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' CLOSING SUBMISSIONS

A. INTRODUCTION

1. These submissions address the relevant principles (Part B), the factual background (Part C), the Speeches, and Mr Haddad's contravention of the Act (Part D), the role of the second respondent, the AMDC (Part E), constitutional questions (Part F) and the relief that ought to be granted (Part G).

2. These submissions supplement the opening submissions filed on 30 May 2025. Terms defined in the opening submissions have the same meaning here.

B. RELEVANT PRINCIPLES: PT IIA OF THE RDA

The prohibition: s 18C

3. Within Pt IIA, s 18C(1) provides that:

> **18C Offensive behaviour because of race, colour or national or ethnic origin**
> (1) It is unlawful for a person to do an act, otherwise than in private, if:
> (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
> (b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

4. Section 18B provides that if an act is done for two or more reasons, and one of the reasons is the race, colour or national or ethnic origin of a person, then the act is taken to be done because of the person's race, colour or national or ethnic origin for the purposes of Pt IIA.

5. A contravention of s 18C(1) has three elements: (1) the relevant act must be done "otherwise than in private", (2) the act must be "reasonably likely" 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* at [25].

6. The respondents now concede that Mr Haddad's acts of making the Speeches are taken to be done otherwise than in private by reason of s 18C(2)(a) of the RDA. Accordingly, only the latter two elements are in contest in respect of Mr Haddad.

7. In relation to s 18C(1)(a), there is a question of construction (which does not appear to have been considered in the previous authorities on Pt IIA) as to whether it must be established that the act was reasonably likely to come to the attention of the relevant person or group of people,

or whether, once it is established that an act was done otherwise than in private, the analysis of reasonably likelihood to offend, etc. is performed on the hypothesis that the relevant person or group of people becomes aware of it. In other words, in this case, must the applicants prove that the act of giving the Speeches was reasonably likely, in all the circumstances, to come to the attention of and then offend, etc. Jewish people in Australia?

8. The answer is no, for two reasons. *First*, the chapeau to s 18C(1) provides that the act must be done "otherwise than in private". That criterion protects private speech, and its inclusion tells against some additional requirement that the act be sufficiently public as to be perceived by the relevant group. As this case illustrates, the factual inquiries as to whether an act was done otherwise than in private, and whether they were reasonably likely to come to the attention of the relevant group, would overlap considerably. *Secondly*, this construction better serves the purpose of Pt IIA of the RDA, which is to deter and eliminate, and thus protect members of the public from, racial hatred and discrimination: *Faruqi* at [342], [345]. The harms of racial hatred do not occur only when that hatred is directly perceived by the targeted group. The expression of hatred of Group A, expressed in speech directed towards Group B, can inspire ill feelings towards Group A and be corrosive of social cohesion, whether or not Group B learns of that speech. Racist speech will often be directed to an audience apart from its target. It is not consistent with the aspirational purpose of Pt IIA to exclude such speech from regulation. Relatedly, the extrinsic materials reveal that the purpose was not to stamp out direct racism, but to address racism on a societal level. In the Second Reading Speech, Mr Lavarch described the legislation as a "safety net for racial harmony in Australia" and said that racist behaviour "affects not only the individual but the community as a whole". Likewise, the Explanatory Memorandum says that Pt IIA was "intended to strengthen and support the significant degree of social cohesion demonstrated by the Australian community at large … no person in Australia need live in fear because of his or her race, colour, or national or ethnic origin." These descriptions of purpose do not favour a construction that would exclude from regulation racist conduct that did not come to the attention of the targeted group.

9. The analysis at [511] of *Kaplan* does not require a different conclusion. Mortimer CJ was there responding to an argument about the identification of the relevant group (not at issue here), in a very different factual context, and presumably did not receive argument on this constructional question. In any event, for the reasons given above, to the extent *Kaplan* can be read as importing a requirement to s 18C that the targeted group directly perceive the act, it is plainly wrong and should not be followed.

10. In any event, the answer to the question does not matter in this case, where the evidence establishes that the Speeches *were*, in all the circumstances, reasonably likely to come to the attention of Jews in Australia. If the Court accepts the applicants' argument on construction, it may nevertheless be prudent to make factual findings on the alternative basis.

11. There appears to be no real dispute about the principles relevant to s 18C(1)(b).

Exemptions: s 18D

12. Section 18C must be read alongside s 18D, providing for exemptions from the prohibition:

> **18D Exemptions**
> Section 18C does not render unlawful anything said or done reasonably and in good faith:
> (a) in the performance, exhibition or distribution of an artistic work; or
> (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; or
> (ii) a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment.

13. The respondents raise the exemptions in s 18D(b) and (c)(i).

14. The requirements of reasonableness and good faith apply to all exemptions under s 18D. The principles in relation to reasonableness and good faith in this context are well-established: see *Faruqi* at [292]-[296]; also the applicants' opening submissions filed on 30 May 2025 at [34]. The respondents' written opening submissions seem to accept these principles, but join issue with the applicants on the application of the principles to the facts of this case: see RS [20]. However, there is repeated reference to a "narrow approach" taken by the applicants to reasonableness and good faith (RS [35]-[36]). There may be a suggestion that some more relaxed standards of reasonableness and good faith ought to apply where topics of religion or politics are involved: see, e.g., RS [21]-[22]. That suggestion finds no support in the text, context or purpose of Pt IIA. Indeed, the exemption in s 18D(c)(ii) must contemplate political commentary, and the legislature also subjected it to the requirement in the chapeau to s 18D. There is no carve-out or special treatment for religious subject-matter. Contrary to the submission at RS [22], the requirement of reasonable likelihood in s 18C(1)(a) and the requirements of reasonableness and good faith in s 18D are dealing with quite different

matters: the former is focused on the reaction of the relevant group; the latter on the actions and intentions of the person doing the act. The respondents' submissions in relation to the constitutional issues, and their relationship with the construction of s 18D, are dealt with further below.

15. Section 18D(b) requires that a genuine purpose "in" the public interest be pursued, not simply a matter "of" public interest (which is broadly defined as a matter of interest or concern to people at large): *Eatock* at [433] (cf RS [18]). Section 18D(b) is concerned to excuse conduct done reasonably and in good faith *in the pursuit of a public benefit* through the exercise of freedom of expression: *Eatock* at [434] (emphasis added). The purposes identified at RS [18.1] and [18.2] depart from the pleading, are not what the applicants accepted in opening to be genuine purposes in the public interest (cf RS [19]) and confuse purpose and means, in that they identify the relevant purpose as being that certain people are "free to" express views and deliver teaching. As the Court identified in *Eatock* at [434], the provision is concerned with the public interest use to which the freedom of expression is exercised and not merely freedom of expression itself. An additional pursuit of public benefit, *beyond freedom of expression*, is contemplated.

