



Federal Court of Australia
District Registry: New South Wales
Division: General

No. NSD1503 of 2024

PETER WERTHEIM AM and another
Applicants

WISSAM HADDAD and another
Respondents

RESPONDENTS' OPENING SUBMISSIONS

1. The acts at issue in this proceeding are the delivery of religious lectures or sermons and political commentary (**speeches**) by a recognised Islamic preacher to his congregants and Muslim followers on private premises; and the publication of recordings of the speeches on web pages not established or maintained by the Respondents and directed to the same audience. The Applicants and their lay witnesses were exposed to the speeches only after they were reported on elsewhere.
2. The Applicants' claims against the First Respondent (**Mr Haddad**) and the Second Respondent (**AMDC Inc**) will fail for the following reasons.

A. Claim against Mr Haddad

A.1 Not otherwise than in private

3. Section 18C(1) of the ***Racial Discrimination Act 1975*** (Cth) renders acts unlawful only if they are done 'otherwise than in private'. An act is taken not to be done in private if it 'causes words, sounds, images or writing to be communicated to the public', 'is done in a public place' or 'is done in the sight or hearing of people who are in a public place': s 18C(2). A 'public place' includes any place to which 'the public' have access as of right or by express or implied invitation: s 18C(3). These matters cannot depend on subjective knowledge or intentions: cf. Applicants' outline of submissions (**AS**) [14].
4. The use of the phrase 'the public' in s 18C(2) and (3) contrasts with other sections of the *RD Act* which refer to 'the public *or any section of the public*': ss 11, 13. This contrast indicates that s 18C is concerned only with acts that are communicated to or done in places open to or in the vicinity of the general public or the public at large, not to a group of individuals in an otherwise private setting. This is consistent with the purpose of s 18C being to balance preserving freedom of speech against promoting 'social cohesion' by protecting a right to participate in public life free from unjustified offensive conduct based on race: see, e.g., explanatory memorandum for the *Racial Hatred Bill 1994* at p

- 1; second reading speech for the *Racial Hatred Bill 1994* (Hansard, House of Representatives, 15 November 1994, pp 3336-37).
5. Speeches A, B, C and E were delivered by Mr Haddad in person at the premises of the Al Madina Dawah **Centre**: affidavit of William **Haddad** sworn 9 May 2025 at [86], [99], [103], [111] (CB 162-66). The Centre is a standalone building which is manifestly a private property – it is surrounded by high black fencing and its entrance carries a sign that says ‘Private Property No Trespassing’: Haddad at [46]-[48] (CB 155-56), annexures WH-3, WH-4 (CB 611-17); affidavit of Enver **Neziroski** sworn 8 May 2025 at [15]-[17] (CB 144-45), annexures EN-1, EN-2 (CB 604-10). The attendees of the Centre are ordinarily entirely Muslims: Haddad at [45], [49]-[52] (CB 155-56); Neziroski at [20]-[24] (CB 145-46). There is no standing invitation to non-Muslims to attend the Centre; any non-Muslim wishing to do so must obtain specific permission from a member of the Centre’s governing Committee: Haddad at [49]-[52] (CB 156). All attendees at lectures or sermons (whether Muslim or not) must be prepared spiritually by participating in Islamic rituals: Haddad at [50] (CB 156); Neziroski at [23] (CB 145-46). Lectures and sermons are preceded by prayers in which attendees are also expected to participate: Haddad at [62]-[64] (CB 157-58). There will be no evidence that any of the speeches was attended or heard by anyone who was not a regular congregant of the Centre and a practising Muslim. Similarly, speech D was a conversation in a room between three individuals. In these circumstances, the Applicants will not establish that any of the speeches was delivered in a public place or within the sight or hearing of people who were in a public place: cf. *McIvor v Garlick* [1972] VR 129; *Inglis v Fish* [1961] VR 607. **Kaplan v State of Victoria (No 8)** [2023] FCA 1092 is not informative because these matters were not in issue: contra AS [15].
 6. The fact that each of the speeches was recorded and subsequently published does not convert them to being otherwise than in private: contra AS [14]. It is the *act* of delivering each speech – speaking the words – that must be otherwise than in private. It was not that act, but the different and subsequent act of publishing the speech, which caused Mr Haddad’s words to be communicated to the public: cf. s 18C(2)(a). It may be different if words are delivered to a conduit to the public such that communication to the public follows from the act of speaking as a matter of course (cf. *McGlade v Lightfoot* (2002) 124 FCR 106), but the evidence will not establish that this case was in that category.
 7. The claim against Mr Haddad must fail at this threshold.

