

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

Racial Discrimination Act 1975 (Cth)

No: H97/189

BETWEEN:

**AUSTRALIAN MACEDONIAN HUMAN
RIGHTS COMMITTEE (INC)**

Complainant

AND:

STATE OF VICTORIA

Respondent

REASONS FOR DECISION

OF

HEARING COMMISSIONER ALEXANDER STREET SC

Date of Reasons: 8 ~~September~~ September 2000

1. BACKGROUND

1.1 The complaint

A complaint under the *Racial Discrimination Act 1975 Act (Cth)* (“the Act”) dated 25 July 1995 was lodged with the Equal Opportunity Commission of Victoria, as agent for the Human Rights and Equal Opportunity Commission (“the Commission”), signed by the Secretary of the Australian-Macedonian Human Rights Committee (Inc) and also signed by the Acting President of the Macedonian Council

Australia Inc. Further particulars of the complaint were provided to the Commission by letter dated 15 August 2000, again signed by the two above named entities (collectively, “the complaint”).

The complaint asserted that the Victorian Premier and Victorian Government had breached the Act “by directing that the Macedonian language be referred to as “Macedonian (Slavonic)”. The complaint identified a memorandum dated 21 July 1994 addressed to all Ministers on the Premier’s letterhead and signed by the Premier upon the subject described as ““Macedonian” Language’. That memorandum contained a direction, which I shall refer to as “the directive”, in the following terms:

Further to the Federal Government’s decision to use the term Slav Macedonians (and in order to be consistent and avoid any further confusion) I now request all Victorian Government Departments, and agencies, to refer for the time being to the language that is spoken by people living in [the Former Yugoslav Republic of Macedonia], or originating from it, as Macedonian (Slavonic).

How members of the respective communities choose to describe themselves, and in particular how they choose to describe their ethnicity and language will continue to remain up to those individuals and communities themselves.

The two entities on behalf of whom the complaint was signed asserted that they were aggrieved by the directive because of the change of name of the Macedonian language, that they were insulted by the change because it was based upon considerations of ethnic differentiation, that the Macedonian language was being treated differently to any other language in the State of Victoria and that this was entirely unnecessary.

The complaint specifically focussed upon an alleged contravention of section 9 of the Act and referred to Article 1.1 and Article 5 of the *International Convention on the Elimination of all forms of Racial Discrimination Convention* (“the Convention”). The complaint also alleged that the directive constituted a requirement in contravention of section 9(1A). The complaint also alleged that the directive was a law and contravened section 10. The complaint also alleged that the Victorian Government was in the circumstances supplying services on less favourable terms involving a contravention of section 13 by reason of the reference to the Macedonian language in terms that were offensive, insulting and denigrating. The complaint also alleged that the Premier had contravened sections 16 and 17 by reason of issuing the directive.

The complaint recorded that an attempt to have the directive rescinded had been unsuccessful and sought a direction that the Premier and the Victorian Government “cease using the term ‘Macedonian (Slavonic)’ when referring officially to the Macedonian language”.

1.2 The initial Inquiry and proceedings to date

Relevantly, where a complaint is made to the Commission under section 22 alleging an unlawful act, the Race Discrimination Commissioner must inquire into the act and endeavour by conciliation to effect a settlement of the matter to which the alleged act relates, unless the Race Discrimination

Commissioner decides not to inquire into the alleged act or decides not to continue the inquiry into the alleged act on the grounds identified in section 24(2).

The complaint was the subject of initial investigation by the Race Discrimination Commissioner resulting ultimately in a decision under section 24(2) being notified to the Secretary of the Australian-Macedonian Human Rights Committee (Inc) by letter dated 26 June 1997 that the act complained of was not unlawful and that the Race Discrimination Commissioner had decided not to continue inquiring into the complaint.

Pursuant to a letter dated 15 July 1997 the Secretary of the Australian-Macedonian Human Rights Committee (Inc) exercised the right under section 24(4) of the Act to have the complaint referred to the Commission for hearing.

Directions were made on 20 October 1997 for the complaint to proceed as a representative complaint brought by the Australian-Macedonian Human Rights Committee (Inc) on behalf of its members pursuant to section 25L of the Act.

The matter was then the subject of a hearing before Sir Ronald Wilson, AC, KBE, CMG, QC, as the Hearing Commissioner on 18 and 20 November 1997 and a decision was delivered on 8 January 1998 that the complaint be dismissed.

The Macedonian Teachers' Association of Victoria Inc made application to the Federal Court of Australia for an order of review under section 5 of the *Administrative Decisions (Judicial Review) Act* 1977 in relation to the decision dated 8 January 1998. In those proceedings the applicant acted not only in its own right but also as a representative on behalf of its members pursuant to Part IVA of the *Federal Court of Australia Act* 1976. The matter was heard by the Honourable Justice Weinberg on 19 and 20 October 1998 and judgment was delivered on 21 December 1998 in which, relevantly the following orders were made:

1. The decision of the Human Rights and Equal Opportunity Commission dismissing the complaint brought against the State of Victoria by the Australian-Macedonian Human Rights Committee (Inc) be set aside.
2. The complaint be remitted for further consideration according to law.
3. Any further consideration by the Commission of that complaint be confined to the material filed at the time of the original decision.

An appeal was heard by the Full Federal Court of Australia comprising O'Connor, Sundberg and North JJ on 20 May 1999 and judgment dismissing the appeal was delivered on 16 September 1999. An application was made for special leave to appeal to the High Court of Australia and was dismissed on 26 May 2000.

Under section 25A of the Act the Commission is required to hold an inquiry into each complaint or matter referred to it under relevantly section 24(5). Section 6 relevantly binds the Crown in the right of the States and accordingly the complaint under section 22 against the respondent falls within the Act.

2. CONDUCT OF THIS INQUIRY

2.1 Non-Publication Direction

The material that this inquiry has taken into account by way of further consideration into the complaint was not adduced in public when the inquiry was first undertaken by Commissioner Sir Ronald Wilson. Notwithstanding the general importance of holding an inquiry in public, upon balancing the competing public interests, I am satisfied that it is appropriate within the meaning of section 25H(2) that this inquiry, by way of further consideration, be held in private. There are in my view proper grounds for holding that the material produced to the Commission should remain confidential rather than form part of the record available to the public as generally occurs where the inquiry is held in public. In this regard certain witnesses who gave evidence were only willing to do so, because of what I find to be legitimate concerns, on the basis of suppression of their identity. However conducting the inquiry by way of further consideration in private does not adequately protect those witnesses. Upon balancing the competing public interests I am also satisfied it is necessary that the identity of witnesses before the Commission not already published and in the public arena should remain suppressed. The reasons in this determination refer only to witnesses the identity of whom have already been published and are in the public arena. A suppression of identity direction was made by Commissioner Sir Ronald Wilson and similar orders were made in the related proceedings in the Federal Court of Australia.

I direct pursuant to section 25J of the Act that no person shall publish the names of witnesses who have appeared before the Commission or the names of deponents who have sworn affidavits produced to the Commission or information that might identify them as witnesses or deponents before the Commission, except:

- (a) to the extent set out in this determination or already published and in the public arena; or
- (b) by the parties, any aggrieved person or their legal advisers only in so far as is necessary for the purpose of obtaining legal advice or the preparation and conduct of any Court proceedings; or
- (c) for official purposes which necessitates disclosure either for performance of statutory duties or law enforcement.

2.2 “On the papers” Direction

I also record that in the telephone directions hearing on 24 August 2000 I directed that the inquiry would be conducted “on the papers”, meaning on the material already filed with the Commission

comprising both evidence and submissions. In this regard there was an express reference by Commissioner Sir Ronald Wilson on 20 November 1997 “for the parties to file their submissions with the Commission”. In my view the said direction is in accordance with the Order 3 of the orders referred to above made by the Honourable Justice Weinberg on 21 December 1998.

Conducting this inquiry “on the papers”, in the circumstances, also, in my view, accords with affording as little formality and technicality and with as much expedition as the requirements of the Act dictate and still enables a proper consideration of the matters before the Commission. I am also satisfied that notice was given to each party of the intention to conduct the inquiry “on the papers” and I note that no objection was made to this course by either party.

I am also satisfied that both parties have had a reasonable opportunity to make submissions to the Commission all of which I have read together with the transcripts and exhibits and I have taken this material into account in making this determination.

2.3 Application for Joinder by Pan-Macedonian Association of Melbourne and Victoria Inc

By letter dated 21 July 2000 the Pan-Macedonian Association of Melbourne and Victoria Inc made application to be joined as a third party to the complaint. At the telephone directions hearing on 24 August 2000 I decided that the application should be refused and indicated that my full reasons for the decision on this application would be included in this determination.

