Model Complaint Form

Vakras & Raymond ICCPR breach(es) by Australian State

For communications under:

- Optional Protocol to the International Covenant on Civil and Political Rights

Please indicate which of the above procedures you are invoking: ICCPR (*with reference to ICESCR and ICERD*)

Date: 28 July 2017

I. Information on the complainant 1 (1st Author):

Name: Vakras First name(s): Demetrios

Nationality: Australian Date and place of birth: [redacted], Melbourne Australia

I. Information on the complainant 2 (2nd Author):

Name: Raymond First name(s): Lee-Anne

Nationality: Australian Date and place of birth: [redacted], Melbourne Australia

Address for correspondence on this complaint: [redacted], Melbourne, Australia.

email vakras@iamsurreal.com

leeanneart@iamsurreal.com

Submitting the communication:

on their own behalf: Demetrios Vakras & Lee-Anne Raymond

II. State concerned/Articles violated

Name of the State against which the complaint is directed:

Australia

Articles of the Covenant or Convention alleged to have been violated:

INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS
Article 2, (1), (3) (a) and (b); Article 14 (1) [1];
Article 17 (1), (2); article 18 (1); Article 19; Article 26 [2];

The Authors make reference to the **related Articles of the:**
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL and CULTURAL RIGHTS,
Article 2 (2) (pertaining to discrimination as to race, language, religion, political opinion); Article 15 (1) (a), (c) (pertaining to reputational protection) [3] and, 15 (3) (Freedom of expression) [4];

CONVENTION on the Elimination of All Forms of Racial Discrimination,
Article 1 (1) (which provides a definition of the discrimination prohibited by Articles 2 and 26 of the ICCPR, *as the making of a "distinction"*); as well as *Article 2 1 (b)* prohibiting the defending or supporting of discrimination and *Article 5 (a), and (d) (iii), (vii), (viii), (e) (vi)*.

III. Exhaustion of domestic remedies/Application to other international procedures

All domestic remedies ending with the High Court of Australia (HCA) have been exhausted by the Authors.

The Authors, Surrealist Artists, who on exercising their right to express their ideas in images and words – which included the ideas of the 1st Author's ancestral heritage (Greek mythology), where interpretation of those ideas relied on words written in Greek script – and where both Authors objected to an attack to their honour and reputation on having expressed their ideas (partly due to the use of Greek language), were penalised by the States Parties for doing so.

The Authors made 3 Applications to the HCA:

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[1] Article 14 (1) mandates for a fair trial in "**a suit at law**" (our emphasis) – and is not limited to criminal trials alone. This is supported by the interpretation of the same clause given by the States Party to this clause in the **CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006 - SECT 24**, being for a "Fair Hearing", as is explained in the Bill presented to State Parliament for legislating the statute into law. The Bill [**ANNEXURE 1 "Charter of Human Rights and Responsibilities Bill"**] at pp. 17-18, interprets Article 14 (1) of the ICCPR as "Clause 24... establishes that a person…party to a civil proceeding has a right to have the charge or proceeding decided by a competent, independent or impartial court of tribunal after a fair and public hearing."

[2] "UN GENERAL COMMENT NUMBER 34 OF 2011", Human Rights Committee 102nd session Geneva, 11-29 July 2011
General comment No. 34
Article 19: Freedoms of opinion and expression
General remarks, NUMBERS 7, 9, 11, 12, 25, 47, 48, 49.

[3] "COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS Thirty-fifth sessionGeneva, 7-25 November 2005"
General Comment No. 17 (2005), E/C.12/GC/1712 January 2006,
"moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant)"
Remark numbers, 1, 2, 3, 12, 30, 31, 41, 43.

[4] The referencing of the General Comment to the ICESCR pertains to related protection under Article 18 1, 2, 3 of the ICCPR.
Committee on Economic, Social and Cultural Rights Forty-third session 2–20 November 2009
General comment No. 21, "Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)"
Remark numbers, 3, 19 "...The Committee also wishes to stress the need to take into consideration existing international human rights standards on limitations that can or cannot be legitimately imposed on rights that are intrinsically linked to the right to take part in cultural life, such as the rights to ... freedom of thought, conscience and religion, to freedom of opinion and expression...", 21, 22, 44, 49 (a) (b), 54 (a).

(i) Two Applications Seeking Leave to Appeal decisions of the lower Victorian-state Courts [5], submitted 20 January 2017 which were dismissed on 6 April 2017; and

(ii) One Application *invoking* of the Original Jurisdiction of the HCA according to s 75 (v) of the ***Commonwealth of Australia Constitution Act*** ("Constitution") seeking mandamus, certiorari and remedy, against the domestic courts of Federal jurisdiction, submitted on 4 January 2017 ("**M3 2017**"). This Application had gone without any response until 9 June 2017 (received by the Authors on 14 June 2017), one week after the Authors had submitted an earlier Petition to Geneva (which the Authors subsequently withdrew). The "M3 2017" application was initially dismissed as an "Abuse of Process" on 30 June 2017 [6], until the grounds for the dismissal were realised to be in error after the 1st Author's "submission". Nevertheless it was dismissed on 12 July with the court refusing to address the jurisdictional errors referred to in the Application.

The Appeals sought in the HCA against the Victorian Supreme Court are appended as **ANNEXURE 2 "23_Special__Leave for Appeal-complete-searchable.compressed"**
The Application to Show Cause, Affidavit, Summary, and Summons against the Federal courts are appended as **ANNEXURE 3 "combined_HCA_Affidavit_Mandamus_Submission_Summons_04Jan2017.compressed"**
The dismissal of the Appeals sought in the HCA of the Victorian Supreme Court decisions are appended as **ANNEXURE 4 "Vakras & Anor v Cripps & Anor [2017] HCASL 87 88 (6 April 2017)"**
The dismissal of the Application to Show Cause and Mandamus is appended as **ANNEXURE 42, "HCA Nettle dismissal of M32017-opt-ocr.compressed"**

ACRONYM LIST

FCA	**–**	Federal Court of Australia
FCCA	**–**	Federal Circuit Court of Australia
HCA	**–**	High Court of Australia
HRC	**–**	Human Rights Commission
SCV	**–**	Supreme Court of Victoria (Alternately VSC)
VCAT	**–**	Victorian Civil and Administrative Tribunal
VSCA	**–**	Victorian Supreme Court of Appeal

IV. Facts of the complaint SUMMARY

(1) The Authors make the following declaration:

- we have the right to express our ideas in images and words (art);
- we have the right to not have an attack made as against our ideas unrelated to the ideas expressed in our art;
- we have the right to defend ourselves (object and protect) against any such attack being made that is prejudicial to our honour and reputation;

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[5] The SCV heard two matters as one: our claim (that had begun at the VCAT *tribunal*) over the gallery who hosted the exhibition breaching their contract in how they exhibited our art; and, that the actions we described as breaching the contract were claimed by the gallery and its owner as defaming them instead. With the exception of the orders sought, the Leave for Appeal with regard to both matters made to the HCA are identical.

[6] "Mr Vakras, in case you did not understand that, the reason it is being dismissed is because your application for special leave to appeal from the orders of the Federal Court was rejected by two judges after you had filed this application... You do not get a second go. It is what is called an abuse of process to attempt to do so." [**ANNEXURE 41 "Vakras v Federal Court of Australia & Ors - [2017] HCATrans 139"**]

- we (the 1st Author) has the right to not be unlawfully discriminated against on racial grounds where the resulting consequences are detrimental to both Authors where the States Parties actions are not merely in violation of the ICCPR, but are *antipathetic* to everything it stands for.

(2) The Authors are surrealist visual artists [7] . The 1st Author has been producing surrealist art since the late 1970s, the 2nd Author since the 1980s. Both Authors have exhibited their surrealist work yearly since 1991 until 2009. The last exhibition held by either Author was in 2010. Neither Author now produces art, let alone is capable of holding an exhibition, as a direct consequence of the assault on their art by an art gallery and its owner in which the States Parties enjoined.

(3) In 2008 both Authors successfully applied to hire a gallery to exhibit their work after a **vetting process conducted by that gallery**. The Authors' exhibition was held at that gallery in 17 June - 5 July 2009.

(4) Robert Cripps, the owner of the gallery ("Guildford Lane Gallery" – which was the trading name of "Redleg Museum Services P/L") [8] took actions as against both Authors, reacting with hostility to the ideas the Authors expressed in their art *after the exhibition had opened to the public*.

(5) Cripps declared the Authors' ideas to be incomprehensible. Notwithstanding the "incomprehensibility" of the Authors' ideas, he nevertheless "disagreed" with what the Authors expressed – "the whole lot" – and on those grounds attacked both Authors' reputation.

(6) On the opening night of the exhibition (18 June 2009) Cripps made a declaration of his political feelings regarding Palestine, irrelevant to the exhibition material, and claimed that the exhibition was "anti-Palestinian" and the Authors "racist", without ever providing a cogent rationale that could establish a link between the Authors' material with Palestine or with racism.

(7) Premised on the stated "Palestine association", foreign to the exhibition, Cripps/Gallery took additional action against both Authors, posting multiple disclaimers throughout the exhibition space and a large "WARNING!" outside the entry to the Authors' exhibition, presenting the Authors and their ideas (expressed in their art) as being sufficiently objectionable to warrant actions that are without precedent for an art exhibition. These actions belittled and humiliated the Authors to the public. Additionally Cripps/ Gallery imposed restrictions to the Authors' entry into the gallery to prevent their capacity to defend their art – the personhood expressed in their art – and their person.

(8) The Authors' objections to the actions by Cripps/Gallery were made in person and email, and the contents of those objections were published by each Author to their own artist-website.

(9) Notwithstanding that the State Party has signed into domestic law Article 15 1 (c) of the ICESCR (s 195 AK, Copyright Act 1968) which gives the Authors the right to object to actions prejudicial to their honour and reputation done with regard to works of which they are author, the States Parties (the SCV, Beach J.) misapplied ***Common Law***, countervailing the Authors' rights, and permitting Cripps/Gallery to run a defamation lawsuit as against both Authors instead. The States Parties agreed with the causal chain proposed by Cripps/Gallery where the entire controversy was corollary to the Authors' ideas expressed in their art, their exhibition. The Authors' objections and defences to the actions done by Cripps/Gallery to their art and exhibition were determined by the States Parties as being capable of lowering the estimation of Cripps/Gallery with the corollary being they defamed Cripps/Gallery.

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[7] Surrealism is an art movement that evolved out of Dada in the 1920s. Its history is established and recognised [**ANNEXURE 5 "NGV surrealism"**].

[8] Redleg Museum Services P/L, which traded as "Guildford Lane Gallery", was a company with one director, Cripps; one secretary, Cripps; and one shareholder, Cripps. Cripps and the Gallery, "Cripps/Gallery", are treated as the same entity.

(10) After having predetermined the matter to be a defamation under ***Common Law***, Cripps/Gallery were given an unfettered right to construct "imputations" as they saw fit against both Authors that were claimed to arise from the Authors' written objections to the actions done to them.

(11) The most outrageous imputation permitted was the "Hitler imputation". This imputation relied on the 1st Author's exhibition material being about Adolf Hitler's Mein Kampf, and its known association with Genesis, Deuteronomy and Leviticus REFER, exhibition photographs [**ANNEXURE 6 "vakras art in situ 2009 essays.compressed"**] And claim 5.32, 5.33, 5.34, 5.35, 5.42 of this Petition].

(12) The 1st Author, in response to the "Palestine association" with the Authors' exhibited art, made reference to historic material, *primarily Bundesarchiv photographic records, which document the involvement of Hitler with Palestine to which there is no prohibition, to access, or to reference,* ***and which is not information about the party claiming to be defamed by the Author's references to it.*** It was nevertheless permitted by the States Parties to run as being defamatory of Cripps/Gallery though not about him or his gallery, *where the States Parties permitted Palestine, irrelevant to the Authors' art, to intrude in the assessment made of their art, thereby entrapping the Authors by their need to make reference to it in order to defend the attack made against them*. [9]

(13) The matter went to trial in March 2014 before Emilios Kyrou in the SCV as a "defamation".

Notably, during the trial Cripps made an attack on the 1st Author's use of "a different script" (Greek) being used in the 1st Author's written material, and that the presence of "another script" (not the Latin script used for English) was in part the cause for the posting of disclaimers and "WARNING!" where this was purported to aid the irrational conclusion that the entire exhibition was "anti Palestinian", "racist": "the Whole lot". Cripps/Gallery's counsel emphasised the distinction made of the 1st Author, with the presence of Greek words in Greek script in the exhibition content, permitting for the 1st Author to be rebuked for his failure to "realise" that unlike himself "most people are not Greek".

(14) The 1st Author lodged a complaint with the Human Rights Commission (10 June 2014) regarding the distinction made of him in breach of ss. 9 and 13 of the Race Discrimination Act 1975 (RDA).

(15) On 20 June 2014 the States Parties delivered a finding as against both Authors which the Authors appealed. **The VSCA** (in July-September 2015) **left the following undisturbed**:

(a) that the Authors could not demonstrate that the actions by Cripps/Gallery caused them any pecuniary injury and could not therefore demonstrate their reputations being sullied [10] – in which their failure to prove pecuniary injury was said to constitute defamation of Cripps/Gallery.

(b) that there was no implied duty in the contract (Hire Agreement between the Authors and Cripps/Gallery) to support the Authors' expectation that Cripps/Gallery would act in "good faith":

(i) to deliver services that one would expect from an art gallery (the art would not be exhibited in a way prejudicial to the Authors' honour and reputation), or that

(ii) Cripps' general conduct would preclude inappropriate actions towards gallery visitors, or

(iii) act as against both Authors upon making an unlawful distinction of the the 1st Author.

(c) Specific to this facet of the finding, it was proclaimed that:

(i) no part of the contract precluded the posting of disclaimers and that their having been posted did not breach the contract;

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[9] The first Author's reference to Bundesarchiv material was made in objection to attacks made against the art in an email dated 27 June 2009 [**ANNEXURE 7 "Addenda to_ a misrepresentation of our art + rebutal"**]; and the same material, posted on-line sans the Bundesarchiv photographs, was published by the Supreme Court of Victoria itself, **March 2014** – Kyrou, **Cripps & Anor v Vakras & Anor [2014] VSC 110 (25 March 2014)** http://www.austlii.edu.au/au/cases/vic/VSC/2014/110.html

[10] The requirement for the Authors to demonstrate pecuniary injury in order to show that their reputation was sullied by the actions of Cripps/Gallery was a requirement introduced by the States Parties.

(ii) that the 1st Author, identified to be of Greek background during trial, had used "foreign words" (Greek words in Greek script), thereby opening himself and the exhibition to the rebuke and reaction by Cripps/Gallery which took the form of disclaimers (and "WARNING!"), which the contract did not prohibit;

(iii) that Palestinians are "oppressed by Jews" and "Muslims react to what Jews do to them" **Note:** ***the Authors strenuously object to this expression of antisemitism by the States Parties*** – and *notwithstanding that Palestine was, and for ever will remain, irrelevant to the Authors' exhibition*,

(iv) that it was found both Authors had been insensitive to Palestinians, both in their exhibition material and then subsequently by their refusal to agree with the antisemitic views of Cripps/Gallery and the States Parties (Kyrou).

(16) The causal chain constructed by the States Parties ran thus: the Authors' own ideas expressed in their exhibition which included Greek words written in Greek script was insensitive to Palestinians – and the Authors had therefore, by their insensitivity, brought the situation upon themselves, had only themselves to blame, and defamed Cripps/Gallery by writing about what was done to the exhibition.

(17) On 20 June 2014 the HRC advised the 1st Author of their acceptance of the complaint of race discrimination by Cripps/Gallery. Five hours later Kyrou delivered the judgment (point 15) finding the racial distinction made of the 1st Author to be legitimate, thus justifying disclaimers (and "WARNING!"), at Reason [146 (h)], none of which was prohibited by the contract.

(18) The HRC, on 25 August 2014, Terminated the 1st Author's complaint on the grounds that the matter could not be "reconciled", advising that the matter would require progress to the Federal courts. The Termination was premised on submissions to the HRC by Cripps/Gallery denying that at any stage during the trial or exhibition did any question of the 1st Author's Greek heritage arise nor over the use of Greek language, and that the 1st Author's complaint to the HRC was "an abuse of process" and "yet another attack apart from the defamatory materials published" by him (notwithstanding Kyrou at [146 (h]) having found, on the testimony of Cripps, that such a distinction had been made). The 1st Author filed his Application for Race Discrimination with the Federal Circuit Court (FCCA) on 21 October 2014.

(19) The Application by the 1st Author to the FCCA for a claim of Race Discrimination and for remedy to the injury to reputation suffered by the Authors (protected under s 195AK Copyright Act 1968) was ***dismissed on 27 January 2016 without going to trial*** on an Interlocutory submission by Cripps/Gallery that the Authors' claim was an abuse of process on grounds that the matter had been finalised by the Supreme Court of Victoria (Kyrou at [146 (h)], ruling that the 1st Author had used "foreign words").

(20) FCCA judge, Burchardt, Issue Estopped the suit on the face of the Supreme Court of Victoria judgment (which had found that the distinction of the 1st Author which resulted in the disclaimers and "WARNING!" – which was prejudicial to the honour and reputation of both Authors – was not an action prohibited by the contract). *The Authors point out that their own interlocutory to add the 2nd Author in the reputational complaint was also dismissed*.

(21) The FCCA finding, being made on an interlocutory submission, precluded the Authors from automatically appealing it. The 1st Author made an application seeking Leave to Appeal the FCCA decision in the FCA which that court dismissed on 15 August 2016. The FCA dismissal, being with regard to an interlocutory judgment, precluded the Authors seeking Leave to Appeal it in the High Court.

(22) The 1st Author invoked the original jurisdiction of the HCA under s 75 (v) of the Constitution [11] with an "Application to Show Cause" seeking Mandamus and Certiorari, supported with an Affidavit, a Summons, and a Submission on 4 January 2017. A "hearing" was first scheduled by the HCA on 30 June 2017 in which the Application was summarily dismissed *without a hearing*. That dismissal was subsequently "reserved" after the 1st Author questioned the grounds for the dismissal in response to the judge's query as to whether he understood the charge of "abuse of process" levelled against him by the judgement. Nettle nevertheless "affirmed" the correctness of the FCCA and FCA decisions and dismissed the Application on 12 July 2017 [**ANNEXURE 42**]. In summary the HCA (Nettle) affirmed, inter alia that:

(a) the 1st Author, failed to prove "anti-Greek" motivation for the distinction;
(b) that reasons other than the distinction were just as likely reasons for posting disclaimers and a "WARNING!" (prejudicial to honour and reputation);
(c) that the 1st Author unreasonably refused to modify his use of Greek words in Greek script in the art exhibition knowing that "others are not Greek";
(d) that the question of disclaimers and (WARNING!) had been properly settled in the State Supreme court as not breaching the contract, (refer point 20 of summary) and estopping further action on the basis of the "finality" of that decision;
(e) that the Authors were not "dispossessed" of moral rights – by actions prejudicial to honour and reputation – purported to be because they continue to "own" them (missing the Authors' point).

In addition, Nettle found that in lieu of pursuing remedy for damages for actions prejudicial to honour and reputation in the FCCA, the Authors should instead have prosecuted a claim for damage to the worth of their copyright in the SCV. The 1st Author was ordered to pay costs.

IV. Facts of the complaint CHRONOLOGY

CHRONOLOGY		
Year	**Day/Month**	**Event**
2008	29 October	"the Gallery" accepts the Authors' proposal for a Surrealist exhibition for June/July 2009.
2009	17 March	Authors sign Hire Agreement. Clause 11 stipulates the Gallery takes no commission on sales.
	15 May	Authors make full up-front payment of AUD$4,460.00 to Cripps/Gallery to hire the space ("Gallery").
	15–16 June	Authors set up and hang exhibition
	17 June	Exhibition opens to the public
	18 June	Exhibition Opening Night. Art on exhibition publicly objected to by Gallery owner (Cripps). The Art, artists and exhibition are proclaimed as "anti Palestinian" and "racist".
	21 June	Multiple disclaimers as well as a large "WARNING!" posted by Gallery – without advising the Authors.
	22&23 June	(Gallery closed to public). Authors advised by a visitor to the exhibition that the Gallery had posted disclaimers.

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[11] **COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT - SECT 75**
Original jurisdiction of High Court

In all matters:

(i) arising under any treaty;

...

