IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M3 of 2017

BETWEEN:

DEMETRIOS VAKRAS
Plaintiff

and

FEDERAL COURT OF AUSTRALIA
FEDERAL CIRCUIT COURT OF AUSTRALIA
ROBERT RAYMOND CRIPPS
REDLEG MUSEUM SERVICES PTY LTD
Defendants

AFFIDAVIT

I, DEMETRIOS VAKRAS, of [redacted] Street [redacted], artist/shop-assistant [affirm*] as follows:

1. In invoking the Original Jurisdiction of the High Court of Australia, **COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT - SECT 75**, (v), for a constitutional writ of Mandamus I am supporting my application with this Affidavit.

2. The writ is sought against the Federal Court of Australia (FCA) and Federal Circuit Court of Australia (FCCA) over the following judgments:
(a) VID 163 of 2016 - (Vakras v Cripps [2016] FCA 955) judgment and orders delivered 15/8/2016 [EXHIBIT 1];
(b) MLG2122 of 2014 - (Vakras v Cripps & Anor [2016] FCCA 20) judgment and orders delivered 27/1/2016 [EXHIBIT 2].

3. Time requirement. (With regard to Rule 25.07.2 of the High Court Rules 2004), I submit the court allow for "such further time as is, under special circumstances, allowed by the Court or a Justice" – and as is permitted under Rule 4.02 ("**Enlargement and abridgment of time**") noting the following:

(**a**) I submit that the date at which the "refusal to hear" an appeal should be 26 August 2016, on which day the Registrars of both the FCA and High Court of Australia (HCA) rejected a submission to appeal the FCA judgment of 15 August 2016. The judgment in question was a dismissal of an application to seek leave to appeal the decision of the FCCA which was interlocutory. (Expanded in point 4 of this Affidavit beginning at Line 24 of p 2);

(**b**) By not dispensing with a privative time-clause would constrain the HCA in the exercise of its jurisdiction. The court would have failed the role intended for it by s 75 (v) of the Constitution.

Demetrios Vakras
[redacted] Street [redacted]
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Fax: [N/A]
Email: [*vakras@*[redacted]]
Ref: [*Demetrios Vakras*]

(I intend this point to be understood in this context: ***Re Refugee Review Tribunal; Ex parte Aala [2000] HCA 57; 204 CLR 82; 176 ALR 219; 75 ALJR 52 (16 November 2000)***. Kirby J at [139] "s 75(v) of the Constitution is a provision of 'cardinal significance [for by it] all officers of the Commonwealth (including federal judges) are rendered accountable in this Court to the Constitution and the laws of the Commonwealth. Being the means by which the rule of law is upheld throughout the Commonwealth, the provision is not to be narrowly construed or the relief grudgingly provided.'")

(**c**) It would impose a penalty on an unrepresented litigant unfamiliar with the technical elements of constructing such a writ and reward the third and fourth defendants for their having kept funds they were by court order ordered to return to me that cause me to remain unrepresented.

(**d**) The third and fourth defendants refused to obey a Supreme Court of Victoria Court of Appeal order [EXHIBIT 3] to return money to me. Having already gained benefit from the money, the third and fourth defendants held on to and continued to use that money to fund legal representation used against me for one year after the Court of Appeal orders had been issued. After this time the third and fourth defendants put their business assets into storage advertising the intent to *phoenix* the business [EXHIBIT 4], [EXHIBIT 5], and subsequent to storing assets, the third defendant declared bankruptcy [EXHIBIT 6].

4. The matters brought before the FCCA and summarily dismissed by it (without those matters having proceeded to trial), from which leave was sought to appeal the summary dismissal in the FCA; and the subsequent dismissal by the FCA of the appeal and refusal to grant leave to it, were:

(**a**) a breach of the Racial Discrimination Act 1975 (RDA), ss 9 and 13;

(**b**) a breach of the Moral Rights amendment of the Copyright Act 1968, ***Copyright Amendment (Moral Rights) Act 2000***, s 195AK;

(**c**) a claim of Misleading and Deceptive trading – arising under the Trade Practices Act 1974 (TPA), ss 52 and 53;

