FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: GENERAL

No. NSD 1503 of 2024

BETWEEN

PETER WERTHEIM AM and ROBERT GOOT AO SC
Applicants

AND

WISSAM HADDAD and AL MADINA DAWAH CENTRE INCORPORATED ABN 38 967 325 114
Respondents

APPLICANTS' OUTLINE OF SUBMISSIONS

A. INTRODUCTION

1. By originating application filed on 25 October 2024, the applicants claim that each of the respondents contravened s 18C of the *Racial Discrimination Act 1975* (Cth) (**RDA**). The claim arises out of certain speeches delivered by the first respondent, Mr Haddad, and published to social media accounts associated with the second respondent, Al Madina Dawah Centre Incorporated (**AMDC Inc**). The applicants seek relief including declarations, injunctions requiring the removal of the videos of the speeches and preventing further offensive communications, and the publication of a notice recording the contraventions.

B. FACTUAL BACKGROUND

2. Mr Haddad is a preacher at a western Sydney Islamic centre called the Al Madina Dawah Centre (**AMDC**). The AMDC is operated by AMDC Inc, an incorporated association registered under the *Associations Incorporation Act 2009* (NSW). Mr Haddad is one of the founders, the sole director, and member of the governing committee of AMDC Inc.

3. In November 2023, Mr Haddad gave a series of speeches (the **Speeches**) at the AMDC, including a three-part series called "The Jews of Al Madina" (Speeches A, C and E). Videos of the Speeches were published on social media. Each was published at least on a Rumble page in the name of the AMDC, and at least two (Speeches A and B) were published on a Facebook page in the name of the AMDC. The Speeches were also the subject of media reporting. They came to the attention of the Australian Jewish community.

4. The applicants are both Jewish and associated with the Executive Council of Australian Jewry (**ECAJ**), the peak, elected representative body of the Australian Jewish community. Mr Wertheim is ECAJ's co-CEO and Mr Goot is ECAJ's elected Deputy President. In March 2024, they lodged a complaint over the Speeches with the Australian Human Rights Commission under s 46P of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**). On 30 September 2024, the Commission terminated the complaint, enlivening the Court's jurisdiction under s 46PO.

C. OVERVIEW OF THE STATUTORY SCHEME

5. Part IIA of the RDA Act prohibits offensive behaviour based on racial hatred. Within Pt IIA, section 18C(1) has three elements: (1) the relevant act must be done "otherwise than in private", (2) the act must be "reasonably likely in all the circumstances" to "offend, insult,

humiliate or intimidate" and (3) the act must be done "because of the race, colour or national or ethnic origin" of a person or group of people: ***Faruqi v Hanson*** [2024] FCA 1264 at [25].

6. Section 18C must be read alongside s 18D, providing for exemptions from the prohibition. To access the exemption an act must be done "reasonably and in good faith" and, relevantly:

> (b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
> (c) in making or publishing (i) a fair and accurate report of any event or matter of public interest

7. Accordingly, the issues for determination are whether the three elements of a contravention of s 18C(1) are established in respect of each respondent, and whether either respondent falls within an exemption in s 18D. A further issue is whether s 18C is constitutional, which the respondents challenge on two grounds. The final issue is the appropriate relief.

D. THE APPLICANTS' EVIDENCE

8. The applicants' evidence primarily comprises videos of the Speeches (exhibited to the affidavit of Poppy Kambas affirmed 17 April 2025); affidavit evidence of the two applicants and other Jewish people in Australia, deposing to their reactions to the Speeches and their experiences as Jews in Australia; a report of Dr Andre Oboler, an expert in antisemitism; and a report of Professor Gabriel Reynolds, a professor of Islamic studies and theology. Transcripts of the Speeches, prepared as an aide memoire, are annexed to the applicants' statement of claim and appear to be uncontroversial.

E. THE RESPONDENTS CONTRAVENED S 18C

9. The applicants' case is that Mr Haddad contravened s 18C by making the Speeches, and that AMDC Inc contravened s 18C by publishing the Speeches.

E.1. Act done "otherwise than in private" (chapeau)

10. The first element is that an act was done "otherwise than in private". The respondents admit that by making each Speech, Mr Haddad relevantly did an act, but say that it was done in private. For the following reasons, that argument should be rejected.