In support of the application the letter dated 21 July 2000 identified the Pan-Macedonian Association of Melbourne and Victoria Inc as being the major representative body of the Greek Macedonians in Melbourne and Victoria and that they were directly involved in the original contentions that gave rise to the memorandum dated 21 July 1994. The Pan-Macedonian Association of Melbourne and Victoria Inc represents 49 Greek clubs which in turn represent 29,000 members. It is said that determination of legal issues in this complaint may have far reaching implications for the Greek community in Melbourne and in Australia in relation to language, culture and identity and accordingly it seeks to be joined so as to be heard and play a part in determining the legal questions that will directly affect the Greek community. The application foreshadowed that evidence could be adduced from various Balkan experts and language experts to support its submissions and claims relating to the use of the word Macedonian as it relates to history, culture and language. The application asserted that joinder as a third party was necessary given the sensitive and complex nature of the issues involved.

Section 25F provides as follows:

The parties to an inquiry shall be the complainant, the respondent, any person joined by the Commission as a party to the inquiry and any person to whom the Commission grants leave to appear as a party to the inquiry.

The Commission is also given power under section 25V to make directions relating to procedure for the purposes of an inquiry. In considering whether the Pan-Macedonian Association of Melbourne and Victoria Inc should be joined as a party or granted leave to appear as a party to the inquiry it is, in my

opinion, material to take into account Order 3 made by the Honourable Justice Weinberg on 21 December 1998. That Order binds the Commission in this inquiry to confine itself to the material filed before Commissioner Sir Ronald Wilson. In my view, the reference to material filed in Order 3 comprises both the evidence and the submissions. In these circumstances the joinder serves no practical utility and I reject the application on this ground.

Further, an application by the same entity was earlier made to and rejected by Commissioner Sir Ronald Wilson. No material change of circumstances or substantial injustice was identified to support this further application for the same relief. In my view, it is in the public interest that there be consistency upon a procedural ruling of this kind, in respect of repeated application, in the absence of a material change of circumstances or substantial injustice and on this additional ground the application is rejected.

Further, I have also considered the grounds advanced in support of the application. In my view identifying and determining the issues in question in this inquiry is an exercise that has been properly addressed by the existing parties to the complaint. In my opinion it is material to take into account the nature of the inquiry being undertaken by the Commission. The inquiry is confined to the subject matter of the complaint and is primarily for the purposes of finding whether or not the complaint is substantiated and if so the making of a determination within the scope of section 25Z of the Act.

In this regard, although the complaint lodged initially referred to the Premier and the Government of Victoria, the respondent has been treated by both parties in this inquiry as the State of Victoria and was so identified in the determination of the Race Discrimination Commissioner under section 24(2) made on 26 June 1997 as well as in the referral to the Commission pursuant to section 24(5) dated 8 August 1997. The State of Victoria as respondent has in adducing and challenging evidence as well as in its written submissions taken issue with the alleged unlawful conduct identified in the complaint and the respondent is the relevant entity directly affected if the complaint be substantiated in this determination under section 25Z.

Although I accept that there is a keen and real interest by the members of the Pan-Macedonian Association of Melbourne and Victoria Inc in the perceived issues involved in the complaint, I am of the opinion that justice can be done for the purposes of this inquiry without the joinder or appearance of that applicant as a party to the inquiry.

Moreover, in my opinion, the dictates of expedition as well as achieving a prompt inquiry into the matters at issue between the existing parties are best served by making a determination on the material already filed even if Order 3 had not been made. In this regard I have taken into account the volume of material that has already been generated in the form of submissions, exhibits, transcripts and authorities.

I should also add that, in my opinion, this is not an inquiry at large into the use of the word Macedonian as it relates to history, culture and language but rather an inquiry into a specific complaint of alleged unlawful conduct under the Act.

Further, in my opinion, given the nature of this inquiry it would be a great tragedy if a perception were painted that the determination of the legal issues raised by this complaint have far reaching implications for the Greek community in Melbourne and in Australia in relation to language, culture and identity. The legal issues involve essentially cold questions of construction of the Act which are then applied to the findings made in relation to the act the subject of the specific complaint. There is no question of law in this regard that is of any greater importance for the members of the Pan-Macedonian Association of Melbourne and Victoria Inc than for every other person in Australia, all of whom are subject to the salutary provisions of the Act.

To the extent that the inquiry requires the making of findings of fact, those are findings made on the material to which the Commission has had regard and those findings of fact have no legal status and do not bind or purport to bind any persons. Moreover, even in relation to the parties to the inquiry it must be understood that section 25Z(2) specifically provides that a determination of this Commission “is not binding or conclusive between any of the parties to the determination”. Where the Commission exercises its discretionary power under section 25Z(3) to state findings of fact in the making of a determination under section 25Z(1) this is done primarily for the purpose of revealing the method and reasoning in the making of the determination upon the material that is before the Commission so as to ensure a proper and valid exercise of statutory power. The inquiry into and determination of a complaint is however an important part of the civil regime for the implementation and enforcement of the principles of dignity and equality enshrined within the Convention and given domestic effect by the provisions of the Act. It would be a great tragedy if a finding of fact in this determination or any inquiry under the Act was misconceived as having some wider impact and an even greater tragedy if such a finding of fact was interpreted as a ground for fuelling tensions between any Australians or indeed any people. I do not, in this regard, suggest in any way that joinder of a responsible organisation such as the Pan-Macedonian Association of Melbourne and Victoria Inc or indeed a refusal of the joinder application would generate or fan any tensions.

Accordingly, taking into account the grounds advanced in support of the application, the purpose of this inquiry and the limited role of any findings of fact as explained above, I decline to exercise the power to join the Pan-Macedonian Association of Melbourne and Victoria Inc as a party to this inquiry into the complaint and further, I refuse leave to the Pan-Macedonian Association of Melbourne and Victoria Inc to appear as a party to the inquiry into the complaint.

2.4 Application for joinder of the Macedonian Teachers’ Association of Victoria

An application was made for joinder of the Macedonian Teachers’ Association of Victoria at the telephone directions hearing on 24 August 2000. In support of the application it was pointed out that this was the entity that had the conduct of proceedings in both the Federal Court of Australia and High

Court of Australia relating to the determination made on 8 January 1998. No earlier application for joinder has been made to the Commission and no cogent explanation was given as to why the application was made so belatedly.

In light of the terms of Order 3 which confines the Commission to the material already filed, I can see no practical utility in exercising the power of joinder. I am satisfied that justice can be done for the purposes of this inquiry without the joinder of the Macedonian Teachers' Association of Victoria. Further, this is a matter in which clearly careful attention was given to the identity of the complainant at the time of the making of the representative direction on 20 October 1997.

In all the circumstances, I decline to exercise the power to join the Macedonian Teachers' Association of Victoria as a party to this inquiry into the complaint and further, I refuse leave to the Macedonian Teachers' Association of Victoria to appear as a party to the inquiry into the complaint.

2.5 Application to amend complaint

An application was made in November 1997 to amend the complaint so as to include an alleged contravention of section 18C of the Act. This is an inquiry into the complaint dated 25 July 1995 and further particularised on 15 August 1995 which raised a number of alleged contraventions, all under Part II of the Act.

Section 18C is contained in a separate Part of the Act, being Part IIA, and did not commence operation until 13 October 1995. The amendment was described in the Second Reading Speech, 1995, Hansard page 3336, as "a new law dealing with racism in Australia". The only formulation of the proposed amendment is found in the complainant's opening on 18 November 1997 and the complainant's submissions. No other formulation of the proposed amended complaint was provided. In the opening, counsel, on behalf of the complainant, referred to section 18C and accepted that it had not been:

...specifically identified in this complaint until now. In my submission that in no way ought to bind the complainant from raising it and it doesn't introduce any new issues of fact or evidence and it ought not to be shut out, if necessary, from making an application to amend the complaint, bearing in mind that in this situation the complaint was made before any legal services were retained by the complainant so it was made on their own behalf ... We don't seek to put section 18C in issue on the basis of the directive being the relevant act for the purpose of section 18C. What we say are the acts under section 18C are those which I have identified in paragraph 22 of the submissions.

The complainant's outline of submissions dated 10 November 1997 provides:

21. The respondent itself and through its servants and agents (see section 18E of the Act) has:

- (a) engaged in acts which were reasonably likely in the circumstances to offend, insult and humiliate the people whom the complainant represents;

- (b) and those acts have been because of ethnic origin (namely Macedonian ethnic origin) of the people whom the complainant represents, in contravention of section 18C of the Act.

22. The acts referred to in paragraph 21:

- (a) the continued insistence on adherence to the directive;
- (b) refusal on behalf of the Government to attend Macedonian community functions unless the directive is adhered to at those functions;
- (c) the publication and distribution of community information in Macedonian which identifies the Macedonian language as 'Slavonic';
- (d) differentiating between Macedonian and every other VCE language in the way that language is identified and named;
- (e) differentiating between Macedonian and every other language, including English, which is taught in Victorian schools in the way the language is identified and named.