(**d**) an interlocutory submission to enjoin an additional party (Lee-Anne Raymond) to the Moral Rights and Misleading and Deceptive Trading claim [EXHIBIT 7]: and,

(**e**) an interlocutory submission on 21/7/2015 by the third and fourth defendants seeking for the matters brought against them to be dismissed [EXHIBIT 8] on grounds – submitted in the Affidavit in support of the interlocutory – that the "Court has no jurisdiction to hear these claims" (point 26) [EXHIBIT 9]; which was made in support of their claim that pursuit of the matter constituted an "abuse of process", (point 14, "Response", "Grounds of Opposition", 23/11/2014) [EXHIBIT 10].

5. The matters that came to the FCCA followed the Termination under s **46PH (1) (i)** by the Human Rights Commission (HRC) of a complaint of Racial Discrimination, "the President is satisfied that there is no reasonable prospect of the matter being settled by conciliation" [EXHIBIT 11, (originating application which includes the HRC NOTICE OF TERMINATION)]. The Application for relief in the FCCA included a claim over a breach of Moral Rights arising over the same (and other) actions

done by the same parties in the same controversy, whose actions in the same course of events had given rise to the race discrimination complaint.

6. *Difficulties* the Federal courts and those courts' officials have had grasping what "moral rights" intends to protect adversely affected how the courts have run the matter. These *difficulties* resulted in the 28 April 2015 orders by Registrar Caporale of the FCCA calling for new points of claim to be submitted "in relation to both the discrimination claim and the copyright claim". [EXHIBIT 12];

7. In the Registrar-ordered replacement "Points of Claim", filed 28/5/2015, the component of Misleading and Deceptive Trading was added to the discrimination and Moral Rights claims with regard to the misrepresentations made, personally and in advertising, by the third and fourth defendants to myself and another party, Lee-Anne Raymond, that caused the procurement of an agreement to hold a joint art exhibition in the gallery owned/run by the third and fourth defendants. It is what was done by the third and fourth defendants during a joint art exhibition that race discrimination and Moral Rights breaches occurred. Included as co-claimant in the "replaced" complaint was Lee-Anne Raymond (at point 34 b) [EXHIBIT 13] as an affected party as this was a joint art exhibition.

8. Two of the three statutes in question – the **Racial Discrimination Act** 1975 (**RDA**) and the **Copyright Amendment** (**Moral Rights**) **Act** 2000 (**Moral Rights**) – wherein the matters lie, are international covenants legislated into law by Parliament. Those covenants are the **International Convention on the Elimination of All Forms of Racial Discrimination** (**ICERD**) (specifically Article 1) and the **International Covenant on Economic**, Social and Cultural Rights (**ICESCR**) (specifically Article 15 1 (c), & 3, as well as the **Berne Convention** (6bis).

FAILURE OF THE FCCA TO EXERCISE JURISDICTION
RACE DISCRIMINATION component

9. The Summary Dismissal by the primary judge of the FCCA with regard to the complaint arising under ss 9 & 13 of the RDA was by disregard of the Statute. As s 9 derives from an International Treaty (Article 1 of the ICERD) ss 31 & 32 of the VIENNA CONVENTION ON THE LAW OF TREATIES (Australian Treaty Series 1974 No 2) mandates that it must be understood "in good faith" according to the "object and purpose" of the treaty. [1] [2] [3]

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

10. The judge of the FCCA ignored the only question in the matter of discrimination from the HRC that the court was required to adjudicate: did the actions complained of happen? The HRC plainly summarised the RDA complaint (in correspondence sent to the third defendant) in the following way: "racial discrimination in the provision of goods, services", seeking "an apology from Cripps and acknowledgement from him that using words that are Greek that accompanied my art on Greek myths does not convey anything sinister" (HRC email 18/8/2014) [EXHIBIT 20]. The third defendant's response was "there is absolutely no substance or merits in his allegations." (20/8/2014) [EXHIBIT 21].

11. What the third defendant denied to the HRC was contradicted by an admission when the matter came to the FCCA. The third and fourth defendants' 1/7/2015 "Points of Defence", point 14 [EXHIBIT 14] admits: "the essays accompanying the Applicant's artwork were in convoluted English, and also in Greek and Latin writings, and his [the third defendant's] concern [was] that the essays could be interpreted as being anti-Palestinian and racist".