A.2 Not reasonably likely to offend, insult, humiliate or intimidate

8. The Court must make an objective assessment of the likely effect of the relevant act upon an ordinary, reasonable member of the relevant group, whose characteristics are constructed having regard to the characteristics of the whole or a substantial part of the group and excluding those who are particularly sensitive or particularly robust: see, e.g., *Faruqi v Hanson* [2024] FCA 1264 at [224], [235]-[238]. The characteristics attributed to the ordinary and reasonable member of the group should be ‘consistent with what might be expected of a member of a free and tolerant society’: *Clarke v Nationwide News Pty Ltd* (2012) 201 FCR 389 at 403 [59]. The words ‘offend, insult, humiliate or intimidate’ refer to ‘profound and serious effects, not to be likened to mere slights’: see, e.g., *Faruqi* at [239].
9. Subjective evidence of the kind relied on by the Applicants may assist the Court in understanding the perspective of the ordinary, reasonable member of the relevant group: *Faruqi* at [241]. But the extent of the assistance to be gained from that evidence must be limited when the witnesses have been exposed to the content of the speeches in the abstract from the context in which they were actually delivered. This context must form part of ‘all the circumstances’ for the purposes of making the assessment under s 18C(1)(a). The question is not whether the words spoken by Mr Haddad were reasonably likely to offend, insult, humiliate or intimidate Jewish people in Australia when read or heard by such a person in the abstract, but whether the *act* of speaking them in the circumstances in which that act occurred was reasonably likely to have that result.
10. The relevant circumstances include the settings in which the speeches were delivered, as set out in paragraph 5 above. It is evident from those settings, and from the contents of the speeches, that they were directed only to a Muslim audience – for example, the lectures and sermons begin with prayer, contain Arabic phrases and reference Islamic texts and concepts: see also Haddad at [43], [83], [85] (CB 155, 161-62). These circumstances made it objectively unlikely that the act of delivering the speeches would have offended, insulted, humiliated or intimidated Jewish people in Australia. This unlikelihood is borne out by the fact that not one of the lay witnesses put forward by the Applicants observed the speeches directly, or came unguided across the recordings of those speeches at their original source. Instead, each of those lay witnesses heard about the speeches from another source such as *The Australian*, *Sky News* or a media monitoring site called the ‘Middle East Media Research Institute’ that ‘exposes

antisemitic footage’: affidavit of Data Scientist sworn 25 March 2025 at [16] (CB 115). None of the witnesses except for Data Scientist viewed any of the speeches in full until they were provided to them by the Applicants’ solicitors or a researcher from the Executive Council of Australian Jewry. There is no evidence that either of the Applicants or any of the lay witnesses understand Arabic. It is only because of what appears to have been an extraordinary pursuit of Mr Haddad and the Centre that any Jewish person in Australia was exposed to the speeches.

11. It cannot be the case that an act is reasonably likely to offend, insult, humiliate or intimidate a group because some members of the group have later been directed to or sought out a record of the act and then become offended by it. This conclusion reflects Mortimer CJ’s observation in *Kaplan* at [511], which should be accepted, that ‘[t]he group who could be reasonably offended, insulted, humiliated or insulted must have been persons able to hear the speech’.
12. In assessing the likelihood of the acts of delivering the speeches offending, insulting, humiliating or intimidating Jewish people in Australia, it is also necessary for the Court to view each speech as a whole, and in particular to view the yellow-highlighted passages relied on by the Applicants in the context of the other words spoken. Once this view is taken, it is apparent that almost all of the references made by Mr Haddad to Jews and Jewish people are to the historical Jews of Al Medina referred to in Islamic religious texts, or to the state of Israel: contra AS [24]-[26]. To the extent there were any references to Jewish people which are fairly viewed as going beyond historical Jews or the state of Israel (which is minimal), those did not refer to Australian Jews, and in any event were not at such a level as to make them reasonably likely to have profound and serious effects on an ordinary, reasonable Jewish person in Australia whose characteristics reflect life in a free and tolerant society accustomed to rigorous debate and a diversity of views. What ‘choices’ Mr Haddad may have made in formulating the speeches is not relevant to the objective test under s 18C(1)(a): contra AS [28].
13. For at least these reasons, the Applicants do not establish the element in s 18C(1)(a).

