



**Notice of a Constitutional matter  
under section 78B of the Judiciary Act 1903**

No. NSD1503 of 2024

Federal Court of Australia

District Registry: New South Wales

Division: General

**Peter Wertheim AM** and another

Applicants

**William Haddad** and another

Respondents

The First and Second Respondents give notice that the proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

**Nature of Constitutional matter**

1. Whether section 18C of the *Racial Discrimination Act 1975* (Cth) (**RD Act**) imposes an unjustified burden on the implied freedom of political communication, and is therefore unconstitutional, to the extent the Court finds that the First and Second Respondents would have contravened section 18C by reason of making or publishing speeches in response to requests from the Islamic community to provide sermons which address the war in Gaza.
2. Whether section 18C of the RD Act is a law for prohibiting the free exercise of any religion, and is therefore unconstitutional by reason of section 116 of the *Constitution*, to the extent the Court finds that the First and Second Respondents would have contravened section 18C by reason of making and publishing statements that:
  - (a) derived, in substance, from religious texts (the Qur'an and Hadith);
  - (b) comprised direct and allegorical references to and from the Qur'an and Hadith; and/or

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Filed on behalf of (name & role of party)	William Haddad and Al Madina Dawah Centre Inc, First and Second Respondents
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- (c) constituted and/or were made for the purpose of teaching Tafsir, or otherwise delivering religious, historical and educational lectures or sermons, to practising Muslims.

### **Facts showing that section 78B Judiciary Act 1903 applies**

1. The First Respondent is an Islamic preacher and teacher who delivers Islamic sermons, teaches Tafsir (being commentary aimed at explaining the Qur'an prepared by Islamic scholars), and delivers religious, historical and educational lectures at the Al Madina Dawah Centre (**AMDC**).
2. The AMDC is operated by the Second Respondent.
3. The Applicants allege that the First Respondent contravened section 18C of the RD Act by making five 'speeches' (**Speeches**) at the AMDC in November 2023 which they allege contained offensive imputations about Australian Jewish people.
4. The Applicants allege that the Second Respondent contravened section 18C of the RD Act by publishing audio-visual recordings of the Speeches on a Facebook page and a 'Rumble' page (Rumble being an online audio-visual streaming service).
5. Among other things, the Respondents allege that the Speeches:
  - (a) were prepared by the First Respondent in response to requests from the Islamic community to provide sermons which address the Gaza War, and contained political commentary on the Gaza War made in that context;
  - (b) were in the nature of delivering Tafsir, Islamic religious sermons and/or Islamic lectures;
  - (c) derived, in substance, from the text of the Qur'an and Hadith and/or contained direct and allegorical references to and from the Qur'an and Hadith; and
  - (d) were directed at practising Muslims only.
6. The First Respondent denies that the making of the Speeches contravened section 18C, including on the basis that:
  - (a) the relevant acts were done in private;
  - (b) the relevant acts were not reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate Australian Jewish people or any of them;
  - (c) the relevant acts were not done because of the race, colour or national or ethnic origin of Australian Jewish people or any of them; and
  - (d) in any event, the exemption in section 18D(b) is available.

7. The Second Respondent:
- (a) denies that it published the audio-visual recordings of the Speeches;
  - (b) in any event, denies that the publication of the Speeches contravened section 18C for corresponding reasons to those set out in paragraph 6 above; and
  - (c) in any event, says the exemption in section 18D(b) and/or the exemption in section 18D(c)(i) is available.
8. However, in the event the Court finds that the Respondents engaged in acts that would contravene section 18C of the RD Act:
- (a) notwithstanding the matters set out in subparagraph 5(a) above – the Respondents allege that section 18C imposes an unjustified burden on the implied freedom of political communication and is unconstitutional for that reason; and
  - (b) notwithstanding the matters set out in subparagraphs 5(b) to 5(d) above – the Respondents allege that section 18C is a law for prohibiting conduct which includes the free exercise of any religion, being the religion of Islam, and is unconstitutional for that reason by reason of section 116 of the *Constitution*.
9. In these circumstances, there is a cause pending in a federal (being this Court) that involves a matter arising under the Constitution or involving its interpretation, such that notice is required pursuant to section 78B(1) of the *Judiciary Act 1903* (Cth).

Date: 10 February 2025



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Signed by Elias Tabchouri  
Lawyer for the Respondent

## NOTICE OF FILING

### Details of Filing

Document Lodged:	Notice of a Constitutional Matter under s78B Judiciary Act 1903 - Form 18 - Rule 8.11(2)
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A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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