11. Section 18C(2) provides that for the purposes of s 18C(1) an act is taken not be done in private if it:

(a) causes words, sounds, images or writing to be communicated to the public; or
(b) is done in a public place; or
(c) is done in sight or hearing of people who are in a public place.

12. Section 18C(3) provides that in s 18C:

> ***public place*** includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

13. The act of making the Speeches meets the descriptions in s 18C(2)(a) and (b), and in any event, was not done in private, for the following reasons.

14. *First*, the Speeches were published on social media. By making the Speeches, Mr Haddad caused words to be communicated to the public within the meaning of s 18C(2)(a). The question whether a respondent caused words to be communicated to the public is one of fact which must be determined by applying common sense to the facts of the particular case: ***McGlade*** *v Lightfoot* (2000) 124 FC 106 at [37]. In that case, Carr J considered that by giving an interview to a journalist, albeit in an office, the respondent had deliberately and intentionally engaged in conduct, the natural consequence of which was the publication of his words ([40]). Likewise, Mr Haddad delivered his speeches into a microphone and in front of a camera, which facilitated their publication to the world at large on the Internet, and he thus caused his words to be communicated to the public. Other matters that tend to show that the Speeches were intended to be communicated to the wider public will be addressed in the evidence and in closing submissions.

15. *Secondly*, even putting the social media publication to one side, the AMDC was a public place within the meaning of s 18C(2)(b). It is not relevant that only Muslim members of the public might attend. The ordinary meaning of that term does not require that a place be accessible to *all* members of the public. In ***Kaplan*** *v State of Victoria (No 8)* [2023] FCA 1092, for example, it was common ground that the school environment was a public environment: [100]. On Mr Haddad's evidence, dozens, and up to 400 people, were present for his Speeches. If a Muslim person with no personal connection to Mr Haddad or the leadership of AMDC Inc sought to attend the AMDC, they would no doubt be allowed entry. To construe "public place" so as to exclude such a forum would be unduly narrow.

16. *Thirdly*, even if the Court did not find s 18C(2)(a) or (b) were satisfied, it would still find that the Speeches were delivered "*otherwise than in private*". Section 18C(2) is not exhaustive of

the circumstances in which an act is done "*otherwise than in private*. A construction of s 18C which led to the conclusion that the Speeches were delivered "in private" would dramatically narrow the application of Pt IIA of the RDA. In the Second Reading Speech for the *Racial Hatred Bill 1994*, which introduced Pt IIA into the RDA, it was said that "the law has no application to private conversations". Likewise, the Bill's Explanatory Memorandum said that the law "does not apply to statements made during a private conversation or within the confines of a private home". The words "*otherwise than in private*" were clearly intended to limit the burden imposed by Pt IIA on freedom of expression in domestic and similar settings, where the expression of offensive views could do little public harm, not to immunise a preacher speaking to congregants in a community centre.

17. As to AMDC Inc, the respondents' position in relation to AMDC Inc is that it did no relevant act as it is not responsible for the social media pages. That is a matter for evidence. If established that AMDC Inc did have control over the social media pages, then publishing and failing to remove the videos was an act done "otherwise than in private".

E.2. Acts reasonably likely to offend, etc Jewish people in Australia (para (a))

18. The second element is that the act is "reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate" a person or a group of people. The applicants' case is that the Speeches were reasonably likely to have that effect on the group of Jewish people in Australia.

19. The para (a) inquiry is an objective inquiry: *Faruqi* at [224]. The inquiry is as to the likely effect of the act upon a hypothetical representative of the relevant group: ***Eatock*** *v Bolt* (2011) 197 FCR 261 at [250]. The "ordinary" or "reasonable" member of the group should be isolated for the assessment, in order to exclude those who would have an extreme or atypical reaction: *Eatock* at [251]. The act will be "reasonably likely" to have the requisite effect if there is a "real" and "not fanciful or remote … chance" of the relevant outcome: *Eatock* at [260]. Evidence of the subjective reaction of members of the group is relevant to whether that outcome was reasonably likely: *Eatock* at [241]; ***Jones v Scully*** (2002) 120 FCR 243 at [99]. The evidence of the applicants' Jewish lay witnesses will assist the Court in understanding the perspective of, and likely effect on, the group of Jewish people in Australia.

