them to a penalty of imprisonment for non-compliance with an order of the Tribunal: s 133 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).

APPENDIX 1

Refer footnote 26

Statements in the Seminar, Newsletter and Article concerning the attitude to have toward Muslim people [emphasis added]

Seminar

[references are to Seminar transcript page numbers, commencing at C1184 of the Appeal book]

(a) love Muslim people, not just in theory but in practice

[T-2] But if you know exact whereabouts where person is, where they stand, it will save you lot of trouble and you may reach them in time to save the person as well. [That's right]. Sometimes we have this theory that Muslims need his love, love of Christ, Yes that's right. But if we don't understand their mindset, our true intention to love them can be misunderstood. [Yes]. It is important that we know their mindset and we learn about them.

[T-45] So now please remember, we are not here learning how to fight with Muslim, we are learning here how we can love Muslims and help them to see the truth. This is the purpose of sitting here. OK, we are learning we need to know Islam so that we know what their Holy book teaches we also know what our bible teaches and then we present gospel to Muslim people.

[T-80] Similarly, we do love Muslim, but we hate wrong teaching. We have to be very clear. Muslims are not our enemy. They need Jesus. They are doing bad things because they are blinded by the enemy.

[T -103-104] We do everything with prayer but practical love is very important. I have heard so many stories in Australia when people that have come out of detention centre and they have seen love of Christ in people, people have shared with them their resources, and their food, and they have loved them, they have cared them and so many Muslim, young Muslim, old Muslim, woman, children they have become Christian because they have seen practical love of Christ. Its very important. Okay. So its not just a theory, that you have very good theory. Not it's a practical thing, so that you have to

show that practice. Jesus didn't say that "go and, and preach gospel to all the nations." Before he said that, he said, "Love your neighbour like yourself." That was the first thing and then he said, "go and preach gospel." So we have to love them li...as ourselves. In our neighbourhood, wherever they are in need, we help them. Okay. Practical love. And then of course we started with ...love...and love should be not only in theory, in word, but it should be shown in practice. You invite them for dinner, for lunch. And you may go out for a cup of coffee or something like that. So develop some relationship with them and show hospitality. And these practical things when we need to look at.

(b) befriend, engage with, welcome, help, build bridges of understanding

[T-85-6] And...So you have to build up the case, so Muslim people they can see what Christian people believe is not nonsense. It does make sense. ... Now when we look at Jesus, now Jesus is called "Word of God in the bible, as well as in the Qur'an." That is very powerful actually, common bridge when we explain Muslim people about Jesus being Son of God, Jesus being God, this is very powerful tool.

[T-99] So we need to pray and not to give up. And I believe this century is century of Muslim people. I am not praying for million but I am praying for hundreds of millions Muslim to come to Jesus, accept him as their Lord and Saviour. And I believe they will come, because God is raising up us. If we do not raise up then God may allow a bit more trouble in our country so that we wake up. He is shaking us up. He wants to prepare us so that we can digest Muslim, large communities, we can accept them in our Churches. We are prepared to help them to establish in Christ Jesus.

[T-100] Then we can portray that to Muslim people and that builds, builds a bridge between their understanding and us. Then give literature and take literature from Muslim people. That's very useful. When they offer you Qur'an, don't be afraid of Qur'an. We know its not from our God but there are lot of things in Qur'an which are very similar from bible.

[T -103-104]You invite them for dinner, for lunch. And you may go out for a cup of coffee or something like that. So develop some relationship with them and show hospitality. And these practical things when we need to look at.

[T-108] ... But we start then building friendship with them. And don't get involved in religion. Just know them as a person, and show interest in them as a person. Always of same sex, okay, very important. And then when you have built friendship, you have built trust, then you may share your testimony.