16. As to what may constitute a "genuine purpose", Bromberg J did not consider that the "genuine purpose" to which s 18D(b) refers was a reference to the subjective purpose of the maker. At [435], his Honour stated:

> What the provision calls for is the pursuance through a statement, publication, discussion or debate of a purpose which is genuinely in the public interest. That calls for an objective consideration of whether the purpose is genuinely in the public interest.

Relief: AHRC Act

17. 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 46PPO(4)(b)).

18. This power to fashion appropriate remedies is "obviously broad": *Faruqi* at [380].

C. RELEVANT FACTUAL BACKGROUND

The Jewish community in Australia

19. Each of the seven Jewish lay witnesses gave evidence about their personal circumstances, experiences of being Jewish in Australia, and how they reacted to the Speeches. This autobiographical evidence can assist the Court as it undertakes the objective inquiry into the likely reaction of Jewish people in Australia to the Speeches.

20. The evidence of the lay witnesses also establishes a number of important contextual matters about the Jewish community in Australia in November 2023, which form part of "all the circumstances" required to be considered by s 18C(1)(a). Those matters include the following.

21. The Jewish community in Australia comprises 117,000 people (T31.6-8). Prior to 7 October 2023, Jewish members of the community generally felt safe in and accepted by the broader Australian community. Nevertheless, there was an awareness of and vigilance to anti-Jewish sentiment and violence. More than half of Jewish Australians have at least one grandparent who was a Holocaust survivor: Wertheim, [4] (CB 73). Jewish people are accustomed to heightened security on their communal institutions, like armed guards outside Moriah College, a Jewish day school in Sydney (T47.4).

22. The events around 7 October 2023 were significant to Jewish members of the community. Each of the witnesses records a shift in their feelings of safety, self-consciousness, and belonging in Australia. An increase in antisemitic incidents led the federal government to recognise the increased level of risk to the Australian Jewish community (T43.18-28). Mr Wertheim, a long-time observer of antisemitism, described the use of "dehumanising language" at protests and elsewhere as something quite new and alien for his community (T43.35-44.10). A number of the witnesses recall an event at the Sydney Opera House shortly after 7 October 2023 as being particularly important to a shift in their understanding of their place in Australian society (T42.10-16). In Melbourne, Mr Peleg described an incident where he was excluded from the CBD, he was told for his own safety (T67.56-68.6). Sadly, the Teacher, who had previously taken her students to mosques and Islamic centres to engage in interfaith dialogue, gave evidence that these excursions had stopped after 7 October 2023 (T70.24-39; T72.13-16).

Relevance of some matters addressed in cross-examination

23. The Jewish lay witnesses were each asked whether they would expect to be exposed to challenging ideas and diverse beliefs in Australia. It is not to the point that members of the community ought to expect to confront different views. Whether the views expressed by Mr Haddad fall into the category of views that members of the community are expected to put up with is the very issue raised by this case. In any case, if the witnesses are accustomed to living in a robust democracy and yet still have the visceral emotional reaction they describe having to Mr Haddad's Speeches, that suggests those Speeches are in a category apart. For example, Mr Wertheim has engaged in civil society and political discourse for decades, and monitors antisemitism as part of his job. One might expect him to be hardened to it. Yet he experienced Mr Haddad's Speeches as dehumanising: T44.6-10.

24. Another line of cross-examination pursued by the respondents was that some of the Jewish lay witnesses went looking for material that would offend them. It was suggested in opening that they went out of their way to expose themselves to speech that would offend them, like a person with prudish sensitivity seeking out pornography on the web and then complaining about being offended by it (T23.9-17). Those two things are not alike. It is not the *viewing* of antisemitic speeches that causes offence, etc. It is the fact that those speeches were made in the first place. Locating and viewing those speeches allows a Jewish person in Australia to inform themselves, legitimately, about the things that are being said about them. The Data Scientist's response to this line of questioning illustrated the point (T93.31-46, emphasis added):

> Just turning to MEMRI TV again, having watched the Reddit clip, you decided to search for the video on MEMRI TV website; is that correct?---Yes.
>
> Did you do that having formed a view, amongst other views, that Mr Haddad was quite clearly inciting hatred against the Jews, and this was extremely disturbing to you?---Yes.
>
> That being the view you held from seeing the Reddit clip, why did you search for the video on MEMRI TV in those circumstances?---Because I wanted to see it from the source, because that was the source for – for the – the clip that had been posted to Reddit. MEMRI had compiled it, and I wanted to see if there was further information about Mr Haddad on the website, and if there were other videos, as well.
>
> I'm sure you wanted to see it, but my question is, why did you want to see it?---**Because I wanted to know about what had been said by somebody living**

in my city about my community that was, in my view, extremely problematic.

25. The fact that a witness may have demonstrated some curiosity about anti-Jewish sentiment in their city and country does not detract from the legitimacy of their responses to the Speeches.

26. It is not relevant that some of the Jewish witnesses did not view the Speeches in their entirety. As is addressed below, when Mr Haddad gave the Speeches, it was likely that they would be shared and travel on the Internet in edited form. It is unsurprising that the most provocative of his statements would gain the most attention. In any event, the "montage" provided to the witnesses by the applicants' solicitors is a fair reflection of the approach, tone and subject matter of the Speeches.

27. It is also not relevant that the Jewish witnesses may not have previously attended an Islamic religious centre or mosque for the purposes of attending a religious sermon. It is not in contention that there were no Jewish people at the AMDC present for Mr Haddad's lectures. Nothing about that setting changes the content of the Speeches. It was, in any event, entirely foreseeable that the speeches would travel online in a manner that became decontextualised from their immediate physical and cultural setting.

28. It is not relevant that the Jewish witnesses may not speak Arabic. The Speeches are in English. Mr Haddad accepted that he only used Arabic for the opening prayer, Arabic words used after the names of Allah and the Prophet and where the text required the use of an Arabic word in an English sentence (T149.24-27). There is no evidence that these words alter the meaning of the Speeches in any way.

29. The witnesses' familiarity or unfamiliarity with the existence of religious narratives about religious and military encounters between Jews and Muslims is also not relevant.

Mr Haddad, the AMDC Inc, and the Al Madina Dawah Centre

30. At the time of the Speeches, Mr Haddad was a 43-year-old carpet layer who also operated as a preacher, though he had not yet obtained the formal qualifications he now holds. He was one of the founders and the public officer of AMDC Inc, and a member of its governing committee: SOAF, [8] (CB 865). He was in control of AMDC Inc: T116.34.

31. Both Mr Haddad and the AMDC had active social media presences. There was an AMDC YouTube channel at the time the Speeches were delivered, thought it was later shut down by

YouTube: T120.11-32. The AMDC also had a channel on Rumble, a video platform similar to YouTube: T127.33-39. It had a Facebook page: SOAF, [18]. It had an Instagram account: T119.36. Mr Haddad often delivered his speeches before a physical backdrop (Ex A1.1-2) which advertised accounts for the AMDC on YouTube, Instagram, Facebook, Telegram and Paltalk. The AMDC also had an "unofficial" media outlet called "Muslim Unapologetic": T118.27-35.