In my opinion, these alleged acts do introduce issues of fact in relation to the element of section 18C that do not arise in the complaint dated 25 July 1995 and further particularised on 15 August 1995. There is a different focus on the nature and timing of the alleged act falling within section 18C. Although there is some force in the proposition that these alleged acts arise out of the making of the directive, it does in my opinion involve new matter and I consider it amounts to a fresh and different complaint. I have taken into account that the complaint does in my view raise the ongoing implementation of the directive but only in the context of allegations under Part II.

Although I consider that there is power under section 25V(1)(c) and (d) to permit amendments clarifying, correcting or refining the matters at issue between the parties so as to ensure that justice is done, the proposed amendment in the present case in my opinion seeks to raise new issues between parties of a material and different nature under a Part that was not in force at the time of the complaint. I consider that the proposed amendment is in substance a fresh complaint.

I am also concerned by the fact that the new allegations are not set out in a complaint lodged under section 22 and that accordingly no steps have been taken in relation to these allegations under section 24. I am not satisfied that there is power to make this type of amendment.

Further, on the assumption that there is power, I find that the proposed amendment is not appropriate or necessary to ensure that justice is done. In my opinion, it goes beyond the matter of mere formality and technicality to permit an amendment that introduces a fresh complaint formulated in submissions, under a different Part, in relation to a different time period, and which requires identification of different acts and proof of different facts. In the circumstances I decline to grant the proposed amendment of the complaint.

3. THE LAW

The opening recital to the Act records relevantly that:

...it is desirable, in pursuance of all relevant powers of the Parliament, including, but not limited to, its power to make laws with respect to external affairs, with respect to the people of any race for whom it is deemed necessary to make special laws and with respect to immigration, to make the provisions contained in this Act for the prohibition of racial discrimination and certain other forms of discrimination and, in particular, to make provision for giving effect to the Convention.

The Convention is defined in section 3 of the Act to be the *International Convention on the Elimination of all forms of Racial Discrimination* that was open for signature on 21 December 1965 and entered into force on 2 January 1969 and which is set out in the schedule to the Act.

Section 3(1) provides:

In this Act, unless the contrary intention appears –

...“services” includes services consisting of the provision of facilities by way of banking or insurance or of facilities for grants, loans, credit or finance.

Section 3(3) provides:

For the purposes of this Act, refusing or failing to do an act shall be deemed to be the doing of an act and a reference to an act includes a reference to such a refusal or failure.

Section 9 provides as follows:

(1) It is unlawful for a person to do any act involving a 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 any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

(1A) Where:

- (a) a person requires another person to comply with a term, condition or requirement which is not reasonable having regard to the circumstances of the case; and
- (b) the other person does not or cannot comply with the term, condition or requirement; and
- (c) the requirement to comply has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by persons of the same race, colour, descent or national or ethnic origin as the other person, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life;

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.

- (2) A reference in this section to a human right or fundamental freedom in the political, economic, social, cultural or any other field of public life includes any right of a kind referred to in Article 5 of the Convention.
- (3) This section does not apply in respect of the employment, or an application for the employment, of a person on a ship or aircraft (not being an Australian ship or aircraft) if that person was engaged, or applied, for that employment outside Australia.
- (4) The succeeding provisions of this Part do not limit the generality of this section.

Section 10 provides as follows:

- (1) If, by reason of, or of a provision of, a law of the Commonwealth or of a State or Territory, persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin, or enjoy a right to a more limited extent than persons of another race, colour or national or ethnic origin, then, notwithstanding anything in that law, persons of the first-mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, colour or national or ethnic origin.
- (2) A reference in subsection (1) to a right includes a reference to a right of a kind referred to in Article 5 of the Convention.
- (3) Where a law contains a provision that:
 - (a) authorises property owned by an Aboriginal or a Torres Strait Islander to be managed by another person without the consent of the Aboriginal or Torres Strait Islander; or
 - (b) prevents or restricts an Aboriginal or a Torres Strait Islander from terminating the management by another person of property owned by the Aboriginal or Torres Strait Islander;

not being a provision that applies to persons generally without regard to their race, colour or national or ethnic origin, that provision shall be deemed to be a provision in relation to which subsection (1) applies and a reference in that subsection to a right includes a reference to a right of a person to manage property owned by the person.

Section 13 provides as follows:

It is unlawful for a person who supplies goods or services to the public or to any section of the public:

- (a) to refuse or fail on demand to supply those goods or services to another person; or
- (b) to refuse or fail on demand to supply those goods or services to another person except on less favourable terms or conditions than those upon or subject to which he or she would otherwise supply those goods or services;

by reason of the race, colour or national or ethnic origin of that other person or of any relative or associate of that other person.

Section 16 provides as follows:

It is unlawful for a person to publish or display, or cause or permit to be published or displayed, an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful by reason of a provision of this Part or an act that would, but for subsection 12(3) or 15(5), be unlawful by reason of section 12 or 15, as the case may be.

Section 17 provides as follows:

It is unlawful for a person:

- (a) to incite the doing of an act that is unlawful by reason of a provision of this Part;
or
- (b) to assist or promote whether by financial assistance or otherwise the doing of such an act.

Section 18 provides as follows:

Where:

- (a) an act is done for 2 or more reasons; and
- (b) one of the reasons is the race, colour, descent or national or ethnic origin of a person (whether or not it is the dominant reason or a substantial reason for doing the act);

then, for the purposes of this Part, the act is taken to be done for that reason.

The Act was amended by Act No. 101 of 1995 which took effect on 13 October 1995 to insert section 18C which provides as follows:

- (1) It is unlawful for a person to do an act, otherwise than in private, if:
 - (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
 - (b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.
- (2) For the purposes of subsection (1), an act is taken not to be done in private if it:
 - (a) causes words, sounds, images or writing to be communicated to the public; or
 - (b) is done in a public place; or
 - (c) is done in the sight or hearing of people who are in a public place.
- (3) In this section:

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

Section 18D provides as follows:

Section 18C does not render unlawful anything said or done reasonably and in good faith:

- (a) in the performance, exhibition or distribution of an artistic work; or
- (b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
- (c) in making or publishing:
 - (i) a fair and accurate report of any event or matter of public interest; or
 - (ii) a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment.

The Second Reading Speech for the Act, 1975, Hansard pages 285-286, relevantly records the purpose of the legislation as follows:

The purpose of this Bill is to make racial discrimination unlawful in Australia and to provide an effective means of combating racial prejudice in our country...

The Bill introduces into Australian law for the first time the obligations contained in the International Convention on the Elimination of All Forms of Racial Discrimination. It is asserted in this Convention that all human beings are born free and equal in dignity and rights and that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous and without any justification. I need hardly say that I am sure all honourable members would agree with these sentiments. Eighty-one countries have already ratified or acceded to the Convention. The Convention was signed on behalf of Australia on 13 October 1966 and the ratification of the Convention by Australia is, I believe, urgent and overdue.

Legislation has a vital role to play in the elimination of racial discrimination and the enactment of this Bill is a fundamental step, a condition precedent, it could be said, that must be taken if Australia is to ratify the Convention. The common law provides few effective remedies against discrimination in the exercise of human rights, whether it is based on race or colour or on any other grounds. The proscribing of racial discrimination in legislative form will require legal sanctions. These will also make people more aware of the evils, the undesirable and unsociable consequences of discrimination – the hurtful consequences of discrimination – and make them more obvious and conspicuous. In this regard the Bill will perform an important educative role. In addition, the introduction of legislation will furnish legal background on which to rest changes reflecting basic community attitudes. The fact that racial discrimination is unlawful will make it easier for people to resist social pressures that result in discrimination.

In making racial discrimination unlawful, the Bill follows the definition used in the Convention. The Bill will thus make it unlawful for a person to do an act involving discrimination based on race, colour, descent or national or ethnic origin which impairs the enjoyment of fundamental rights and freedoms...

The Bill represents an important step in the Government's program with respect to human rights. It will provide the basis upon which Australia can comply with the obligations imposed by the Convention on Racial Discrimination. The Bill is based on the view that laws proscribing discrimination are vital, but not in themselves alone can they be sufficient. The educative role is at least as significant and the Bill recognises that there must also be effective and systematic enforcement of rights and the promotion of education and research, if the elimination of racial discrimination in this country is to be achieved in fact as well as in the theory...

Relevantly the introduction to the Convention records (with emphasis added by underlining) as follows:

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in cooperation with the Organisation, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all

the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination, ...

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904(XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person, ...

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination, ...

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end.

Article 1 paragraph 1 provides as follows:

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.

Article 1 paragraph 3 provides as follows:

Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalisation, provided that such provisions do not discriminate against any particular nationality.