And you may share a little bit more of your own self. When you are building...building friendship you may ask them about their culture and then also start reading about their culture, some books about their country, about their poets, about their politics. Show that you show interest. Learn a little bit of their language. How they say hello, how they say bye. Just with the simple things which help them a lot to see that you are genuinely interested in that person. And when you have shown that interest and you have built friendship, then in appropriate time you see your testimony and then it will go...grow from their onward.

(c) **pray for**

[T-91-2] Okay. Now let us go bit further. We need to learn many things concerning Islam when we want to reach them effectively. But before we look into that, I will like to focus on really important issue and that is prayer. ...we need to pray for Muslim people and first thing is that we need to prepare our heart.

[T-94] Then we need to wait upon the lord that God will direct us in our prayer. We don't know what to pray for Muslim people... Allow the Holy Spirit to guide you, to direct you to pray for Muslim people because he knows only what needs to be prayed.

[T-99] There are many Muslims who become Christian and then they are backslidden. Because there is no proper shepherding for Muslims. They are not disciplined properly, and they are not easy to disciple either, there is a difficulty. So we need to pray that somehow we will be able to minister to them and those who are backslidden they will come back to Christ and accept them as their lord and saviour.

...

So we need to pray and not to give up. And I believe this century is century of Muslim people. I am not praying for million but I am praying for hundreds of millions Muslim to come to Jesus, accept him as their Lord and Saviour. And I believe they will come, because God is raising up us. If we do not raise up then God may allow a bit more trouble in our country so that we wake up. He is

shaking us up. He wants to prepare us so that we can digest Muslim, large communities, we can accept them in our Churches. We are prepared to help them to establish in Christ Jesus.

[T-108] Similarly in Islam there is no magical formula we can work on, but we start praying and then we will start looking also, and we don't miss the opportunity. So when we are praying, and any Muslim who comes to our path, even non-Muslim, anybody who is not saved and those who are saved we also need to help them. But we start then building friendship with them. And don't get involved in religion. Just know them as a person, and show interest in them as a person. Always of same sex, okay, very important. And then when you have built friendship, you have built trust, then you may share your testimony.

(d) not fear, and distinguish the person (whom you love) from the belief (which you hate)

[T-44] However, we have not to be fearful of Muslim people because all Muslims are not same. Majority, vast majority of Muslim they don't know what's in Qur'an.

[T-79] We are looking at the reality of Islam, which is...if you come to know, it's not very pleasing, but that is the nature of God of Islam. And, we need to be aware of but at the same time not be afraid of
[RESP]

...

And the desire which God has, burning desire, is to seek and save the lost [Amen]. We know when there were only two people, Adam and Eve they were lost in sin. And they failed to obey God. ... He seeks. He wants to save every sinner. He wants to save every lost person. Because He loves every one of them. Our God, He loves sinner and he hates sin.

[T-80] Similarly, we do love Muslim, but we hate wrong teaching. We have to be very clear. Muslims are not our enemy. They need Jesus. They are doing bad things because they are blinded by the enemy.

...

Similarly, those Muslims who are doing wrongs, they cannot, see they have been blinded by the enemy. So we have not to be aggressive. We are not to take revenge from them. We are not to behave like they are behaving, but we have to act according to

Jesus' action. Because we are follower of Lord Jesus Christ. We are not follower of Mohammed, the prophet of Islam. We need to keep that in mind always.

Newsletter

[references are to page numbers of the document commencing at Appeal Book A11]

[Page 2, 3rd
Column]

The only hope for the Muslims are you and me who are Born-again. ... We need to love the Muslims with all our heart. However difficult it may be. I love them so much – even though I almost lost my life and my family trying to preach to them about Jesus in Saudi Arabia. ...after all, it is not at all hard to witness to a Muslim in Australia. ...I believe the Lord has brought these people into Australia, so that we could reach them to Christ.

[Page 3]

How can we save our nation?

... God has given us commonsense and I believe we have to be wise not to sell our birth right or heritage. Lets love the Muslim, lets reach them to Christ. I think we have many of them to start working with before we get any more.