(v) in which a writ of Mandamus or prohibition or an injunction **is sought against an officer of the Commonwealth**

CHRONOLOGY		
Year	**Day/Month**	**Event**
	24 June	Both Authors "visit" Gallery to photograph disclaimers & "WARNING!". The claims by Cripps of 18 June – being that the art and the Authors are "racist" and "anti Palestinian" – are repeated and cited as the reason for the posting of disclaimers so as to "protect the Gallery" as against the Authors' art.
	25 June	The Authors, in an email titled "a misrepresentation of our art", write to object to the accusations made against them and their art by their accusers (the Gallery, management, staff and volunteers) and the treatment of their art resulting from the accusations.
	26 June	Cripps/the Gallery's responding email "disagrees" with the entirety of the Authors' emailed complaint and imposes oppressive and restrictive conditions for their entry, to which the Authors refused to agree.
	5 July	The Authors collect paintings at close of exhibition.
	7 July	"Acquittal of business". Gallery promises payment of bond and money from the one sale "within 2 weeks of the exhibition closing date".
	22 July	Cripps/the Gallery fail to pay the monies. Gallery pledges "it will be sorted out ASAP".
	4–5 August	Multiple emails demanding payment of monies sent to Cripps/the Gallery by both Authors.
	6 August	Cripps emails the Authors, promises to return monies conditional on Authors' agreeing to "take no legal action" against him.
	10–13 August	After legal advice (from Andrew Panna, "ArtsLaw"), being that such an agreement, procured "by duress" would be worthless, the Authors agree. The money is returned on 13 August 2009.
	21 August	1st Author posts an entry on the Exhibitions page of www.vakras.com , and posts two further separate pages on the website to elaborate on the exhibition experience: being the "Guildford Lane Gallery" page, and the "New-left Nazi" page.
	September	2nd Author adds a link to a posting from the "Exhibitions" page found on www.leeanneart.com defending the art and exhibition against accusations and actions taken against it by Cripps/Gallery.
2010	May	Artist Courtney Kim an exhibitor at the Gallery (unrelated to the Authors' exhibition) emails 1st Author complaining of Cripps' sexual harassment of "female staffs".
2011	22 February	Both Authors receive letters from Cripps threatening action under s 474.17 of Crimes Act cth, for "harassment using a carriage of service".
	1 April	Writ served on the Authors by Cripps and Redleg Museum Services P/L trading as "Guildford Lane Gallery", claiming "injurious falsehood" (later modified to defamation) over everything written by the Authors.
2011-2014		Multiple legal exchanges and multiple court hearings. Multiple unnecessary delays caused by the court in bringing the matter to trial.
		Notable Hearings 2011 -2014 **18 May 2012** VCAT merger of the Authors' claim against Cripps/the Gallery for breach of contract (in the way the exhibition was presented to the public) **7 September 2012** Beach J, (who at this stage was presiding over the defamation claim), ordered the 1st Author supply specifics to the page being the "New-Left Nazis".

CHRONOLOGY			
Year	**Day/Month**	**Event**	
2014	17–26 March	SCV trial: Cripps/Gallery prosecute Authors for "defamation" over exhibition; Authors prosecute Cripps/Gallery for breach-of-contract over exhibition. "**Cripps v Vakras [2014] VSC 279**"	
		Human Rights Commission (HRC)	(Federal Jurisdiction)
	10 June		*Complaint made to HRC about the racial distinction made of the 1st Author - where his use of Greek words were said to have led to the requirement for a disclaimer of liability and "WARNING!" and that the use of Greek permitted Cripps/the Gallery to demand the Greek words be translated and re-written into English using the "English alphabet" (sic).*
	20 June	Adverse judgement against the Authors in the SCV defamation trial. **Notable:** "foreign words" (Greek words written in Greek script - [146 (h)]) gave rise to disclaimers – as, in the absence of "implied terms to act in good faith" at reason [240] & footnote 66, in the contract (Hire Agreement), there was no prohibition to doing so.	
	13 July	The Authors make "Irredeemable Bias Complaint" as against the States Parties, Kyrou (judge) to Chief Justice of the SCV (Marilyn Warren), Attorney General of Victoria, and Governor of Victoria.	
	21 July	(Shortly prior 21 July) The Authors discover that the SCV's entire on-line complaints-procedure has been removed. Authors make a further complaint by email to Attorney General about Kyrou, and also as against Warren.	
	26 July	The Authors' home/studio (against which the Authors had mortgaged AUD $470,000.00 to fund their legal representation and court costs) is sold at auction.	
	28 July	Kyrou, SCV, delivers sealed orders giving effect to 20 June finding against the Authors.	
		Human Rights Commission (HRC)	(Federal Jurisdiction)
	5 - 7 August		*(5 August) Cripps makes submission to HRC claiming that at no time was the Author's racial background and use of Greek at issue and* that the 1st Author's complaint to the HRC was "an abuse of process" and "yet another attack apart from the defamatory materials published" by him... *The Author responds on 5 and 7 August, supplying the HRC with Supreme Court transcripts.*
	11 August	Authors' Appeal of the SCV findings lodged in the VSCA.	
		Human Rights Commission (HRC)	(Federal Jurisdiction)
	20 August		*Cripps' makes further submission to HRC claiming* "there is absolutely no substance or merits in his allegations"

CHRONOLOGY			
Year	**Day/Month**	**Event**	
	25 August	Cripps/the Gallery commence Bankruptcy proceedings against the Authors and bring action for a "Warrant of Seizure and Sale" against the Authors' home/studio, notwithstanding it had already been sold, with settlement2 weeks away. The Authors were not advised of these actions by Cripps/ Gallery.	
		Human Rights Commission (HRC)	(Federal Jurisdiction)
	25 August		*"Termination" by the HRC of the Race Discrimination complaint on the grounds that the dispute could not be reconciled by the Commission. Cripps' submission to HRC was that at no time was the 1st Author's racial background and use of Greek at issue, notwithstanding Kyrou's finding at 146 (h), based on Cripps' testimony in the State of Victoria court, that use of "foreign words" gave rise to the disclaimers.*
	4 September	Supreme Court action by the Authors against the Bankruptcy and Warrant for Seizure and Sale by Cripps/the Gallery. These actions against the Authors are lifted 6 days prior to the settlement of the sale of the Authors' home/studio by court order permitting for the sale to proceed and for the Authors to pay the damages awarded to Cripps/the Gallery as ordered by Kyrou. (Court Order: Hargrave, No. S CI2011 1484, 4/9/2014) **ANNEXURE 8 "Hargrave ordrs 4 09 2014.compressed"**	
	10 September	Settlement of sale. Damages paid to Cripps/the Gallery. The damages paid being AUD $380,900.00. (After subtracting from the Authors' sale the AUD $381K, for the penalty to Cripps, AUD$470K, legal fees paid, and AUD $20K, for the Realtor costs, the Authors are plundered of their entire life's savings and left without funds)	
		Federal Circuit Court of Australia (FCCA)	(Federal Jurisdiction)
	21 October		*1st Author (self-represented) makes an Application to the Federal (jurisdiction) Court, the FCCA, to prosecute the race discrimination by Cripps/the Gallery, which included a claim for damages to the reputational injury caused by the posting of disclaimers/ "WARNING!". (see attached: Statutory excerpts - RDA ss 9, 13, 18 & Moral Rights 195 AK)* **ANNEXURE 9 "Moral Rights Copyright Act RDA parts"**
2015		Federal Circuit Court of Australia (FCCA)	(Federal Jurisdiction)
		2 January	*FCCA arranges for mediation in April.*
	5–6 March	Appeal of the 2014 Supreme Court finding is heard at the Supreme Court of Appeal Victoria.	
		Federal Circuit Court of Australia (FCCA)	(Federal Jurisdiction)
	28 April		*At mediation Cripps denies making any distinction and that the Author owes him for costs and damages. The FCCA Registrar orders "points of claim" be submitted by the 1st Author to explain what is meant by "Moral Rights" and the reputational protection afforded (see 195AK [refer previous ANNEXURE 9]).*

CHRONOLOGY			
Year	**Day/Month**	**Event**	
		28 May	*Filing of "Points of Claim" per FCCA Registrar's orders. Claim is co-signed by 2nd Author*
		1 July	*Cripps/the Gallery (represented) respond to the Author's "Points of Claim" filed in the FCCA claiming that Greek words could have been "racist" and "anti-Palestinian"*
		21 July	*Cripps/the Gallery (represented) submit an interlocutory application to the FCCA for the Author's Application to be struck out.*
		July - November	*Multiple FCCA appearances and pre-trial "mentions" to decide whether the Author had a "justiciable" complaint, despite the admission to making a distinction.* *10 August 2015 - An Interlocutory Submission to include the 2nd Author to remedy to reputational injury (Moral Rights) component of the claim.* *[**ANNEXURE 45**]*
	4 September	The VSCA deliver sealed "Order of the Court of Appeal" that Cripps/the Gallery repay the Authors AUD$284,869.00 + 5% simple interest.	
	September - November	The Authors attempt to recover monies the VSCA, at **Reason [9],** ordered be returned on grounds that **the Authors are "entitled to recover the sums which on appeal have been held to be unjustifiably extracted"**. Steps to this end were undertaken on: 8/9/2015, 25/9/2015, 25/11/2015, being for "Letter of Demand", "Statutory Demand", re-serving orders with a view of prosecuting "Contempt in the face of a court order".	
2016		Federal Circuit Court of Australia (FCCA)	(Federal Jurisdiction)
		27 January	*Without going to trial, the judge dismisses the Authors' claim. Based entirely on Cripps/Gallery submissions that the race discrimination, and attack to Authors' reputation (disclaimers and "WARNING!") were "settled" in the Supreme Court of Victoria which had found there was no prohibition to such actions in the contract. "Issue Estoppel" is made, declaring the matter of the disclaimer (and WARNING!) had been decided in the Supreme Court of Victoria in 2014, and that the 1st Author had failed to show "motivation" for distinction made of him.*
		February - June	*Several submissions, Court appearances seeking leave to appeal the FCCA decision in the Federal Court of Australia (FCA).*
	26 April	Cripps/the Gallery (Redleg Museum Services P/L, trading as "Ruby's Music Room") make postings on their social media (instagram), including a photograph of the business assets being packed and moved into storage using "THATS QUICK REMOVALS AND STORAGE", to advise that the business is "relocating".	
	May	New solicitors are engaged by the Authors to recover the monies, per the Supreme Court Appeal orders of 4 September 2015 using limited funds saved in interim.	

CHRONOLOGY			
Year	**Day/Month**	**Event**	
	7 July	Cripps declares personal bankruptcy (the Authors receive notice after 19 July 2016); Cripps, the sole director, sole secretary and sole share holder of "the Gallery" (Redleg Museum Services P/L, trading as "Ruby's Music Room"), removes himself from the position of director, and secretary, but remains the sole shareholder with shares declared to have the value of $0.00 in a company that has no responsible human entity behind it. [**ANNEXURE 10 "Cripps declares bankrupt-rdcd.compressed"**]	
		Federal Court of Australia (FCA)	(Federal Jurisdiction)
	15 August		*Seeking Leave to appeal the FCCA decision in the FCA dismissed on grounds, inter alia that:* • *the 1st Author failed to show how he was "vilified", despite no such claim having been made by him.* • *The judge, Davies, on her own motion, refused to consider the complaint as discrimination under ss 9 and 13 of the Race Discrimination Act (Article 1 of the CERD), instead deciding the matter under 18C (vilification in a public place);* • *Davies ridicules the 1st Author's claim as "fanciful".*
2017		High Court of Australia (HCA)	(HCA - in regard to the Federal Jurisdiction)
	4 January		*The 1st Author invokes the Original Jurisdiction of the HCA on 4 January 2017 against the FCA dismissal seeking Mandamus and Certiorari.*
	20 January	Application by Authors (self-represented) made to the HCA Seeking Leave to Appeal the judgements inter-alia of the SCV and VSCA.	
	6 April	Without a hearing, the HCA dismiss the Application Seeking Leave to Appeal, on the grounds of the "futility" of the Authors' pursuit.	
	2 June	Authors lodge their petition with Geneva, which was subsequently withdrawn on 14 June 2017 following notification by regular mail (dated 9 June) that the HCA would convene a "hearing" on 30 June 2017, of "M3 of 2017".	
	30 June	The HCA (Nettle) summarily dismisses the Mandamus as an "abuse of process". Nettle invites the 1st Author to answer whether he understands the charge against him for "abuse of process". The 1st Author informs the court of error, and the judge adjourns to "re-consider".	
	12 July	"Reconsideration" does not alter the outcome. The HCA fails to address the Mandamus. The HCA "affirms" correctness of FCCA and FCA decisions (see point 22 of the "summary"), dismisses the Application and orders the 1st Author pay costs.	
	28 July	Authors modify and re-lodge their petition in Geneva.	

THE COMPLAINT

The Authors make six claims as against the State and the States Parties in violating rights found in the ICCPR (with reference to the ICESCR) and one claim by the 1st Author Under the ICCPR (with reference to the CERD).

These are:
1: **Freedom of expression regardless of frontiers*;***
2: **The right to hold an opinion: religion or belief*;***
3: **The right to equal treatment regardless of political opinions** - ***no discrimination against one for holding a political opinion;***
4: **The right to not have one's reputation Unlawfully Attacked*;***
5: **The Right to a Fair Trial*;***
6: **The Right to Effective Remedy – notwithstanding that the violation has been committed by persons acting in an official capacity*; AND,***
7: **The Right to not be racially discriminated against.**

The Authors would like point out that the claims are interrelated and should not be read in isolation.

[Claim 1] ICCPR Article 19
2. Everyone shall have the right to ***freedom of expression****; this right shall include* ***freedom to seek, receive and impart information*** *and ideas of all kinds, regardless of frontiers, either orally,* ***in writing or in print, in the form of art****, or through any other media of his choice.*

> ***(with reference to) ICESCR Article 15***
> 3. The States Parties to the present Covenant undertake to **respect the freedom indispensable for** scientific research and **creative activity**.

Freedom of expression regardless of frontiers.

(1.1) The ICCPR provides no exception to Article 19 to limit this freedom to ideas that only the State, the States Parties, or its Officers (acting in their official capacity) hold or agree with.

(1.2) In 2009 the Authors held a Surrealist Exhibition which was accompanied by, and consisted of, all the elements/content published into a 32 page catalogue/manifesto. The contents of the publication constituted the exhibition. [**Annexure 11 "TranshumanistCatalogue-ISBN_ 9780646521886-soft-copy_sml.compressed"**]

(1.3) The paintings, drawings, digital images that were hung on the gallery walls are those reproduced in the publication. Essays from the publication were printed and pinned alongside the hung artworks to which they pertained.

(1.4) The catalogue/manifesto – *the exhibition* – in part criticised values derived from religious tenets, for instance, gender discrimination in Hinduism (p.2); the assail of secular society by religion, particularly Islam in the 21st century (pp. 25-28); quoted Hitler's admission in *Mein Kampf* to the Biblical basis of his intolerance (pp. 30-31); etc. In total, 11 passages from the Old Testament, 11 passages from the Koran, and 4 passages from the New Testament were criticised as part of the Authors' exhibition. Judaism, Christianity, Zoroastrianism, Islam and Hinduism are all in some way criticised. Other references in the exhibition included Josephus' *Contra Apion* and the Homeric Hymns.

(1.5) **The Authors emphasise** that Article 19 2 of the ICCPR protects their right to express their ideas in their exhibition regardless of any objections arising over them, by the Gallery owner, politicians, the court, the judiciary and of the State - *unless the ideas breach some other domestic law, ie, criminal law, censorship laws, none of which have been identified against the Authors*.

(1.6) **The Authors *refer*** to the **ICESCR, Article 15 3**, as reinforcing their freedom to creative activity protected under the ICCPR. This right includes their right to be surrealist artists and atheists and express their ideas in art, in images and in words. The Authors assert that this right includes the right to express artistic ideas that may have no historical precedent. This means, the Authors assert their right to be surrealists, even if there had been no historical surrealism.

(1.7) The Authors' ideas expressed in their exhibition gave rise to:

(a) the exhibition being mischaracterised by Cripps/Gallery as being "anti-Palestinian" [12] ;
(b) the exhibition being declared "racist" [13];
(c) that on account of the above declarations, multiple disclaimers to dissociate the gallery from "objectionable content" being posted by Cripps/Gallery; and
(d) a large "WARNING!" sign displayed outside the entry to the exhibition space.
(e) a racial distinction being made against the 1st Author.

(1.8) The Authors' complaint lies as against the States Parties on the following grounds:

The States Parties pre-determined a chain of causality that blamed the Authors' art content [14] for:

(a) the previously described adverse actions (that were taken against them by Cripps/Gallery) which included permitting the racial distinction against the 1st Author;
(b) the suit at law (because the Authors defended their honour and reputation against the adverse "vile interpretation" of their art, and actions taken against them on account of this "interpretation" of their ideas in the exhibition); and,
(c) having permitted the suit against the Authors, the States Parties made an averse finding against them from "imputations" the States Parties themselves permitted to arise from the Authors' defences (to the adverse actions taken against the ideas expressed in their exhibition).

(1.9) The States Parties restated the political opinions held by Cripps/Gallery regarding Palestine REFER, Claim 3.4 of this Petition, Kyrou at [146] [227] (notwithstanding their irrelevance to the exhibition), and this was (mis) used to satisfy the removal from the Authors any right to rebut these claims against them and their art, or to permit them a right to defend their reputation; meaning, that by having defended their ideas and their person, their doing so would lessen the standing of Cripps/Gallery for having done it. REFER, Claim 4 of this Petition, – Common Law defamation

(1.10) ***The Authors assert****, that the "freedom to creative activity" means their freedom to be anti-religious Surrealists, and that the States Parties should not have permitted for a suit at law against them for having exercised their right to be surrealists, atheist, artists because of concerns irrelevant with the expression of their ideas (Palestine).*

(1.11) **The Authors emphasise**, that every action taken by the Authors was subsequent to actions taken by Cripps/Gallery, and that Cripps/Gallery has admitted to doing those actions with regard to the Authors exercising their right to express ideas.

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[12] No part of the exhibition, the catalogue/manifesto mentioned or alluded to Palestine, Palestinians or that conflict.

[13] In the SCV in March 2014, Cripps testified that at no stage did he consider the essays/art/artists/exhibition "racist" or "anti-Palestinian" to have called it "racist", as was the Authors consistent claim he did.
Cripps' adamant testimony in 2014 was then contradicted by him in his FCCA submission, "Points of Defence", on 1 July 2015: "the essays accompanying the Applicant's art work were in convoluted English, and also in Greek and Latin writings, and [Cripps'] concern [was] that the essays could be interpreted as being anti-Palestinian and racist,..." (Cripps, Point 14)
[**ANNEXURE 12 "Respondents Points of Defence 010715"**]

[14] [**730**] "...Mr Vakras' ill-will towards Mr Cripps — which persist[s] and account[s] for the retention of the Vakras Articles on the internet — were born out of the offence that Mr Vakras took to the feedback that Mr Cripps provided about Mr Vakras' essays." (Kyrou) **Cripps v Vakras [2014] VSC 279 (20 June 2014)**

(1.12) **The Authors submit** that the States Parties acted improperly by permitting the suit against them.

(1.13) **The Authors emphasise**: That the actions taken by the Authors (in their defence and in response to claims by Cripps/Gallery) was to refer to information already imparted, for which there is no prohibition for them to receive;

(a) that this information was historic information about a political situation in Palestine,
(b) that this information is not materially about Cripps/Gallery, and should not ever have been permitted by the States Parties to give rise to any "imputation" as about Cripps and Hitler, unless the objective by the States Parties is to misuse defamation law to achieve a collateral outcome (vis-à-vis Palestine). And,
(c) that it was the States Parties who permitted a suit of "defamation" – *that the States Parties later admitted was by their own construction and was wrong* (refer below to point 1.17 VSCA reason [**155**])

(1.14) The States Parties gave effect to the outcome sought by Cripps/Gallery in 2009 which was to damage the Authors' standing as artists because of Palestine, notwithstanding the irrelevance of Palestine to the Authors' material.

(1.15) The States Parties permitted for the Authors' ideas to be associated with Palestine without showing why or how this association could be made.

(1.16) **The Authors submit** that the States Parties facilitated the suit as against them and therefore became a participant in the suit against them, and that without the States Parties actions as a participant no suit could have been or should have been brought against them.

(1.17) **The States Parties actually admit to their own error.**
The Appeal Court set aside the "Hitler imputation" which the States Parties had previously permitted and facilitated, as well, the "racist" imputation as against the 1st Author from his references to historic material:

> [**149**] ... **we cannot accept that the gist of the article was that which he found it to be**. The article had to be read as a whole. ...
>
> [**150**] **It must have been immediately evident to the hypothetical reader that what Vakras was embarking upon was a philosophical exercise which culminated in his conclusion that the plaintiff merited the description given to him in the article. The article developed a chain of reasoning about those matters. The thesis** — whether or not it was logical, attractive, or correct — **was not difficult to understand, as the reader would see. It went this way: (1) Hitler resorted to Biblical text to justify his racial exterminations — specifically, of the Jews; (2) Muslim Palestinians who kill Jews justify what they do by resort to text in the Koran; (3) the common feature of the killing of Jews by Hitler and of Jews by Muslim Palestinians is justification by resort to religious texts; (4) 'new-left Nazis', who support Palestine, who regard the Palestinians as oppressed by the Jews, and do not disapprove the killing of Jews by Muslims, are racists. Their sentiments are the same as Hitler's, but they consider their racism justifiable; and (5), for Cripps, the killing of innocent Jews by Muslim Palestinians was justified. Thus, he was a racist, a manifestation of 'new-left Nazis'.**
>
> [**152**] **The meaning thus conveyed had nothing to do with condoning Hitler's atrocities based on his view of Aryan race superiority, or with images of atrocities committed on innocent civilians based on that racist view.**

[**155**] His Honour's failure to correctly identify the gist of the Hitler imputation, the gist as found being outside the pleaded case, and the impact of those matters upon damages would require, even in the absence of any other error, that the appeal against the judgment for damages in favour of Cripps with respect to the two Vakras articles be set aside...

(Warren, Ashley, Digby, Appeal) **Vakras & Anor v Cripps & Anor [2015] VSCA 193 (24 July 2015)**

(1.18) **The States Parties further conceded** on 4 September 2015 that the penalty they had imposed as against the Authors was "**on appeal ... unjustifiably extracted**" [15]

(1.19) **The Authors stress,** that these imputations, though later found by the States Parties to be wrong had been ones permitted and facilitated by the States Parties themselves, and are not one judge's (Kyrou's), "failure" alone (as the Appeal Court found).