32. Mr Haddad had an Instagram account with the handle @abu.ousayd, which at the date of the hearing had more than 10,000 followers and which he posts to "pretty much" daily: T 119.28-33, T120.38-44. In the name "Abu Ousayd Official", he also had a SoundCloud account: T128.1-10 where he would post audio of his sermons and lectures. According to Mr Haddad, that audio would first be posted in a Telegram channel called "Abu Ousayd Lectures MP3": T128.1-10.

33. At the time the Speeches were given, there was a practice of disseminating video and audio of Mr Haddad's sermons and lectures on this variety of social media platforms. He accepted that in November 2023, he knew his Speeches were being recorded, and knew that they were all to be published online: T124.37-40. At T130.22-36:

> But you were aware, weren't you, in November 2023 that your lectures and sermons were being sound-recorded? --- Video-recorded, yes.
>
> Video and sound-recorded? --- Yes.
>
> And that those video and sound recordings were being retained including for the purpose of being published? --- Yes.
>
> And you understood that the purpose – one of the purposes for which the sound recordings and video recordings were being made was to allow publication on the YouTube channel. Do you agree? --- Yes.
>
> And for publication on the Rumble channel? --- Yes.
>
> That is, the Al Madina Centre Rumble channel. Yes? --- Yes.

34. Indeed, he knew in November 2023 that a sermon or lecture he gave in the Centre was very likely to turn up on YouTube, Rumble, Telegram and Soundcloud: T131.21-24.

35. Mr Haddad was evasive about who was actually posting these things to the Internet. One of the five committee members of AMDC Inc, a man named Yahya Ye, is responsible for media: T117.3-8. Mr Haddad, Mr Ye and Enver Neziroski have control of the AMDC bank accounts:

T117.31-17. AMDC Inc engages a team in Indonesia to design social media content and Mr Haddad can instruct them to put something up or take something down: T119.44-120.10. That team is paid by the AMDC Inc: T148.1-15. These facts illustrate that, even if Mr Haddad is not an administrator of the social media accounts in the name of the Centre and organisation of which he is in charge, he has effective control of them, and AMDC Inc is also responsible for what is published and removed or not removed from those accounts.

36. In the last decade or so, Mr Haddad has come to the attention of mainstream Australian media on a number of occasions: T132.4-5. This engagement is typified by Mr Haddad's exchanges with talkback radio personality, Ray Hadley. Mr Haddad called into Mr Hadley's radio program to argue about Syria, and then posted about him on his social media. In Mr Haddad's words, he and Mr Hadley had "funny relationship. He has a go at me. I have a go at him": T133.22-23.

37. In November 2022, Mr Haddad addressed the topic of the celebration of Christmas in a speech at the AMDC. This came to the attention of mainstream Australian media after a clip of the speeches, including where Mr Haddad said that wishing someone "Merry Christmas" was a sin worse than congratulating someone for murder, has been published online: Ex A1.6-11. The media coverage followed publication of a clip of the speech on a website called "MERI TV": T136.3-6. Mr Haddad promptly engaged with this public controversy on his Instagram account by posting a screenshot of a mainstream media headline alongside a caption "challenging" any Christian that disagreed with his criticism of Christmas: Ex A1.12.

38. In April 2023, Mr Haddad again came to the attention of mainstream Australian media when he gave a speech about Kashmir and accused Hindus to be "worshippers of cows and monkeys": Ex A1.13-15. MEMRI TV covered the speech: Ex A1.13-15. Mr Haddad was aware that his speech had been picked up and published more broadly to the Australian community, and that it caused offence to Hindus: T141.5-16. Mr Haddad continued to stoke the controversy by posting to Instagram a video where he ate a beef burger to make light of the offence that he caused to Hindus: Ex A1.17; Ex A2; T141.42-46. This video was picked up by MEMRI TV and Mr Haddad again continued to engage on his Instagram account by commenting "YOU CANT HANDLE THE BEEF!": Ex A1.22. Mr Haddad defiantly told the Court this was not an apology: T141.45-146.4.

39. Mr Haddad explains his motivations for these episodes as follows (T145.30-T146.6):

> When your speeches were picked up by MEMRI TV and by the mainstream media, it was your habit to post that response to your supporters on your Instagram account, wasn't it? --- Yes, to my followers specifically, yes.
>
> And to demonstrate that you were a person who was getting that sort of attention from MEMRI TV and the media? --- Not to demonstrate that, no.
>
> What were you seeing to demonstrate? --- To show that whatever MEMRI TV was writing was obviously, again, out of context.
>
> And you were demonstrating, weren't you, to your followers that you were a person who was happy to criticise other members of the community? --- Yes.
>
> Other segments of society? --- Yes.
>
> Including Christians and Hindus? --- Yes.
>
> And you were happy to criticise Christians and Hindus just for practising the dictates of the faith of Christianity and Hinduism, weren't you? --- From an ideological point of view, yes.
>
> And that you were entirely unconcerned by the offence you might cause by doing that? --- No.

40. At the time he delivered the Speeches, Mr Haddad was in charge of an organisation which was attempting to build an online audience. He was a key driver of that, providing content in the form of speeches and sermons which were published on an array of social media platforms. He had experienced several times a cycle of coverage and outrage, whereby he said something controversial about another group in society, a video of that was published on to an AMDC social media account, MEMRI TV published a clip of that video, the mainstream media covered it, and he then responded on his own social media. He was well aware how that worked, and the tone of his posts reveals that he delighted in the attention that this cycle brought him.

D. THE SPEECHES

Summary of the Speeches, their delivery and publication

41. On 1 November 2023, Mr Haddad posted on Instagram that he would be starting a new series called "The Jews of Al Madina" at the AMDC on the coming Friday, promising it would be recorded and uploaded to YouTube: Ex A1.23. For the following three successive Friday evenings in November 2023, Mr Haddad delivered the three-part series of sermons, referred to in this proceeding as Speeches A, C and E: SOAF [9], [11], [13] (CB 865-866). The applicants' case focuses primarily on Speeches A, C and E.

42. Speech A was delivered on 3 November 2023 to an audience of about 40 people; Haddad [86]. As well as YouTube, it was published (at least) to Rumble and Facebook. Shortly after Mr Haddad gave the speech, it was covered by the mainstream Australian media. Just three days after it was delivered, Speech A was covered in *The Australian* (CB 309) and the *Daily Telegraph* (CB 314). Further coverage in *The Australian* (CB 319) and on Sky News (CB 324; Ex PK-1) followed. At some stage, Speech A was clipped and captioned by MEMRI TV, as Mr Haddad ironically acknowledged by sharing that video to his own Instagram page (Ex A2.1, Ex A3).