A.3 Not because of the race, national or ethnic origin of Jewish people in Australia

14. The question is why the act was done, and whether that included the race, colour, national or ethnic origin of the relevant group; see, e.g., *Kaplan* at [527]-[530]. Motive is not necessary but ‘may be relevant, indeed centrally relevant’: *Kaplan* at [526].
15. Mr Haddad’s evidence will be that he made each of the speeches:

- 15.1. in response to questions, concerns and distress expressed to him by members of the Centre's Muslim community about the events involving Israel and Palestine in Gaza since 7 October 2023: Haddad at [69]-[78] (CB 158-59);
- 15.2. for the purpose of providing support and spiritual comfort to members of the Muslim community by placing the current events in Gaza in a historical religious context: Haddad at [78]-[80], [84] (CB 159-61); and
- 15.3. not motivated and without intending to express any criticism or comment about Jewish people in Australia, by reason of their race or otherwise: Haddad at [85] (CB 161-62).
16. The evidence Mr Haddad will give to this effect is consistent with the content of the speeches, which, viewed fairly, refer almost wholly to historical Jews as recorded in Islamic texts or the state of Israel and contain no reference to Australian Jews. In these circumstances, the Court will not be able to conclude that the speeches were 'plainly calculated' to convey a message about Jewish people in Australia, or any message about their race or ethnic origin: contra AS [32].
17. For at least these reasons, the Applicants will not establish the element in s 18C(1)(b).

A.4 The exception in s 18D(b) applies

18. It is 'a matter of interest or concern to people at large' (*Eatock v Bolt* (2011) 197 FCR 261 at 359 [433]) that:
 - 18.1. 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
 - 18.2. 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.
19. The Applicants accept that these were genuine purposes in the public interest: AS [35].
20. The evidence will demonstrate that, in delivering the speeches, Mr Haddad was engaged in each of these purposes in good faith in the sense of doing so honestly and for a legitimate purpose, not an ulterior purpose, and taking 'a conscientious approach to the task of honouring the values asserted by the Act ... assessed objectively' as opposed to carelessly disregarding its effect on those who may be offended by it: see, e.g., *Faruqi*

at [296]. The evidence will also demonstrate that Mr Haddad's acts of delivering the speeches were reasonable in the sense of there being 'a rational relationship' between those acts and the purposes set out in paragraph 18 above in the sense that it was done in a manner calculated to advance that purpose, and not in a manner disproportionate to advancing the purpose: see, e.g., *Faruqi* at [294].

21. In relation to these objective elements of s 18D(b), the political commentary made by Mr Haddad is supported by a range of independent sources (Haddad at [81] (CB 160-61)), and the Respondents' and Applicants' experts agree that much of speeches A, B, C and E is founded upon religious texts. Where the experts disagree is in their perception of how Mr Haddad extrapolates on those texts, but the public interest in religious speech (or any other public interest) cannot be limited to the repetition of uncontroversial source material. In a society in which political communication and religious freedom are constitutionally protected, there must be room allowed in the conditions of reasonableness and good faith for opinions that are open to contention and debate, and even those that may be regarded as novel or fringe (without accepting that Mr Haddad's views have those qualities), provided they are rationally connected with a matter of legitimate public interest or concern: in this case, the delivery of religious and/or political commentary to one's community.
22. The requirements of reasonableness and good faith should not be construed as only allowing speech on topics of genuine public interest which is sanitised or blunted, or finely calibrated to minimise the potential for offence, or as closely controlling the manner in which someone can use religious texts to deliver a religious or political message: contra AS [36]-[38]. Otherwise s 18D would have little work to do when s 18C(1)(a) is already controlled by a requirement of reasonable likelihood. The climate of heightened emotion associated with the present political debate (cf. AS [21], [27]) makes it especially important to give the protections in s 18D their full force and effect.
23. It is also significant in assessing reasonableness and good faith that Mr Haddad delivered the speeches in the setting of the Centre, which had the characteristics set out in paragraph 5 above.