(1.20) The States Parties had given no other option to the Authors than to defend against the imputations made by Cripps/Gallery, regardless of their veracity:

"[**12]** A defendant in a defamation case is entitled to deny a plaintiff's pleaded meanings, and to seek to justify a variant of the plaintiff's meanings, provided that the variant is not substantially different from the pleaded meaning and that it is no more injurious or serious than the pleaded meaning." **Cripps & Anor v Vakras & Anor [2012] VSC 400 ((**http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSC/2012/400.html**))**

(1.21) **The Authors submit,** that this constituted an interference of their **expression of ideas** by all parties; first,

(a) because the States Parties found no problem with the association of the ideas expressed in their work with Palestine; second,
(b) for finding no problem with the posting of disclaimers and "WARNING!" (because of the association with Palestine).

(1.22) **The Authors further submit,** that this constituted an interference by the States Parties, on the right of the Authors to **freely receive information and then rely on it when there exists no prohibition to receiving it**,

(a) for finding problem with the Authors' defence as against Palestine which, by the Authors' referring to historic material about Palestine, was said to have defamed Cripps/Gallery, who is not Palestine.
(b) where the availability of the information, not restricted by the State Party, was used as a snare by the States Parties against the Authors.

(1.23) The Authors have the right under the ICCPR to express their ideas in their art without, by their expressing ideas, being accused, without rational basis, of being "anti Palestinian" and "racist"; without their ideas requiring disclaimers of liability; without their ideas requiring a "WARNING!" – and, without,

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[15] "[**9]** ... in any event in our view, [we cannot] justify the retention by the respondents of a large sum of money in the interim. The successful plaintiffs below extracted their judgment in the usual way and the successful appellants are now in the usual way entitled to recover the sums which on appeal have been held to be **unjustifiably extracted**. Moreover, the sum was paid over by the appellants, not simply Vakras.
[**10]** Nor is retention justified as against the prospect that such costs orders as the Court will make in respect of the appeal and the first trial might yield a net amount payable by the appellants. Whether that will be so is speculative, and in any event lies in the indefinite future.
[**11]** We also consider that it is just and appropriate to stay the retrial pending repayment of the sum of $284,869 plus interest to the date of repayment. This is a just and fair concomitancy to the enforcement of the judgment sum below against the appellants and will help ensure satisfaction of the Court's most recent orders."
Warren, Ashley, Digby **Vakras & Anor v Cripps & Anor [2015] VSCA 234 (4 September 2015)**

after having expressed their ideas and been attacked for doing so, permitting for a "defamation" suit to run as against them because they defended their ideas against the claims made that were damaging to *their own reputation*.

(1.24) The States Parties wrongfully penalised the Authors from what arose as a consequence of them expressing ideas in their exhibition critical of the precepts of religion that lead to genocide and crimes against humanity, and Adolf Hitler. The topic of conversation with regard to material on exhibition about Hitler and the Nazis was then permitted to magnify the damage done by the "defamation" and be a cause for punitive damages findings being made against the Authors. REFER, exhibition photographs [**ANNEXURE 6 "vakras art in situ 2009 essays.compressed"**] And claim 5.32, 5.33, 5.34, 5.35, 5.42 of this Petition]

The States Parties permitted for material consisting of historic documents – unrelated to the party purporting to be defamed by the material – to claim defamation by it.

(1.25) The States Parties stripped from the Authors their rights to hold ideas, or express ideas, and penalised the Authors for "receiving" information for which there is no restriction.

(1.26) The States Parties are clear: Authors and their art can be attacked over the ideas they express and Authors either have to suffer those attacks in silence, or, if they defend their honour and reputation bring a lawsuit "upon themselves". That is, the States Parties chain of causality blames the Authors for expressing their ideas as being the cause of the problems.

[Claim 2] ICCPR Article 19
*1. Everyone shall have the **right to hold opinions without interference**.*

ICCPR Article 18
*1. Everyone shall have the right to **freedom of thought, conscience and religion**. This right shall include freedom to have or to adopt a religion or belief of his choice*

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

The right to freedom of thought: religion or "belief".

(2.1) It is not the role of the State to mandate what opinion the Authors hold of religions, or to limit their freedom of thought about religion, and impose a restriction on that freedom because, whatever opinions might be held on religion by the Authors, though unrelated to Palestine *or any other issue*, mandates that prior to them exercising their freedom of thought or conscience, they must first have considered "other issues" such as Palestine or the feelings of Palestinians or any other group.

(2.2) Cripps/Gallery were permitted by the States Parties to utilise one work by the 1st Author entitled "*attempting the destruction of the secular muse*", critical of Zoroastrianism, Judaism, Christianity and Islam, and claim it to demonstrate a purported relationship between Palestine, and "racism" in the Authors' exhibition. On purporting this relationship, the Authors' opinion on religion, and their freedom of thought and conscience to form an opinion about religion, and impart that opinion, were unlawfully removed.

(2.3) Cripps' Affidavit to the FCCA affirmed on 21 July 2015 clearly identifies the 1st Author's material to have given rise to the actions taken as against both Authors:

> "**Point 8**. During the course of the exhibition, the Applicant's artworks were accompanied by written materials which were in convoluted English language, and also in Greek, I was concerned

that the written materials could be interpreted as being anti-Palestinian and racist. An example of such written material was an essay accompanying the Applicant's artwork entitled "Secular Muse" as contained in the Applicant's catalogue for the art exhibition." [**ANNEXURE 13 "Respondent's Affidavit 210715"**][16]

(2.4) **The Authors reject** any claimed association with "Palestine", or "racism" is possible from the material, and point out that their freedom of thought and conscience cannot be limited by mandating that they should have considered Palestine, prior to exercising that freedom.

(2.5) **Further, the Authors reject** that Cripps/Gallery had any right under law, notwithstanding the States Parties permitting them, to prosecute for "defamation" - *over what was instead a defence by the Authors of their art and person made necessary by the attack made as against them by Cripps/Gallery*.

(2.6) **The Authors emphasise and assert as their right to,** in the "*attempting the destruction of the secular muse*", censure Judaism, Christianity and Islam, utilising religious edicts to do so.

(2.7) The Authors note that nothing in the ICCPR can be said to permit the States Parties to (mis)use the law to interfere with the Authors' opinions on religion by finding their expressing antipathy to religions, and opinion on religions, interferes with unspecified random individuals' political opinions on Palestine. In other words because Cripps/Gallery held political opinions about Palestine the States Parties permitted for the Authors to be disavailed of their right to hold whatever opinion they held about religion.

(2.8) The Authors point out that the exceptions to Article 19 are not available to the States Parties:

i. the exception under 19 3 (a) to respect the rights and reputation of others (in the way used against the Authors), is not so broad to:
   - permit it being applied to protect the reputation of Palestinians from the criticism of their ideas; or,
   - protect parties advocating support for Palestinians whose reputation could suffer injury from a discussion of Palestinians' ideas or the history of the conflict;

ii. the exception under 19 3 (b) to protect national security.
   The States Parties cannot claim a fear of reaction (war, trade boycott) from "Palestine", or an uprising by local "Palestinians" who might topple the State ("ordre public"), or a corruption of public morals as against the Authors over criticism of religious precepts *that had nothing to do with Palestine until Cripps/Gallery said they did*;

iii. the exception under 18 3 is also invalid as against the Authors,
   as what opinions the Authors express about religion cannot be said to affect public safety, order, or the ability of Palestinians (either in "Palestine" or elsewhere) from manifesting their religion.

(2.9) The States Parties, by permitting a suit at law as against the Authors, knowingly interfered with the right to hold opinions, on religion, and their conscience, and then penalised both Authors for having exercised a freedom guaranteed by the ICCPR.

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[16] Though submitted by Cripps/Gallery as demonstrating a link between Palestine and the 1st Author's material, no such association is possible. The essay explaining the painting ***attempting the destruction of the secular muse*** appears as "APPENDIX 5 – Secular Muse Essay" in Kyrou's 20 June 2014 judgment; and as "ANNEXURE D – Secular Muse. Essay" in the SCV appeal judgment of 24 July 2015. The essay and painting are reproduced on pp. 25-26 of Humanist Transhumanist, **ANNEX 11**. The States Parties judgment was that the ideas expressed in the exhibition were the catalyst of the chain of events that followed and permitted all actions taken against both Authors.

[Claim 3] ICCPR Article 2
1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, ***political or other opinion****...*

ICCPR Article 26
All persons are ***equal before the law and are entitled without any discrimination*** *to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and* ***effective protection against discrimination on any ground*** *such as race, colour, sex, language,* ***religion, political or other opinion****...*

The right to equal treatment regardless of political opinions - ***prohibits any discrimination against individuals because of the political opinions held***.

(3.1) The State Party has introduced no Statue, or legislated into law mandatory support or opposition to Palestine, and there is no law that stipulates, mandates or prohibits what opinions are to be held in regard to Palestine.

(3.2) Whatever political opinions were held by any of the parties regarding Palestine should have been immaterial to the court. However, the States Parties, as evidenced in the SCV judgment of 20 June 2014, took into account what opinions were held about Palestine.

(3.3) The States Parties held, that since Palestine was a laudable cause, that this constituted legitimate grounds to permit for Cripps/Gallery to attack the honour and reputation of the Authors with the posting of disclaimers and a "WARNING!" despite the irrelevance of Palestine to the Authors' material.

(3.4) The States Parties' finding as against the Authors was that Palestine *was* an issue that the Authors should have been sympathetic to, and considerate of, and that the Authors showed neither:

> **[146]** Based on the facts that are not in dispute … I find… broadly as follows:
> **(i)** Mr Cripps said that he was concerned that Mr Vakras' essays could be interpreted as being **anti-Palestinian and racist**. He mentioned that the situation in Palestine was delicate and that ***he was against what the Jewish State was doing in Palestine***. He said that ***the essays could be interpreted as laying the blame for the violence in Palestine solely on the Palestinians and that such an interpretation would ignore that the Palestinians are oppressed people who resort to violence out of desperation and who were reacting to what the Jews do to them.*** (Authors' emphasis)
> **(j)** Mr Cripps' criticism of Mr Vakras' essays upset Mr Vakras…***. Mr Cripps said that Palestinians resort to violence out of desperation and were reacting to what the Jews do to them***. … Mr Vakras loudly accused Mr Cripps of being a racist. He said that Mr Cripps' views were similar to Hitler's views in Mein Kampf and that **Hitler and the Nazis had supported the cause of the Muslims in Palestine**." (Authors' emphasis)
> **[227]** Mr **Cripps**... disagrees with what is happening in Palestine and ***believes that unequal force is being used by the Jewish state, or Israel, against the Palestinian people.*** **He does not like what the 'Jewish state is doing in Palestine.'** (Authors' emphasis)
> (Kyrou) **Cripps v Vakras [2014] VSC 279 (20 June 2014)**

(3.5) **The Authors Assert**: every Australian citizen has the "right" to hold pro or anti-Palestinian opinion, or to hold no opinion on the subject; and,

> (a) not be compelled to hold "the right opinion" according to the States Parties, and not be publicly vilified, ridiculed, or have action taken against them (the disclaimers and "WARNING!"), and then; as in the Authors' case;

(b)have a media campaign orchestrated against them by the States Parties because they lacked concern for Palestinians; and that,
(c) the States Parties have no capacity under any law, domestic or international, to impose penalty against the Authors for having, or not having, a position about "Palestinians" (notwithstanding the impossibility to draw any conclusion about what "opinion" on Palestine was expressed in the Authors' exhibition material that made no reference to Palestine); and that,
(d)there is no "Palestine test", notwithstanding that the States Parties judgment as against the Authors shows that such a test was applied to them.

(3.6) The States Parties in the 20 June SCV judgment (by Kyrou) proclaimed: "***Palestinians are oppressed people who resort to violence out of desperation and who were reacting to what the Jews do to them***" [146 (i)] as counting against the Authors for disagreeing with that opinion.
The Authors not only refuse to share the political opinion of the States Parties about Palestine, but also reject and **denounce the States Parties (Kyrou's) proposition as racist (antisemitic)**.

(3.7) The States Parties have no mandate or jurisdiction under domestic law to strip the Authors' rights on account of a political opinion the States Parties believe the Authors should have been sympathetic to, or to share with the States Parties, to then penalise the Authors for not sharing that opinion or belief as the Authors' Application Seeking Leave to Appeal the SCV judgments in the HCA (dismissed by the HCA on 6 April 2017) submitted:

> (19) The Primary judge abused the office of the court to make, in the adverse judgment, a political proclamation in support of "Palestine". Reasons **[146 (i) (j)]**, & **[227]** pertain to a political cause, protected by ***Lange*** (per ***Monis***) which was with regard to the adversely affected "interest", being the art on exhibition. Parliament has legislated no law in support of "Palestine", notwithstanding Labor MP Vamvakinou's repeated attempts to make mandatory support for Palestine (House of Representatives Hansard 24/2/2014 & 1/12/2014).

[Claim 4] ICCPR Article 17
*1. No one shall be subjected to arbitrary or ... **unlawful attacks on his honour and reputation**.*
*2. **Everyone has the right to the protection of the law against such interference or attacks**.*

> ***(with reference to) ICESCR Article 15***
> 1. The States Parties to the present Covenant recognize **the right of everyone**:
> (c) **To** benefit from **the protection of the moral** and material **interests resulting from any** scientific, l**iterary or artistic production of which he is the author**.

The right to not have one's honour and reputation *Unlawfully Attacked and right to protection against such "interference".*

(4.1) **The Authors submit** that the State Party protects against the reputational attack of the kind suffered by the Authors where an attack as against the Authors' art and exhibition counts as an attack on the Authors' person and reputation due to the link of the personality of the Author which is expressed in their creation.

(4.2) **The Authors refer the Commission/Commissioner** to the State having legislated into domestic law the Moral Rights amendment to the Copyright Act, as found in the ICESCR in Article 15 1 (c) as demonstration of Australia's intention to protect reputation consistent with the Authors' submission.

(4.3) **The Authors rely on** the reputational protection as it is understood and afforded by 15 1 (c) (of the ICESCR), and refer the Commission/Commissioner to General Comment No. 17 (2005), E/C.12/GC/1712 January 2006 which acknowledges that it has the effect the Authors assert:

12.The protection of the "moral interests" of authors ... proclaim[s] **the intrinsically personal character of every creation of the human mind and the ensuing durable link between creators and their creations**.
13. ... **"moral interests" in article 15, paragraph 1 (c), include[s] the right of authors** ... **to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, such productions, which would be prejudicial to their honour and reputation**.

14.The Committee stresses the importance of recognizing the value of scientific, literary and **artistic productions as expressions of the personality of their creator**... (emphasis by the Authors) [17]

(4.4) **The Authors emphasise** that the reputational objective of 15 1 (c) of the ICESCR finds its expression in s 195AK of the Moral Rights Amendment 2000 to the Copyright Act 1968 (quoted below) which uses the same wording:

SECT 195AK
Derogatory treatment of artistic work
In this Part: "***derogatory treatment*** " , in relation to an artistic work, means:
(a) **the doing, in relation to the work**, of anything that results in a material distortion of, the destruction or mutilation of, or a material alteration to, the work **that is prejudicial to the author's honour or reputation**; or
(b) **an exhibition in public of the work that is prejudicial to the author's honour or reputation because of the manner or place in which the exhibition occurs**; or
(c) the doing of anything else in relation to the work that is prejudicial to the author's honour or reputation. (Authors' emphasis)

(4.5) **The Authors** maintain that this right to protect their reputation remains available to them notwithstanding the States Parties, being the courts and judges both state and federal, having denied the Authors their rights.

The Authors refer to their Application Seeking Leave to Appeal the Supreme Court of Victoria judgments in the HCA (dismissed by the HCA on 6 April 2017) to make their point:

> (5) Leave Sought to Appeal, additionally seeks to invoke the Original Jurisdiction of the Court under the Constitution, **s 75 (i)** concerning the interpretation of international instruments – Moral Rights – and their application in laws constructed by Parliament under s 51 xxix, and

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[17] "COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS Thirty-fifth sessionGeneva, 7-25 November 2005" General Comment No. 17 (2005), E/C.12/GC/1712 January 2006
"Moral interests"

12.The protection of the "moral interests" of authors was one of the main concerns of the drafters of article 27, paragraph 2, of the Universal Declaration of Human Rights: "Authors of all artistic, literary, scientific works and inventors shall retain, in addition to just remuneration of their labour, a moral right on their work and/or discovery which shall not disappear, even after such a work shall have become the common property of mankind." Their intention was to proclaim **the intrinsically personal character of every creation of the human mind and the ensuing durable link between creators and their creations**.
13.In line with the drafting history of article 27, paragraph 2, of the Universal Declaration of Human Rights and article 15, paragraph 1 (c), of the Covenant, the Committee considers that **"moral interests" in article 15, paragraph 1 (c), include the right of authors** to be recognized as the creators of their scientific, literary and artistic productions and **to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, such productions, which would be prejudicial to their honour and reputation**.

14.The Committee stresses the importance of recognizing the value of scientific, literary and **artistic productions as expressions of the personality of their creator**, and notes that protection of moral interests can be found, although to a varying extent, in most States, **regardless of the legal system in force**. (emphasis by the Authors)

> xviii of the Constitution. Whether the protection of reputation under Moral Rights is defeated by Common-Law defamation, in which objecting to reputational damage done according to its definition under Moral Rights ("destruction" and "sullied") should be allowed to give rise to "imputations" said to defame the doer of the acts that "destroyed" and "sullied" our reputation?

(4.6) The attack as against the Authors was done by Cripps/Gallery in the prejudicial manner in which the Gallery presented their art to the public (the "milieu") where the Authors and their work and ideas were deemed so objectionable that they could only be publicly exhibited with disclaimers declaring that the entire gallery and its staff objected to the Authors' work and a "WARNING!"; and where, prejudicial to the Authors' honour and reputation, ascribing a meaning to the Authors' work that was alien to it ("anti-Palestinian" and "racist") misrepresenting it. [**ANNEXURE 35 "cripps-disclaimer_0827"**]

(4.7) **The Authors emphasise** the ICCPR does not define "attack to reputation" in any way that could limit its definition to a **Common Law** meaning, to the exclusion of any other definition of what would constitute an "attack to reputation".

(4.8) **The Authors further emphasise** that the State Party (Australia) introduced the reputational protection against actions prejudicial to honour and reputation – of the kind the Authors assert – notwithstanding the pre-existing **Common Law** "defamation" – *that is, the protection is complimentary to existing law and not vitiated by pre-existing defamation law*.

(4.9) Notwithstanding the beforementioned statutory protection, the States Parties (SCV) permitted only the definition found in **Common Law** as capable of defining injury to reputation with regard to the Authors:

> [**301**] "...statements might be defamatory if 'the **words** tend to **lower the plaintiff in the estimation of** right-thinking members **of society** generally'. An earlier test asked whether the words were likely to injure the reputation of a plaintiff by exposing him (or her) to hatred, contempt or ridicule...
>
> **The common law test of defamatory matter** propounded by Lord Atkin was ... **whether the published matter is likely to lead an ordinary reasonable person to think the less of a plaintiff**, [and] was confirmed by this Court ... Gummow and Hayne JJ in *Gacic* referred to the likelihood that the imputations might cause 'ordinary decent folk' in the community to think the less of the plaintiff." Kyrou **Cripps v Vakras [2014] VSC 279 (20 June 2014)**

(4.10) *The **Common Law** permits only for injury to reputation to be done with "words" that are "published" – either written or spoken. And this is codified in s 7 of the Defamation Act 2005* [18]

(4.11) ***Common Law** precludes **injury to reputation as a consequence of actions** as were done against the Authors*.

(4.12) ***The States Parties themselves attacked** the Authors for their having asserted their right to object to, and protect themselves from the attack on their art work(s) – which as an expression of personality, counted as against their person – because **the States Parties refused to concede the Authors could suffer injury from actions***.

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[18] DEFAMATION ACT 2005 - SECT 7
Distinction between slander and libel abolished
(1) The distinction at general law between slander and libel is abolished. (2) Accordingly, the **publication** of defamatory matter of any kind is actionable without proof of special damage.

And, by accepting the matter as a "defamation" the SCV made a pre-judgment under ***Common Law which reverses the onus of proof with regard to defamation***, and the court's pre-judgment was that the actions as against the Authors by Cripps/Gallery could not injure ("sully") their reputation or humiliate them, because such actions instead "**told against the gallery, rather than the artist**", (VSCA, at [338]), and were instead defamatory of Cripps/Gallery. Once the States Parties pre-judged that the material written would lower the estimation of the individual (Cripps/Gallery), the Authors' rights to defend their own honour and reputation were removed, and **the States Parties permitted the Authors only the right to mount as a "defence" excuses for having committed the pre-judged "defamation"** and defending against what was claimed was suggested by them (see extract appended as **[ANNEXURE 43]**, demonstrating the SCV and VSCA process with regard to the 2nd Author's material).

(4.13) Pre-judgment on the matter permitted Cripps/Gallery carte blanche as the plaintiff REFER, (1.20) Claim 1 of this Petition, Beach at [12] to prosecute for a claim that he/the Gallery were instead injured; because, the Authors wrote about actions (disclaimers and "WARNING!") which were never in dispute.