43. In response to the media attention, between 3 and 10 November 2023, Mr Haddad recorded a video podcast for "Muslim Unapologetic" called "Media Response to Reality of World Palestine" (Speech D), which was published to YouTube: T127.3. At lunchtime on 10 November, the date he delivered Speech C, he delivered another speech at the AMDC called "Murdered by Israel Khutbah Jummah" (Speech B), this time to an audience of 300 to 400 congregants: SOAF, [10]; Haddad, [99]. Speech B was published to Rumble, where it remains. It was also published to Facebook.

44. The Speeches made their way to the Jewish community. Several Jewish witnesses recall learning about the Speeches through *The Australian* or Sky News. Others saw them on social media, including WhatsApp, Reddit, and X.

Likelihood that Speeches would be seen by Jewish Australians

45. As outlined above, the applicants' primary position is that, on the proper construction of the RDA, once it is accepted the Speeches were delivered otherwise than in private, they do not need to separately establish that the Speeches were reasonably likely to come to the attention of Jewish Australians. Nevertheless, given this is contested by the respondents, the Court should make findings on this issue.

46. The evidence establishes that it was reasonably likely – indeed, almost inevitable – that the Speeches would be seen by Jewish Australians. As at November 2023, it is abundantly clear that MEMRI TV was monitoring social media accounts associated with the AMDC and Mr Haddad, and that it was inclined to publish anything provocative that he said. In the year leading up to the Speeches, it had published articles based on Mr Haddad's sermon at the AMDC about saying "merry Christmas", Mr Haddad's sermon at the AMDC about Kashmir which referred to Hindus as "worshippers of cows and monkeys" and Mr Haddad's subsequent Instagram video saying he had "no beef with anyone", in response to coverage of

his sermon. A three-part series of Speeches, promoted by Mr Haddad on his Instagram, and published to YouTube, whose very title ("the Jews of Al Madina") betrayed that they would be about Jews was extremely unlikely to escape attention. Such invective, placed on the Internet for all to see, was bound to be covered and criticised.

47. It was equally likely that the mainstream national media in Australia would learn about the Speeches, whether through MEMRI TV or through the same social media channels which Mr Haddad and the AMDC used to distribute his sermons, and once they did, it was inevitable that they would publish articles and news stories about them. It would be newsworthy at any time that a preacher in Sydney was giving sermons of this nature, but it was especially so in November 2023, at the time when the conflict in Gaza was freshly underway. In the modern media and social media environment, it was likely that news of the Speeches would be distributed on social media. It was also likely that Jewish people, who are vigilant against antisemitism, would show a particular interest in the Speeches and might circulate news of them within their community. It was also likely that Jewish Australians would show an interest in the Speeches, because the Speeches were about them, and go searching for other references to them online. They were perfectly entitled to do so, exercising their right to participate in civil society as it concerned them. It was therefore likely that Jewish Australians would come across the MEMRI TV (and other) reporting. Although the MEMRI TV clip and various news stories in evidence do not reproduce the whole of the Speeches, it could hardly be expected that they would. Anybody responding to the hateful content of the Speeches was bound to focus on the most egregious parts of them. Nobody in the chain of communication that began with Mr Haddad's Speeches being published to social media and ended with the Jewish witnesses watching the Speeches did anything unusual, unexpected or unforeseeable. In any event, the news stories in evidence are not an unfair representation of the content of the Speeches. In these circumstances, the Court would not conclude that it mattered that there was a conduit between some of the Jewish witnesses and the AMDC's social media accounts: Jewish people in Australia did not need to visit the AMDC's YouTube page in order to be offended by the Speeches.

48. Indeed, the Court would comfortably conclude that Mr Haddad enjoyed stoking controversy and intended for his Speeches to reach a non-Muslim audience. It would assist in his goal of attracting notoriety to enter into a public conflict with the Jewish community.

The Speeches were reasonably likely, in all the circumstances, to offend, insult, humiliate and intimidate Jewish people in Australia

49. The Speeches were reasonably likely, in all the circumstances, to offend, insult, humiliate and intimidate Jewish people in Australia. The primary circumstance is the content of the Speeches themselves, which was likely to lead to those reactions for the following reasons.

50. *First*, any ordinary observer of the Speeches would interpret the comments about Jews as applying to all Jews, by reason of their race. There is repeated reference to "the Jews" (no fewer than 169 times across the Speeches) and "these people", without any qualification as to religious or political belief, or other limitations (such as members of the Israeli government or army). Indeed, Mr Haddad was abundantly clear that in his view there was no difference between ultra-Orthodox religious Jews, who are not Zionists, and other Jews. He said "there is no difference" between Zionists and "the Jews": "There was no Zionists at the time of the Prophet, it was Jews, *Yahud* … don't be fooled to think [ultra-orthodox Jews] are still your friends." (ST1.27-28; ST10.10-19). The respondents' submission that almost all of the references made by Mr Haddad to Jews and Jewish people are to the historical Jews of Al Medina or to the state of Israel at RS [12] is simply not borne out.

51. *Secondly*, Mr Haddad repeatedly made clear that he was referring to Jews in the past, present and future. He emphasised the connection between past and present: "just like they do today" (ST5.21), "same thing, history repeating itself" (ST5.26), "like the cowards that they are today" (ST17.31-32), "no different, no different than today … nothing's changed (ST85.6-7). This belies the suggestion that Mr Haddad was talking only about Jews of the past, or about those in power in Israel, and indicates that instead he was talking about all Jews, at all times.

52. *Thirdly*, Mr Haddad attributed to Jewish people (past, present and future) negative characteristics. These characteristics are pleaded as imputations in the applicants' Statement of Claim, and annexed to these submissions is a schedule cross-referencing the imputations to the transcripts of the Speeches. These negative characteristics include that they are (with references to the pleaded imputations): mischievous ([29](a), (e), (h)), oppressive ([29](b)), arrogant ([29](f), (g)), murderous and rebellious ([29](h)), shifty ([29](i)), slanderous ([29](n)), troublemakers ([29](n)), schemers ([29](n)), conflict-mongerers ([29](o), (p)), cowards ([29](q)), filthy ([30](b)), untrustworthy ([31](a), (d), [33](c), (d)), conspiratorial ([31](b)), greedy ([31](c), [33](g)), racist ([33](b)), treacherous ([33](c)), vile ([33](c)), descendants of apes and pigs ([33](f)), manipulative ([33](h)), and the enemies of Muslims

([29](d), (r), [31](D)). The Speeches also conveyed that Jews want to obtain money and power for nefarious means ([29](j)), that they control the media in order to abuse the weak or target Muslims ([29](l)) and to manipulate ([33](h), and that they own most banks and use oppressive interest loans knowing it is almost impossible to pay the loans back ([29](m)), and that they want to attack women and children ([33](e)).