Article 1 paragraph 4 provides as follows:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2 paragraph 1 provides as follows:

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

- (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
- (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organisations;
- (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
- (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organisation;
- (e) Each State Party undertakes to encourage, where appropriate, integrationist multi-racial organisations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

Article 4 refers relevantly to the State parties adopting positive measures designed to eradicate all incitement to or acts of discrimination and relevantly in paragraph (c):

Shall not permit public authorities or public institutions, national or local to promote or incite racial discrimination.

Article 5 provides as follows:

1. In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
 - (a) The right to equal treatment before the tribunals and all other organs administering justice;
 - (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;
 - (c) Political rights, in particular the rights to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
 - (d) Other civil rights, in particular:
 - (i) The right to freedom of movement and residence within the border of the State;
 - (ii) The right to leave any country, including one's own, and to return to one's country;
 - (iii) The right to nationality;

- (iv) The right to marriage and choice of spouse;
- (v) The right to own property alone as well as in association with others;
- (vi) The right to inherit;
- (vii) The right to freedom of thought, conscience and religion;
- (viii) The right to freedom of opinion and expression;
- (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
 - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) The right to form and join trade unions;
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training;
 - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public such as transport, hotels, restaurants, cafes, theatres and parks.

The Act is appropriately categorised as beneficial and remedial legislation and accordingly the provisions require a liberal construction rather than a construction that is literal or technical: IW v City of Perth (1997) 191 CLR 1 at 12. The Act specifies the particular ingredients which amount to unlawful conduct proscribed by Part II and Part IIA and is not a comprehensive discrimination code. As a result, conduct that would be regarded as discriminatory in its ordinary meaning may fall outside the Act. Further, Part II and Part IIA provide a civil regime to make racial discrimination unlawful in Australia and section 26 makes clear that unlawful acts within either Part II or Part IIA do not amount to a criminal offence.

Section 9(1) requires the following elements to be established:

- (i) the doing of an act by a person involving a distinction, exclusion, restriction or preference;
- (ii) the distinction, exclusion, restriction or preference must be based on race, colour, descent or national or ethnic origin;
- (iii) the distinction, exclusion, restriction or preference must have the purpose or effect of:
 - (a) nullifying or impairing;
 - (b) the recognition, enjoyment or exercise;
 - (c) on an equal footing;

- (d) of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

The complainant carries the burden of proof in establishing unlawful conduct assessed by the civil standard of proof on the balance of probabilities. No intention or motive to discriminate is necessary to establish unlawful conduct within section 9(1). Whether an act involves a distinction, exclusion, restriction or preference is a matter of fact to be determined by reference to the alleged unlawful act.

The term “involving” must, consistent with this type of provision, be given a broad interpretation and embraces a meaning of including or implying. An act may involve a number of impacts. However it is sufficient for the purpose of section 9(1) if the act involves a distinction, an exclusion, a restriction or a preference. The term “distinction” has a meaning that includes differentiation or distinguishing one thing from another. No submission was advanced that the act involved an “exclusion”. The term “preference” has a meaning that includes a choice or selection of one thing above another. The term “restriction” has a meaning that includes something that restricts, limits or derogates. “Based on” requires a foundational link between “the distinction, exclusion, restriction or preference” and the “race, colour, descent or national or ethnic origin”, rather than a narrower causal link and has a meaning that includes “founded upon” or “by reference to”. Determining the existence of a foundational link of this kind between the two concepts is an objective issue of fact. “Based on” does not mean “solely based on”. It is the distinction, exclusion, restriction or preference involved in an act that must be “based on” race, colour, descent or national or ethnic origin.

“Descent” and “national or ethnic origin” must also be given a liberal construction. “Descent” has a meaning that includes coming from, by birth or lineage, an ancestor or ancestors and does not require any particular citizenship, country of birth or particular territorial link. The terms “national” and “ethnic” give expanded scope to the term “origin”. “National origin” has a meaning that includes coming from, by birth or lineage, an identifiable nation or country of people. In particular, the nation or country need no longer exist or indeed have a particular international status. In my opinion, the term “ethnic origin” has a meaning that includes coming from an identifiable group or community who use speech different to the majority language (here in Australia English) and does not require any particular territorial link. It is the “distinction, exclusion, restriction or preference” which must have the proscribed purpose or effect. Determining the purpose is an objective exercise of finding of fact as to the end sought to be achieved. Determining the effect is an exercise of finding of fact as to the end achieved.

“Nullifying or impairing” are terms of wide scope and, in my opinion, have a meaning that includes diminishing. “Recognition, enjoyment or exercise” are also words of broad scope. I consider that “recognition” applies to recognition by all and that “enjoyment and exercise” apply individually and collectively depending on the right or freedom. To confine these three terms to an individual recognition, individual enjoyment or individual exercise does not accord with the purpose of the Convention or with the width of certain expressed rights or freedoms. In my opinion, “recognition”

includes acknowledgment of something as valid or entitled to consideration. This is, in my view, supported by reference to the notions embraced within the opening of the Convention “to promote and encourage universal respect for and observance of” and “of securing understanding of and respect for”. “Enjoyment” is the only one of these three terms used in Article 5 and in my opinion, embraces a meaning which includes satisfaction from possession, right to use or use. “Exercise”, in my opinion, is probably included for abundance of caution, and embraces use of. The words “on an equal footing” require a comparison with others in relation to “recognition, enjoyment or exercise”. The object of this comparison is “any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life” which is given expanded but not exhaustive content by the principles of dignity and equality in all human beings referred to in Article 5 of the Convention. Whether an alleged human right or fundamental freedom exists and is of the relevant kind is a question of law but, in my view, whether the alleged right or freedom is the subject of the proscribed purpose or effect is a question of fact.

4. EVIDENCE

An affidavit was tendered from Professor Clyne, in which he said relevantly:

Language is an instrument of nationhood. The authenticity and recognition of a language is usually a precursor to the recognition of a nation or ethnic group. Language provides people of a particular ethnic grouping with the ability to identify and describe themselves and their culture. There are many examples throughout the world, and within Australia, of the disastrous impact which loss of the language can have on [an] ethnic group. Use of a language without fear, shame, humiliation or embarrassment is dependent in part upon the acceptance and recognition of that language by governments and public officials.

Oral evidence was also given by Professor Clyne as to the distinction recognised by linguists between a language and a dialect in a literate society as well as the reasons for development of a standard language. Professor Clyne pointed out that a language can be written in any script and that there were people who spoke Macedonian and then wrote Macedonian in Greek script because Greek was the language in which they were literate. Professor Clyne indicated that the word “Macedonian” when used as a noun is more often used to refer to the standard language of what was the Republic of Macedonia.

Professor Clyne explained a linguist’s concept of a community language in Australia and emphasised the importance in the Australian community of both indigenous languages and immigrant languages. Professor Clyne described Macedonian from a linguists point of view as a Slavic language and described Slavonic as being a synonym for Slavic but an older version of the word Slavic. Professor Clyne indicated that some Macedonian speakers came from Greece and that there were also speakers of Macedonian dialects from Greece.

Professor Clyne identified the significance of the recognition of minority languages in various parts of the world. Professor Clyne accepted that what was spoken as Macedonian would not be Ancient

Macedonian. Professor Clyne also accepted from a linguistic viewpoint that use of Macedonian as an adjective to describe a particular region was appropriate to identify Macedonian dialects, although he indicated that such speakers would describe their language as Greek.

An affidavit of a school teacher was also tendered, identifying that Macedonian had been taught within the State school system in Victoria as a community language for more than ten years. The teacher also said “a fundamental criteria in language maintenance is the sense that learning a language will in some way be beneficial and is deemed to be of value by the society”. The affidavit also deposed to the 1995 annual VCE Macedonian graduation to which Mr Honeywood was invited and declined to attend. In relation to the effect of the directive, the deponent said:

...no other group has a government stipulation as to how they must self-identify their language at these events in order to obtain official recognition and participation. In this context we felt that as a group we were being treated differently and marginalised because we refused to implement the directive at a community level.

The affidavit recorded that a particular secondary college in which the parents wished to hold a barbecue as a fund raiser for the school were told they could not advertise their barbecue unless they complied with the directive.

The deponent also referred to the cessation of a brochure relating to Macedonian “because the directive is at loggerheads with the community and the way the speakers identified the language, no brochure has been produced, meaning that one group of language speakers we serve as a school is being treated differently, in the dissemination of study information to ethnic communities”. The deponent also referred to an example when Macedonian welfare workers were unable to obtain funding for a community education workshop: “the Macedonian welfare workers network could not undertake such an agreement not only because they are opposed to the ethnic renaming but mainly because nobody in our community would participate in such a workshop if it was advertised with that name”. The deponent said “the issue of respect and recognition of group self-identification by Government is central to equality and access to services”. The deponent stated “it is not true, as the Premier suggests in his directive, that we as Macedonians are free as a community to describe our language as we please”. Reference was also made to the fact that the directive had given rise to some Government departments creating brochures referring to “Macedonian/Slovenian”, whereas in fact Slovenian is a totally different language. The deponent said “language is a central core value to ethnic identification and is the verbal expression of linguistic identification” ... “almost all cultural activities for Macedonian people revolve around our language. If our language is belittled and slurred, our culture is belittled and slurred”. An exhibit relating to total enrolments in languages for 1994, 1995 and 1996 was tendered in evidence.