20. The words "offend, insult, humiliate or intimidate" take their ordinary English meanings: *Jones v Scully* at [102] (various dictionary definitions are extracted at *Jones v Scully* at [103] and ***Bropho*** *v Human Rights and Equal Opportunity Commission* (2004) 135 FCR 105 at [67]). The words have been described as "open textured": *Bropho* at [67]. However, para (a)

only applies to conduct that has "profound and serious effects, not to be likened to mere slights": ***Creek*** *v Cairns Post Pty Ltd* (2001) 112 FCR 352 at [16]. The applicants rely on each of the four types of effect prohibited by s 18C.

21. The assessment as to the likely effect of the act must be made with reference to "all the circumstances", which requires consideration of the social, cultural, historical and other circumstances attending the people in the group: *Eatock* at [257]. The circumstances of Jewish people in Australia in November 2023 are illustrated by the applicants' lay evidence and the expert report of Dr Oboler. At a high level, they include an ever-present awareness of the Holocaust, and in many cases a family connection to the Holocaust; a general sense of safety in Australia, though coupled with a vigilance to antisemitism; a familiarity with antisemitic tropes and their role in contributing to the Holocaust; and then an experience of seismic shock and fear after the massacre in Israel on 7 October 2023 and the reaction to it in some quarters in Australia, which ruptured the assumption of safety and feeling of acceptance in Australia.

22. A central circumstance is the Speeches themselves and what they said: cf *Faruqi* at [221]. The applicants have highlighted key passages of the Speeches in the transcripts, but rely on the Speeches as a whole. The relevant circumstances also include that the Speeches were delivered in a religious setting by a person in a leadership position, invoking religious texts; amid a time of particular tension affecting Jewish Australians arising from events overseas; and the contemporary media environment, in which social media content is easily edited and shared and watched in snippets, and in which the national media is interested in antisemitism.

23. Taking account of these circumstances, para (a) is easily satisfied for the following reasons.

24. *First*, the Speeches attribute to Jewish people characteristics – largely negative characteristics – simply by virtue of their membership of that group. Attributing characteristics to people on the basis of their group membership is the essence of racial and religious prejudice and the discrimination which flows from it: *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc* (2006) 15 VR 207 at [176], cited in *Eatock* at [215]. Ascribing negative traits to people by reason of their group membership disseminates the idea that members of the group are not worthy or are less worthy and are thus deserving of disdain and unequal treatment: *Eatock* at [216]. The repeated use of the present tense, and the rhetorical framing of the Speeches as an explanation of contemporary events and people, belie any suggestion that Mr Haddad was only talking about certain Jews in the seventh century. Mr Haddad's stated purpose was "to give an introduction as to who they are" – "they" being "the Jews".

25. *Secondly*, in making his generalised statements about Jewish people, Mr Haddad deployed classical antisemitic tropes which would be familiar to Jewish people in Australia. These familiar images – Jews controlling the media, Jewish conspiracy, Jews loving money , etc. – have been used as a pretext for violence against Jewish people throughout history. By situating them in religious sermons, amongst discussion of stories from religious texts, Mr Haddad purported to imbue them with the weight and authority of the religion of Islam.

26. *Thirdly*, Mr Haddad made references to violence against Jews, some express and some more subtle, which could be interpreted as endorsing violence against Jews. Most striking is his repeated quotation of the passage "*O Muslim, O believer, there is a Yahudi behind me, come and kill him*." By citing this passage in speeches which convey that Muslims "are going to always be dealing with [Jews] until ... the end of time", Mr Haddad may be read as suggesting that this is not just a description of events at some future time, but a present and ongoing imperative, and that accordingly Muslims (including his audience) should deal with Jews violently. Whether or not Mr Haddad intended to convey that message is irrelevant: as an available reading of his words, it is intimidating to Jewish people in Australia, and particularly so in the febrile environment of increased antisemitism after 7 October 2023.

27. Any of these features would ordinarily be sufficient to offend, insult, humiliate or intimidate the hypothetical Jewish person in Australia. But that conclusion is even more readily reached in the context of November 2023, when the evidence indicates Jewish people in Australia felt vulnerable, frightened and shaken, and alert to being targeted based on their Jewishness.

28. It is no answer that some of Mr Haddad's words are drawn from religious texts. There is no reason that quotations from scripture cannot meet the description in para (a), although the religious context will be relevant to s 18D. Mr Haddad made choices about which passages to quote and which stories to narrate, and how to frame and contextualise those quotations rhetorically, and he made those choices in a particular social and political context. If by so doing he caused offence, etc., the statutory test is met.