12. The following appears to require repeated emphasis: Termination of the complaint by the HRC **did NOT lie** in ***46PH, 1*** *(a) ("the President is satisfied that the alleged unlawful discrimination is not unlawful discrimination"*). Termination lay in s 46PH (1) (i). The HRC had accepted that the actions complained of in the complaint, **if true**, were discriminatory.

13. The judge of the FCCA disregarded the statute interpolating an idiosyncratic personal understanding of what the statute required which is inconsistent with, and violates, the International obligations arising from the Treaty (ICERD). Instead of adjudicating on whether the actions complained of happened, the judge introduced his own requirement of ***"motive" for the doing of actions which were not in dispute to being done***. The question of "motive" has been settled. It has been argued by the State (Australia), in **Paul Barbaro v. Australia, Communication No.**

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

[3] **Minister for Home Affairs of the Commonwealth v Zentai [2012] HCA 28 (15 August 2012)** "17. The primary question in this appeal is whether the Minister committed a jurisdictional error by purporting to determine ... a necessary condition for surrender, derived from Art 2.5 of the Treaty and, by operation of s 11 of the Act and reg 4 of the Regulations read with s 22(3)(e) of the Act, qualifying the powers conferred by the Act, had not been satisfied. It is necessary to consider the relevant terms of the Treaty and to do so in light of the rules of interpretation in the Vienna Convention on the Law of Treaties ("the Vienna Convention")".

7/1995, U.N. Doc. CERD/C/51/D/7/1995 (1997) [4] **;**
(has been re-affirmed recently) *Vata-Meyer v Commonwealth of Australia [2015] FCAFC 139 [27]; (and is based on, at least domestically) Weinberg J Macedonian Teachers Association of Victoria Inc v Human Rights & Equal Opportunity Commission & Anor [1998] FCA 1650 (21* December 1998) [un-numbered]) ***1998) 91 FCR 8,39*** (re, "causal nexus")

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

15. This "misapprehension" by the primary judge of the FCCA led to his concluding that the ***making of a distinction*** – acknowledged in the decision – of the kind prohibited by the Statute could not be shown to be "improperly motivated" (Reason [24]), by "anti-Greek" prejudice (Reason [22]) and, that on the absence of such proof, that there was "no prospect of success" at Reason [44]. And, building from that misapprehension, the primary judge concluded at [60] that my having sought to prosecute the claim(s) was "an abuse of process".

16. Had jurisdiction been exercised as the statute mandates, (***Craig*** [5] [12]), the FCCA could not have found at [22] that the discrimination complaint "lack[ed] proper justiciable controversy". It is not disputed by either the defendant or the primary judge that I am Greek by "race", "ethnic origin", and that I manifested an attribute of my "racial" “background”, “inheritance”, “origin”, culture, in the form of my use of the Greek language in writing about Greek mythology *because I am of that background* - and that *because of this* the result was the *distinction* (etc) prohibited by the Statute. The primary judge, solely on the strength of his interpolating a requirement absent in the statute refused to exercise his jurisdiction (***Craig*** [11]).

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

> “It should also be noted that the transcript extracts of crossexamination of Mr Cripps only go to support the findings that I have made earlier, namely, that the difficulties with words in Greek were of the same character as difficulties with Mr Vakras' convoluted and difficult to understand English,” Burchardt J, Reason [60].

The “earlier findings” referred to, are the primary judge's agreement with

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[4] **Paul Barbaro v. Australia**, "6.3 The State party agrees in principle with the author's assertion that obvious and blatant expressions of racial discrimination are not required when investigating instances of race distinctions. It notes in this context that prohibition of indirectly discriminatory acts or unintentionally discriminatory acts is an established principle of Australian law."

[5] **Craig v South Australia [1995] HCA 58; (1995) 184 CLR 163 (24 October 1995))**

the defendants, that “convoluted English” could be “anti-Palestinian” or “racist” (Reasons [36] & [37]); and that Greek words written in Greek script could be “anti-Palestinian and racist” (Reason [36]).