53. *Fourthly*, in ascribing these negative characteristics to Jews, Mr Haddad deployed familiar antisemitic tropes which are commonly used to apply to people of the Jewish race (see the expert report of Dr Andre Oboler at CB 173). He referred to their Hollywood blockbuster films (ST13.6), oppressive interest loans and the majority of banks being owned by Jews (ST7.23-27), their hands being everywhere, controlling the media (ST7.21-22). These tropes have no sensible connection to faith, and they are widely understood as describing Jews generally, whether or not they are religious. It was not suggested to Dr Oboler, or indeed any of the Jewish witnesses who also recognised these tropes, that these tropes relate somehow to Jews *of faith* only.

54. *Fifthly*, Mr Haddad describes Jews as the eternal enemy of Muslims (ST2.7-13):

> …these are the people that we are going to always be dealing with until Allah sends Imam al-Nabi. These are the people that when it comes to the end of time, Allah would cause miracles for the nation of Muhammad to see and hear with their own eyes and ears. Towards the end of times when the Muslims will be fighting the Jews, the trees will speak, the stone will speak, and they will say, O Muslim, O believer, there is a Yahudi behind me, come and kill him.

55. Indeed, this idea is central to the Speeches. What otherwise is the rational connection between a speech about historical events in the 7th century and the modern day war in Gaza?

56. In connection with his portrayal of Jews as the enemy of Muslims, Mr Haddad deployed violent imagery. He repeated the story about Jews being killed at the end of times, even more emphatically, in Speech B (ST28.12-23), emphasising that "we believe every single word the messenger of Muhammad came with, and if he said it, it's going to come to pass, and anyone who doubts this has fallen into disbelief." The story the subject of Speech C involved the killing of Jews, when the Prophet decided "The only thing for [them] is the sword": ST90.11-12. At the end of Speech A, he said a lesson to be drawn was that (ST18.54-19.5):

> Yes, a Muslim is merciful, he is patient, he is forbearing, but as Muslims we also have a limit … we put up with a lot but when somebody crosses the line then Allah … has given us in the Sharia of Muhammad a way to deal with such people.

57. This rhetoric is likely to be perceived as menacing by Jews.

58. Mr Haddad also clearly attributes the enmity between Muslims and Jews to Jews. In Speech C (ST53.19): "So if you want to say who started it first? We can clearly see that the Jews started it first." In Speech E (ST100.22-24): "The next time someone tells you who started the issues or the problems between the Muslims and the Jews, we can see clearly where it started. And that is the Jews themselves." It is intimidating to Jews for Mr Haddad to tell a Muslim audience that Jews are the enemy, that they are to blame for that, and that they should or will be dealt with violently.

59. To the extent that Mr Haddad references the Qur'an, the Hadith and other religious texts in the Speeches, and it might be argued that this serves to reduce the offence, etc. caused by them, that is entirely undermined by his gratuitous additions and commentary (such as calling Jews a "vile people" (ST85.15), and referring to Starbucks, McDonald's and Nike (ST7.18-19) which are not, either on the face of the Speeches or in reality, sourced from scripture.

60. Apart from the content of the Speeches, other relevant circumstances to be taken into account include the circumstances of the Jewish community in Australia at the time of the Speeches outlined above, including the rupture of October 7 and subsequent feelings of insecurity and self-consciousness, and the fact that the Speeches were given in Sydney, in English, by a person who is recognisably Australian, to an Australian congregation.

Speeches made "because of" ethnic origin of Jews

61. This is a clear-cut case on s 18C(1)(b). The Speeches are about Jews, are titled "The Jews of Al Madina" and were clearly done for reasons of race. 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, including those in Australia.

62. The suggestion that Mr Haddad might have been motivated by the "faith" of the Jews he defamed does not survive scrutiny, as is outlined below.

Section 18D and the purpose of the Speeches

63. As outlined above, in order to establish he falls within the s 18D(b) exemption, Mr Haddad must establish that the Speeches were made in the course of a statement, publication, discussion or debate for a genuine purpose in the public interest. That begs the question: what was Mr Haddad's purpose in making the Speeches?

64. Two purposes were pleaded:

(a) Teaching Tafsir, or otherwise delivering religious, historical and educational lectures or sermons, to congregants of the AMDC and other practising Muslims; and/or

(b) Responding to requests from the Islamic community to provide sermons which address the Gaza War, and engaging in political commentary on the Gaza War from a religious perspective.

65. Two slightly different purposes were set out in the written submissions (RS [18.1]-[18.2]):

(a) Members and leaders of the Muslim community (as well as the broader community) are free to express views and participate in debate about the events taking place in Gaza, particularly since 7 October 2023, including in strong terms; and

(b) Persons who are recognised in their community as religious leaders are free to deliver teaching and commentary on religious and historical subjects to members of that community, including to provide spiritual support, and religious context for current political events.

66. Mr Haddad's affidavit described his purpose in this way (at [79]):

> …to speak to my congregation and provide them with spiritual comfort. The message that I was trying to deliver was: *do not be afraid nor distressed as this conflict between the Jews and the Muslims is not new. This conflict is continuing from many years ago from the times of Al Madina and will come again at the end of time.*

67. Mr Haddad deposed that his intention was to draw parallels between the acts that were done by the Jewish tribes at the time of Al Madina as recorded in Islamic religious texts and the

individuals who have committed acts violating international law (i.e. Israeli government and the IDF): [84].

68. Mr Haddad outlined a purpose for the Speeches as he gave them. At the start of Speech A, having referred to the Jews and the Zionists being the same thing, Mr Haddad said (ST1.27-32; 2.7-17):

> I want to give an introduction as to who they are … we need to learn about these people because these are a people that we are going to always be dealing with until Allah sends Imam al-Nabi … we need to know where they came from, what they did at the time of the Messenger of Muhammad, what they continue to do now and what they will continue to do in the future.

69. Mr Haddad's evidence under cross examination was different again. He acknowledged that the connection he drew between the events of the 7th century and the events in Israel today were that those involved were all "of Jewish faith": T151.12-17. He repeatedly referred to "Jews of faith" and disclaimed any intention to deride Jews of ethnicity (e.g. T160.14). He said it was no part of his purpose to describe all Jews as mischievous and arrogant, and indeed it would have been improper for him to do so (T165.1-22, emphasis added):

> Was it your intention or purpose to describe all Jews as mischievous people?---No. That was no part of your – the purpose you claim in support of these speeches?---No. Would it – was it any part of your purpose to describe all Jews as arrogant people?---No. Not all. No.
>
> And do you accept it would have been quite improper for you to have done that?---By meaning all Jews, it would have been improper. But that wasn't what what my intention was.
>
> All right. Do you accept it would have been quite improper of you to describe all the Jews – that is, all Jews – as a murderous people, or a rebellious people?---If it's "all", yes.
>
> Do you accept it would have been improper - - -?---Sorry, did you say improper or proper?
>
> Improper?---Improper. Yes.
>
> You agree it would have been improper of you to do that?---**As a blanket statement to all Jews, yes, it would have been improper there.**
>
> And do you accept that it would have been improper of you to have conveyed the impression that Jews – all Jews – in the past and present, have used their wealth to have authority over the weak?---Same as the other answer, if it is a blanket statement of all Jews, of faith, and of culture or ethnicity, yes, it would be wrong to do that.