(4.14) The SCV disdain for the Authors' exercising their right to defend their reputation is uncompromising and *unapologetic*:

> [**495]** The Humiliation Imputation, the Abuse Imputation, the Destruction Imputation and the Sullies Reputation individually, and in the context of each other, convey the message that Mr Cripps is not a fit person to operate any gallery. In order for Mr Cripps to operate the Gallery as a successful business, it is necessary that he be well regarded by artists who may potentially exhibit their artwork at the Gallery. The above mentioned imputations, individually and collectively, damage Mr Cripps' standing in the arts community and adversely affect Mr Cripps' ability to conduct the business of the Gallery.
>
> [**496]** The Sabotage Imputation is clearly defamatory of Mr Cripps, as the assertion that Mr Cripps actively sabotages exhibitions once he can no longer make a profit from them would cause prospective exhibitors to shun Mr Cripps and the Gallery. Kyrou **Cripps v Vakras [2014] VSC 279 (20 June 2014)** (expanded in "extract" appended as [**ANNEXURE 43**])

The Authors assert as their right to defend their reputation from attack

(4.15) Cripps/Gallery, as previously pointed to, used one work by the 1st Author entitled "*attempting the destruction of the secular muse*" purporting it – without rational basis – to demonstrate a relationship between Palestine and the exhibition – being "anti-Palestinian" – and "racist", mischaracterising the artists in a way prejudicial to their honour and reputation. [19]

(4.16) **The Authors restate their strenuous objection to, and rejection of, the "Palestine" association with their material of which they are Authors and declare that it instead constitutes a deplorable attack to their honour and reputation, a "vile interpretation" deserving of the strongest condemnation, due to the deliberateness in the misrepresentation of their art and ideas, especially the explicitly stated declaration that the Authors' support the "oppression" of peoples**. REFER, Point (3.4) of this Petition, Kyrou, 20/6/2014 at [146 (i), (j)], [227]

The right to defend against the attack made to the Authors' reputation is the live issue.

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[19] "*attempting the destruction of the secular muse*" was presented by Cripps/Gallery in the FCCA to demonstrate the 1st Author as expressing "anti Palestinian" and "racist" views – notwithstanding having testified in the Supreme Court of Victoria to never having previously seen the material. **Cripps Testimony,** `21/3/2014, Transcripts, p. 436, l.1-31.`

[**ANNEXURE 14 "img-513122542 transcript parts scan.compressed"]**

(4.17) The nature of the attack as against the Authors was to their personhood as expressed through the ideas in their art. The right to defend their art being misrepresented, and defend the personhood expressed in the art from the attack, cannot be exercised if the Authors are prohibited from making reference to the facts surrounding the attack, which are:

(a) to make reference to what it was about their art that was used by the Gallery as against them (being the exhibition's criticism of religion leading to Hitler, to war crimes, and human rights violations); that,

(b) required them to sufficiently discredit the reasoning used by the Gallery that presented their art to the public in a manner prejudicial to their honour and reputation (the Authors had to robustly denounce the claim the content could be "anti Palestinian" or "racist" because of its criticism of religions); and

(c) to discredit the competence of the Gallery and its bona fides in making the attack against the Authors' art in the manner in which Cripps/Gallery did.

(4.18) It was by reference to facts by the Authors that the States Parties permitted Cripps/Gallery to concoct "imputations" that instead were claimed to "defame" their attacker for doing the deeds. Palestine, utterly irrelevant and alien to the Authors' exhibition, was permitted by the States Parties to count against them and the claimed "imputations" said to arise from the Authors' defence against the attack on them was reported in the media to detrimental effect:

> "Gallery Owner is Dangerous Racist" [and a] "Dangerous Racist who has embraced discredited views of national socialism" (Reported in **Melbourne Observer**, p. 3, 30 May 2012 [**ANNEXURE 15 "melb_observer_May_30_2012detail_p3-p9_composite"**])

(4.19) It was necessary for the Authors, in response to the association of their work with Palestine, done with regard to their art, to make reference to undisputed historical facts regarding Palestine, which happen to be of the known Nazi involvement, of al Hussein, supported by Adolf Hitler which is information that the Authors have the right to receive and refer to (which is not about Cripps/Gallery), *noting that Adolf Hitler was already a theme of the exhibition*. REFER, exhibition photographs [**ANNEXURE 6 "vakras art in situ 2009 essays.compressed"**] And claim 5.32, 5.33, 5.34, 5.35, 5.42 of this Petition]

(4.20) ***The States Parties alone*** *(with regard to Palestine) permitted that:*

(a) *an ordinary or reasonable reader does not know the history, and*

(b) because they do not know the history, the word "Hitler" raises the spectre of the Holocaust; which means they understood,

(c) *on seeing "Hitler", an imputation of support of genocide based on Aryan Supremacy embracing discredited views of national socialism.*

Per Kyrou:

[308] "… the Holocaust and the commission of atrocities on innocent civilians … are conveyed by the mere mention of Hitler's name ..." (Kyrou) **Cripps v Vakras [2014] VSC 279 (20 June 2014)**. [20]

(4.21) **Though** this (specific) construction as against the Authors by the States Parties was overturned by the Appeal Court. REFER, Claim 1 (1.17) of this Petition, appeal judgment [150],[151],[152],[155] this did not mitigate or reverse the damage done to the Authors by the ***SCV Press Release*** of June 2014 that asserted injury to Cripps/Gallery on the salacious "imputations" the SCV had permitted:

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20 **[309]** "The hypothetical referees ... upon reading the phrases, 'the new-left Nazis' and 'the sentiments of Hitler expressed in his Mein Kampf' would immediately call to mind the policies of genocide perpetrated by Hitler and the Nazis, including the Holocaust... the reader would immediately form the view that Mr Cripps is a person to be loathed and detested..."[**307**] "…To associate anyone with the views of Hitler is to profoundly damage their reputation because the message that is immediately conveyed is that the person condones the atrocities that Hitler committed based on his views that the Aryan race is superior to all other races and that Jews (among others) should be exterminated…"

[308] "… the Holocaust and the commission of atrocities on innocent civilians … are conveyed by the mere mention of Hitler's name ..." (Kyrou) **Cripps v Vakras [2014] VSC 279 (20 June 2014)**

(a) "Mr Cripps is a racist who holds views similar to Adolf Hitler";
(b) "Mr Cripps, a professional gallerist, ceases to support and actively sabotages the exhibitions of artists who exhibit their works at the Gallery, once he can no longer make any profit from them."
(c) "Mr Cripps, by reason of his ignorance of art, is not a fit and proper person to be a gallerist."
(d) And that the "articles lacked any factual foundation and were egregious and grievous examples of their type" (Supreme Court Press-Release **[ANNEXURE 16 "Kyrou - Supreme Court Social Media reports.compressed"]**)

(4.22) The Media, in receipt of the ***SCV Press Release***, derided the Authors, reporting inter alia:

- "Hitler rant so costly", "Justice Emilios Kyrou said likening someone to Hitler, 'one of the most abhorrent individuals of all time", was inarguably one of the most shocking examples of defamation, and Vakras' refusal to apologise was outrageous", **Herald Sun newspaper**, 21 June 2014;
- "Hitler jibe", "unfounded claims", **Herald Sun, online**, 20 June 2014;
- "Artists fined for defaming former gallery owner by comparing him to Hitler", "Mr Vakras' actions [were] 'outrageous',and found Mr Cripps' 'reputation and standing have been grievously injured by the Hitler imputation… A disagreement…unleashed a sustained wholesale attack.'" **ABC News, website, and Television News, and Radio News (*RN*)** 20 June 2014;
- "Justice Kyrou said articles made very damaging allegations about Mr Cripps and his company including that he held similar views to Hitler, he was a bully and sexually harassed and sabotaged others." **Radio 3AW**, 20 June 2014;
- "Mr Vakras' website claimed Mr Cripps was a racist who held similar views to Adolf Hitler.… [and] the imputations caused Cripps profound distress and embarrassment…[And] Mr Vakras' motivation for the two articles had been to smear Mr Cripps and maximise the damage to his reputation"; and "Ms Raymond … defamed Mr Cripps when claiming he ceased support…and that Mr Cripps was not a fit and proper person to run a gallery because of his ignorance of art." Age newspaper, online, 20 June 2014;
- Gallery owner awarded $450,000 after being defamed", **Sydney Morning Herald, newspaper, online**, 20 June 2014;
- "Costly Hitler insult", "Wrongly likening Guildford Lane Gallery owner Robert Cripps to Adolf Hitler has attracted a $250,000 damages bill plus $100,000 aggravated damages bill…" **Melbourne Observer, Newspaper/online**, 20 June 2014
- **[ANNEXURE 17 "Hitler Rant jibe insult unfounded adverse media reports-smll.compressed"]**)

(4.23) **The States Parties enjoined with Cripps/Gallery as participants, not as adjudicators**, against the Authors' defence of their reputation. The States Parties achieved the outcome sought by Cripps/ Gallery which was to discredit the artists, discredit their art, discredit the message of their art, and this had the intention and result of restricting their capacity to produce art. The States Parties accomplished this by:

(a) the disproportionate size of the pecuniary penalty as imposed against both Authors (AUD $450K, which was in addition to the funds already outlaid by the Authors in legal defences (AUD $470K); to ensure,
(b) the Authors would have had no capacity to fund an Appeal [21] ; and to ensure,

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[21] That the Authors could finance their defence in the SCV was by mortgaging their home/studio. That the Authors did fund an appeal in the VSCA was because they had deposited funds in advance of the adverse finding against them by "maxing out" their already mortgaged home/studio prior to its sale. The Authors did pay Cripps/Gallery AUD$383,900.00 from the sale. Though the Appeal court ordered the return of AUD$284,869.00 "+ simple interest" that was never returned, meaning that the Authors seeking leave to appeal in the HCA would be as self-represented litigants which required months of reading previous Court decisions, multiple Statutes, and multiple International Covenants.

(c) the effect of the penalty was so large that it removed from the Authors their studio and therefore their ability to produce any more of the art against which objections were raised, intending this as a deterrent [22] ; and to ensure,
(d) the mass-media dissemination of the finding (which the Appeal Court later conceded was **premised on the court's own failure**).

(4.24) **The Authors emphasise**, that on appeal the States Parties conceded that an attack had occurred against the Authors by Cripps/Gallery (in how their work was exhibited to the public), but declared the work *worthless* [23] in which no "pecuniary injury" was shown to have resulted from the actions in the "milieu". The VSCA judges proclaimed, that "**to the contrary, that the problems were evidently created by the gallery operator, and so told against the gallery, rather than the artist**" (Appeal 24/7/2015 [338]). [24]

The Authors emphasise, that by this action:

(a) ***the States Parties nullified the reputational protection of s 195AK of the Copyright Act provisioned by The State per Article 15 1 (c) of the ICESCR, and that the Victorian-state-court lacked the jurisdiction to have caused such an effect; and***
(b) ***the States Parties turned the Authors' defence of reputation in circumstances such as those experienced by them as only ever being capable of defaming the doer of the acts.***

(4.25) The Authors further emphasise:

(a) Section 7 of the Defamation Act itself requires no proof that pecuniary damage has occurred for an injury to have been done and that n*either does 195AK of the Moral Rights Amendment to the Copyright Act;*
(b) *the victim of an attack to their reputation (of the kind the Authors complain) is left with no recourse for complaint or remedy. Section 195 AK of of the Moral Rights Amendment to the Copyright Act and Article 15 1 (c) of the ICESCR requires an actor to do the act prejudicial to honour and reputation – and the VSCA deemed that would instead defame the actor;*
(c) the "milieu", being the "backdrop, setting, context,.. conditions, surroundings" (Thesaurus [**ANNEXURE 18 "milieu-definition"**]), within which the multiple disclaimers, and large "WARNING!", were posted (with regard to the art) – **is** the manner in which the Authors' art was presented to the public prejudicial to their honour and reputation (per s 195 AK of the Copyright Act, and Article 15 1 (c) of the ICESCR) but is now left unprotectable; and

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[22] Kyrou, **Cripps v Vakras [2014] VSC 279 (20 June 2014)**:
[743] The matters discussed at [724] to [742] above clearly warrant **a substantial amount of aggravated damages**. **The amount must be sufficiently high to deter Mr Vakras** from continuing to defame Mr Cripps.[335]

[23] The VSCA found that the works on exhibition were only of "personal importance" to the Authors at Reason [9] **Vakras & Anor v Cripps & Anor [2015] VSCA 193 (24 July 2015)**. And beyond the "personal importance" to the Authors, their works had no economic value.

[24] [338] In the present case, **it is clear that things went radically wrong in the staging of the exhibition. It is beyond question that there was disputation between the defendants and Cripps in the course of the exhibition**. The fact **that the exhibition was a commercial failure was not**, however, necessarily **the consequence of that disputation**. Indeed, its **commercial failure** might have been fairly readily **forecast**. But **the defendants' complaints — largely unwarranted, as the judge found them to be — were about the general milieu in which the exhibition was, for the most part, conducted**; and, in small measure, about the delay in paying what was due to them. In their articles, the defendants supplemented their complaints about Cripps with recitation of the negative experiences of other artists who had exhibited at the gallery.

[263] In our opinion, there was no error in his Honour concluding that justification had not been established. Whilst, in our opinion, there was force to the submission for Ms Raymond that the disruption of the exhibitions by Ms Bowman and Mr Mishriki was likely to have sullied their reputations, it might well be perceived, **to the contrary, that the problems were evidently created by the gallery operator, and so told against the gallery, rather than the artist**. Further, we consider that the evidence was not capable of establishing that Cripps had 'repeatedly' engaged in behaviour sullying the reputations of artists. **Vakras & Anor v Cripps & Anor [2015] VSCA 193 (24 July 2015). [Expanded in "extract" appended as ANNEXURE 43]**

(d) the VSCA in agreement with the SCV determined that the absence of reference in the contract (Hire Agreement) regarding the nature, role and function of an art gallery [25] and general obligations, meant that there was no *implied* terms for the Gallery to act in "good faith or to cooperate in the performance of the Hiring Agreement" (Reasons [240] & footnote 66) [26].
(Hiring Agreement, [**ANNEXURE 19 "GLG-signed-contract-extracted-Points of Defence-orc"**])

(4.26) The jurisdiction for remedy to a reputational injury of the kind suffered by the Authors (which the SCV had turned into a defamation of the parties that made their attack on the Authors) belongs to Federal courts per s 195AZA of the Moral Rights amendment to the Copyright Act and is subject to s 203 of the same Act [**Refer ANNEXURE 9**] which precludes the State courts' jurisdiction. The 1st Author brought his claim for remedy on 21 October 2014 (refer Chronology) to the FCCA by including it with a claim for race discrimination (Claim 7 of this Petition) which had commenced with a claim to the Human Rights Commission on 10 June 2014.

(4.27) A subsequent "re-submission" of the originating Application as an expanded "Points of Claim", per orders of the FCCA Registrar, was made on 28 May 2015 (refer Chronology). Included as co-applicant to the moral rights reputation claim was the 2nd Author who was co-signatory. A further interlocutory submission by the 1st Author on 10 August 2015 sought to "reinforce" the addition of the 2nd Author to the moral rights reputational complaint [**ANNEXURE 45**].

(4.28) The FCCA subsequently dismissed the claim on 27 January 2016 (Vakras v Cripps & Anor [2016] FCCA 20 (27 January 2016)), finding inter alia that:

[**41**] "It should be noted that Kyrou J, at [242] of his decision ... [dealt with] the disclaimer..."
[**42**] "This is, in my view, a judicial determination directly involving an issue of fact or law which has disposed of the issue so that it cannot, thereafter, be raised by the same parties..."
[**46**] "it is the case that as an artist, Mr Vakras has moral ownership in his works. It is just not clear to me that the erection of the disclaimer in any way contravened or subtracted from his moral rights."
[**49**] "The erection of the disclaimers simply is not likely to lead to a curial finding"
And by wrongly ascribing jurisdiction to the SCV.

(4.29) The FCCA rejected the inclusion of the 2nd Author as party to the moral rights claim on the bizarre grounds that she was not a party to the race discrimination complaint:

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[25] The State Party's domestic law, per the Trade practices Act 1974, s 74:

TRADE PRACTICES ACT 1974 No. 51, 1974 - SECT 74 Warranties in relation to the supply of services.
74. (1) In every contract for the supply (otherwise than by way of competitive tender) by a corporation in the course of a business of services to a consumer there is an implied warranty that the services will be rendered with due care and skill and that any materials supplied in connexion with those services will be reasonably fit for the purpose for which they are supplied.

The Authors' expectation was that Cripps/Gallery would not exhibit their art in any way that would prejudice their honour and reputation, as this is not the role or function of any art gallery.

[26] Kyrou, **Cripps v Vakras [2014] VSC 279 (20 June 2014)**:

240 In the present case, the tests in BP are not satisfied, primarily because the alleged implied terms would be inconsistent with cl 11.c of the Hiring Agreement.[65] Also, there is nothing in the circumstances of the present case which, consistent with the principles discussed above, would warrant the implication of obligations of good faith or cooperation in the Hiring Agreement. [66] However, even if such obligations were to be implied, there would not have been any basis for a finding that Redleg breached them.

[*footnote*] [66] It follows that I reject Redleg's admission in its defence that the parties to the Hiring Agreement owed each other a duty of good faith, or alternatively a duty to cooperate in the performance of the agreement.

[**44**] "the question of the claims now sought to be agitated under the Copyright Act and the Consumer Law. These were not, on any view, matters before the HRC and were, therefore, incapable of being litigated through the referral, pursuant to s.46PO of the HRC Act"

(4.30) With regard to the preceding point the Authors make the following comments:

(a) the judge was wrong in law to "issue estop" the suit. It is established under common law that the same facts that give rise to *an issue*, may be used in any subsequent suit over a *different issue* [27];

(b) the judge was wrong in law according to the Evidence Act to give weight to "facts" said to be established by a prior ruling/judgment [28];

(c) the judge ignored that the *issues* heard in the SCV/VSCA were whether the ***contract*** forbade the disclaimers (which the SCV/VSCA found it did not), and whether the Authors, in writing about the disclaimers (whose existence is undisputed) ***defamed*** Cripps/Gallery (which the SCV/VSCA found did defame). The ***issues*** before the FCCA were of whether the posting of disclaimers was ***prejudicial to the honour and reputation*** of the Authors (under moral rights), and that the posting of the disclaimers was based on a ***racial (etc) distinction*** **made of the 1st Author in breach of the RDA**;

(d) the judge wrongly presented the Authors' reputational claim under moral rights as one about *intellectual property and whether their ownership of the "intellectual property" was affected*, and on his failure concluded "ownership" of moral rights was untouched and undamaged by the posting of disclaimers; and

(e) (With reference to point 4.27, and [**ANNEXURE 45**]) contrary to the judge's claim, the inclusion of the 2nd Author was not pursuant to s 46PO of the HRC Act, but pursuant to the Moral Rights amendment to the Copyright Act made to the court of competent jurisdiction.

(4.31) The 1st Author made an Application seeking mandamus against the FCCA decision, and the FCA decision that denied him the right to appeal the FCCA judgment. Quoted from the 1st Author's Affidavit made to the HCA on 4 January 2017 [**ANNEXURE 3**], reproduced below:

> 24. The primary judge provides no reason to omit consideration of 195AK (b), which concerns itself with how, and the manner in which, the art was brought to the public. The primary judge fails to address or even mention the other actions done by the third defendant which were part of the complaint brought to the FCCA. One of these actions was the posting of a large "WARNING!" sign. Another was the third defendant misusing the "opportunity" of the art on exhibition to approach females viewing the works to ask if it was their "lovely bottom" featured in the paintings being viewed.
>
> 25. The judge hopelessly fails to understand what Moral Rights protects *against being done*: **any action that is prejudicial to an artist's honour and**

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[27] Per McHugh J in **Rogers v R [1994] HCA 42** at [7]:
"An issue estoppel can only arise, however, in respect of an ultimate issue in the litigation. No estoppel can arise in respect of evidentiary issues even when they are the building blocks in the proof of an ultimate issue... In Reg. v. Storey ((124) [1978] HCA 39; (1978) 140 CLR 364 at 424.) Aickin J said: '(I)ssue estoppel applies only to issues. There is no estoppel as to evidentiary facts found in the course of determining an issue. There is nothing to prevent a party, in a later proceeding in relation to a particular issue of fact negatived in the earlier proceeding, tendering evidence of those same facts directed to a different issue.'"

[28] With regard to the Evidence Act at s 91:
"Evidence of the decision, or of a finding of fact, in an Australian or overseas proceeding is not admissible to prove the existence of a fact that was in issue in that proceeding."

> **reputation in the manner the work was brought to the public (an exhibition)**. The statue protects the effect to *personhood*, "projected" by the artist in his/her artworks with regard to actions prejudicial to that personhood. The primary judge confuses this with intellectual property *ownership*. Misapprehending this to be about "*ownership"* results in failure to understand that though "*ownership"* remains untouched by any of the actions complained of, those actions still remain prejudicial to honour per Moral Rights. At Reason [46], the judge clearly expresses misapprehension: "Of course, it is the case that as an artist, Mr Vakras has moral ownership in his works. It is just not clear to me that the erection of the disclaimer in any way contravened or subtracted from his moral rights."

(4.32) The Application seeking mandamus against the FCCA (and FCA) decisions was dismissed by the HCA (Nettle) on 12 July 2017. Nettle at para. 1, p. 4, [**ANNEXURE 42**] agreed with the "correctness" of the FCCA (and FCA) decisions (outlined in Point 4.28) by, like the FCCA, misunderstanding the Authors' claim to be one of damage to the worth of the intellectual *property owned by the Authors*.