29. The result is no different because there were no Jewish people in the audience at the time Mr Haddad delivered his Speeches. The suggestion in *Kaplan* at [509]-[512] that the relevant group must have been present to hear the speech finds no support in the statutory text. The question is whether a speech is reasonably likely to offend, etc. a particular group. If there is a real chance of the group learning of the contents of a speech that is offensive to them, para (a) is satisfied. Indeed, the fact that no Jews were present may *increase* the humiliation and

intimidation caused by a speech. It serves to confirm a suspicion held by Jews in Australia that, behind their backs, they are denigrated for who they are. Further, it is humiliating and intimidating to Jewish Australians to learn that others are being encouraged to dislike or resent them. Likewise, it is not relevant that Mr Haddad may have not expressly directed his addresses *to* Jewish people. The website in ***Toben v Jones*** (2003) 129 FCR 515, containing Holocaust denial material, was not addressed to Jews, but it was about them and accessible to them. The same may be said about the content of the letterboxed leaflets in *Jones v Scully*.

30. As to AMDC Inc and the publication of the Speeches on social media, it is similarly no answer that the AMDC pages are directed to congregants of the AMDC and members of the Islamic community. They are accessible by the general population, and once published, it was objectively likely that Jewish people would become aware of the Speeches.

E.3. Acts done because of ethnic origin of a group of people (para (b))

31. The final element is that the act was done "because of" the relevant group's race, colour or national or ethnic origin. Here, the relevant acts were plainly done "because of" the race or ethnic origin of Jewish people. This Court has accepted that Jewish people in Australia are people with a shared ethnic origin for the purposes of the RDA: *Jones v Scully* at [113]; *Miller v Wertheim* [2002] FCAFC 156 at [14]; ***Jones v Toben*** (2002) 71 ALD 629 at [69].

32. For an act to have been done "because of" a relevant attribute, it suffices that it be "a factor" in the respondents' decision to act: *Creek* at [28]; *Toben v Jones* at [37], [62] and [152]; *Kaplan* at [526]. In an approach that was upheld on appeal (*Toben v Jones* at [38], [65], [77], [154]), and endorsed in *Eatock* at [318], Branson J held in *Jones v Toben* at [99] that it was "abundantly clear" that race was a factor in the respondent's decision to publish the relevant material, because it included many references to Jews and events and people characterised as Jewish, and was "plainly calculated" to convey a message about Jewish people. Likewise, the Speeches were, on their own terms, centrally about Jews, and plainly calculated to convey a message about Jewish people.

F. THE EXEMPTIONS IN S 18D ARE NOT ENGAGED

33. The respondents bear the onus of establishing that any of the exemptions in s 18D are engaged: *Toben v Jones* at [41], [78], [159]-[161]; *Eatock* at [338]. They will not discharge that onus.

F.1. "Reasonably and in good faith"

34. Each of the exemptions in s 18D require the doing or saying of something to be done "reasonably and in good faith". The word "reasonably" involves elements of rationality and proportionality, and imports an objective judgment: *Bropho* at [79]. What is required is a "rational relationship" between what is said or done and an activity in ss 18D(a)-(c), in the sense that it was said or done "for the purpose" of the activity and "in a manner calculated to advance the purpose": *Faruqi* at [294]. It must not be disproportionate to what is necessary to carry the activity out: *Bropho* at [79]. "Good faith" has an objective and subjective element: *Bropho* at [96]. It requires subjective honesty and legitimate purpose: *Bropho* at [96]. It also requires "a conscientious approach to the task of honouring the values asserted by the Act", which may be assessed objectively: *Bropho* at [101]. That involves acting in a way that is designed to minimise the offence or insult, humiliation or intimidation suffered by people affected by it: *Bropho* at [102]; *Eatock* at [347]-[349]. Where a person uses gratuitous insults or inflammatory language, that may negative good faith: *Eatock* at [412]-[415]; *Bropho* at [81]. The facts relevant to reasonableness and good faith may overlap: *Bropho* at [103].