70. The "Jews of faith" explanation, when it came, was striking for its novelty in a case where Mr Haddad had given instructions for a Defence to be drafted and filed, sworn a detailed affidavit, and had been represented through opening submissions and then the cross-examination of eight witnesses for the applicants, none of whom were asked anything about their faith.

71. The Court would reject this explanation. It has all the appearance of recent invention. The Speeches do not mention "Jews of faith". That is not what they are about.

72. In any event, insulting all religious Jews would hardly be a genuine purpose in the public interest for the purposes of s 18D(b), and may still contravene s 18C. In *King-Ansell v Police* [1979] 2 NZLR 531, in a passage cited at [111] of *Jones v Scully*, Richardson P said at 543:

> … a group is identifiable in terms of its ethnic origins if it is a segment of the population distinguished from others by a sufficient combination of shared customs, beliefs, traditions and characteristics derived from a common or presumed common past, even if not drawn from what is biological terms is a common racial stock. It is that combination which gives them an historically determined social identity in their own eyes and in the eyes of those outside the group. They have a distinct social identity based not simply on group cohesion and solidarity but also on their belief as to their historical antecedents.

73. That is, "Jews of faith" would still be a group with a shared ethnic origin for the purposes of the RDA.

74. The Court could instead conclude that Mr Haddad had a range of other purposes: to encourage people to hate Jews (T169.43), to attract attention by giving a controversial speech about Jews (T146.42-43, T169.14-15), and to disparage Jews by reference to race (T170.21), and to attract attention by posting racist content online (T173.1-2). None of these is a purpose in the public interest.

75. The pleaded purposes may be accepted to be purposes in the public interest. But Mr Haddad's case then collapses on reasonableness and good faith.

76. Teaching Tafsir, or otherwise delivering religious, historical and educational lectures or sermons, to congregants of the AMDC and other practising Muslims is both vague and rather specific. But whatever it means, it does not require *any* mention of Jewish people. And if it did, it does not require this kind of attack. Both experts agree that Islam does not justify the wholesale condemnation of Jews (see, e.g., Ibrahim Report at [81], [98], [117] (CB 271, 275-276, 281); Reynolds Report at [50] (CB 250)).

77. By way of illustration, in *Toben v Jones*, Carr J observed at [44]-[45] (in reasons with which Allsop J agreed: [159]), concluding that reasonableness and good faith were not made out in that case:

> In the context of knowing that Australian Jewish people would be offended by the challenge which the appellant sought to make, a reasonable person acting in good faith would have made every effort to express the challenge and his views with as much restraint as was consistent with the communication of those views.
>
> In my opinion, the Document shows that the appellant made no such effort. On the contrary, the terms of the Document are, in my view, deliberately provocative and inflammatory. The reference to the Lenin and Stalin eras was, in my opinion, contrived to smear those on the receiving end of the appellant's message. The appellant described the Jews as "also murderers". This reference was made almost as an aside, clearly to paint Jews in a bad light, before the author resumed his flamboyantly-worded challenge.

78. The analysis in respect of Mr Haddad is similar. It was obvious speaking about "the Jews" might cause offence. If there was a religious basis for the approach the Speeches took of attributing some eternal characteristics to Jewish people (which has not been established on the evidence), Mr Haddad well exceeded the hurt and insult that was a necessary part of practising his religion.

79. The second pleaded purpose is that Mr Haddad was responding to requests from the Islamic community to provide sermons which addressed the Gaza War, and engaging in political commentary on the Gaza War from a religious perspective. Again, that does not require any mention of Jews. The vast bulk of the Speeches do not touch on Gaza or Israel. His Speeches are not rationally connected to that purpose, and he has made no attempt to minimise the offence, insult, humiliation or intimidation suffered by Jewish people: *Bropho* at [102]; see *Eatock* at [347]-[349].

80. Whichever way one analyses the s 18D question – whether by assessing what Mr Haddad's real purpose was and asking whether it was a purpose in the public interest, or measuring his actions against the purposes he pleads – he will not succeed in establishing he is exempt from s 18C. There is simply no reasonable explanation for making speeches that attempt to explain the actions of a modern-day group by reference to events in the 7th century, where the only connection between the two is race.

E. AMDC INC

81. In relation to AMDC Inc, the respondents deny that they are responsible for publishing any of the Speeches. The Court should find that AMDC Inc controlled the social media accounts. Mr Haddad's evidence on the topic of social media was doggedly evasive and not credible. The second respondent did not offer up any other witnesses. An inference is available that the organisation does control the social media accounts. In any event, AMDC Inc, through Mr Haddad and its other officers, knew that this material was being published and had the power to remove it, for example by instructing the team in Indonesia to do so. Attribution is established. The rest of the analysis in respect of s 18C is the same as above.

82. As to s 18D, the respondents raise two possible exemptions. For all the same reasons given above, AMDC Inc cannot establish that it acted reasonably and in good faith in publishing the Speeches. As to the additional fair and accurate report exemption pleaded, under s 18D(c)(i), publication was an essential part of the act of making the Speeches. It would be absurd if one could complete the problematic act, by publishing the offensive Speeches, and be saved by calling it a "report" of that act. That implies a distance or objectivity from the first act that does not exist where Mr Haddad controls AMDC Inc. Furthermore, simply to publish, in full, a video of an entire event is contrary to the ordinary meaning of "report".

F. CONSTITUTIONAL VALIDITY

83. The respondents challenge the validity of s 18C under the *Constitution* on two bases: the implied freedom of political communication and s 116 of the *Constitution*. Both challenges should fail.

84. Before addressing the grounds of asserted invalidity, there is a preliminary issue about the relationship between the constitutional analysis and the construction of Pt IIA of the RDA. The respondents say their primary argument in relation to the *Constitution* is that the constitutional protections of political communication and religious freedom inform the proper construction of ss 18C and 18D: RS [32] (CB 848). The details of that submission are somewhat vague, but at RS [21] they suggest that these aspects of the *Constitution* ought to inform the interpretation of s 18D. That puts the cart before the horse. As the Court observed at [314] of *Faruqi*, before assessing the constitutional validity of a law, it is necessary to identify its proper construction: see *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police* (2008) 234 CLR 532 at [11] (Gummow, Hayne, Heydon and Kiefel JJ). If, once the provisions have been construed, there is a constructional choice between an interpretation

which would invalidate it and another interpretation that would not, the Court should choose the latter if it is reasonably open: *Acts Interpretation Act 1901* (Cth), s 15A; *Wainohu v New South Wales* (2011) 243 CLR 181 at [97]. The construction of s 18D relied on by the applicants does not result in invalidity. The respondents' suggestion that the implied freedom and s 116 should result in some sort of relaxed standard of reasonableness or good faith, or relaxed application of those standards, under s 18D should be rejected.