(4.33) Nettle (para. 1, p. 4) ruled "that the moral rights claim was without arguable foundation" incomprehensibly asserting that the Authors should have sought remedy for economic devaluation (worth) of their intellectual *property* in the SCV, [29] despite ***such a remedy being irrelevant to the Authors' claim as it would not and could never address damage done by actions prejudicial to honour and reputation***, and that whatever jurisdiction the SCV has to hear "intellectual property-right" claims (which the Authors do not dispute), the Authors' claim lies in s 195AZA, which per s 203 precludes the SCV from addressing their **actual concern which was for damage done to their reputation** by the actions complained of.

(4.34) **The Authors refer the Commission/Commissioner to** General Comment No. 17 (2005), E/C.12/GC/1712 January 2006, to the ICESCR 15 1 (c), **specifically Points 2, and 3**:

> *2. …the scope of protection of the moral …interests of the author provided for by article 15, paragraph 1 (c), does not necessarily coincide with what is referred to as intellectual property rights under national legislation or international agreements.*
>
> *3. It is therefore important not to equate intellectual property rights with the human right recognized in article 15, paragraph 1 (c).*

And emphasise that the 1st Author without ambiguity identified the protection violated to Nettle in his oral summary during the HCA "hearing" of 30 June 2017, as being about "*the actions of the third and fourth defendants in this matter were prejudicial to my honour and reputation and my co-exhibitor – to our reputation and honour in our exhibition*" (per Transcripts [**ANNEXURE 41**]), which Nettle ruled the Authors should have forgone (point 4.33).

(4.35) **The Authors declare their right** to exercise actions in protection of their reputation from attacks made with regard to works they have Authored. **And on those grounds raise an objection to Nettle,** who

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[29] Nettle : "The Supreme Court has ample power to grant injunctive relief and relief by way of an account of profits in the exercise of its inherent equitable jurisdiction". 12 July 2017, M3 of 2017.

has previously asserted a "distinction" to exist between an idea, and the holder of the idea [30] that would preclude any Author protecting their reputation from the kind of attack described by the Authors, notwithstanding that Australia has legislated that protection into law that binds the courts under Clause 5 of the Constitution. Nettle's interpretation is impermissible according to Articles 31 and 32 of the ***Vienna Convention on the Law of Treaties, to which Australia is signatory***.

(4.36) The States Parties (SCV, VSCA) permitted the Authors' reputation be attacked and enjoined in the attack. Notwithstanding that Australia has introduced into law protections to reputation such as the Authors rely on in this petition, the States parties removed from the Authors their right to object to and protect their own reputation by finding that they had damaged the reputation of their attacker and permitting them only a right to defend against "imputations" arising from the Authors' writings defending the integrity of their art in defence of their reputation. The actions of the States Parties resulted in the Authors being despoiled of their material possessions and reputation. The States Parties, in the court(s) of competent jurisdiction (FCCA and FCA) confirmed the SCV and VSCA decisions, and the HCA on 6 April, and 12 July, 2017 affirmed all prior decisions in contradiction to law.

(4.35) **The Authors emphasise** the specific obligations of the States Parties with regard to General Comment No. 17 (2005), E/C.12/GC/1712 January 2006, to the ICESCR 15 1 (c), and emphasise the points listed as identifying the specific failures of the States Parties:

- Point 30 – the States Parties are obligated to respect Authors' right to benefit from a protection of and to object to, derogatory actions prejudicial to honour and reputation done with regard to their work. The Authors were denied this;
- Point 31 - the obligation is on the States Parties to "prevent third parties" doing such acts. The States Parties instead facilitated third parties to act in ways proscribed by law;
- Point 41 - the States Parties are in violation of their obligations with regard to our reputation due to their disregard of obligations; and
- Point 43:

"Violations of article 15, paragraph 1 (c), can also occur through the omission or failure of States parties to take necessary measures to comply with its legal obligations under that provision. Violations through omission include the failure to take appropriate steps towards the full realization of the right of authors to benefit from the protection of the moral and material interests resulting from their scientific, literary or artistic productions and the failure to enforce relevant laws or to provide administrative, judicial or other appropriate remedies enabling authors to assert their rights under article 15, paragraph 1 (c)."

(4.37) The Authors stress, that all parts referenced in the GC No 17 2005 with regard to 15 1 (c) of the ICESCR are consistent with, and give support to, the Authors' claim against the States Parties that arise under Article 17 of the ICCPR.

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[30] **Catch the Fire Ministries Inc & Ors v Islamic Council of Victoria Inc [2006] VSCA 284 (14 December 2006). Nettle at:**

[32] ... as I see it... the Tribunal … did not give a great deal of consideration to the distinction between hatred of the religious beliefs of Muslims and hatred of Muslims because of their religious beliefs. The Tribunal appears to me to have assumed that the two conceptions are identical or at least that hatred or other relevant emotion of or towards the religious beliefs of Muslims must invariably result in hatred or other relevant emotion of or towards Muslims. In my view, that is not so.

[33] ... It is essential to keep the distinction between the hatred of beliefs and the hatred of their adherents steadily in view.[26] Beyond that, it is a matter for the law of defamation or the law relating to misrepresentation and misleading and deceptive conduct or, possibly, criminal sanctions.

[35] … as I perceive it, is that the Tribunal's failure to observe the distinction between hatred of beliefs and hatred of adherents to beliefs has resulted in the Tribunal deciding the matter ...

[Claim 5] ICCPR Article 14
1. All persons shall be equal before the courts and tribunals. In the determination of ... his rights and obligations ***in a suit at law,*** **everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law**.
...[regarding] any judgement rendered in a criminal case ***or in a suit at law.***

Prefatory Point
(5.1) The States Parties, with reference to Article 14 1 of the ICCPR, define a "suit at law" to mean a "civil suit" as well as a "criminal suit". This appears in s 24 of ***The Charter of Human Rights and Responsibilities Act 2006***.

(5.2) The Parliament of The State of Victoria, in the "Explanatory Memorandum" introducing the Bill (to the Statute), explains s 24 of the Act:

> "...The human rights protected by the Charter are civil and political rights. They primarily derive from the International covenant on Civil and Political rights 1966…
> Clause 24 provides for the right to a fair hearing.
> Sub-clause (1) establishes that a person … or a party to a civil proceeding has a right to have the charge or proceeding decided by a competent, independent or impartial court or tribunal after a fair public hearing."
> "This clause is modelled on article 14 (1) of the Covenant." (Refer [**ANNEXURE 1**])

The Right to a Fair Trial
(5.3) The right to a "fair trial" was denied the Authors by the States Parties.

(5.4) The most grievous of the transgressions by the States Parties was to deny the Authors the presumption of innocence to a Criminal finding it made against both, deny them the right to not self-incriminate with regard to the criminal conduct, and deny them a court of competent jurisdiction to hear the criminal claim before making an adverse finding against them (point **(c), below**).

POINT (a) The States Parties made a pre-judgment against the Authors and demonstrated bias.

(5.5) ***Common Law*** *defines as "defamatory" words that lower the esteem of an individual in the eyes of others* REFER, Kyrou quoted at Point (4.9) of this Petition *permitting for the* material evidence *that the Authors had published – words and photographs regarding actions done to them by Cripps/Gallery – to automatically "incriminate" them.*

(5.6) Therefore the Authors' description of their own reputations being "sullied" and "destroyed" by the actions taken against them by a gallery that operates "without knowledge of art" that exhibited their work to the public in a way that was "humiliating" to them, was pre-judged by the States Parties according to ***Common Law*** as instead damaging the reputation of the parties who had attacked the Authors' reputation.

(5.7) The Authors' rights to make objections are availed to them by Commonwealth Statute, based on international covenants, which the Authors exercised, but which, once exercised by them, was misused by the States Parties to strip from them those rights. **Though the *Common Law* mandates that an existing interest (their art – as representing the Authors' personhood) precludes the capacity for a defamation suit to have ever been run against them, the States Parties made an exception with them**.

> *Referring to the Authors' Application Seeking Leave to Appeal the Supreme Court of Victoria judgments in the HCA* (dismissed by the HCA on 6 April 2017):

(18) Though privilege is associated, even to "defamatory statements made voluntarily and in protection of a personal interest" (**Papaconstuntinos v Holmes a Court [2012] HCA 53 (5 December 2012)**, Heydon J, at [64], citing Parke B in Toogood v Spyring, "in the conduct of his own affairs, in matters where his interest is concerned.") privilege was removed by the Supreme Court. (Our interest is availed statutory protection under the Moral Rights amendment to the Copyright Act 1968, ss 195AI (1), (2); 195AK (a), (b), (c)).

(5.8) Though the State Parties considered the Authors situation under ***Common Law*** *Defamation*, they were also bound by the same ***Common Law*** to give weight to their interest, being their art, which ***Common Law*** also protects, but which the States Parties denied the Authors.

(5.9) *And having selectively considered the Authors' objections through the* ***Common Law*** *"defamation" prism, their objections counted instead as a confession by the Authors to having done the "defamation". The* ***Common Law*** *position selectively chosen by the SCV is unambiguous:*

> "... a plea of truth in a defamation action is a plea in confession and avoidance; it is not a traverse of the allegation of defamatory matter. The plea of truth confesses that the matter is defamatory of the plaintiff ... Since 1652, the plaintiff in a defamation action has not had to prove the falsity of the words published to maintain the action..." Michael McHugh, High Court of Australia judge, "*Dancing the Defamation Tango*" [31]

(5.10) *The Authors make the following observation, the States Parties (SCV) unlawfully selected what elements of* ***Common Law*** *they would apply, and misused their office to render impotent Federal Statutes that exist to protect the Authors, turning those Statutory rights into snares that entrapped the Authors who had exercised their rights.*

(5.11) In their Application seeking leave to appeal in the High Court of Australia, the Authors submitted that the Federal Statutes that protect their reputation in the manner described have been made by the authority given the Australian Parliament under the Constitution, sections 51 xxix and 51 xviii ("external affairs", ie treaties; "intellectual property/copyright", respectively).

(5.12) Also stressed by the Authors to the HCA: Clause 5 of the Constitution, binds all the States Parties including the courts, meaning that as Parliament's Statute (s 195AK of the Copyright Act 1968) is Constitutional, the States Parties had no lawful grounds to misuse it as a snare instead of a protection (of the Authors). Refer extract appended as [ANNEXURE 43], demonstrating the SCV and VSCA process with regard to the 2n Author's material

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<u>POINT (b) The States Parties exercise of law exceeded jurisdiction to the extent that it was illegal (that is, it was made in disregard of the "Evidence Act")</u>

(5.13) The States Parties are mandated by Statute to consider evidence according to the "Evidence Act" (of 2008, Victoria; 1995 Commonwealth).

S 88 of the Evidence Act defines "admissible admissions":

> **"EVIDENCE ACT 2008 - SECT 88**
> **Proof of admissions**

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[31] Michael McHugh, former judge of the High Court of Australia, in a speech hosted on the HCA website [[**<u>ANNEXURE 20 "mchughj_2july05 [excerpts]"</u>**)

For the purpose of determining whether evidence of an admission is admissible, the court is to find that a particular person made the admission if it is reasonably open to find that he or she made the admission. **"** [32]

(5.14) The Evidence Act does not permit judges discretion to exempt themselves being bound by it. The States Parties flagrantly exempted themselves from being bound by the Evidence Act in 3 clear instances in the matter against the Authors:

(i) Cripps' testimony to ignorance of art;
(ii) Cripps' admission to the "WARNING!";
(iii) Cripps' admission that the purchaser of the one work sold "might have been" a woman other than the one to whom the "Lovely Bottom" comment was made.

IGNORANCE OF ART

(5.15) Cripps' testimony in the Victorian Supreme Court was to his:

- ignorance about art,
- absence of art training,
- absence of knowledge of art theory,
- ignorance of art history, and to his
- limited education. [33]

(5.16) The States Parties without lawful reason did not comply with s 88 of the Evidence Act. Having unlawfully exempted himself, Kyrou, in contradiction to the admissions made by Cripps, declared that there was no evidence "even on the balance of probabilities" showing Cripps to be ignorant about art. [34]

(5.17) The States Parties, on this fabrication of their construction, launched an outright attack on the Authors (specifically against the 2nd Author, though both Authors wrote of the same shortcoming):

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[32] "**Victorian Current Acts**", **EVIDENCE ACT 2008.**
Each State, including the Commonwealth of Australia, has an "evidence act". The Federal **"EVIDENCE ACT 1995"** of the "Commonwealth Consolidated Acts " includes the same section 88 with the same wording**.**

[33] **Transcript testimony by Cripps in Victorian Supreme Court (March 2014) [ANNEXURE 14]:**
"I didn't have the skill or the ability to understand what his works actually meant, what the writing meant. I don't profess to be an art critic. I'm primarily a business person that's involved in the arts. I don't have any art training." (Transcript, p. 388, lines. 10-14)

"---I had no ability to interpret what was written. I did consult and I got glazed eyes at the essays. I'm not an art historian. I have no ability to analyse actually what's been written so I did what I believed to be reasonable." (Transcript, p. 441, lines.6-10)

"---I admitted I had no art background, I had no art training and I didn't understand, I didn't understand his essays, nor did I understand the paintings." (Transcript, p. 388, lines.19-23)

"the problems just attempting to interpret his essays.
It was very difficult to interpret them, wasn't it?---For me, yes. You know, I've got third form education, you know." (Transcript, p. 445, lines.24-26)

[34] "**[491] The whole tenor of the Raymond Article is that Mr Cripps is not a fit and proper person to be a gallerist**. Although the article does not expressly state that **Mr Cripps is ignorant of art**, that message permeates the article, as **it conveys that Mr Cripps' criticisms of the Exhibition and the installation of the Disclaimer arose out of such ignorance**.

"**[513]** ... The evidence did not provide a sufficient basis for a conclusion on the balance of probabilities either that Mr Cripps was ignorant of art or that he was not a fit and proper person to be a gallerist [on the basis of that ignorance]."

"**[660]** ... there was no credible evidence that Mr Cripps had a bad reputation in the following areas: ...
(g) that he was ignorant of art; and
(h) that he was not a fit and proper person to be a gallerist."
Kyrou (**Cripps v Vakras [2014] VSC 279 (20 June 2014)**)

[**498**] The Unfit Imputation is clearly defamatory of Mr Cripps. To say of a person who operates an art gallery that they are ignorant of art and are not a fit and proper person to be a gallerist is to assert that they lack the essential attributes they need to conduct their business. Kyrou, **Cripps v Vakras [2014] VSC 279 (20 June 2014)**

(5.18) The Appeal judges also exempted themselves from being bound by s 88 of the Evidence Act leaving Kyrou's "finding" undisturbed. [35] The Authors point out, that notwithstanding the SCV and VSCA, that Cripps' oral presentation of 26 June 2016 in the FCA (in which the Authors sought remedy for the attack on their reputation) was to <u>again declare</u> that, not only did he have no knowledge or qualification in art, but that such knowledge is not a requirement to run an art gallery. And this was despite the SCV and VSCA having awarded Cripps massive damages for that which those courts held was "defamatory" and false.

THE "WARNING!"

(5.19) The open bias as against the Authors shown by the States Parties (Kyrou) extended to the judicial fabrication of testimony where no testimony of the kind claimed by the States Parties was ever made.

(5.20) The "WARNING!" which had been admitted to by Cripps/Gallery in an earlier proceeding in VCAT [36] in a 2012 submission [37] *was never a fact in dispute between the parties*. At trial the *purpose* of the "WARNING!" was disputed not its existence. [38]

(5.21) The States Parties (Kyrou), *required* "malice" against the Authors without which defamation is not possible. Kyrou fabricated testimony by Cripps about the "WARNING!" to concoct "malice":

> [**177**] "I find that a warning sign was not placed on the landing".
> [**178**] " I find that if the warning sign existed, Mr Vakras would have photographed it"

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[35] The Appeal judges unequivocally upheld Kyrou:

[304] In our opinion, **there was no error in the judge's conclusion** that the meaning pleaded by the plaintiff was conveyed. We have no doubt that **the article implied that Cripps was ignorant of the Surrealist school. But beyond that, the article in the broad carried the message that Cripps was ignorant of art** and interested in profit."
Warren, Ashley, Digby (**Vakras & Anor v Cripps & Anor [2015] VSCA 193 (24 July 2015)**)

[36] Victorian Civil and Administrative Tribunal

[37] Cripps admission to the WARNING! Cripps' "Points of Defence" of 8 May 2012:
"12 The Respondents [Cripps/Redleg]admit that there was a sign at the bottom of the stairs in the Guildford Lane Gallery, leading up to level one, which said WARNING, but this sign had nothing to do with the exhibition " [[**ANNEXURE 21 "Tao Jiang Points of Defence-ORC-"]**]

[38] The existence of the WARNING! was not denied at trial, only its purpose was:
"MR DIBB: You say there was no indication as to what the warning referred to?---I connected it with the disclaimers." (Transcript, 18/3/2014, p. 154, lines 3-5) [**ANNEXURE 14]**

[**98**] "Mr Vakras was so keen to ensure that his evidence assisted the Artists' case that he was prepared to deliberately lie." Kyrou, 20 June 2014 [39]

The Trial Transcripts do not support Kyrou's finding that the "WARNING!" was disputed.

THE LOVELY BOTTOM ADMISSION

(5.22) Cripps admitted to asking female gallery goers of their "Lovely Bottom" (Answers to Interrogatories 2012).
At trial this was embellished; the person to whom he made the comment, was also the buyer of one work. On cross-examination Cripps agreed it was "possible" that the buyer was unrelated to the woman to whom the question was posed:

> "You gave evidence on Friday that at the opening night you said to a woman who bought the work earlier in the night was that her lovely bottom, do you recall giving that evidence?---Yes, I do.
> I suggest to you, Mr Cripps, that you were mistaken that it was the woman who had bought the work earlier in the night, what do you say about that?---It could be possible." **Trial Transcripts, 21/3/2014, Cripps, p. 464 Lines 21-31 [ANNEXURE 14]**

(5.23) Rules-of-evidence mandate that Cripps' testimony regarding the "Lovely Bottom" could not be disregarded – **and the Authors be given opportunity to present evidence** – being the buyer of the work – to demonstrate the two women and events concerning them as being unrelated to one other. The States Parties denied the Authors the opportunity to do so. Presented as an Annexure [[**ANNEXURE 22 "IMG_6602 Charlotte receipt Monument.compressed"**]] is the receipt in Cripps' own hand identifying Dr Smith, not Nancy Ladas, as the buyer.

(5.24) In flagrant contempt of the rules-of-evidence the perjured testimony was misused to "prove" what the States Parties had already pre-determined. According to the States Parties, Cripps' actions which were prejudicial to the integrity, honour and reputation of the Authors by actions done with regard to the art had not damaged the Authors as they had made a sale, thereby "proving" malice:

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[39] **The States Parties (Kyrou) finding against the Authors fabricates Testimony**:
"[**175]** The first factual issue that I must resolve is whether there was a warning sign on the landing between the ground floor and the first floor of the Gallery.

[**176]** The Artists gave evidence that they saw such a sign whereas Mr Cripps denied that such a sign had been placed on the landing.

[**98] Mr Vakras was so keen to ensure that his evidence assisted the Artists' case that he was prepared to deliberately lie.**
[17] I have found that he lied about important aspects of the events of 18 and 24 June 2009.

[**99]** Due to my concerns about the veracity of Mr Vakras' evidence, I have generally rejected that evidence where it was contradicted or not supported by either contemporaneous documents or the evidence of credible independent witnesses, or where the evidence was implausible.

[**177] I find that a warning sign was not placed on the landing.** This is largely because the existence of such a sign is not supported by the contemporaneous documents. In their emails after the meeting on 24 June 2014, the Artists referred to the Disclaimer but did not refer to any warning sign. Moreover, while **Mr Vakras photographed the Disclaimer, no photograph with the warning sign has been produced**.

[**178]** It is true that Mr Vakras stated that Mr Cripps' behaviour prevented him from photographing the warning sign. However, I do not accept that this was the position. Mr Vakras had adequate time to take at least five photographs on the first floor on 24 June 2009.[45] **I find that if the warning sign existed, Mr Vakras would have photographed it**.

[**179]** The First Vakras Article does not refer to a warning sign. The Raymond Article refers to a 'huge "WARNING" sign' but it does so on the false premise that the Exhibition was on the second floor of the Gallery rather than on the first floor. In any event, for the reasons I have already set out, that part of the Raymond Article is deliberately untrue." (**Cripps v Vakras [2014] VSC 279 (20 June 2014)**)

[**334**] "Mr Cripps made an inappropriate comment to Ms Ladas but she had already purchased a painting and there was no evidence that any offence that she may have taken as against Mr Cripps affected her support for the Artists or the Exhibition." Kyrou, 20 June 2014 [40]

[**526**] "[and] was not actuated by the purposes [claimed]... but by the dominant purpose of smearing Mr Cripps and maximising the damage to his reputation and business interests. That purpose was improper in the sense that it was foreign to any privileged occasion that might otherwise have existed." Kyrou, 20 June 2014 [41]

POINT (c) The right to:

- **(i) the Presumption of Innocence when defending against a Criminal allegation being made against them,**
- **(ii) the right to not self-incriminate, and**
- **(iii) the concomitant right to have Criminal matters heard in a court of competent jurisdiction were denied to the Authors.**

(5.25) Instead **the States Parties made a Criminal finding as against both Authors** for "electronic surveillance" (Breaching of the Surveillance Act), **without a Criminal trial taking place**. The States Parties made a Criminal finding (though without recording a conviction) against both without an evidential basis and imposed a pecuniary penalty against both for committing the criminal act, **and denied the Authors any right to an Appeal.**

From the Authors' Application Seeking Leave to Appeal the Supreme Court of Victoria judgments in the HCA (dismissed by the HCA on 6 April 2017)*:*

(9) While hearing a Civil matter the Primary judge made a Criminal finding and imposed ruinous pecuniary damages; the SURVEILLANCE DEVICES ACT 1999, under s 30E(1) (a), (b), (2) (a), (b) (i), though not cited, was relied on in the 20/6/2014 judgment at **[714 (e)]**, "The Artists are keeping Mr Cripps 'under constant electronic surveillance', which has increased the harm to him", repeated at **[740], [743], & 762 (d)**.