18. Irrespective of whether the English of the written material that was part of the 2009 art exhibition is, as the judge proclaims, “difficult and convoluted” – which I dispute – or whether it is due to any of the other "reasons" purported for the actions being done by the third and fourth defendants, it cannot and does not mitigate what is prohibited by s 9 (RDA) *because* s 18 does not allow the judge discretion.

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

20. The primary judge of the FCCA at (Reason [42]) proclaimed an **Issue Estoppel** on account of disclaimers posted by the third and fourth defendants, on their being "critical" to the defamation matter that had been before the State (Supreme) Court of Victoria. One of the reasons for the posting of disclaimers had been that Greek script was used to write Greek words (which gave rise to the complaint to the HRC). Whatever finding the Supreme Court made, or did not make, it is irrelevant, since those findings did not involve pleadings according to the Statutes that had come before the Federal courts. No pleadings were made, nor could have been made in the Supreme Court of Victoria, regarding the RDA or Moral Rights as the statutes in question lie outside its jurisdiction. No consideration was given to these statutes by the Supreme Court that could permit the primary judge of the FCCA to run an estoppel against a Supreme Court of Victoria finding made in consideration of unrelated statutes.

MORAL RIGHTS component

21. The finding of the Moral Rights complaint to be without "justiciable controversy", Reason [46], was reached by the primary judge misunderstanding both the claim and the Statute, per (Reasons [47], [48], [49]).
Contrary to (Reason [47]) the complaint does not lie within s 195 AQ of the Copyright Act, it lies instead in s 195AK (*Also addressed at point 42 of this Affidavit. Beginning: Page 10, line 42*). Though reference is made to 195AK, the judge refers only to (c) of that section.

22. The primary judge provides no reason to omit consideration of 195AK (b), which concerns itself with how, and the manner in which, the art was

brought to the public. The primary judge fails to address or even mention the other actions done by the third defendant which were part of the complaint brought to the FCCA. One of these actions was the posting of a large "WARNING!" sign. Another was the third defendant misusing the "opportunity" of the art on exhibition to approach females viewing the works to ask if it was their "lovely bottom" featured in the paintings being viewed.

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

24. The nature of the jurisdictional error here is described in ***Kirk*** [6] [72] in confirmation of ***Craig*** [11].

25. The primary judge, in applying an *Anshun*-type estoppel at (Reason [54]) plainly and wrongly finds that it is "clear that Mr Vakras could have brought his Copyright claims into the Supreme Court proceeding", and at (Reason [56]) "it was unreasonable of Mr Vakras not to have brought his Copyright ... claim... into the Supreme Court", and at (Reason [57]) "The facts that would arise in this proceeding are, to all effects and purposes identical to those which arose in the Supreme Court proceeding".

26. The failure to identify jurisdiction is constructed on a failure to correctly understand s 203 of the Copyright Act, which is required by s 195AZA, as is demonstrated by (Reason [53]), "Contrary to his submissions, the Supreme Court of Victoria is not prohibited by the terms of either s.195AZA or s.203 of the Copyright Act from hearing Copyright Act matters (see s.135AP of the Copyright Act)".

(Notwithstanding the error in the reference to s 135 of the Copyright Act which is irrelevant to Moral Rights) The failure to exercise jurisdiction occurs in the failing to correctly identify the *Division* and *Subdivision* of the Statute under which the Application for Remedy was being sought. The relief sought lies in ***Subdivision A***, and the statute plainly contradicts Reason [56]. S 195AZA (in *Subdivision A*) of the statute is for "Remedies for infringements of author's moral rights". Whatever remedy is sought,

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[6] **Kirk v Industrial Relations Commission; Kirk Group Holdings Pty Ltd v WorkCover Authority of New South Wales (Inspector Childs) [2010] HCA 1 (3 February 2010)**

under s 195AZA is "subject to s 203" of the Statute. And put plainly, s 203 precludes jurisdiction to a State court. ***The question of whether the State court can hear copyright matters under the statute is a separate one to the question of whether it can grant relief for Moral Rights.***

27. At (Reason [49]), the primary judge's claim that the posting of the disclaimers has a defence available under s 195 AS of the Copyright Act is without bona fides. The Statute calls for consideration to be given to factors he did not consider such as "reasonableness" "**in all the circumstances**":

> "No infringement of right of integrity of authorship if derogatory treatment or other action was reasonable (1) in respect of the work if the person establishes that it was reasonable in all the circumstances to subject the work to the treatment." (s 195 AS (1)).