85. The construction of Pt IIA has been addressed in opening submissions and above.

Implied freedom of political communication

86. This Court has held that Pt IIA of the RDA does not infringe the implied freedom of political communication on two occasions, in *Jones v Scully* (at [239]-[240]) and *Faruqi* (at [308]-[378]), in which this Court, as presently constituted, found that Hely J's conclusion in *Jones v Scully* was not plainly wrong, but was correct. The respondents accept the principles expressed in *Faruqi* and the way they were applied in the circumstances of that case: RS [33]. However, they contend that the circumstances of this case are different from those in *Faruqi* and so, in some way, s 18C is unconstitutional in this case.

87. The implied freedom operates at a systemic level, and should not be analysed in this fact-specific fashion. The issue of a law's burden on the implied freedom requires consideration as to how it affects the freedom generally: ***Unions NSW*** *v New South Wales* (2013) 252 CLR 530 at [35]. In *Unions NSW*, French CJ, Hayne, Crennan, Kiefel and Bell JJ observed at [36]:

> …it is important to bear in the mind that what the *Constitution* protects is not a personal right. A legislative prohibition or restriction on the freedom not to be understood as affecting a person's right or freedom to engage in political communication, but as affecting communication on those subjects more generally. The freedom is to be understood as addressed to legislative power, not rights, and as effecting a restriction on that power. Thus the question is not whether a person is limited in the way that he or she can express himself or herself, although identification of that limited effect may be necessary to an understanding of the operation of a statutory provision upon the freedom more generally. The central question is: how does the impugned law affect the freedom?

88. This Court concluded at [378] of *Faruqi* that Pt IIA does not infringe the implied freedom of political communication and is not unconstitutional. That conclusion was not somehow limited in its application only to the kind of speech considered in that case. On the implied

freedom issue, therefore, the respondents must establish that the decision in *Faruqi* was plainly wrong.

89. The decision in *Faruqi* was not plainly wrong. It was correct. The applicants embrace the reasoning outlined at [308]-[378]. (Although a majority of the High Court has subsequently indicated in *Babet v Commonwealth* [2025] HCA 21 that structured proportionality analysis does not need to be applied in every case, there is no reason why it should be abandoned in this case.)

90. The respondents may be understood to be submitting at RS [34]-[35] that this Court erred in *Faruqi* in characterising the burden on the implied freedom as slight (at [332]) because it did not appreciate that speech like Mr Haddad's would be captured by Pt IIA, and that this case thus illustrates that there is a more substantial burden than was previously thought. That argument should fail, for two reasons. *First*, the Court in *Faruqi* was aware that speech that touched on such topics might be captured. At [333], Stewart J records a submission from Senator Hanson than the burden of s 18C on the freedom was substantial because a range of matters for discussion would be potentially impacted, including (among other matters) multiculturalism, foreign policy including appropriate response to overseas events such as wars or conflicts, and domestic protests about foreign events, religious conflict where aligned or associated with particular ethnic groups or national origins. As his Honour observed at [334], the 18D exemption protects reasonable and good faith commentary and advocacy on political topics. It is only the class of communications that meet the criteria set out at [329] that are rendered unlawful. *Secondly* and relatedly, Mr Haddad's Speeches are not aptly characterised as political. The conflict in the Middle East may have been a topic Mr Haddad had in mind, but the thrust of the Speeches was really criticism of Jewish people.

91. As to the suggestion at RS [36] that there are available alternative measures which could be deployed to achieve the purpose of Pt IIA, only one example is given, and that is to enact a different definition of "reasonably". It is unclear what that definition would involve, apart from being somehow more relaxed (at least as it applies to Mr Haddad's speech). That vagueness tells against it being an obvious and compelling alternative which is equally practicable and available: see *Comcare v Banerji* (2019) 267 CLR 373 at [35]. In any event, if some new, relaxed definition of "reasonably" were introduced, it would no doubt widen the scope of s 18D and the suggestion that any difference to the protection of members of the public would be "marginal" may not be borne out.

Section 116 of the *Constitution*

92. Section 116 of the Commonwealth Constitution provides:

> The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

93. In order to attract invalidity under s 116, a law must have the purpose of achieving an object which s 116 forbids: ***Kruger*** *v The Commonwealth* (1997) 190 CLR 1 at 40 (Brennan CJ), 60-61 (Dawson J), 86 (Toohey J), 133 (Gaudron J), and 160 (Gummow J).

94. The respondents accept that the Court is bound to accept that the word "for" in s 116 connotes that prohibiting the free exercise of any religion must be a purpose, end or object of the law: RS [38].

95. The Court can comfortably conclude that Pt IIA of the RDA does not have a purpose, end or object of prohibiting the free exercise of any religion, for three reasons.

96. *First*, as the Court held in *Faruqi*, the purpose of Pt IIA is to deter and eliminate, and thus protect members of the public from, racial hatred and discrimination, not to prohibit the free exercise of religion. The "purpose" of a law is the "public interest sought to be protected and enhanced" by the law: ***Alexander*** *v Minister for Home Affairs* (2022) 276 CLR 336 at [102] (Gageler J). The respondents' approach at RS [38] involves characterising the purpose of a statute by reference to the facts of this case. That is not the appropriate level of abstraction at which to undertake the analysis. It also confuses "manner" or "means" or effect with purpose: see *Alexander* at [101].

97. *Secondly*, a "genuine purpose in the public interest", in s 18D(b), may be a religious purpose. There is no reason why a religious purpose cannot be genuinely in the public interest: see *Eatock v Bolt* at [435]. Section 18D thus carves out genuinely religious speech in the public interest, which is engaged in reasonably and in good faith, from the operation of s 18C. The respondents' contention at RS [38] that, on the applicants' case, s 18D does not protect speech that constitutes the free exercise of any religion is wrong.

98. *Thirdly*, the Court could not be satisfied that Pt IIA even has an *effect* on the free exercise of religion. There are two reports from experts in Islam in evidence. As outlined above, neither expert's evidence supports the proposition that Islam requires or permits the expression of

racial hatred towards Jews or any other ethnic group. Indeed, the evidence is to the contrary: Mr Ibrahim observes at [51] that the Prophet dealt with Jews based on their actions, not their identity; that Islam teaches that generalising to include all Jews is incorrect ([81]), that the Qur'an makes it clear that not all Jews are the same ([84]), that Islam rejects broad generalisations and evaluates people based on their deeds and faith, not their race or lineage, and that the teachings of Islam emphasise justice and equality, and condemn collective punishment or unfair blame ([98]). Similarly, Professor Reynolds's evidence is that Mr Haddad's declaration that Jewish behaviour today is a manifestation of inherent negative qualities of the Jewish people is not consistent with the Qur'an or the Hadith ([30]). Accordingly, the evidence does not support a conclusion that the effect, let alone purpose, of s 18C is to prohibit speech that includes the free exercise of any religion: cf RS [39].