(5.26) The Authors point out that this is a Criminal offence, carries a jail-term ([**ANNEXURE 23 "SURVEILLANCE DEVICES ACT 1999"**]), was irrelevant to the case, and was used by the States Parties to evince the Authors' "malice" enabling a finding for aggravated damages against both.

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[40] **[334]** The evidence, however, has not established that Mr Cripps inhibited the Artists' capacity to promote the Exhibition or that the Exhibition failed. The Artists gave evidence that the opening night was a success. … Mr Cripps made an inappropriate comment to Ms Ladas but she had already purchased a painting and there was no evidence that any offence that she may have taken as against Mr Cripps affected her support for the Artists or the Exhibition. (**Cripps v Vakras [2014] VSC 279 (20 June 2014)**)

[41] **[526]** In my opinion, the discussion of the defence of qualified privilege at common law in relation to the First Vakras Article at [401] to [413] above also applies to the Raymond Article. ..
(**b**) Mr Cripps has established malice...Significantly, in publishing the article, Ms Raymond was not actuated by the purposes set out at [524] above but by the dominant purpose of smearing Mr Cripps and maximising the damage to his reputation and busines [231]nterests.231 That purpose was improper in the sense that it was foreign to any privileged occasion that might otherwise have existed. I have based these conclusions on the following:
(**i**) The unprovoked and vicious nature of Ms Raymond's attack on Mr Cripps in the Raymond Article and the excessive mode of publication adopted.
(**iii**) The deliberate falsities in the Raymond Article about the statements and conduct of Mr Cripps on 18 and 24 June 2009 that I have summarised at [153], [159], [179], [187] and [195] above. By way of example, although Ms Raymond knew that Mr Cripps had made the 'lovely bottom' comment to only one woman (her superior at Museum Victoria, Ms Ladas), she used the plural 'women' in the Raymond Article. (**Cripps v Vakras [2014] VSC 279 (20 June 2014)**)

POINT (d) The right to have the matter dealt according to the laws under which it arose and not under laws alien to the matter that were introduced on the States Parties own motion

(5.27) The States Parties used the Classification Act (films and DVDs) which is not applicable to Art Exhibitions, to permit justifying the actions done with regard to the Authors' art prejudicial to their reputation that permitted for the making of an adverse finding against the Authors.

> *From the Authors' Application Seeking Leave to Appeal the Supreme Court of Victoria judgments in the HCA* (dismissed by the HCA on 6 April 2017):
>
> (10) The Primary judge relied on statutes irrelevant to the matter. The 2009 Surrealist Art exhibition was of paintings, drawings and prints. With regard to disclaimers posted throughout our exhibition, breaching the contract (and Moral Rights), Kyrou J, considered it to not breach the contract because, "I mean if you look at any DVD of any movie that's the first thing that you see." (T, 26/3/2014, p. 657, ll 11-22). This might be required under s 6 of CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (ENFORCEMENT) ACT 1995, if our *exhibition* was a film. It was not.

POINT (e) The right to an impartial party hearing the matter was denied to the Authors

(5.28) The Authors return to their right to express their ideas (Claim 1), and not be vilified by the States Parties by unlawful abuse of their office. And it bears repeating, the Authors' exhibition was a critique of religious precepts as it was *surrealist art*. REFER, surrealism, [**ANNEXURE 5]**

(5.29) The Authors had a right to be heard by an impartial judiciary but were denied this right.

(5.30) The Authors' surrealist art REFER, surrealism, [**ANNEXURE 5]** was objected to by Cripps/Gallery, and testimony given by Cripps in the SCV declared the objection to be with "the whole lot". [42]

(5.31) In the pages to follow, the Authors reproduce material exhibited in June-July 2009 **[ANNEXURES 6 & 11]**. The material pre-dates the Authors' ever having known of Cripps or his gallery. The States Parties turned this material into imputations about Cripps though irrelevant to him.

(5.32) From the essay pinned alongside the oil painting "*Pythia between Χαός and Χασμός*", both essay and painting reproduced on pp. 30-31, Humanist Transhumanist - and both part of the June-July 2009 exhibition **[ANNEXURES 6 & 11]**. (Proceeding with criticism made of the Jewish "historian" Josephus):

> "These Jewish laws of which Josephus was so proud constitute the basis of Christian instruction. Some of the more memorable of these laws: "Out of all the peoples on the face of the earth YHWH has chosen you to be his treasured possession." Deuteronomy 14.2"
>
> "...if you turn away [from god's directives] and ally yourselves with the survivors of these nations that remain among you and if you intermarry with them and associate with them, then you may be sure that YHWH your God will no longer drive out these nations before you." Joshua 23.12-13"

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[42] Cross-examination of Cripps regarding the disclaimers on 21 March 2014, Supreme Court of Victoria:

"Were you shown this document before it was put up?---Yes, I did.
Did you agree with the words that are in it?---Yes, I do.
Where it says, "The views and opinions expressed in this exhibition", did you have any understanding as to what that was referring to?
---Yes, the views expressed within the written material of the exhibition.
And in particular what parts or aspects of the written material?
---The whole lot.
The whole lot?
---I had no ability to interpret what was written.

[Transcript pp.440-441, l. 28-31 & 1-13] **[ANNEXURE 14]**

"... "You must destroy all the peoples YHWH your God gives over to you. Do not look on them with pity and do not serve their gods..." Deuteronomy 7.16 [etc]"

"Racial purity, hatred, and intolerance were demanded by YHWH who Christians claim was later born onto earth in the form of a man, the so–called "used" one (Χριστός, Khristos: Christ, means "the used"). These instructions were inculcated in weekly sermons and became the force which guided those of the Judaist faiths. It was these edicts which nearly 2000 years after Josephus' time, were put into practice by Adolph Hitler who wrote in his Mein Kampf:

"...there is only one holiest human right... the holiest obligation... to see to it that the blood is preserved pure... by raising marriage from the level of a continuous defilement of the race, and give it the consecration of an institution which is called upon to produce images of the Lord and not monstrosities..." pp. 365-366 Mein Kampf "Christianity ... was absolutely forced to undertake the destruction of heathen altars. Only from this fanatical intolerance could its apodictic faith take form....The objection may very well be raised that such phenomena in world history arise from the most part from specifically Jewish modes of thought, in fact , that this type of intolerance and fanaticism positively embodies the Jewish nature... we may deeply regret this fact..." Mein Kampf pp. 412-413

"Though Jewish in origin, it is this Biblical intolerance, part of the shared inheritance of Judaism and Christianity that Hitler pursued. (Those who make claims to the contrary have not read his Mein Kampf)."

(5.33) From the essay pinned alongside the oil painting "*attempting the destruction of the secular muse*", both essay and painting reproduced on p. 25, Humanist Transhumanist - and both part of the June-July 2009 exhibition [**ANNEXURES 6 & 11**]:

"Though some Christians claim that when their god took human form as the Christ he renounced these laws, this is incorrect. It is clearly stated in Matthew 5.17: "Do not think that I have come to abolish the Law or the Prophets; I have not come to abolish them but to fulfil them.""

(5.34) From the essay pinned alongside the framed digital print "*medousa gammadion*", both essay and print reproduced p. 32, Humanist Transhumanist - and both part of the June-July 2009 exhibition [**ANNEXURES 6 & 11**]:

"The symbols of the actual ideology that demanded the racial exterminations undertaken by the Nazis should have been the crucifix and star of David, as the demand for racial purity and religious intolerance is Biblical."

(5.35) With regard to the Authors' exhibition material of 2009 which was an attack made on religious precepts, the Authors' trial should not have been presided by Kyrou:

(a) Kyrou, is an active lobbyist for the Greek Orthodox Church;

(b) Advocates for Biblical Law to play a role in formulating law and its values; and,

(c) Proselytises on behalf of the Church and the Church's role in developing "law".

(5.36) As the Authors summarised in their joint complaint to Marilyn Warren (Chief Justice of the SCV), the Governor of Victoria and Attorney General of Victoria on 13 July 2014:

"Kyrou's grimaces, offhand remarks he made during the trial, made it incontrovertibly obvious that he had utter contempt for critics of religion and had made up his mind well before the trial finished" [**ANNEXURE 24 "complaint Kyrou bias.compressed"**] [43]

[43] The Governor and Attorney General's Department both responded. Warren failed to respond. The SCV reacted by removing all the complaints procedure information from its website. Warren instead decided to preside over the appeal of Kyrou's judgment, and warned the Authors, via their counsel, about their complaints about Kyrou which they have published online. [**ANNEXURE 34 "[Kyrou Warren contempt scandal] 302630283_1_ELet Vakras Raymond 28.7.15"**]

(5.37) **The Authors reiterate**:
In the trial prosecuted against them by the States Parties, the Biblical "Law" proselytised by Kyrou, was in the 2009 surrealist exhibition material, presented as underpinning the the genocide committed by Adolf Hitler – and this material, though predating the Authors' knowledge of the existence of Cripps or Kyrou was used by Kyrou to construct the "Hitler imputation" and to attack the reputation of the Authors through Australia's mass-media.

(5.38) Kyrou's written piece published in the Greek Orthodox English-language web-site, "Mode of Life" declares the "law" (Genesis, Deuteronomy, and Leviticus) as descending on humanity as "the tongues of fire", of the Christian Pentecost which **provides guidance for judges**. [**ANNEXURE 25 "Kyrou writes ModeOfLife.compressed"**] [44]

(5.39) Kyrou is:

(a) promoted by the Greek Orthodox Archdiocese of Australia as its advocate, featuring in the Archdiocese's (Greek-language) newsletter. [**ANNEXURE 27 "1_VEMA_Feb_2015_GRE p6 - highlight.compressed"**] [45]

(b) lectures to promote Christianity, from the pulpit of Greek Orthodox Church of St Eustathios, South Melbourne, on the subject of the "place for Religion in the Judicial System". This lecture was promoted by the Greek Orthodox Archdiocese on:

(i) their Facebook site (point 5.43 of this Petition) and

(ii) the Greek Orthodox Church's "Youth" site [**ANNEXURE 28 "2015-09-21lecture.compressed"**].

(c) Kyrou organised for the the Greek Orthodox Church to be included in the Legal Year Openings of the Supreme Court of Victoria in which Kyrou read the Biblical passages on "The Law", *that the Authors had condemned in their art exhibition of June-July 2009* [**ANNEXURE 29 "CYC Victoria and Tasmania"**]

(5.40) Kyrou's advocacy to insinuate the Church's values into the judicial system has been tireless, widespread, and public. His advocacy for the "place for Religion in the Judicial System" was published by the Victorian Law Institute [**ANNEXURE 30**]. [46]

(5.41) The Authors refer the Commission/Commissioner to the SCV Appeal of 24 July 2015 and stress that the "failure" by Kyrou regarding the "Hitler imputation" (as described by the appeal judges) was not an accident. Kyrou's findings [307] and [308] of the 20 June 2014 judgment [47] has to be considered in the context of this failure. The only association made with Hitler by the Authors was with Christianity not

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[44] The Authors point out that "Mode of Life", the publishers of Kyrou's article, actively advocates against "secularism" and "Apostasy". [**ANNEXURE 26 "ModeOfLife anti-secular.compressed"**]

[45] Kyrou features on the Greek orthodox website, blogs, photo postings, etc, not just *The Vema*.

[46] "the principle that 'Christianity is part of the law of England' was accepted until 1917" … "religion continues to influence the administration of justice " …"principles of the law… have their origins in values which feature prominently in the great religious texts"

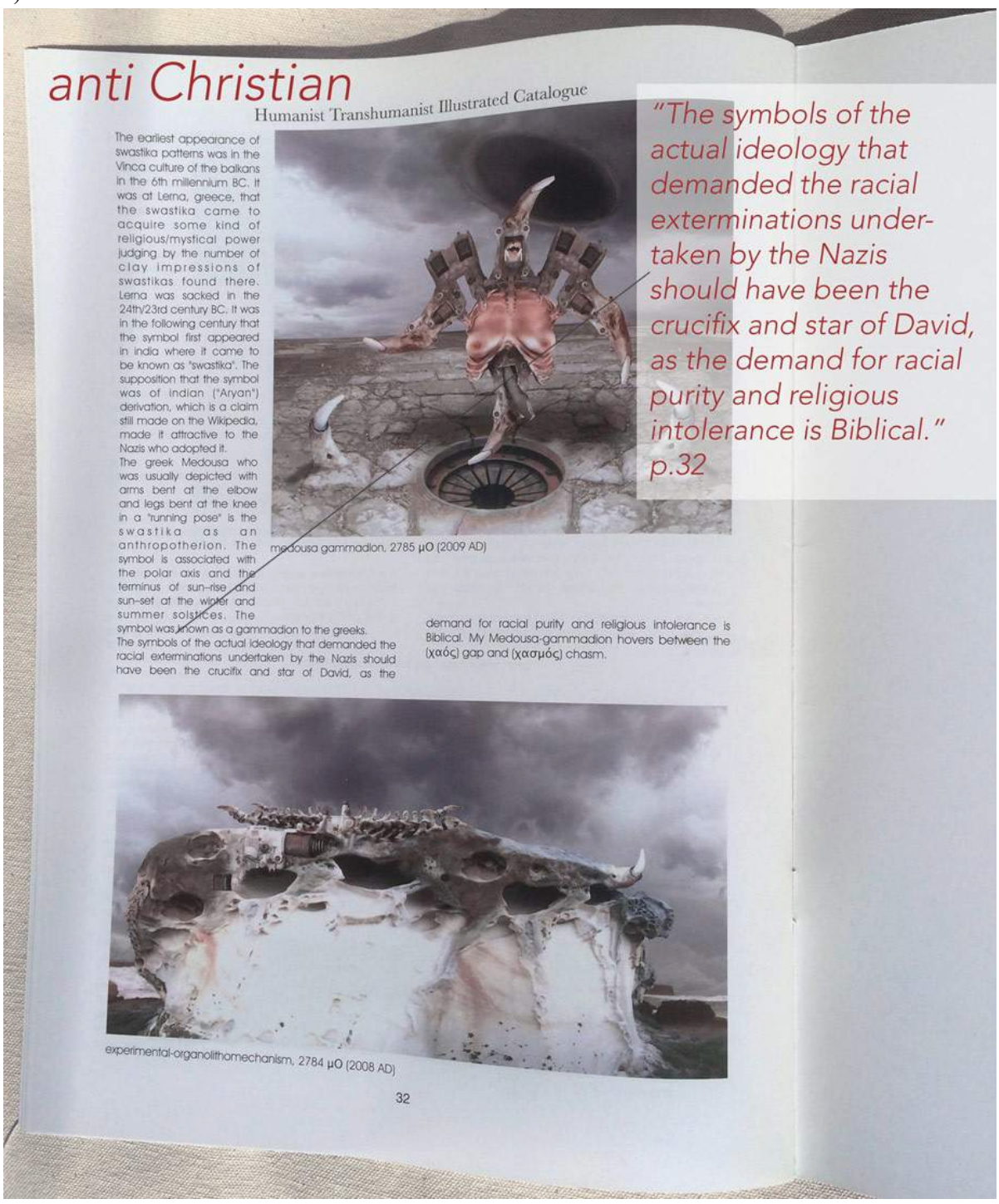
[47] **[307]** The Hitler Imputation inarguably defames Mr Cripps. .. **To associate anyone with the views of Hitler is to profoundly damage their reputation because the message that is immediately conveyed is that the person condones the atrocities that Hitler** committed based on his views that the Aryan race is superior to all other races and that Jews (among others) should be exterminated. In modern Australian society, that message represents a devastating assault on the person's reputation and is likely to make them a pariah. **(the Authors emphasis)**

[308] Hitler is universally regarded as one of the most abhorrent individuals of all time. The images with which he is instantly associated are those of the Holocaust and the commission of atrocities on innocent civilians based on the racist view set out at [307] above. These images are conveyed by **the mere mention of Hitler's name** and are **so potent** that they would be instantly attributed to **anyone who** is accused of being a racist who **holds views that are similar to those of Hitler.** The levelling of such an accusation at any person **would eviscerate their reputation. (the Authors emphasis)**
(Cripps v Vakras [2014] VSC 279 (20 June 2014))

Cripps. Kyrou should have recused himself from hearing a matter that was clearly offensive to his publicly stated strongly held religious beliefs and opinions.

(5.42)

The exhibition material was misused by the States Parties to create the "Hitler imputation"



anti Christian

Humanist Transhumanist Illustrated Catalogue

The earliest appearance of swastika patterns was in the Vinca culture of the balkans in the 6th millennium BC. It was at Lerna, greece, that the swastika came to acquire some kind of religious/mystical power judging by the number of clay impressions of swastikas found there. Lerna was sacked in the 24th/23rd century BC. It was in the following century that the symbol first appeared in india where it came to be known as "swastika". The supposition that the symbol was of indian ("Aryan") derivation, which is a claim still made on the Wikipedia, made it attractive to the Nazis who adopted it.

The greek Medousa who was usually depicted with arms bent at the elbow and legs bent at the knee in a "running pose" is the swastika as an anthropotherion. The symbol is associated with the polar axis and the terminus of sun-rise and sun-set at the winter and summer solstices. The symbol was known as a gammadion to the greeks.

The symbols of the actual ideology that demanded the racial exterminations undertaken by the Nazis should have been the crucifix and star of David, as the demand for racial purity and religious intolerance is Biblical. My Medousa-gammadion hovers between the (χαός) gap and (χασμός) chasm.

medousa gammadion, 2785 μO (2009 AD)

"The symbols of the actual ideology that demanded the racial exterminations undertaken by the Nazis should have been the crucifix and star of David, as the demand for racial purity and religious intolerance is Biblical." p.32

experimental-organolithomechanism, 2784 μO (2008 AD)

32

(5.43)

Kyrou proselytising on the role Christian religion plays in the formulation and application of law with Bishop Ezekeil of Dervis (Assistant Bishop to the head of the Greek Orthodox Archdiocese of Australia) seated behind him.

POINT (f) The right to not be penalised for purported damage done to a party not involved in the suit

(5.44) The judge, Kyrou, ordered that the Authors pay penalty to a party which *was not a party* to the suit.

Extracted from the Authors' Application Seeking Leave to Appeal the Supreme Court of Victoria judgments in the HCA (dismissed by the HCA on 6 April 2017):

(13) (a) The Primary judge Ordered we pay damages to Redleg Museum Services P/L, for "damage" done not to it, but to a party not involved in the suit. The Primary judge identifies this party as the transport company, the "Redleg Group P/L" (Reason [19]).
(b) The "defamation" damage was clearly identified as being done to the separate transport company, the "Redleg Group".
(c) The Primary judge proclaims that company had a standing interest capable of suffering injury, notwithstanding that it was not a party to the suit (Reasons [563], [426]).
(d) This was left undisturbed by the Appeal judges at Reason [10].
An ASIC search (conducted 27/9/2015) showed that the "Redleg Group" was deregistered by ASIC under a SECTION 601AB in April 2005 (under Supreme Court order: 8682 of 2001). Cripps' testimony was that it was still in operation.

(5.45) The Authors' right extends to not be made liable for damages to a company that does not exist and who was not party to the suit [19], Kyrou 20/6/2014 Reasons [563], [426] [48].

Attached as an Annexure's are:

- ASIC's liquidation and de-registration of the "Redleg Group" [**ANNEXURE 31 "THE REDLEG GROUP PTY- LTD deregistered"**]
- ASIC's de-registration of the "Redleg Museum Services" (trading name of "Redleg Group") [**ANNEXURE 32 "Redleg Museum Services Cancelled by ASIC 2d38353432323635313 43"**]

POINT (g) The right to procedural fairness was abused and misused as against the Authors

(5.46) *From the Authors' Application Seeking Leave to Appeal the Supreme Court of Victoria judgments in the HCA* (dismissed by the HCA on 6 April 2017):

(16) The Initial trial judge (Beach J) ordered at [43 (1)] "file and serve particulars identifying the hyperlinks referred to in paragraph 5 of the further amended defence of the first defendant and the precise words and images on the hyperlinked pages upon which the defendants will rely at trial" (7 September 2012). Compliance with those orders gave cause for the Primary judge to make an adverse finding, [26] "it is inappropriate for Mr Vakras to select a small part of only one of the hyperlinked items and to purport to include it in the matter complained of. In my opinion, the fact that Mr Vakras proposes to rely on only a small portion of the Hyperlinked Article supports my view that the two articles are separate..." Cripps & Anor v Vakras & Anor [2014] VSC 110 (25 March 2014)

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48 [19] In the 1980s,...He registered a company called Redleg Group Pty Ltd for t**he arts transportation business. This was a different company from Redleg, the second plaintiff in the Defamation Proceeding**.

[423] The First Vakras Article treats Mr Cripps and Redleg as one and attributes all of Mr Cripps' alleged negative attributes to Redleg. Also, by **referring to Redleg's arts transportation business**, and asking rhetorically whether Redleg can be trusted, the article attacks Redleg's reputation in relation to its entire business activities rather than simply in relation to its dealings with artists who exhibit their works at the Gallery. Further, the First Vakras Article expressly describes the Gallery as 'disreputable'.