Evidence was also led orally from this teacher. The teacher indicated that the number of students enrolled in the subject Macedonian had according to the census decreased from 1994 when there were 1,512 to 1,389 in 1995, following which there was an increase in 1996 to 1,673. The teacher identified the language being taught at a particular primary school as being Macedonian and that the subject was

taught at more than 12 schools. In answer to a question as to any adverse effect on enrolments from the directive, the teacher said:

It doesn't seem to have an adverse effect on enrolments because of the strategies that we undertook as teachers and as a community.

The teacher identified the terms "Slav" and "Slavonic" as being used in some circumstances in a derogatory way. The teacher also accepted from a linguistic viewpoint that the language Macedonian was a Slavonic language, in the sense of language family. The teacher gave evidence that:

Macedonian-Slavonic is not its language name and I do not agree that that should be the name used to refer to it now because the language we have always referred to is Macedonian. It has been on certificates and examinations and appears all around Australia, apart from here in Victoria, and I could never agree to Macedonian-Slavonic being an appropriate language name for our language.

The teacher further gave evidence that when the directive happened "the community was just beside itself".

The teacher also gave the following relevant evidence:

President: I think you were asked as to whether there wasn't sections of the community which were relatively content to work within the directive?

Teacher: No. If there were those sections of the community, they were not content and we have taken this on really – we have reached a crossroads in terms of multicultural education when this directive was introduced and originally came through, the community and teachers and students decided, 'Right, we will fight this, we will boycott this. We will boycott our own language classes. We won't attend. We will have protest marches. We will withdraw the children from the classes.' That was the original thing – that was the knee jerk reaction from the community. Even as teachers in terms of preparing the examination for VCE and High School Certificate in Victoria, we reached this stage to make a point that 'No, we are not happy with this', but it became obvious to us that if we did this we were committing linguistic suicide. We were committing language suicide. If the kids didn't go to the classes, principals would close them down and if they closed them down, the funding would be reallocated to a priority language. We are not a priority language. So then we had to make a choice.

President: It's a question of survival from your perspective?

Teacher: It's a survival perspective, so we either continue on, keep on applying pressure to the relevant educational bodies to try and reverse this directive or we try some other matters and in my affidavit I refer to the fact that it was so important to heal the effect within the community and we could only do that by reframing this thing to students and to parents and to the community in saying 'Well, okay we are not going to go out and physically fight with anybody, that's stupid, but we will put all our energies into supporting our language programs, into developing new language programs and just learning our language'. That was the

way we fought back and, yes, its reflected in the numbers but that's why its reflected. That means we have managed to use that sort of positive reinforcement to fight this directive and that's something I'm very proud of, and the fact the conflict resolution strategies that we implemented with students really had a positive effect. As a multicultural educator, we've been trained to imbue students with tolerance and that becomes part and parcel of our training and I think that is what we enacted as Macedonian language teachers. I know of no other language teacher group that's had to do that in the context of multicultural education.

The teacher also indicated that throughout the world the language Macedonian is taught as Macedonian. The teacher did not accept that it was a logical step from the Federal Government's decision in 1994 to refer to people who originate from the Former Yugoslav Republic of Macedonia ("FYROM") as Slav-Macedonians, because "nothing's changed, the people don't refer to themselves – their ethnic identifier is Macedonian". The teacher stated that Slav-Macedonian and Macedonian-Slavonic were "both labels that the people don't want used" and were equally offensive. The teacher also pointed out "that what was going to appear on certificates would be problematic and would hinder students going on to do further studies in a subject called Macedonian-Slavonic, because that did not exist in any other tertiary institution in Australia or, for that matter, the world, so there were real education issues here effecting real students in a real context. It wasn't a word play about semantics and that's what the Union took on".

An affidavit of Mr Honeywood was tendered, being the person who held the position as parliamentary secretary to the Minister for Ethnic Affairs in 1994 and who assisted the Premier, being the Minister for Ethnic Affairs, in relation to the directive issued on 21 July 1994.

Mr Honeywood gave evidence identifying concerns as to tensions between communities. Mr Honeywood referred to the increase in the number of primary schools teaching what he referred to as Macedonian-Slavonic from 1994 through to 1996. The number of secondary schools remained the same between 1994 and 1996 and Mr Honeywood also referred to special funding that had been provided. Mr Honeywood referred to concerns in the State of Victoria about ensuring peace and harmony within Australian communities. Mr Honeywood gave some evidence relating to a belief of confusion about the description of the language.

Mr Honeywood also pointed out that there are any number of reasons why student enrolment for languages increase or decrease, but that no study had been undertaken to identify the changes in relation to the students studying Macedonian. Mr Honeywood pointed out that the enrolment figures were based on the start of the year and accepted that the decrease was identified six months after the directive was introduced. Mr Honeywood also gave oral evidence as follows:

Mr Honeywood: The reason for the directive was based on the concern that the Premier and I both had about the fact that on an unprecedented basis we had disharmony, we had violence, between two of our largest ethnic communities, that we had one of those ethnic communities

arguing very strongly that the terminology Macedonian and the territorial rights being claimed by the newly liberated former state of Yugoslavia, Macedonia was against their perspective, and of course, the Slav-Macedonian community argue very strongly that they should be able to retain those descriptive terms, even though the Federal Government had said that this was not to be the case in terms of the community and in terms of the country.

Miss Mortimer: Those tensions and those arguments centre on the recognition or non-recognition of FYROM and the identification of a people or a race. Is that right?

Mr Honeywood: And in addition to that the Greek community's strong view that the language termed Macedonian by the Slav-Macedonian community could not be a correct descriptor given that there are Greek dialects of Macedonian.

Mr Honeywood described a position where a community had only three descriptors, one the name of the community, secondly the country of origin and thirdly the language used. Mr Honeywood pointed out that the Federal Government had officially changed two of the descriptors:

...but had left out the third traditional usual descriptor of a community by way of the language and we believe that given that education is a State Government matter, it was appropriate that the third one of that trilogy be addressed, given the concerns that were raised.

Later in evidence Mr Honeywood indicated that the third descriptor "was a major issue" that was "exacerbating the difficulties in terms of retaining peace and harmony".

Mr Honeywood made references to rejecting Skopjean as a language name and accepted that there was no formal meeting with the Macedonian community prior to issuing the directive. Mr Honeywood also gave evidence that he saw the term "Slavonic" in its purest term and not in a sense that was derogatory. Mr Honeywood also said "my motivation, as I said, was to find a compromise that stood up correctly, linguistically speaking" and agreed with the proposition that bracketing Slavonic was, he considered, the best of a number of choices that perhaps all had some disadvantage. Mr Honeywood also gave evidence that:

...the language was a matter for the State Government jurisdiction, that it was the third traditional descriptor of a community and I can't think of a fourth or fifth because there are already only three that I can think of and that that third one had to be changed to be consistent with the fact that a State had become independent and we'd had the problems with peace and harmony and the Federal Government for the same reasons as I quoted from Gareth Evans speech to Parliament, in the interests of peace and harmony across Australia – had decided to change the descriptor for the name of the country, the descriptor for the name of the community and, of course, the education system being a Victorian issue, we ...

Mr Honeywood identified the reference to jurisdiction being the State Government's jurisdiction over education.

Mr Honeywood was also asked about the refusal of the Victorian Government to give its sanction or imprimatur to any function that will not use the name Macedonian-Slavonic and said, relevantly:

We deliberately sanctioned the naming of organisations as they wanted to call themselves. But you cannot compromise a Government representative by requiring him to attend a function at which a terminology is going to be officially used which goes against Government policy. We were at great pains to leave the organisations with the ability to call themselves as they saw fit. But in terms of the function that I'm sure Miss Mortimer is alluding to or about to allude to, that function was a specific invitation to hand out official language certificates to VCE students that refused to use Government policy terminology and I cannot hand out, representing the Government, official certificates that use a different descriptor.

In further cross examination Mr Honeywood appeared to accept that the proposed certificates that were to be handed out were not Government certificates but certificates organised by the Macedonian Teachers' Association of Victoria. Mr Honeywood was also asked the following:

Miss Mortimer: What I asked you was, does that not mean that in order to receive official sanction, community organisations that organise events where the language has to be referred to, like this, as an integral part of the event must comply with the directive if they are to receive official presence, official sanction.