G. RELIEF

99. The applicants seek the following kinds of relief: declarations, an injunction requiring the Speeches to be removed, an injunction prohibiting future contraventions, the publication of a corrective notice, and costs.

Declarations

100. The applicants seek a declaration that Mr Haddad and AMDC Inc contravened s 18C in the manner discussed above (the terms of the declarations sought are set out in the originating application). The Court in *McGlade* considered that a declaration of contravention was "a useful and appropriate way of recording publicly the unlawfulness of the making by the respondent of comments which received considerable publicity and were reasonably likely to offend and insult the relevant persons identified above" (at [78]). The terms of the declaration are consistent with Bromberg J's approach in ***Eatock v Bolt (No 2)*** [2011] FCA 1180. His Honour there held that a declaration of contravention should reflect the final outcome of the case with certainty and precision, including details of the Court's determination of those elements of s 18D were relied upon: see [5]-[7]. Declarations were also ordered in ***Silberberg*** *v Builders Collective of Australia Inc* (2007) 164 FCR 475 (see [17], [37]).

Injunction: removal of videos

101. The applicants seek an injunction requiring each of the respondents to remove Speeches A to E from any internet page or other publication in the control of that respondent. Further, in relation to any source of re-publication over which neither respondent has control, but of

which either respondent is or is made aware, to take all reasonable steps to bring the orders made in this proceeding to the attention of the publisher and to request that the Speeches be removed.

102. Although the Speeches, except Speech B, were taken down from Rumble, they remain in other places online, such as in clipped form on Instagram (Ex A2.1) and on Soundcloud (T173.26).

103. Of course, they are also now published by others, such as media organisations. There is nevertheless utility in ordering the respondents to remove them. In *Jones v Toben*, Branson J ordered that the applicant remove the contravening material from the relevant website, remove any other material with substantially similar content, and any other material conveying certain imputations; and be restrained from publishing or republishing to the public, by himself or by any agent or employee, on the world wide web or otherwise, the same material. Her Honour was not deterred by the risk that the practical effect of an injunction might be undermined by individuals other than the respondent, citing a Canadian Human Rights Tribunal which referred, amongst other things, to "significant symbolic value in the public denunciation of the action that are the subject of this complaint": [110]-[111]. Branson J quoted the following passage at [111]:

> Any remedy award by this, or any tribunal, will inevitably serve a number of purposes: prevention and elimination of discriminatory practices is only one of the outcomes flowing from an order issued as a consequence of these proceedings. There is also a significant symbolic value in the public denunciation of the actions that are the subject of this complaint. Similarly, there is the potential educative and ultimately larger preventative benefit that can be achieved by open discussion of the principles enunciated in this or any tribunal decision.

104. The relief Branson J ordered was not disturbed on appeal.

105. As a further example, in *Eatock v Bolt (No 2)*, Bromberg J ordered that the respondents, whether by their servants, their agents or howsoever otherwise, be restrained from further publishing or republishing the contravening newspapers articles or any substantial parts thereof.

106. In *Faruqi*, this Court ordered Senator Hanson to delete her objectionable tweet: see [384]. The Court observed at [384] that such an order requiring unlawful conduct not to be continued is expressly within what is contemplated by s 46PO(4)(a).

Injunction: preventing further contraventions

107. The applicants also seeks an order requiring each of the respondents not to cause words, sounds or images to be communicated to the public, or in the sight and hearing of people in a public place, which attribute characteristics to Jewish people on the basis of their group membership or which convey any of the imputations alleged in the Statement of Claim.

108. In *Silberberg*, the Court ordered that a respondent be restrained from publishing or republishing to the public the contravening messages he had posted, any material with substantially similar content to those messages, and any other material which conveyed certain imputations about the applicant. Gyles J considered the relief was "well within" the relief available pursuant to s 446PO(4)(a) of the AHRC Act, was well justified by the findings and was consistent with previous cases: [37].

109. In *Jones v Scully*, Hely J ordered that the respondent be restrained from repeating or continuing the contravening conduct (distributing leaflets in Launceston and selling leaflets with offensive material about Jews), and that the respondent be restrained from distributing, selling or offering to sell any leaflet or other publication which was to the same effect as any of the contravening leaflets.

110. Some judges have expressed hesitation about making orders preventing future contraventions. In *Eatock v Bolt*, the parties agreed that any injunctions made should be directed at the publication or republication of the impugned articles themselves and not at the imputation conveyed by them: [460]. Bromberg J at [462] also accepted a submission from the respondents that the terms of an injunction should not extend to the publication of articles whose content was substantially the same as, or substantially similar to, that contained in the contravening articles. However, that was because the "language, tone and structure" of the publications had made a significant contribution to the unlawful manner in which the subject matter was dealt with, and the judge did not want to suggest that it was unlawful for a publication to deal with racial identification including challenging the genuineness of the identification of a group of people. The present situation is not analogous. It is difficult to imagine a communication which attributed characteristics to all Jewish people simply because they were Jewish, or conveyed the pleaded imputations, without contravening Pt IIA of the RDA.

111. Similarly, this Court declined to restrain Senator Hanson from using the Phrases "piss off back to Pakistan" and "go back to where you came from" in public: [383]. This was because

whether or not the use of such phrases was unlawful was context-specific. The injunction sought here does not have that problem.

Corrective notice

112. The applicants also seek orders pursuant to s 46PO(4)(b) of the AHRC Act that respondents, at their own expense and within 21 days of the date of the order, publish notices in the terms set out in Annexure A and Annexure B to the draft orders on various social media pages. The corrective notice is titled "unlawful behaviour based on racial hatred by Wissam Haddad and Al Madina Dawah Centre".

113. Bromberg J contemplated a similar corrective order in *Eatock v Bolt*. It was said that public vindication was important, and would go some way to redressing the hurt felt by those injured, to restore the esteem and social standing which has been lost as a consequence of the contravention, to inform those influenced by the contravening conduct of the wrongdoing involved, and may help to negate the dissemination of racial prejudice: [466]. His Honour then made that order.

114. A similar order was made in *Eatock v Bolt (No 2)*. Justice Bromberg there ordered that the second respondent publish in the *Herald Sun* newspaper a corrective notice, twice, in a position immediately adjacent to Mr Bolt's regular column.

115. In light of Mr Haddad and the AMDC's use of social media to cultivate an audience and broadcast the Speeches, it is appropriate that the same channels be used to communicate the corrective notice.

Costs

116. There is no reason why the respondents ought not pay the applicants' costs in the event the applicants are successful. A costs order was made in favour of the successful applicants in, for example, *McGlade* and *Faruqi*.

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PETER BRAHAM SC
Eleven Wentworth
T: (02) 9233 6462
E: braham@elevenwentworth.com

HANNAH RYAN
Eleven Wentworth
T: (02) 8029 0738
E: hannah.ryan@elevenwentworth.com

JOY CHEN
Eleven Wentworth
T: (02) 8231 5032
E: chen@elevenwentworth.com