[424] ... I will refer to this imputation as the 'Redleg Trust Imputation'.

[426] ... the First Vakras Article conveys the message that, because the disreputable Mr Cripps operates and owns Redleg, it is a disreputable company which is not to be trusted, **the article defames Redleg**. In order for a company carrying on business to succeed, it needs to attract customers. To say of such a company that it is disreputable and not to be trusted damages its business reputation because customers are less likely to do business with it.

[563] A corporate plaintiff is unable to recover damages for injury to feelings; its damages are limited to injury to its trading or business reputation. These damages include actual monetary loss, and damage to trading reputation and goodwill to the extent that it can be assessed in monetary terms. **A company must show that it had a trading reputation at the time of publication of the defamatory material.**
(Cripps v Vakras [2014] VSC 279 (20 June 2014))

[Claim 6] ICCPR Article 2
3. Each State Party to the present Covenant undertakes:
(a) To ensure that any person whose rights or freedoms as herein recognized are violated ***shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity****;*
(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and ***to develop the possibilities of judicial remedy****;*
(c) To ensure that the competent authorities shall ***enforce such remedies when granted****..*

The Right to Effective Remedy – "notwithstanding that the violation has been committed by persons acting in an official capacity"

(6.1) The Authors submit that their rights have been violated, their freedoms infringed, and remedy denied to them by all the States Parties (SCV, VSCA, FCCA, FCA, HCA), and particularly by Emilios Kyrou acting in his official capacity.

(6.2) The violations constitute all the claims made in this petition.

(6.3) The damage done to the Authors by the States Parties is comprehensive – a result of the Authors their having exercised their right to express ideas in their art exhibition of 2009 and then defend their reputation against attack with regard to the ideas expressed in their exhibition.
In financial terms the destruction of the Authors is their being divested of AUD$935K (to date) – which represents their entire life-output;
In artistic terms, the Authors have lost the esteem, credibility and the integrity of their entire artistic output that spans to the 1970s;
The names of both Authors are *destroyed* – it is recognised that an artist's reputation is embodied by the association and connection that exists between the art and ideas of the artist with their name. The achievements and reputations of Michelangelo, Leonardo da Vinci, Picasso, Dalí, Giger, Frida Kahlo, Dorothea Tanning are (embodied in/by) their name. The link between artist-and-name is reflected in the Authors' own art websites which are their own names ("vakras.com", "demetiosvakras.com", "leeanneart.com" and "leeannesurreal.com").

(6.4) **The Authors emphasise** that the damage done them is particularly acute in the internet-age.
The 1st Author emphasises, that

- his work being exhibited by a gallery in Chicago in 2002,
- the inclusion of his art in the book ***Carnivora*** (edited by Les Barany, agent of surrealist H.R. Giger), and
- the inclusion of his art in the book ***Lexikon der phantastischen Künstler*** by art historian Gerhard Habarta

were by invitation of the Author by these parties after they discovered his works on the internet.
To now search for either Author and their art on the internet brings up multiple listings on "artist Hitler rant". And this is notwithstanding that the "Hitler imputation" that gave rise to the headlines has been admitted to as an own failure by the States Parties – ***which the Authors emphasise had been intentionally orchestrated by the States Parties and disseminated by them in their media release***.

(6.5) **The Authors also emphasise** that the States Parties were cognisant that their dissemination of material via the internet would result in it being widespread, and that their disseminating their adverse finding on social media was done with the intent of wide dissemination. It is not as if the States Parties were indifferent to the prospective damage to the Authors' reputation, nay, they agreed with Cripps/

Gallery on the "objectionability" of the Authors' "potentially offensive" material (Kyrou, 20/6/2014 [242]) and supported the actions taken against them, and were intent on damaging the credibility of the art and the credibility of both Authors for having authored the material, and made an example of them.

(6.6) The States Parties acted with a callous and deliberate malice. It was they who, to re-summarise:

(a) permitted for the Authors' exhibition material to constitute the catalyst in a causal chain which gave rise to all of the actions taken against both Authors by Cripps/Gallery because, the States Parties, in agreement with Cripps/Gallery, considered the Authors' exhibition material objectionable and "offensive" (Kyrou, 20/6/2014, at [242]) and despite their having no legal foundation on which to implement a penalty as against material because of their dislike of it, they did so anyway;

(b) who, lauding the Palestine cause (*unrelated to the Authors' exhibitio*n), penalised them for their failure to sympathise with it, and their art's failure, to share the concern for Palestine that both Cripps/Gallery and the States Parties believed they ought to have done;

(c) who diminished the worth and value of the Authors reputation as artists to the extent that the States Parties deemed that the Authors' art, exhibition, and their personhood (expressed by the art), and their achievements as artists, had no demonstrable value associated with it (where "value" was assessed as pecuniary), and that since the Authors and their creations were devoid of intrinsic pecuniary worth that nothing of tangible value existed for them to suffer an injury [49];

(d) who, though bound by the internal laws of the State (ie Evidence Act), deliberately disregarded obligations mandated by law and dispensed with admissions made by Cripps/Gallery that would have prevented the judge from making a finding as against the Authors (Kyrou fabricated "evidence" to find against the Authors);

(e) who awarded damages (reversed on appeal with regard to the 2nd Author) to a company that they (the Supreme Court of Victoria) had "liquidated" in 2005, which therefore did not exist and could not suffer damage, and which was not party to the lawsuit - which was a fact that Kyrou acknowledged at [19] 20/6/2014 judgment;

(f) who made a finding on criminal conduct being done by both Authors during a civil trial where the Authors were denied their rights to have the matter heard in a criminal court, and where the criminal act having been found to be done formed the basis of the "aggravated damages" penalty made against both;

(g) who permitted for the 1st Author to be racially discriminated against on the grounds that the contract required no more than providing what was included in its contents – and it was as against this finding that the subsequent Federal-jurisdiction court, issued an "Issue Estoppel";

(h) who made postings on the Supreme Court of Victoria website, and on Facebook (and Twitter) to draw the Australian public's attention to the Authors "wrongdoing" which continues to cause them profound humiliation;

(i) who, after the Authors had already spent approx. AUD$470K by borrowing against the estimated valuation of their home/studio, were ordered to pay Cripps/Gallery AUD$383,900.00 - which meant that the pursuing of the race-discrimination matter and all subsequent matters that arose required the Authors to represent themselves without legal representation and that they acquire a sufficient understanding of the *machinations* of the legal system to do so (this in turn delayed their application to appeal to the HCA which was prejudicial to them).

(6.7) The Authors have not produced any art since the suit of law was launched against them. The Authors have been left with no capacity to set-up studio and cannot express their ideas (which includes exhibiting their art), and aged in their mid-50s, will never be able to reclaim what has been taken

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[49] According to the States Parties, the "defamation" purported to have been done to Cripps/Gallery by the 2nd Author was that she could not have reasonably believed that Cripps/Gallery caused their reputation to be sullied and the exhibition destroyed, since she could not demonstrate a financial injury to have been done by the actions complained of. The States Parties sophistic finding was that as it was known by the 2nd Author that Cripps /Gallery could not be shown to have caused a financial injury, her writing about the injury (sullying, destroying) was "knowingly false" and thus "defamatory".

from them, or establish a studio when they retire or recover their integrity or reputation to ever exhibit again.

(6.8) The Authors submit, that unlike other signatories to the ICCPR, such as Greece, the Authors have no remedy as against Kyrou (or the Supreme Court of Victoria) for their first having first permitted the lawsuit against them by Cripps/Gallery, and then enjoining with Cripps/Gallery to take actions themselves as against both Authors, that resulted in further violations against both Authors by the States Parties.

(6.9) To this end, the Authors illustrate the point with reference to the **Greek Constitution** [50] at **Article 99** which provides for "**Suits against magistrates for faulty wrongful judgment**" comprised of judges *and academics* chosen by lot (Excerpt of Greek Constitution, [**ANNEXURE 33 "001-156 aggliko Greece Constitution eng excerpt-2"**]) which is precisely the kind of legislative authority absent in Australia that could deal with the Authors' grievance and injury, remedy their injury, and prevent other such abuses.

(6.10) The Authors emphasise that other States, Party to the ICCPR (not limited to the example of Greece), have internal mechanisms that result in indictment and impeachment of judges and the State Party could utilise existing laws to create a Legislative Organ that would allow it to fulfil its obligations under the ICCPR.

(6.11) As the Authors have already pointed out [REFER, Claim 5, point (a), unfair trial] , though Parliament and the Courts are bound by Clause 5 of the Constitution, the HCA can permit itself to exist as outside the law because it is given unfettered power to decide whether or how it might be bound by law (Clause 5).

(6.12) A*s the Authors submitted in their leave seeking to Appeal the Victorian Supreme Court matter, there is no Legislative Authority that can compel the courts to abide by the Constitution*:

> **Part II:**
>
> (3) In past decisions the HCA has found, (MASON CJ AND DEANE J), ie "Teoh's case" (**Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh ("Teoh's case") [1995] HCA 20**), expressed, at [34],
>
> "Moreover, ratification by Australia of an international convention is not to be dismissed as a merely platitudinous or ineffectual act(17), particularly when the instrument evidences internationally accepted standards to be applied by courts and administrative authorities in dealing with basic human rights ... Rather, ratification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the Convention".
>
> **Does the HCA now find reason to reverse or withdraw from courts any duty or obligation under International Covenants even in instances where Parliament has written them into domestic law? In spite of the Constitution (Clause 5) that binds the court?** (***Authors Application*** *Seeking Leave to Appeal, 20 January 2017, pp.7-8*) [51]

And that Australian courts' judgements are unfettered by Constitutional constraints was made manifestly self-evident by the HCA in the judgment by Nettle on 12 July 2017 [Refer Points 4.35 & 7.19]

(6.13) **The Authors stress**: their rights remain available to them, despite the actions of the States Parties – as the State Party has, under the provisions of the Australian Constitution signed international covenants, and according to them has made laws incorporating the protections the Authors claim. These rights are

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[50] The translation into English is published by the Greek Government at http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf

[51] *The Authors pint out, that in* **Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh ("Teoh's case") [1995] HCA 20** *the HCA ruled that protections under international covenants exist as a "reasonable expectation" even where the State Party has not legislated the International Covenant into law. Meaning, the HCA concedes that Australia can meet its obligations under the ICCPR.*

not abrogated by the States Parties bias as against the Authors on account of their dislike or disagreement with the ideas the Authors expressed in images and words.

(6.14) The Authors emphasise to both the Commission/Commissioner and to the State Party:

Australia is signatory to the ***Vienna Convention on the Law of Treaties***. And as a signatory it is bound by its agreement to the ICCPR. With reference to Articles 26 and 27:

> ***Article 26***. *"PACTA SUNT SERVANDA"*
> *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*
> ***Article 27***. *INTERNAL LAW AND OBSERVANCE OF TREATIES*
> *A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.*

(6.15) The Authors point out, that as signatory to the Vienna Convention Australia cannot refuse to observe its obligations arising under the International Treaties by using domestic laws to circumvent its doing so.

(6.16) As it currently stands, under domestic law, the principle that guides what remedies as against States Parties (which includes judges), that the Authors might be availed to is that the Authors have no rights against the States Parties for their actions or against an individual acting in their official capacity, therefore the State Party fails the obligation to Article 2 3 (a) (b) (c) of the ICCPR.

(6.17) The Authors, preemptively, refer to ***Common Law,*** according to which the States Parties (courts and judiciary) *assert for themselves* "immunity" from the obligations under Article 2 3 (a) (b) (c) of the ICCPR from as recently as 2005 (though noting that the HCA gives to itself an unfettered right to act unconstitutionally (refer Point 6.12):

> 33. ... The general principle is as stated by Lord Denning MR in Sirros v Moore[11]:
> "Ever since the year 1613, if not before, it has been accepted in our law that **no action is maintainable against a judge for anything said or done by him in the exercise of a jurisdiction which belongs to him**. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not liable to an action."
> (Authors' emphasis) **GLEESON CJ, Fingleton v R [2005] HCA 34**

(6.18) T**he Authors place emphasis** on the three cases the 1st Author cited in his submissions to the HCA seeking Mandamus against the Federal Court and Circuit Court. In those cases the High Court ruled that "malice" "gross error" and "ignorance" constitute extra-jurisdictional determinations. That is, they lie beyond a judge's jurisdiction, and the HCA's declaration of judicial immunity is not availed to judges where they have no jurisdiction to make rulings. [52]

(6.19) In considering Kyrou's actions as an officer of the State, it is not his jurisdiction to:

(a) make political proclamations lauding the Palestine cause;

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[52] The 3 cited cases define "jurisdictional error". Ignorance (of law), an unfair hearing, the court lacking jurisdiction (ie, a criminal mater cannot be decided in a civil trial) are all examples of where a judge does not have jurisdiction.
Craig v The State of South Australia [1995] HCA 58
Kirk v Industrial Relations Commission of New South Wales [2010] HCA 1
Edwards v Santos Limited [2011] HCA 8

(b) agree with one party as against another on the objectionable nature of their art ("potentially offensive statements", Kyrou [242]);
(c) to disavail Federal-jurisdiction protections available to the Authors which lie outside his Victorian-state jurisdiction;
(d) to determine a criminal matter in a civil proceeding and impose a penalty;
(e) ignore the rule-of-law that mandates that findings be based on evidence.

(6.20) The Parliament of the State of Victoria can amend its constitution and create a Legislative Organ to properly address judicial misconduct of the kind complained of by the Authors.

(6.21) The State of Victoria failed to act on the Authors' complaint (refer point 5.36 of this Petition) under s 87AAB of the Victorian State Constitution to investigate, what would have, had it been investigated, shown "proved misbehaviour" [53].

(6.22) The Authors seek for the State Party to act in good faith and honour its obligations under its International Treaties – and compel the State of Victoria to amend its constitution accordingly to permit the Authors access to remedy, and compel the HCA to act within, and not outside, the Constitution.

(6.23) The Authors seek, as remedy, the recovery all of the monies they have paid in legal costs, relocation costs, monies they paid in rental accommodation (having lost their place of residence), interest paid on the money borrowed from the bank they used to pay for their legal costs, and the AUD $383,900.00 they paid Cripps/Gallery per court order [**ANNEXURE 8**]. The amount paid by the Authors totals AUD $930,000.00.

(6.24) Further, the Authors seek remedy in order to create the art they have been prevented from creating since 2011 which is entirely due to the actions of the States Parties.
The Authors point out that had the States Parties not first made a pre-judgment against them for their having exercised their right to express their ideas in their art exhibition, which the Court found to be the catalyst in the casual chain, that the matter would never have gone to trial.

(6.25) The Authors point out that, (with regard to the so-called "Hitler imputation" constructed by the States Parties), the Appeal Court ordered:
- that Cripps/Gallery had "unjustifiably extracted" monies from both Authors;
- that a re-trial be ordered on the limited grounds; and
- that a re-trial, if any, be stayed until Cripps/Gallery returned the funds to the Authors.

(6.26) Though it may be argued by the States Parties that the Authors can reclaim some of the money from Cripps/Gallery they point to the following facts:

- It was solely by wrongful order of the States Parties that both Authors defended themselves against a defamation claim for their having exercised their right to defend their reputation
- And, it was by wrongful order by the States Parties that the Authors paid any money.

(6.27) It is the States Parties sole responsibility to provide remedy to the Authors and bring them to their original position. This has to include providing them the ability to create the art they would otherwise have created were it not for the States Parties interference in support of Cripps/Gallery in all its actions against the Authors in particular by Emilios Kyrou acting in his official capacity.

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[53] **CONSTITUTION ACT 1975 - SECT 87AAB**
Removal from judicial office
(1) The Governor in Council may remove the holder of a judicial office from that office on the presentation to the Governor of an address from both Houses of the Parliament agreed to by a special majority in the same session praying for that removal on the ground of proved misbehaviour or incapacity.

(6.28) The Authors seek to remedy and reverse the damage done to their reputation by the States Parties, that the States Parties make a pubic announcement to correct the wrongs they have done to the Authors and direct (or pay) the media to report it.

[Claim 7] ICCPR Article 2

*1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction...**race**, colour, sex, **language, religion**, political or other opinion, **national** or social **origin**...*

Article 26

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, **the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race**, colour, sex, **language, religion**, political or other opinion, national or social origin, property, birth or other status.*

The 1st Author makes reference to the following Covenants and General Comments related to discrimination on a distinction based on race (language, religion and national origin):

> ***ICERD Article 1***
>
> *1. In this Convention, the term "**racial discrimination**" shall mean **any distinction, exclusion, restriction** or preference **based on race**, colour, **descent, or national or ethnic origin** which has **the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing**, **of human rights and fundamental freedoms** in the **political**, economic, social, **cultural or any other field** of public life.* (Defining the meaning of "racial discrimination")
>
> ***ICESCR Article 2 (2)***
>
> *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be **exercised without discrimination of any kind as to race**, colour, sex, **language, religion**, political or other opinion...*
>
> ***Committee on Economic, Social and Cultural Rights Forty-third session***
> ***2–20 November 2009***
> - ***E/C.12/GC/21***
>
> *Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)*
> *Comments 48 and 49* [54]

54

48. The right of everyone to take part in cultural life, like the other rights enshrined in the Covenant, imposes three types or levels of obligations on States parties: (a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfil. The obligation to respect requires States parties to refrain from interfering, directly or indirectly, with the enjoyment of the right to take part in cultural life. The obligation to protect requires States parties to take steps to prevent third parties from interfering in the right to take part in cultural life …

49. The obligation to respect includes the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group:

(a) **To freely choose their own cultural identity, to belong or not to belong to a community, and have their choice respected;**

This includes the right not to be subjected to any form of discrimination based on cultural identity, exclusion or forced assimilation, and the right of all persons to express their cultural identity freely and to exercise their cultural practices and way of life. States parties should consequently ensure that their legislation does not impair the enjoyment of these rights through direct or indirect discrimination.

(b) **To enjoy freedom of opinion, freedom of expression in the language or languages of their choice, and the right to seek, receive and impart information and ideas of all kinds and forms including art forms, regardless of frontiers of any kind**…

The Right to not be racially discriminated against

(7.1) The claim in this instance is of discrimination of the 1st Author, on account of his exercising his right to express his ideas where those ideas reflected the culture of his race (racial background, origin) and that the States Parties condoned and facilitated the discrimination of him contrary to the ICCPR. The States Parties removed the 1st Author's right by misapplication of domestic laws, primarily contract law and defamation law. Ideally, the 1st Author's claim would lie under the CERD.

(7.2) In testimony given by Cripps on 21 March 2014 in the SCV, the 1st Author's use of Greek script was said to give cause for concern, and Cripps' counsel explained that the attack made against both Authors by Cripps/Gallery – in the form of disclaimers and "WARNING!" – was premised on the distinction made of the 1st Author, his being Greek, and that he used Greek script in the expression of his ideas:

> "I was concerned about... And I was actually talking to him about the labels because they were written in, in another, in another - in a different script" Cripps' testimony, 21/3/2014, Transcript p. 389 lines 21-22
>
> "put some simple english explanations beside the work" Cripps' testimony, 21/3/2014, Transcript p. 389 lines 29-30
>
> "Mr Vakras, ... I'm firmly instructed that there were annexed to each picture ... a few lines of explanation, description, difficult to tell particularly where it was not in the Latin alphabet?---" Cripps' counsel, Transcript p. 263 line 17-21
>
> "-You're of Greek background are you?---That's correct. You speak and write Greek?---That's correct. But you know of course that a lot of people don't speak or write Greek?---" Cripps' counsel, Transcript p. 262 lines 1-10 [**ANNEXURE 14**]

(7.3) Kyrou (SCV), at reason [**146 (h)**], condoned the distinction.

The extract from the Authors' Application Seeking Leave to Appeal the SCV judgments in the HCA emphasises that the States Parties, contrary to the protections available to the 1st Author, condoned the distinction. And, contrary to Article 26 of the ICCPR by failing to prohibit discrimination failed to guarantee effective protection against discrimination:

> (6) In the 20/6/2014 judgment the Primary judge constructed a "defamation" not disturbed by the Appeal Court, with regard to the Contract matter based on the conclusion that "the Hiring Agreement did not contain implied terms to act in good faith or to cooperate in the performance of the Hiring Agreement" (Reasons [240] & footnote 66) in how our Surrealist Art was exhibited and presented in 2009. And in the absence of "implied terms to act in good faith", within the contract there existed no prohibition to the doing of actions proscribed by Human Rights laws. The Supreme Court permitted discrimination based on race (Reason [146 h])
>
> (12) The Primary judge disregarded the **Race Discrimination Act 1975**, ss 9, 13, & 18, and the corollary obligations the court has under the **CERD**. At **[146 (h)]** "Mr Cripps said that Mr Vakras' essays are difficult to understand because they are very long and complex and use[d] foreign words". The Primary judge permitted the posting of disclaimers, prejudicial to our honour and reputation (Moral Rights), due to Greek words written in Greek script on grounds that there was no implied duty beyond what was written in the contract.

(7.4) **The 1st Author stresses** the significance of the 20 June 2014 SCV (Kyrou) finding. This finding was *left intact first by the VSCA on 24 July and 4 September 2015 who in agreement with Kyrou judged there was no "implied duty" in the contract; then by the FCCA, and FCA, who permitted an estoppel on the SCV judgment, and finally by the HCA who dismissed the Application seeking leave to appeal the SCV decision on 6 April 2017, and who on 12 July 2017 "affirmed" the correctness of the SCV decision and the estoppel by the FCCA/FCA based on it.* [55] Contrary to the obligations under the covenant the undisturbed judgment permits for citizens to be treated on **unequal footing** if they manifest an attribute of their background/race/origin, and in the Authors' case both were affected notwithstanding that the 2nd Author does not share the attribute of the 1st Author.