The Article

[references are to page numbers of the document commencing at Appeal Book A19]

“An insight into Islam by Richard”

[Page 3]

The issue that many people have with the above statements is that it is simply wrong to impugn all Muslims as terrorists (as there are many wonderful Muslim people). I want to state emphatically that this is surely true. I have personally met many Muslims who were far kinder and nicer than a lot of Americans and non-Muslims that I know. The difference lies in the fact that if you know a very nice Muslim (of which there are millions) who would in no way condone such monstrous acts as were done on September 11, 2001, he is simply living out a moral code that is far better than what his book affirms. In other words, most Muslims really don't live out the Seventh Century cultural ideas of Islam's founder, but rather have been (somewhat) civilised by the influence of western culture. They are very much like what some people in America would call “nominal” Christians. They believe in Islam because

their parents told them is true, but have no real knowledge of its real specifics.

[Page 4]

Again – this does not mean that every Muslim is a terrorist or a murderer but that the Islamic religion clearly contains and perpetrates these teachings. And again, I have met some wonderful people in the Middle East that I miss even today. Thus, this is not intolerance of the individuals, but a reality-check of the Islamic system of belief that has kept the Middle Eastern people strangled for centuries. Thank God that most Muslims don't follow Islam literally or seriously!

[Page 5]

2. As Christians, we are not called to hate Muslims. But we are called to discern what is true and false, and not to blindly accept believes that are destructive and contrary to Jesus' life of love and justice. We are called to love Muslims with the love of Christ. Love your Muslim friends and share with them the true message of the love of God that is found in Christ.

APPENDIX 2

Structure and Content of the Seminar

[references are to Appeal Book page numbers]

Session 1: Understanding Jihad

- **Introduction:** The importance of Christian love, worship and witness and therefore of understanding the Muslim mindset in order to undertake Muslim evangelism
Illustration: advantage of knowing location of lost children you are trying to rescue
Pages C1185-C1186
- Two views of Jihad: peaceful and violent
Pages C1187&C1189
- Background: The Life of Mohammed and the Qur'an
Pages C1188, C1189-C1202
- Silent Jihad (or Da'wa-Islamic mission) the struggle to propagate Islam. The Six M approach
Pages C1203-C1208,C1210)
- Defensive and Offensive Jihad, place of martyrdom
Pages C1210-C1247

Session 2: Christian and Islam teachings compared

- **Introduction:** There is diversity within Islam. Those who apply Quranic teaching on Jihad literally today and those who say that that is no longer relevant. Many Muslims are ignorant of Qur'an . "We are learning how to love Muslims in order to help them to see the truth."
Pages C1247-C1250
- The Bible and the Quran's teachings compared on:

| | |
|--|--------------------------|
| God | PagesC1250-C1255 |
| The Holy Books :Bible, Qur'an and Mohammed | Pages C1255-1256 |
| Jesus | Pages C1254, C1256-58 |
| Humanity incl Jews and Christians | Page C1258 |
| Sin, salvation and judgement | Pages C1259-C1262, C1268 |
| The 10 Commandments | Pages C1262-C1269 |
| Women | Pages C1269-C1273 |
- Nine Questions and Answers
Pages C1273-C1280

- Christianity and other religions: Satanism, Islam, Buddhism, Hinduism
Pages C1280-C1282