F.2. Section 18D(b)

35. It may be accepted that teaching Tafsir, or delivering religious, historical and educational lectures or sermons to practising Muslims, and engaging in political commentary on the war in Gaza, including from a religious perspective, are genuine purposes in the public interest for the purposes of s 18D(b), as the respondents plead. However, in making the Speeches, Mr Haddad acted neither reasonably nor in good faith.

36. As to teaching Tafsir, or otherwise delivering lectures to practising Muslims, Mr Haddad chose to do that in a particular way, which was telling critical stories about Jews, which he linked to contemporary events and suggested explained characteristics of Jews as a group today. The evidence will establish that Islam does not justify the attribution of negative characteristics to Jewish people simply by virtue of who they are. Even if that were not the case, Mr Haddad's speeches were crafted in a manner calculated to inspire enmity towards Jews, including in present-day Australia. He added his own commentary to quotations from religious texts, and failed to mention any that the interpretations of some of those religious texts are contested even among Muslim scholars. The Speeches contained gratuitous insults and antisemitic tropes. This is not proportional to any religious purpose. The "conscientious

approach" to the task of honouring the RDA's values, which include respect for other groups, is strikingly absent.

37. In *Bropho* at [80], French J considered the example of the publication of a genuine scientific paper on the topic of genetic differences between particular human populations, which might be insulting or offensive to a group of people. Its discussion at a scientific conference would be reasonable, but its presentation to a meeting convened by a racist organisation and use to support a view that a particular group is "inferior" to another may not be a thing reasonably done in relation to s 18D(b). Similarly, the source material in the religious texts referred to by Mr Haddad could be used to construct religious sermons that *would* fall within the s 18D(b) exemption. However, by setting out to use religious texts to denigrate all Jewish people, Mr Haddad failed to act reasonably and in good faith.

38. Similar analysis applies to the purpose of providing commentary on the Gaza war. It is perfectly possible to discuss that topic, indeed to be stridently critical of Israel's actions and even supporters of those actions, without making wholesale offensive generalisations about Jews. Mr Haddad's speeches are not rationally connected to that purpose and both the subjective and objective good faith elements will not be established.

39. The same analysis applies in relation to the s 18D(b) exemption raised by AMDC Inc.

F.2. Section 18D(c)

40. The respondents also claim that the publication of the Speeches was an act done reasonably and in good faith in publishing a fair and accurate report of the making of the Speeches, which they describe as an event of public interest, within the meaning of s 18D(c)(i). For the reasons given above, reasonableness and good faith are not established. Moreover, the Speeches are not "an event of public interest".

G. SECTION 18C IS NOT UNCONSTITUTIONAL

41. Neither limb of the respondents' constitutional challenge to s 18C should succeed. Because the respondents bear the onus of establishing s 18C is unconstitutional, and in light of the page limit, the applicants will address the constitutional argument fully in closing submissions. However, the reasons why those challenges will fail may be shortly stated.

42. On the implied freedom of political communication, this Court has previously determined that s 18C is not unconstitutional on this ground: *Jones v Scully* at [239]-[240]; *Faruqi* at [308]-

[378]. Accordingly, the Court would have to be satisfied that those decisions were plainly wrong before accepting the respondents' argument. It will not be so satisfied.

43. On s 116 of the *Constitution*, in order to attract invalidity under that section, a law must have the purpose of achieving an object which s 116 forbids: ***Kruger*** *v The Commonwealth* (1997) 190 CLR 1 at 40, 60-61, 86, 133, and 160. Pt IIA of the RDA has nothing to say about the exercise of religion. It is no purpose of s 18C to prohibit the free exercise of Islam, or any other religion.

H. RELIEF

44. Pursuant to s 46PO(4) of the AHRC Act, if the Court is satisfied that there has been unlawful discrimination (which, by virtue of the definition of "unlawful discrimination" in s 3 includes contravention of Pt IIA of the RDA), it may make such orders as it thinks fit. Examples of orders include an order declaring that the respondent has committed unlawful discrimination and directing the respondent not to repeat or continue such unlawful discrimination (s 46PO(4)(a)); and an order requiring the respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by an applicant (s 46PO(4)(b)).

45. The applicants seek the relief identified in their originating application, including declarations of contravention, injunctions requiring the removal of the videos of the speeches and preventing further communication of offensive words, sounds or images, and the publication of a notice recording the contraventions.

46. The applicants also seek their costs of bringing the proceedings.

Dated: 30 May 2025

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