B. Claim against AMDC Inc

B.1 The Applicants will not establish attribution

24. The acts relied on by the Applicants against AMDC Inc are the publication of recordings of each speech on a Facebook page and a Rumble (video streaming platform) page.

AMDC Inc is an incorporated association governed by a committee of five members, of which Mr Haddad is one: Haddad at [43] (CB 155). There will be no evidence that Mr Haddad or any other member of the committee had any involvement in establishing or maintaining those pages or in uploading the identified speeches to the Facebook or Rumble pages, or any awareness of that having been done : Haddad at [54]-[55] (CB 156). The fact that the Facebook page on which the speeches were published bears the name of the Centre – which is a place, not just a legal entity – is not sufficient to establish that the relevant acts were those of AMDC Inc. The claim against AMDC Inc must fail for this reason.

B.2 Not reasonably likely to offend, insult, humiliate or intimidate or because of race, national or ethnic origin

25. It is accepted that the acts of publishing the speeches on Facebook and Rumble pages are taken to be done otherwise than in private because they caused words, sounds, images or writing to be communicated to the public. However, the nature and context of the pages remains important. The Facebook page consists of announcements about upcoming events and activities at the Centre, fundraising, Islamic teaching and other messages directed at Muslims: Haddad at [58] (CB 157), annexure WH-5 (CB 618). AMDC Inc does not promote either the Facebook or the Rumble pages: Haddad at [57] (CB 157). In these circumstances, it is objectively unlikely that either page would be accessed by anyone other than congregants and followers of the Centre or fellow Muslims in the local area with an interest in the Centre's activities. A Jewish person in Australia would need to deliberately seek out the pages, or they would need to be reported on by someone else, in order for such a person to be exposed to their content. Again, it cannot be concluded that the acts of publication on the Facebook or Rumble pages were reasonably likely to offend Australian Jews on this basis.
26. The publication of the speeches otherwise was not reasonably likely to offend, insult, humiliate or intimidate an ordinary, reasonable Jewish person in Australia for the reasons in paragraphs 10 to 12 above.
27. For similar reasons, the Applicants will not establish that the race, national or ethnic origin of Jewish people in Australia was a reason for the publication of the speeches. The natural reason for the speeches being published on the Facebook and Rumble pages was to make sermons and speeches delivered at the Centre accessible to those members of its community or fellow Muslims who were not able to attend in person. In those

circumstances, the Court would not conclude that the subject matter of the speeches relating to Jewish people (or any other part of their subject matter) was a reason for their publication. In any event, that subject matter did not relate to Australian Jews, as set out in paragraphs 12 and 16 above.

B.3 The exceptions in s 18D(c)(i) and/or (b) apply

28. There appears to be no dispute that the publication of recordings of the speeches on Facebook and Rumble was a fair and accurate report of the event of the speeches being made. There is no suggestion that the recordings published there were edited such that they did not provide a true representation of the speeches: see, e.g., *Creek v Cairns Post Pty Ltd* (2001) 112 FCR 352 at 360 [32].
29. The speeches were events or matters of public interest for the same reasons as set out in paragraph 18 above. It is in the public interest that members of the Centre's local community and the broader Muslim community are free to receive the views of recognised religious leaders about matters of religion, history and contemporary political debate, even if those views may be challenging to others who happen upon them. The Applicants' contrary assertion (AS [40]) is difficult to reconcile with their acceptance that the same matters are genuine purposes in the public interest (AS [35]).
30. The questions of reasonableness and good faith are informed by the matters set out in paragraphs 21 to 23 above, but also by the manner of publication being on web pages that were evidently focused on communicating with congregants of the Centre and other Muslims with an interest in the Centre's activities, not on disseminating the speeches to a wider audience. The publication of the speeches on those focused web pages was in proportion to the end of communicating them to that audience and not to those who may be offended by their contents. The natural inference from the circumstances of the publications is that they were done for this purpose and not any ulterior purpose.
31. For at least these reasons, the exceptions in s 18D(c)(i) and (b) apply.