Mr Honeywood: No, it does not, because quite simply this was a very specific case of a certificate of attainment being given that related to a subject that had been taught at matriculation level for Year 12 of high school and it related therefore to the descriptor of that subject taught. Can you imagine the compromise of any Government official who had gone to that function and handed out certificates, be they official or be they community-based or whatever, that attested to a student having completed a subject that did not exist?

Mr Honeywood continued and said "in terms of Government policy the subject did not exist". Mr Honeywood indicated that the criterion that would govern his consideration of a particular invitation would be the extent to which, if any, it compromised him in relation to the Government's policy.

Mr Honeywood was also asked questions about the possible confusion or embarrassment that a student may face seeking to use a certificate to access tertiary institutions outside Victoria which certificate refers to completion of certain units in Macedonian in 1994 and completion of other units of Macedonian-Slavonic in 1995. Mr Honeywood said:

As I say, if it had not been bracketed I could imagine that it could give rise to some confusion but all one would have to do would be to refer to the Encyclopaedia Britannica to see that Macedonian is part of the Slavonic languages and I am sure that any university academic who is looking at accepting a student on the basis of that subject, namely that foreign language, I am sure that they would have sufficient education to understand that that was the language which was being referred to.

Mr Honeywood also referred to “our own State Government directive in terms of the naming of the language as Macedonian-Slavonic, on the basis that you can’t have only one department in a government referring to a language one way and having every other government department ...”.

An affidavit of Dr Casule was also tendered, in which he expressed views as a linguist about there being only one Macedonian language in the world today, as well as the development of the language and in relation to the directive said:

Language is a distinguishing characteristic of a person’s ethnic background. Where people’s lands have been taken or conquered and their culture discouraged or prohibited, language is sometimes one of the few remaining identifiers of an ethnic group ... In my opinion the right to change the name of a language rests with, and has always been exercised by, the speakers of that language and no one else. I know of no other situation where a change in the name of an officially and internationally recognised language has been forced upon native speakers by a Government.

Dr Casule continued “In my opinion, the renaming of a language spoken by a minority ethnic group is capable of leading to a decline in the study of that language, where the ‘new’ name is one which the ethnic group finds offensive and humiliating”. Dr Casule also stated “In my direct experience, the eminent world linguists I know of and have spoken with find the directive absurd and without foundation from a linguistic point of view”.

Dr Casule also gave oral evidence. Dr Casule made reference to Slovenia being an area in Croatia, as well as identifying a region that he understood to have been referred to as Greek Macedonia, New Territories, Northern Greece and Macedonia. Dr Casule also gave evidence that all international world associations of linguists referred to Macedonian only as Macedonian and that this has been the position since mid to late 1940s. Dr Casule indicated that he considered there to be an axiom in linguistics “that nobody has the right to rename a language of anyone or give them the name of the language”. Dr Casule pointed out the unacceptable linguistic standard of an exact same exam for Year 12 in New South Wales and in Victoria in which the description between the exam in the two States differs.

Dr Casule also accepted as a matter of classification that it was acceptable to refer to Macedonian as a Slavonic language. Dr Casule also indicated that he took offence to the name of the language in the directive which he regarded as denying him of one of his essential human rights. He stated: “to change the name of an internationally known language, that is the offensive part”. Dr Casule expressed the opinion that the directive caused more harm than it solved and “that’s when things started, when people started to believe they could affect another group”.

A fitter and welder, who described himself as ethnically Macedonian, gave evidence about an occurrence where his wife required an interpreter upon being admitted to hospital and that a term consistent with the directive appeared on the computer screen which caused him anger and upset his feelings.

An affidavit of Professor Tamis was also tendered setting out views as a sociolinguist about the language spoken by the people from FYROM, and the possibility for confusion. Publications by Professor Tamis were also tendered as well as other historic material and an article from the Institute of Macedonian Studies.

Professor Tamis also gave evidence as a sociolinguist and referred to Macedonian as having the status of a language as well as giving evidence about the development of the understanding of Ancient Macedonian and the borders of Ancient Macedonia. Professor Tamis also gave evidence that “we have lobbied the international community that the unilateral use of the term Macedonian by one specific group is totally unjustifiable against the heritage and the history of the Greek Macedonians”. Professor Tamis also referred to a possible term being “Macedo-Slav” in respect of which he had no personal knowledge as to whether anyone else had adopted or used such a term. Professor Tamis expressed the opinion that the Victorian Government phrased the designation to alleviate current conflict and confusion linguistically and from the tension point of view between communities. Professor Tamis expressed the view that the term which is applied to name any given language in the world has no basis in linguistic description but is simply a political designation. Professor Tamis also expressed the view that the only Macedonians are the Ancient Greeks and said “They are Macedonians. We are Macedonians. They are the Yugoslavs, we are the Greeks. That’s my perception”.

An affidavit was also read from the manager of a radio station who gave views from what he described as a Greek perspective of any use of a word “Macedonian” by people living in or coming from FYROM.

The manager also gave oral evidence. Expressing the view that use of the word Macedonian by people living in or coming from FYROM is unacceptable and deeply offensive as well as referring to the continuing Macedonian heritage culture.

Professor Hill gave evidence as a Slavonic linguist. Professor Hill was of the view that in the context of school teaching and school examinations there was no possibility of confusion between Ancient Macedonian, Modern Macedonian and Greek Macedonian dialects. Professor Hill also expressed the view:

...that directive is likely to cause confusion because any addition to the name immediately starts people asking questions; what is actually meant. As I said, if a language is offered as a subject at school or for examination then it is assumed that the reference is to the standard language. If it is qualified in some way people start asking what – why the qualification, is this perhaps not a course in contemporary standard Macedonian. Is it perhaps a course in Macedonian dialects or something like that.

Professor Hill also gave evidence about a telephone conversation some time in 1994 with someone who was an adviser to the Premier of Victoria. An article by Professor Hill was also tendered, as well as the content of an interim accord.

An affidavit of a university student expressed shock and outrage upon finding out about the directive. Two affidavits of a real estate agent were also tendered to the same effect. Two affidavits were also tendered of an arts student who studied Macedonian and was outraged and disappointed by the directive. In particular “I cannot understand why I have to identify myself to a stranger in this way; it is like I am forced to insult myself by using the term ‘Slavonic’”.

An affidavit was also tendered which referred to a conversation with Mr Honeywood in which the deponent was told the reasons for the directive were to clarify the matter because of another language that was being taught called Greek Macedonian at a particular university. The deponent identified that this asserted fact turned out to be incorrect. The deponent stated that the directive was causing tension within schools “making students feel they and their language were worth less or different from all others”. The deponent referred to being distraught from having to sign off on an exam which was required to comply with the directive and said “this was a period of a lot of stress for me, my dilemma was that a government department was forcing me to call my language something different to what I call it”.

A number of newspaper articles, editorials and extracts from other works were also tendered. There was also tendered a recognition by Canada of the Former Yugoslav Republic of Macedonia and an extract from the Encyclopaedia of Language and Linguistics.

I accept the evidence of Professor Clyne and Dr Casule and the school teacher to which I have referred and specifically in relation to the identification with the name Macedonian by users of the language Macedonian and the material significance of the language Macedonian to the culture of the users and maintenance of that culture. I do not find the evidence of Professor Tamis persuasive and the opinion evidence as to conflict and confusion was in my view strongly influenced by subjective belief.

Except to the limited extent identified in my findings I accept the evidence of Mr Honeywood as to his state of mind. I also accept the evidence of the other witnesses to which I have referred.

Detailed submissions have been filed on behalf of the complainant and the respondent, all of which I have taken into account together with the whole of the evidence in the findings I now make.

5. FINDINGS

5.1 Findings as to section 9(1)

The direction by the Premier contained in the memorandum dated 21 July 1994 was, I find, the doing of an act namely the issue of a policy directive in terms of the memorandum and that act was done in connection with and in the course of the duties as Premier of the State of Victoria. I find that the act of issuing the said directive was done by the respondent.

It is then necessary to consider whether that act of using the directive involved “a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin”. The directive involved differentiating between persons of a particular ethnic origin who speak a particular cultural language and persons who speak other cultural languages. The act of distinction involved in this differentiating is the re-naming of the cultural language of persons of a particular ethnic origin. I find that distinction involved in the act of issuing the directive is founded upon ethnic origin and is also a distinction by reference to ethnic origin. I find that the re-naming of a cultural language in the directive is a distinction based on ethnic origin of the persons using that cultural language. I find that, the distinction involved in the act of using the directive being the re-naming of the cultural language has as its true basis and is founded upon the ethnic origins of persons who speak Macedonian.

In my opinion, the directive in the present case is substantially different from the issues that have arisen in relation to recognition of nations, Horta v Commonwealth (1994) 181 CLR 183 at 195-196; Chow Hung Ching v The King (1948) 77 CLR 449 at 467, and it is not necessary to determine whether an act of that nature falls within the scope of the Act. An act of issuing a directive by the respondent concerning Government policy as to name of a language is, in my opinion, an act within the scope of the Act if the elements of a relevant provision are able to be established and I reject the argument that it is a political issue outside the scope of the Act.