Session 3: Christian Witness to Muslims

- **Introduction:**
 - a. There are great obstacles and we witness to Muslims not in our own strength but through God's strength. "He is with us to help us fulfil His purposes, His desires and the desire which God has, burning desire, is to seek and save the lost."
Page C1283
 - b. Why witness: "Our God He loves sinners and He hates sin. Similarly, we so love Muslim(sic) and we hate wrong teaching." "If there is some blind person and he comes near you and he hits into you. Would you hit him back? No you would take pity."
Pages C1283-1284
 - c. Our greatest problem is the apathy and ignorance of many Christians
Pages C1284-C1286
- Christian apologetics: Answering Muslim questions about the Trinity and Jesus as the Son of God - story of encounter with students in Alexandria
Pages C1286-C1295
- The priority of prayer: for pure hearts and minds, encountering spiritual warfare, revelatory dreams, more workers, protection and conversions
Pages C1295-1302
- How to witness: Know Islam, go slowly, Jesus in Quran a link, personal testimony, family life example, don't start by criticizing Islam, cultural sensitivity-dress, food and drink, respect for holy books etc
Pages C1302-C1311

APPENDIX 3

Statements disclosing the ‘religious purpose’ of the Seminar, Newsletter and Article.

[emphasis added]

Seminar

Purpose: To encourage Christians to testify to Muslim people about the Christian faith, and for that purpose to equip Christians with a knowledge of Muslim beliefs.

[references are to Seminar transcript page numbers, commencing at C1184 of the Appeal book]

[T-2] But if you know exact whereabouts where person is, where they stand, it will save you lot of trouble and you may reach them in time to save the person as well. [That’s right]. Sometimes we have this theory that Muslims need his love, love of Christ, Yes that’s right. But if we don’t understand their mindset, our true intention to love them can be misunderstood. [Yes]. It is important that we know their mindset and we learn about them.

[T-3] But as far as sharing gospel is concerned, whether we have learnt or not, we have responsibility. Rather I will say we have privilege to share gospel with all people [Yes].

...

So wherever we are, we witness for Jesus. [Yes]. We share the love of Christ by our word as well as by our deed. Very important. And we should not forget one on cost of the other. Both are very important, to be worshipper of the true God, and to be witness of Lord Jesus Christ.

[T-11] Now what we are learning here, we are not learning here to put down Islam, but we are learning what is the real teaching in Islam: [Yeah] how did Mohammed teach in his time [Yeah].

[T-45] So now please remember, we are not here learning how to fight with Muslim, we are learning here how we can love Muslims and help them to see the truth. **This is the purpose of sitting here.** OK, we are learning we need to know Islam so that we know what

their Holy book teaches we also know what our bible teaches and then we present gospel to Muslim people.

- [T-52] I will go in more detail later concerning Jesus because that is subject which I want you to make sure you understand from Islamic perspective and then from Christian perspective and how we can unite it so that Muslim can come to know the truth.
- [T-80] And we need to know the facts and then we need to obey the lord. Very important. So I will encourage you that you have a g...serious thinking about this and we have responsibility to reach Muslim people.
- [T-91-2] Okay. Now let us go bit further. We need to learn many things concerning Islam when we want to reach them effectively. But before we look into that, I will like to focus on really important issue and that is prayer. ...we need to pray for Muslim people and first thing is that we need to prepare our heart.
- [T-97] So that's...they are very successful and they are growing rapidly, so we need a lot of worker. Okay. I will ask you please to pray that God will release more worker and he may raise you to work among Muslim. And I will be very happy to, to train you, to help you, equip you so that we be effective worker among Muslims. So we need that, we need that badly, not only in Australia but elsewhere as well
- [T-99] Okay, now lets see...there are things we need to do, there are things, which we need not to do when we are sharing gospel with Muslim. So to share gospel with Muslim we must be informed of Islam. We do not ... we should not have false ideas about Islam. We have to be factual, we should be truthful and we should be informed. Okay. So that's very important and that of course will take time and you need to devote your time to learn about Islam through attending conferences, through attending good writing of Christians, born again believers, and no what they believe. Unless you know what they believe you cannot really respond to them.