With reference to the chronology of events regarding the race discrimination:

(7.5) *On 10 June 2014 (prior the 20 June 2014 judgment in the SCV by Kyrou) the 1st Author submitted a complaint to the Human Rights Commission (HRC) over discrimination by Cripps/Gallery* [56].
The HRC, on 25 August 2014, Terminated the 1st Author's complaint on the grounds that the matter could not be "reconciled", advising that the matter would require progress to the Federal courts. The Termination was premised on successive submissions to the HRC by Cripps/Gallery denying that at any stage during the trial or exhibition did any question of the 1st Author's Greek heritage arise nor over the use of Greek language, and **that the complaint to the HRC was "an abuse of process" and "yet another attack apart from the defamatory materials published" by him**... (Authors' emphasis).

(7.6) *The denials by Cripps/Gallery to that which was testified in the SCV were submitted to the HRC on 5 and 20 August 2014:*
[ANNEXURE 37 "Letter to AHRC 050814"] *and*
[ANNEXURE 38 "Cripps - no substance or merit to discrimination-compressed"] *"there is absolutely no substance or merits in his allegations"*

(7.7) The States Parties, the HRC, utterly failed its duty to the 1st Author who provided the HRC specific quotes from the transcripts, along with the entire transcripts in pdf form on 7 August 2014 (annexed as **[ANNEXURE 15 "full response to cripps racism"])**

(7.8) **The 1st Author stresses** that the HRC has both the capacity and obligation to act. The HRC should have proceeded to prosecute both Cripps as well as his solicitor (who was present throughout the SCV trial) for knowingly making false or misleading statements under s 46PN of the Australian Human Rights Commission Act 1986. [57]

(7.9) *Nevertheless and in contradiction to the denials made to the HRC by Cripps/Gallery and his solicitor, the subsequent submissions made to the Federal Circuit Court (FCCA) admitted to the distinction made of the 1st Author.* Cripps' Affidavit to the FCCA affirmed on 21 July 2015 clearly identifies the 1st Author's material as giving rise to the actions taken as against both Author and co-exhibitor:

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[55] *Nettle [**ANNEXURE 42**], at para. 1, p. 2 of the 12 July judgment, in agreeing with the FCCA, on the capacity to issue estop an action as "the result of factual findings made by Kyrou J in the Supreme Court proceedings".*

[56] *The original complaint of 10 June is annexed by the HRC as part of the Termination,* **[ANNEXURE 36 "HRC Termination 25_Aug_2014.compressed-sml"]** *dated 25 August 2014.*

[57] **AUSTRALIAN HUMAN RIGHTS COMMISSION ACT 1986 - SECT 46PN**

False or misleading information

A person must not give information or make a statement to the Commission, to the President or to any other person exercising powers or performing functions under this Act, knowing that the information or statement is false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

"**Point 8**. During the course of the exhibition, the Applicant's artworks were accompanied by written materials which were in convoluted English language, and also in Greek, I was concerned that the written materials could be interpreted as being anti-Palestinian and racist." [**ANNEXURE 13** "Respondent's Affidavit 210715"] [58]

"**Point 18**. The reference to the Applicant being a Greek and his use of Greek words during cross-examination by my counsel Christopher Dibb, was to illustrate that not only were the essays in convoluted English, but they also contained Greek words which could only be understood by a person who speaks and writes Greek such as the Applicant." [**ANNEXURE 13**]

(7.10) Notwithstanding the admitting to the making of the distinction to the *FCCA, the judge, Burchardt, condoned the discrimination and ultimately dismissed the 1st Author's suit, ruling inter alia that:*

(a) *the 1st Author failed to demonstrate "anti-Greek" sentiment "motivated" Cripps to make the distinction which the judge acknowledged had been made (motivation is not required under the CERD or the RDA);*
(b) *that the discrimination complained of lacked "proper justiciable controversy" (Burchhardt [22])*
(c) *(and) estopping the suit on the face of the Supreme Court of Victoria judgment that had permitted discrimination on a racial distinction to occur (Kyrou **[146 (h)]**), and permitted for actions done with regard to the Author's art prejudicial to honour and reputation to take place; and*

*an imposition of an AUD$8,381.00 penalty against the Author for a "vexatious suit" which had "**no prospect of success**" (Authors' emphasis)*

(7.11) The obligations of all the States Parties under Article 2 and 26 of the ICCPR are, the 1st Author repeats, to ensure the rights of individuals to be treated without the distinction (to race, etc) and to provide effective protection against such discrimination. Instead, all the States parties (SCV, VSCA, FCCA, FCA, HCA) have ruled to permit and enable the discrimination prohibited.

(7.12) At this juncture, the 1st Author relies on his Affidavit (supporting the Application to Show Cause, Summons, and Submission) made to the HCA on 4 January 2017 over the judgments made in the courts of Federal jurisdiction. These are used to state his claim in this Petition. The 1st Author stresses that Articles 2 and 26 of the ICCPR are given force of law in the Race Discrimination Act based on the ICERD:

FAILURE OF THE FCCA TO EXERCISE JURISDICTION
RACE DISCRIMINATION component

9.The Summary Dismissal by the primary judge of the FCCA with regard to the complaint arising under ss 9 & 13 of the RDA was by disregard of the Statute. As s 9 derives from an International Treaty (Article 1 of the ICERD) ss 31 & 32 of the VIENNA CONVENTION ON THE LAW OF TREATIES (Australian Treaty Series 1974 No 2) mandates that it must be understood "in good faith" according to the "object and

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[58] This point was a repeat of an earlier "Points of Defence" of 1 July 2015:

Point 14, "the essays accompanying the Applicant's artwork were in convoluted English and also in Greek and Latin writings, an his concern that the essays could be interpreted as being anti-Palestinian and racist" [**ANNEXURE 40 "Respondents Points of Defence 010715"].**
The Author points out:
- there were no "Latin writings", save that the English language uses the Latin alphabet, per transcripts (ANNEX 14) page 261, lines 24-26, Cripps 19/03/14;
- there is no rational correlation of Palestine with any of the material on exhibition by either Author or co-exhibitor in any way.

purpose" of the treaty. [59] [60] [61]

10.The judge of the FCCA ignored the only question in the matter of discrimination from the HRC that the court was required to adjudicate: did the actions complained of happen? The HRC plainly summarised the RDA complaint (in correspondence sent to the third defendant) in the following way: "racial discrimination in the provision of goods, services", seeking "an apology from Cripps and acknowledgement from him that using words that are Greek that accompanied my art on Greek myths does not convey anything sinister" (HRC email 18/8/2014) .... The third defendant's response was "there is absolutely no substance or merits in his allegations." (20/8/2014)....

13.The judge of the FCCA disregarded the statute interpolating an idiosyncratic personal understanding of what the statute required which is inconsistent with, and violates, the International obligations arising from the Treaty (ICERD). Instead of adjudicating on whether the actions complained of happened, the judge introduced his own requirement of ***"motive" for the doing of actions which were not in dispute to being done***. The question of "motive" has been settled. It has been argued by the State (Australia), in **Paul Barbaro v. Australia, Communication No. 7/1995, U.N. Doc. CERD/C/51/D/7/1995 (1997) [62] ;**
(has been re-affirmed recently) *Vata-Meyer v Commonwealth of Australia [2015] FCAFC 139 [27]; (and is based on, at least domestically)*
14.*Weinberg J Macedonian Teachers Association of Victoria Inc v Human Rights* & *Equal Opportunity Commission* & *Anor [1998] FCA 1650 (21* December 1998) [un-numbered]) ***1998) 91 FCR 8,39*** (re, "causal nexus")

15.At Reason [22] the primary judge concluded that the Race Discrimination complaint "lack[ed] proper justiciable controversy" based on the judge's interpolation of *motive*: (Reason [16]) "the assertions that Mr Cripps has now admitted his racist motivation"; repeated at (Reason [22]) "the effect that Mr Cripps had admitted his racist anti-Greek motivation"; (Reason [24]) "the conduct of Mr Cripps during the exhibition in 2009 was improperly motivated by his Greek ethnicity".

16.This "misapprehension" by the primary judge of the FCCA led to his concluding that the ***making of a distinction*** – acknowledged in the decision – of the kind prohibited by the Statute could not be shown to be "improperly motivated" (Reason [24]), by

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59 **Koowarta v Bjelke-Petersen [1982] HCA 27; (1982) 153 CLR,** Brennan J:
25. Section 9(1) has enacted as municipal law important provisions of the Convention in conformity with the obligation in Art. 5 to prohibit racial discrimination in all its forms...
26. The method of construction of such a statute is therefore the method applicable to the construction of the corresponding words in the treaty. The leading general rule of interpretation of treaties is expressed by Art. 31 of the Vienna Convention on the Law of Treaties:
"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."
That is the general rule for the construction of s. 9(1) of the Act...

60 **Povey v Qantas Airways Limited [2005] HCA 33; (2005) 216 ALR 427; (2005) 79 ALJR 1215 (23 June 2005)** 24 The guiding principles of treaty interpretation are found in the Vienna Convention on the Law of Treaties[18] Article 31 provides that a treaty must be interpreted in good faith, in accordance with the ordinary meaning of the terms in their context and in the light of the object and purpose of the treaty Interpretative assistance may be gained from extrinsic sources [19] in order to confirm the meaning resulting from the application of Art 31, or to determine the meaning when interpretation according to Art 31 leaves the meaning "ambiguous or obscure" or "leads to a result which is manifestly absurd or unreasonable"

61 **Minister for Home Affairs of the Commonwealth v Zentai [2012] HCA 28 (15 August 2012)** "17 The primary question in this appeal is whether the Minister committed a jurisdictional error by purporting to determine a necessary condition for surrender, derived from Art 2 5 of the Treaty and, by operation of s 11 of the Act and reg 4 of the Regulations read with s 22(3)(e) of the Act, qualifying the powers conferred by the Act, had not been satisfied It is necessary to consider the relevant terms of the Treaty and to do so in light of the rules of interpretation in the Vienna Convention on the Law of Treaties (the Vienna Convention)

62 **Paul Barbaro v. Australia**, 6 3 The State party agrees in principle with the author's assertion that obvious and blatant expressions of racial discrimination are not required when investigating instances of race distinctions It notes in this context that prohibition of indirectly discriminatory acts or unintentionally discriminatory acts is an established principle of Australian law

"anti-Greek" prejudice (Reason [22]) and, that on the absence of such proof, that there was "no prospect of success" at Reason [44]. And, building from that misapprehension, the primary judge concluded at [60] that my having sought to prosecute the claim(s) was "an abuse of process".

18.Though the *RDA*, at *s 18* states that an act remains discriminatory even if other reasons are involved in the doing of it, the primary judge at Reason [60] dispenses with this statutory requirement:

“It should also be noted that the transcript extracts of crossexamination of Mr Cripps only go to support the findings that I have made earlier, namely, that the difficulties with words in Greek were of the same character as difficulties with Mr Vakras' convoluted and difficult to understand English,” Burchardt J, Reason [60].
The “earlier findings” referred to, are the primary judge's agreement with the defendants, that “convoluted English” could be “anti-Palestinian” or “racist” (Reasons [36] & [37]); and that Greek words written in Greek script could be “anti-Palestinian and racist” (Reason [36]).

20.The FCCA judgment intimates*, that, if there are non-discriminatory reasons in addition to the discriminatory ones that this eliminates discrimination.* This violates s 18 of the RDA. On dispensing with s 18, the judgment at Reason [43] reads "Even accepting that the inclusion of words in Greek added to the difficulties associated with the essays, in my opinion, on the materials taken as a whole, it is simply not more probable than otherwise that Mr Vakras' assertion will be made out." And concludes at [44] that the claim "has no reasonable prospects of success". The dereliction of the duty by the FCCA to make a consideration according to the statute is demonstrated by the judge's consideration of "probabilities" from "material taken as a whole" which s 18 disallows.

21.The primary judge of the FCCA at (Reason [42]) proclaimed an **Issue Estoppel** on account of disclaimers posted by the third and fourth defendants, on their being "critical" to the defamation matter that had been before the State (Supreme) Court of Victoria. One of the reasons for the posting of disclaimers had been that Greek script was used to write Greek words (which gave rise to the complaint to the HRC)...

FAILURE OF THE APPEAL JUDGE (FCA) TO EXERCISE JURISDICTION

RACE DISCRIMINATION component
37.The appeal judge re-characterised a complaint about *discrimination*. On her own motion the judge decided it should be considered as *racial hatred* arising under 18C ("***PART IIA--PROHIBITION OF OFFENSIVE BEHAVIOUR BASED ON RACIAL HATRED***") without providing reason for altering the section of the Statute under which the complaint was made. All the grounds at [29], [31], [32], [33] on which the summary dismissal at [35] relies, show that the consideration by the appeal judge was with regard to *racial hatred under 18C* despite the FCCA judgement for which leave to appeal was sought, was not made under 18C. The acts done that were discriminatory are not capable of vilifying, and therefore the appeal judge concluded, by considering the complaint under 18C, the "the racial discrimination claim has no reasonable prospects of success" and that the "proposition… that Mr Cripps was motivated to make the disclaimer because Mr Vakras is Greek"[35] – to be "fanciful" [35].

38.The appeal judge provides no reason or insight for failure to consider the Termination by the HRC which unambiguously identified ss 9 & 13 of the RDA

39.At [18] the appeal judge accepted the Respondent's submission to the FCCA that "some of the Greek phrases … used might require translation" thereby finding that a breach of the statute should instead constitute a defence against the discrimination

prohibited by the statute.

40.The appeal judge's misapprehension of the statute and its intent has the following ill-effect in the setting of precedent if not quashed:

(**a**) it allows discrimination proscribed by s 9 (1A) of the RDA; and

(**b**) makes lawful the doing of an act proscribed by s 13 – in which it is unlawful to provide a service on "less favourable terms" on failure to comply to a demand based on racial (etc.) background; and

(**c**) makes the doing of the acts proscribed by s 9 (1A) and s 13, defences to breaching s 9 (1). **Section 9 (1A) reads**:

"the act of requiring such compliance is to be treated, for the purposes of this Part, as an act involving a distinction based on, or an act done by reason of, the other person's race, colour, descent or national or ethnic origin" (my emphasis)

41.Further, the FCA dispenses with Procedural Fairness, omitting mention or reference in the finding to material-presented-as-evidence [EXHIBIT 15] (Tab 14.6 of Appeal Book C) that, **at her request,** was provided during the 28/6/2016 hearing seeking leave to appeal. The Greek words in Greek script in an essay about the painting *Pythia between χαός and χασμός* were, **despite Reason [11]** ***already "translated into English"***. Notwithstanding that had the FCA exercised jurisdiction that a demand of the kind described is in breach s 9 (1A).

(7.13) The Authors place significant emphasis on E/C.12/GC/21 of 2009 (Comments 48 and 49), and object to the mischaracterisation of the ideas expressed by the 1st Author by the States Parties as constituting "potentially offensive statements" (Kyrou, 20/6/2014, at [242]).
The Authors point out that it was the States Parties alone (Kyrou) who branded the 1st Author's work as "offensive" – not Cripps/Gallery, and that this lay outside his jurisdiction. At trial Kyrou ***conjectured*** the disclaimers were "`specially done for this exhibition presumably because Mr Cripps saw the essays as being somehow capable of conveying a message that might not be agreeable to some viewers, I don't know.`" Kyrou, Transcript, 26/3/2014, lines 21-24, p. 657. [**ANNEXURE 14**]

(7.14) With regard to E/C.12/GC/21 and the 1st Author's right to express his ideas and his culture based on his racial background, the Author emphasises that he and Kyrou share the same racial background, but that unlike the 1st Author, Kyrou has a known and long association with the Greek Orthodox Christian Church (refer point 5.42 of this petition and [**ANNEXURES , 25, 26, 27, 28, 29**]); and ***the 1st Author further emphasises that the only works in the 2009 exhibition in which Greek words in Greek script were used, were in his anti-Christian art that attributed Hitler's genocide to the Bible***.

(7.15) The Author submits the material on exhibition in 2009 (refer also [ANNEXs 6 and 11])

(7.16) **The Authors emphasise** that Kyrou's condoning of the racial discrimination of the 1st Author was by deliberate misuse of the 1st Author's 2009 exhibition material (regarding Hitler) to construct a defamatory imputation against Cripps over material about Christianity and not about Cripps. The Authors

emphasise the SCV Appeal of 24 July 2015, which at [**155**] concedes "His Honour's failure to correctly identify the gist of the Hitler imputation". The Authors point out Kyrou's "failure" appears at [**307**] and [**308**] of the 20 June 2014 judgment REFER, footnote to point 5.41 of this Petition which proclaimed that "To associate anyone with the views of Hitler is to profoundly damage their reputation because the message that is immediately conveyed is that the person condones the atrocities that Hitler". *And the elements in the exhibition in which the Greek words in Greek script were used, associated Hitler with Christianity*.

(7.17) **The 1st Author places considerable emphasis on his rights in expressing his ideas (under the ICCPR) and to choose freely how he understands his own cultural identity according to E/C.12/GC/21 of 2009**, Comment 49 (b), in expressing his ideas, and referring to his right:

> "To freely choose [his] own cultural identity, to belong or not to belong to a community, and have their choice respected; This includes the right not to be subjected to any form of discrimination based on cultural identity".

(7.18) The 1st Author declares, emphatically, that it is unlawful for Kyrou to dictate how he manifests his Greek identity or what attributes that identity should include or exclude, which could result in "forfeiture" of any right to be treated on equal footing because of the 1st Author's choices.

(7.19) As it stands, all the States Parties have condoned the SCV judgment by Kyrou that permits a distinction based on race that denies treatment on equal footing, contrary to the statutory protections and the international covenants the protection is based on; that the victim of discrimination will instead be penalised by the States parties. And, on 12 July 2017 the HCA "affirmed" the correctness of the estoppel by the FCCA/FCA based on what Nettle found to be "the result of factual findings made by Kyrou J in the Supreme Court proceedings" that permitted disclaimers and a "WARNING!" on the 1st Author's use of Greek words. In effect proclaiming exemption of the courts to to be bound by laws made by Parliament.

(7.20) The Authors declare that the States Parties actions constitute an interference of the 1st Author (refer Comment 48, E/C.12/GC/21 of 2009) on his expressing ideas, particularly as the ideas pertain to his background and were discriminatory of him, and the actions against him affected the 2nd Author.

The Authors make reference judgments and covenants published online:

The judgments by the Courts are published on Austlii, and some on the Courts' own websites
VICTORIAN COURTS:

(**VCAT**) Vakras & Anor v Redleg Museum Services Pty Ltd (Civil Claims) [2012] VCAT 579 (18 May 2012) http://www.austlii.edu.au/au/cases/vic/VCAT/2012/579.html

(**Supreme Court, 2012** – Beach) Cripps & Anor v Vakras & Anor [2012] VSC 400 http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSC/2012/400.html

(**Supreme Court, March 2014** – Kyrou) Cripps & Anor v Vakras & Anor [2014] VSC 110 (25 March 2014) http://www.austlii.edu.au/au/cases/vic/VSC/2014/110.html

(**Judgment: 20 June 2014 Supreme Court – Kyrou**) Cripps v Vakras [2014] VSC 279 (20 June 2014) http://www.austlii.edu.au/au/cases/vic/VSC/2014/279.html

(**Judgment: 28 July 2014 Supreme Court – Kyrou**) Cripps v Vakras (No 2) [2014] VSC 352 (28 July 2014) http://www.austlii.edu.au/au/cases/vic/VSC/2014/352.html

(**Appeal, 24 July 2015: Supreme Court – Court of Appeal, Warren, Ashley, Digby**) Vakras & Anor v Cripps & Anor [2015] VSCA 193 (24 July 2015)

http://www.austlii.edu.au/au/cases/vic/VSCA/2015/193.html

(**Appeal, 4 September 2015: Supreme Court – Court of Appeal, Warren, Ashley, Digby**) Vakras & Anor v Cripps & Anor [2015] VSCA 234 (4 September 2015)
http://www.austlii.edu.au/au/cases/vic/VSCA/2015/234.html

Complete **Trial Transcripts** to Supreme Court of Victoria trial March 2014: http://www.redlegvartists.com/Trial%20Transcripts%20Day%201-8-%20Cripps%20v%20Artists-redactions.pdf

FEDERAL COURTS:

(**Judgement 27 January 2016: Federal Circuit Court – Burchardt**) Vakras v Cripps & Anor [2016] FCCA 20 (27 January 2016) http://www.austlii.edu.au/au/cases/cth/FCCA/2016/20.html

(**Appeal, August 2016: Federal Court – Davies**) Vakras v Cripps [2016] FCA 955
http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca0955

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http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

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ICERD at http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/sch1.html
ICESCR at http://www.legislation.act.gov.au/updates/humanrights/ICESCR.pdf

Vienna Convention Treaties Aust: http://www.austlii.edu.au/au/other/dfat/treaties/1974/2.html

UN GENERAL COMMENTS are published at:
http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf

http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQcMZjyZlUmZS43h49u0CNAuJIjwgfzCL8JQ1SHYTZH6jsZteqZOpBtECZh96hyNh%2F%2FHW6g3fYyiDXsSgaAmIP%2BP

Authors' signatures:

Demetrios Vakras: …

Lee-Anne Raymond: [redacted]..

V. Checklist of supporting documentation (copies, not originals, to be enclosed with your complaint):

Annexures bundled as part of the PDF to the Complaint