Attention has also been drawn to the decision of the European Court of Human Rights in the Belgian Linguistic Case (No 2) (1968) 1 EHRR 252 in support of the proposition that the directive does not affect any human right or fundamental freedom and that linguistic rights are outside the Convention. In that case the European Court of Human Rights held relevantly that there was no right to education in a language of one’s choice by a state. Attention was drawn to the decision of the majority at 284 that a provision that protected rights and freedoms:

...does not forbid every difference in treatment in the exercise of the rights and freedoms recognised ... In addition, and in particular, one would reach absurd results were one to give Article 14 an interpretation as wide as that which the French version seems to imply. One would, in effect, be lead to judge as contrary to the Convention every one of the many legal or administrative provisions which do not secure to everyone complete equality of treatment in the enjoyment of the rights and freedoms recognised. The competent national authorities are frequently confronted with situations and problems which, on account of differences inherent therein, call for different legal solutions; moreover, certain legal inequalities tend only to correct factual inequalities. The extensive interpretation mentioned above cannot consequently be accepted.

It is important, then, to look for the criteria which enable a determination to be made as to whether or not a given difference in treatment, concerning of course the exercise of one of the rights and freedoms set forth, contravenes Article 14. On this question, the Court, following the principles which may be extracted from the legal practice of a large number of democratic States, holds that the principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of a such a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down

in the Convention must not only pursue a legitimate aim: Article 14 is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.

Although these matters are relevant on the question of construction in determining the existence and kind of human right or freedom within the Convention there is, in my opinion, no defence to a contravention of section 9(1) of objective and reasonable justification or of pursuit of a legitimate aim in which there is a reasonable relationship of proportionality with the means employed to achieve the aim.

It is next necessary to consider whether this distinction in the re-naming of the language of persons of a particular ethnic origin has the proscribed purpose or effect. I do not accept that the directive was issued for the purpose of avoiding confusion in the description of the language. Mr Honeywood gave no cogent evidence to support confusion in Government Departments or elsewhere. I do find that Mr Honeywood made the decision to change the “third descriptor” and that Mr Honeywood formulated the distinction within and prepared the directive for issue by the Premier whilst acting within the scope of his employment. I do not accept that avoiding inconsistent administrative references to the language was a purpose of the distinction. I find that it was a purpose of the distinction involved in the act of issuing the directive to ease perceived tension between individuals. I find that it was also a purpose of the distinction to maintain peace and harmony in the State of Victoria. I do not accept that that a purpose of the distinction was to placate a particular community in preference to another.

I find that it was not a purpose of the distinction involved in the act comprised in the directive to nullify or impair the recognition, enjoyment or exercise on an equal footing of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life. The above findings and the penultimate sentence of the memorandum dated 21 July 1994 are inconsistent with the distinction having a purpose of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of any human right or fundamental freedom. Accordingly, I find that the directive was not unlawful conduct by reason of having a proscribed purpose but this still leaves the issue of whether the directive was unlawful conduct because of its effect.

The critical issue which then arises for consideration under section 9(1) is whether the distinction involved in the directive has the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the relevant fields.

The effect of the distinction in the re-naming of the language does impact upon the recognition of the language in departments or instrumentalities of the respondent. A particular administrative description or name is not itself a human right or fundamental freedom. The unclosed category of human rights and fundamental freedoms protected by the Convention are concerned primarily with matters of substance which an individual can exercise or enjoy. The unclosed category does not however create separate proprietary rights to names or descriptions. The human rights and freedoms protected by the Convention and by the Act are not concerned with legal rights to names or descriptions but rather moral rights of people.

In my opinion, it is clear from the opening paragraph to the Convention which refers to “respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion”, as well as the reference to “ethnic origin” in Article 1, that linguistic minorities are intended to benefit from the protection of the Convention. As a matter of construction “cultural rights” in Article 5 of the Convention must include a cultural language. Languages develop so as to express the needs of their users and provide an ever changing kaleidoscope as means of understanding ourselves and our society. No people or their language are better than another.

A cultural language includes in my opinion what may be described as a dialect or patois which is taught, learnt and used in cultural and social activities and is identified with by the users of the language. Whether speech is recognised as a language by international linguists is not, in my view, determinative of the question of fact as to whether there is a cultural language used by persons of ethnic origin. If the cultural language is identified with, in description or name, by the cultural language users this is, in my opinion, part of the cultural right. Identification with a cultural language in cultural and social activities may involve more than mere expression of the language. Mere expression is a freedom specifically recognised by Article 5 paragraph 1(d)(viii) of the Convention but this does not exhaust the protection given to a linguistic minority specifically in relation to cultural rights within paragraph 1(e). The identification by the users with the cultural language may include the description or name of the cultural language which in cultural and social activities is used by the people speaking, reading or writing the cultural language. The badge of personal identity, value and belonging of persons of ethnic origin with each other in cultural and social activities may comprise their identification in the description or name with, and use of, the cultural language. Identification in the description or name of the cultural language by the users of the cultural language may be of material significance in maintaining the identity of the persons of ethnic origin and their use of the cultural language. If the name of the language no longer exists the identity, value and belonging in learning, teaching or using the language may be diminished or destroyed. If, in the context of social and cultural activities, the language of a linguistic minority is not taught, learnt and used, this would lead to the demise of the cultural language. Where the cultural language is the cornerstone of the identity of an ethnic community a demise of the cultural language would be destructive of the ethnic community.

I find that there are people of ethnic origin who in social and cultural activities teach, learn and use the language Macedonian. I find that immediately prior to the directive the language Macedonian was used by people of ethnic origin in Australia. I find that the Macedonian language is a cultural language and identified with in the name Macedonian by the cultural language users. I find that the language Macedonian is the cornerstone of the identity of the ethnic community who speak Macedonian. I find that the badge of personal identity, value and belonging of this ethnic community in cultural and social activities comprises their identification with the name and use of the cultural language Macedonian.

In my opinion, it accords with the principles of dignity and equality for a linguistic minority to have recognised, to enjoy and to exercise the human right in social and cultural activities to teach, learn and use a cultural language as identified with, in description or name, by the cultural language users. In my

opinion, one of the moral rights protected by the Convention is the right in social and cultural activities to teach, learn and use the cultural language Macedonian as identified with in the name Macedonian by the cultural language users. In my opinion, this right is a human right in the cultural life of the users of the Macedonian language.

Accordingly, I am of the opinion that the human right in social and cultural activities to teach, learn and use the cultural language Macedonian, as identified with in the name Macedonian by the cultural language users, exists and is of a kind within Article 5 of the Convention and, in any event, is a human right within the meaning of section 9(1). I find in the present case that there is involved and established a right in social and cultural activities to teach, learn and use the language Macedonian as identified in the name Macedonian by the language users. I find this right is a cultural right of persons of ethnic origin in Australia who speak Macedonian.

The recognition focused upon by the protection in section 9(1) is acknowledgment of the human rights and freedoms of people by all persons including Government bodies, emanations or departments as valid or entitled to consideration. In the present case, re-naming of the language provides a new pigeonhole label whereby the former name of the language ceases to exist for Government administrative purposes. I find that Mr Honeywood's evidence that the language Macedonian does not now exist was an admission by the respondent as to the effect of the distinction involved in the act of issuing the directive in terms of the memorandum dated 21 July 1994. I find that the effect of the directive is that Government bodies, emanations and departments of the respondent do not recognise that the language Macedonian exists. I find that the human right as established above is not recognised as valid or entitled to consideration by Government bodies, emanations and departments of the respondent. I find that this effect of the distinction impairs recognition of the cultural rights of users of the Macedonian language in social and cultural activities. The fact that the distinction does not impair expression of the cultural language is not an answer to this want of recognition.

I find that the distinction does have the effect of adversely affecting and diminishing the recognition of the said right by individuals and within the Government bodies, emanations or departments of the respondent. I find that Macedonian (Slavonic) is not a description or name used by persons who learn, teach or use the Macedonian language in cultural or social activities and is not identified with the cultural language by users of the cultural language. I find that the distinction has had the effect of diminishing the recognition of cultural rights by users of the cultural language in cultural and social activities. I find that issuing the directive has had the effect of impairing recognition of cultural rights of the users of the Macedonian language in cultural and social activities. I find that other users of cultural languages have recognition, enjoyment and exercise of their cultural rights without Government directives re-naming the cultural language and accordingly have recognition and enjoyment of their cultural right on a different and unequal footing to users of the Macedonian language.