Newsletter

The religious purpose of the Newsletter is to be discerned from the following:

- (a) the statements of 'Vision' and 'Mission' appearing on the first page –
- *to reach people from all walks of life into the Kingdom of God;*
 - *to take the good news of the gospel from town to town, city to city, state to state, country to country and to proclaim the name of Jesus*

- (b) the following propositions appearing under the heading **‘Rise up or pay the price’** –
- one year earlier God spoke to Pastor Nalliah of the plan of Satan (“the enemy”) to take Australia and stop it from coming into God’s full will and purposes – He particularly spoke to Pastor Nalliah about the faith of Islam;
 - God had taken Pastor Nalliah into the heart of Islam (ie Saudi Arabia), kept and protected him, so that he could come back to Australia to alert the nation to the wrath that would come upon Australia if Christians did not rise up, pray and stand up for their faith in Jesus;
 - Christians are therefore urged to stand up boldly for what they believe.
- (c) the following propositions appearing under the heading **‘By 2020 – will Australia be a Christian country?’** -
- Muslim population in Australia is increasing whilst non-Muslim population is not;
 - Muslim people teach their children the way of faith but many Christian groups are geared only to entertain and to not producing Christian disciples;
 - a spreading influence of Islam can be seen in England through the proliferation of mosques and involvement of Muslims in local politics and other influential places – this could well happen in Australia;
 - the motto of Muslims is to convert the whole world to Islam – by peace or violence;
 - the hope for Muslims rest with born again Christian people who need to love Muslims with all their heart;
 - it is not hard to witness to a Muslim in Australia; God has brought Muslim people into Australia so that Christians may reach them for Christ;
 - if Christians fail to do so the price may be that Islam gains increasing influence in Australia.
- (d) The following propositions appearing under the heading, **‘How can we save our nation?’** –
- Christians need to love Muslims, but not sell their birth right or heritage to them;
 - Christian leaders should not be wishy-washy about Islam for fear of losing their reputation;
 - whilst Christians should love Muslim people and reach them for Christ, they should also exercise common sense and be wise concerning the number of Muslims coming into the country, and their spreading influence;
 - Christians should therefore be encouraged to enter politics and take up office in Government;
 - Churches should therefore promote Christians into Parliament and to support such people with finances, prayer and helping them in any way possible.

The Article

Propositions and statements in the Article that reveal its religious purposes:

- (a) there is a link between the true nature of Islam and terrorism;
- (b) the link between terrorism and Islam is exposed by Qur'anic teaching on –
- martyrdom for the cause of Allah;
 - the promotion of violence as a means of spreading Islam;
 - what to do if people resist Islam;
- (c) whilst it does not follow that all Muslims are terrorists etc, it is necessary to be realistic about the Islamic system of belief:
- “...this does not mean that every Muslim is a terrorist or murderer but that the Islamic religion clearly contains and perpetrates these teachings. And again, I have met some wonderful people in the Middle East that I miss even today. Thus, this is not intolerance of the individuals, but a reality-check of the Islamic system of belief that has kept the Middle Eastern people strangled for centuries.”*
- (d) America's leaders and professors make an error in assuming that terrorism is not Islam's true nature:
- “Our nations' leaders and professors have continued to state that terrorism is an abuse of Islam by a small number of people, and not Islam's true nature. But this is a terrible deadly error, and unless America wakes up, we will pay a terrible penalty for our ignorance and lack of understanding.”*
- (e) it has become unacceptable in America to say anything derogatory about Islam (or any other religion) because it is regarded as intolerant to say that one religion is the only way:
- “But in our country today, it is unacceptable to impugn any religion or its beliefs – accept [sic] of course Christianity. We have learned that it is socially unacceptable to say anything derogatory about Islam (or any other religion). We are told that it is intolerant to say that one religion is the only way, and that we must accept other ways as equal.”*
- (f) whilst Christians must love Muslims with the love of Christ they need also to discern between true and false:
- “As Christians, we are not called to hate Muslims. But we are called to discern what is true and false, and not to blindly accept beliefs that are destructive and contrary to Jesus' life of love and justice. We are called to love Muslims with the love of Christ.”*