C. Constitutional arguments

32. The Respondents' primary argument is that the constitutional protections of political communication and religious freedom inform the proper construction of ss 18C and 18D in the manner set out above. The Respondents contend that s 18C is unconstitutional only in the alternative, if and to the extent the Court concludes that the making or

publication of the speeches would have contravened s 18C(1) of the RD Act by reason of content which includes religious and political commentary.

C.1 Implied freedom of political communication

33. In *Faruqi* at [308]-[378], the Court as presently constituted engaged in a detailed analysis of whether s 18C was unconstitutional by reason of the implied freedom of political communication as recognised, for example, in *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520. The Respondents accept the principles expressed in *Faruqi* and the way they were applied in the circumstances of that case.
34. However, the circumstances of this case are different from those in *Faruqi*. The tweet that was the subject of *Faruqi* was political only in that it was directed from one politician to another, in reply to political points but not political in its own content: *Faruqi* at [330]. In contrast, the statements complained about by the Applicants include overtly political content about the events in Gaza – matters of intense public and political debate – which contain no connection with the Jewish race or ethnic origin other than that they refer to Israel. Speech D is the clearest example of this, but a number of passages in the other speeches emphasised by the Applicants fall into the same category. Further, Mr Haddad’s evidence will be that the whole of the speeches were designed to bring a religious historical perspective to that matter of political debate, in response to requests from his congregants to do so. Those are matters within the central conception of political communication.
35. If the Court concludes that speech such as this is proscribed by s 18C, including that the defences under s 18D are not available because of the narrow approaches to reasonableness and good faith urged by the Applicants, then the resulting burden on political communication is not slight as it was seen to be in *Faruqi*. Such a result would have a substantial chilling effect on discourse about an important political topic, and disproportionately so on discourse, particularly but not only from an Islamic perspective.
36. Accepting that s 18C has a legitimate purpose of deterring and eliminating and thus protecting members of the public from racial hatred and discrimination (*Faruqi* at [339]-[346]), such a restriction on political communication is not reasonably appropriate and adapted to advancing that purpose. There are available alternative measures, such as to enact a meaning of ‘reasonably’ in s 18D that reflects the approach set out in paragraphs 21 to 23 above. The marginal benefit in terms of protecting members of the public from racial hatred and discrimination that is achieved by the Applicants’ narrow approach

compared with an alternative approach that permits speech of the kind delivered by Mr Haddad is manifestly outweighed by the adverse effect that the narrow approach has on the implied freedom: cf. *Faruqi* at [361]-[377]. This is because s 18C would (as past cases have demonstrated) still protect against most forms of speech that might fairly be regarded as antisemitic; it would just leave room for criticism of a state and its historical antecedents, which has an inevitable connection with religious history, at a time when the conduct of that state is a matter of large political debate.

C.2 Section 116

37. Section 116 of the *Constitution* provides that the Commonwealth must not make any law ‘for’ (relevantly) prohibiting the free exercise of any religion. This is a ‘guarantee of religious freedom’ reflecting that ‘[f]reedom of religion, the paradigm freedom of conscience, is of the essence of a free society’: *Church of the New Faith v Commissioner for Pay-roll Tax (Vic)* (1983) 154 CLR 120 at 130.
38. 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 (the Respondents reserve the right to challenge this construction if the matter proceeds to the High Court): *Kruger v Commonwealth* (1997) 190 CLR 1 at 40, 86, 132, 160. A purpose of s 18C is to prohibit speech identified as manifesting racial hatred or discrimination, subject only to the protections in s 18D. Section 18D does not expressly or, on the Applicants’ case, impliedly protect speech that constitutes the free exercise of any religion. If the Applicants’ case is accepted, the speech prohibited by s 18C includes speech that the experts agree is sourced directly in Islamic religious texts, and the manner in which adherents to the Islamic faith may speak about those texts and their religious beliefs is closely controlled. This constraint on the free exercise of religion is not merely an unintended or incidental effect of a law having a different purpose (cf. *Kruger*); it is inherent in or encompassed by the purpose of prohibiting racially motivated offensive speech without protection of religious speech.
39. In those circumstances, it can be said that a purpose of s 18C is to prohibit speech that includes the free exercise of any religion, contrary to s 116 of the *Constitution*.



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5 June 2025



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A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

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