Accordingly, I find that issuing the directive in terms of the memorandum dated 21 July 1994 was an act by the respondent which involved a distinction based on ethnic origin which has the effect of

impairing the recognition on an equal footing of a human right in the culture of users of the Macedonian language namely, “in social and cultural activities to teach, learn and use the language Macedonian as identified in the name Macedonian by the language users” and is unlawful conduct under section 9(1) of the Act. I find that even if the degree of satisfaction in relation to these findings required greater certainty because of the seriousness of the alleged unlawful conduct and gravity of the consequences flowing from such a finding, I am in fact so satisfied in relation to each of the findings of fact I have made in holding that the respondent has engaged in unlawful conduct under section 9(1).

Even if there were a defence of objective and reasonable justification or legitimate and reasonably proportionate aim as referred to above, the onus would lie upon the respondent to establish the same. I apply a test of objective reasonableness as requiring a logical and understandable basis and that views may differ about the matter: Australian Medical Council v Wilson (1996) 68 FCR 46 at 61-62 .

I find that the policy of the Federal Government in relation to FYROM, as announced on 14 March 1994, did not require any change to the name of the language as the terms used in that policy were for the purposes of assembling data as to country of birth or nationality. The people living in or originating from the FYROM are not one and the same as people in Australia who enjoy and use the language Macedonian in cultural and social activities. The correspondence following the directive by the respondent both from Senator Evans, the then Minister for Foreign Affairs, and Senator Bolkus, the then Minister for Immigration and Ethnic Affairs, do not support the directive being regarded by those persons as a logical step. I find the change made is not a logical step founded upon the Federal Government policy. The linguistic explanation advanced by Mr Honeywell for the decision “to change the descriptor” is I accept objectively an understandable basis but I find in all the circumstances it was not objectively a logical basis. I accept that there had been acts of violence and tension in the State of Victoria prior to the respondent’s directive and that the duty to maintain peace order and good government is a heavy burden which at times requires balancing competing interests and making difficult and unpopular decisions. However, most Government policy can be said to be for the maintenance of peace, order and good government and the performance of this duty does not take the policy outside the scope of the Act. Further, a legitimate purpose for particular conduct does not mean that the conduct objectively assessed has a logical basis.

The reasons for the directive according to its terms were twofold “to be consistent and avoid any further confusion”. The first reason of consistency is flawed as it was neither a consistent step with the Federal Government’s decision nor a logical step founded on that decision. The second expressed reason is unsupported by any actual confusion within Government Departments or any other evidence of genuine confusion. The other reason subsequently expressed, which I accept existed as a reason, was to achieve peace and harmony and to quell tensions between certain persons. In the absence of any consultation of persons using the Macedonian language or a similar change being made anywhere else in the world I am not satisfied that this reason is objectively logical. The argument that this was a problem unique to Victoria is not convincing. I am not satisfied that the directive was in all the circumstances objectively reasonable and accordingly I am not satisfied that there was a reasonable

justification for the distinction involved in issuing the directive. Further, I am also not satisfied that there is a reasonable relationship of proportionality between the distinction involved in the directive and the aims sought to be achieved.

5.2 Findings as to section 9(1A)

The act identified, being the issue of the directive contained in terms of the memorandum dated 21 July 1994, does not, I find, amount to requiring another person to comply with a term, condition or requirement, quite apart from the other criteria under section 9(1A). Further, I find that the directive was not one with which the departments of the respondent did not or could not comply within the meaning of section 9(1A)(b). Further, the Government bodies, emanations and departments to which the directive applied in the act the subject of the complaint are not an “other person” in respect of whom any requirement to comply has the prohibited purpose or effect. No other act was identified in the complaint and reliance upon this provision appears to have been abandoned in the complainant’s opening and was not developed in the submissions. I further find that any such requirement in the directive did not have the prohibited purpose or prohibited effect within section 9(1A).

5.3 Findings as to section 10

Insofar as section 10 is concerned there is, in my opinion, no law involved in the directive contained within the memorandum dated 21 July 1994 and accordingly section 10 has no application.

5.4 Findings as to section 13

I accept that the term “services” in section 13 (taking into account the interpretation of services in section 3(1)) is wide enough to include education: Sinnipan v State of Victoria (1995) 1 VR 421 at 427. A narrower view as to the scope of the meaning of services was tentatively expressed but without determining the same in Aboriginal Students Support & Parents Awareness Committee, Traeger Park Primary School, Alice Springs v Minister for Education; Northern Territory (1992) EOC 92-415 at 78,969.

However, I find that there was no refusal or failure to supply education services to another person on less favourable terms or conditions than those upon or subject to which the respondent would otherwise supply those services. In my opinion, the change in name of the subject is not a term or condition imposed on the supply of educational services. I also find that the change in name is not less favourable terms or conditions than those upon which or subject to which the respondent was otherwise supplying educational services. I further find that there was no refusal or failure on demand to supply educational services. I find that the continued insistence on adherence to the directive is not a refusal or failure on demand to supply educational services to another person, except on less favourable terms or conditions. I find that the refusal on behalf of the Government to attend Macedonian community functions unless the directive was adhered to at those functions is not a refusal to supply educational services to another person, except on less favourable terms and conditions. I find that the publication

and distribution of community information which identifies the Macedonian language with the suffix (“Slavonic”) is not a refusal or failure to supply educational services to another person, except on less favourable terms or conditions. I find that the differentiating between the way Macedonian is identified and named and other languages is not a refusal or failure to supply educational services on less favourable terms or conditions. I find that the alleged contravention of section 13 is not made out.

5.5 Findings as to section 16

In relation to section 16, I find that there was no intention by the respondent to do an act that was unlawful by reason of a provision of Part II of the Act and accordingly I find there is no unlawful conduct as raised in the complaint under section 16 of the Act.

5.6 Findings as to section 17

I find that the act of issuing the memorandum does not amount to inciting the doing of an act that is unlawful by reason of the provision of Part II. I further find that the respondent did not assist or promote, whether by financial assistance or otherwise, the doing of an act that is unlawful by reason of a provision of Part II. I accept that the respondent did not know or intend that the issue of the directive was unlawful by reason of a provision of Part II of the Act. I find that the respondent did not contravene section 17.

6. CONCLUSION AND RELIEF

I find the complaint substantiated and that the respondent engaged in an unlawful act contrary to section 9(1) of the Act by issuing the directive in terms of the memorandum dated 21 July 1994. The complaint does in my view pick up the continuing implementation of the directive. So far as the evidence reveals the directive remains in operation in the State of Victoria and is a continuing act of implementation which I find for the same reasons amounts to continuing unlawful conduct by the respondent within section 9(1) of the Act. In these circumstances, I see no reason why the determination should not include the language of injunction found in section 25Z(1)(b)(i) “that the respondent should not continue the unlawful conduct”.

A prayer for relief in the form of damages was withdrawn which is understandable given the difficulties on the evidence of establishing any loss or damage having been suffered by the persons represented by the complainant. I find that the persons represented by the complainant have been distressed and humiliated by the unlawful conduct of the respondent within section 9(1) and by the continuing unlawful conduct of the respondent.

It was suggested that no relief should be included in the determination and that the matter could be left for the respondent to take appropriate action. It was also submitted that no relief should be granted as

this is a delicate matter thereby implying a risk of tensions. It would be a great tragedy, as I have earlier said, if misconception of the nature of this determination caused any tensions.

However, the complaint has been substantiated and I consider it would be unjust to refuse declarations on this ground. In my view the complainant is entitled to an appropriate declaration as against the respondent. I am satisfied that the determination I propose to make under section 25Z(1)(b)(i) against the respondent together with these reasons is sufficient to redress the injured feelings and humiliation suffered by the persons represented by the complainant. I reject the proposition that the complainant in its representative capacity is not an aggrieved person under section 22 and any such defect in the complaint was cured by the representative directions made on 20 October 1997.

In the circumstances, I make a determination under section 25Z in relation to the complaint against the respondent as follows:

I declare that the respondent has engaged in conduct rendered unlawful by section 9(1) of the Act by the act of issuing the directive in terms of the memorandum dated 21 July 1994 which involved a distinction based on ethnic origin in re-naming the language Macedonian and had the effect of impairing the recognition on an equal footing of a human right in the cultural life of users of the Macedonian language and I declare that the respondent should not continue such unlawful conduct.

I note by way of reminder that I have made a direction pursuant to section 25J of the Act that no person shall publish the names of witnesses who have appeared before the Commission or the names of deponents who have sworn affidavits produced to the Commission or information that might identify them as witnesses or deponents before the Commission, except:

- (a) to the extent set out in this determination or already published and in the public arena; or
- (b) by the parties, any aggrieved person or their legal advisers only in so far as is necessary for the purpose of obtaining legal advice or the preparation and conduct of any Court proceedings; or
- (c) for official purposes which necessitates disclosure either for performance of statutory duties or law enforcement.

DATED THIS DAY OF SEPTEMBER 2000

Alexander W Street SC
Hearing Commissioner