That the disclaimers, according to the third and fourth defendants, objected to "convoluted English" on the grounds that this could be “anti-Palestinian” or “racist” (Reasons [36] & [37]); that Greek words written in Greek script could be “anti-Palestinian and racist” (Reason [36]); or simply because Greek words written in Greek script were used is irrational, without bona fides and objectionable.

28. Further, s 195 AWA of the statute mandates that consent is necessary for a finding that no infringement occurred. It is clear that no consent was given, and that other than by ignoring the statute, the primary judge has no grounds under the statute to make the finding he has.

29. At (Reason [44]), the primary judge refused to exercise jurisdiction by finding that the matters unrelated to discrimination – Moral Rights, Misleading and Deceptive trading – could not have been brought to the FCCA since they had not been part of the original complaint to the HRC.

30. The primary judge failed to exercise jurisdiction by adopting the third and fourth defendants’ submission which was, that all matters, despite their not being about discrimination, needed to have been included in the HRC complaint, as was proposed by them in their "Points of Defence" [EXHIBIT 14] dated 1/7/2015, points 31-35, 57, 59- 60, 71-72.

STRIKING OUT ADDITION OF OTHER PARTIES (LEE-ANNE RAYMOND) component

31. The striking out of Lee-Anne Raymond by the primary judge as being

> “plainly misconceived. She was not a party to the HRC complaint" (Reason [50])

has no valid statutory basis. There is no such requirement. Lee-Anne Raymond was not racially discriminated against and could not therefore be enjoined to the race discrimination complaint made to the HRC.

32. (My) The interlocutory submission of 10/8/2015, intended to confirm Lee-Anne Raymond as a party – as she was co-signatory to the Points of Claim of 28/5/2015 [EXHIBIT 13] that had been ordered by the registrar (on 28/4/2015) [EXHIBIT 12]. The interlocutory submits the statutes under which Lee-Anne Raymond sought to be enjoined at point 4: "*This enjoins Lee-Anne ... to the reliefs sought under the Copyright Act 1968 & the Australian Consumer Law (CCA 2010) components of the matters to be heard.*"

33. The misapprehension of the statute (Moral Rights) by the primary judge led to a failure to appreciate that all the actions complained of were done with regard to the art in an art exhibition of which I and Lee-Anne Raymond were joint authors, even though it is a requirement of the statue, 195AK (i) to consider " if the work has 2 or more authors--their views about the treatment."

34. The judge admits confusion with jurisdiction at (Reason [45]).

35. All causes arose from the same "controversy" and formed a “single matter”. Though the matter(s) raised before the FCCA were all Federal and could all have been initiated as separate Applications in either of the courts of Federal jurisdiction, the FCA Act 1976 (s 32AA) and FCCA Act of 1999 (s 19) prohibit concurrent cases regarding “associated matters” being simultaneously pursued.

FAILURE OF THE APPEAL JUDGE (FCA) TO EXERCISE JURISDICTION

RACE DISCRIMINATION component

36. The appeal judge made a substantial jurisdictional error in failing to give due consideration to the appeal, or application for leave to appeal, from the orders in relation to the application under s 9 and s 13 of the *Racial Discrimination Act*, which arises under ***"PART II--PROHIBITION OF RACIAL DISCRIMINATION"*** of the Statute.

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

38. The appeal judge provides no reason or insight for failure to consider the Termination by the HRC which unambiguously identified ss 9 & 13 of the RDA [EXHIBIT 11, "Attachment A"] and not 18C. The FCA cites my complaint to the Commission at Reason [17], which concludes with one sentence: "I, Greek of race, used Greek words!". This is grammatically, and factually, correct, and is readily self-apparent:

(**a**) The subject (I) bears the attribute (Greek of race);

(**b**) And *because* the subject (I, with the attribute, Greek of race) used Greek words (consistent with the described attribute);

(**c**) an act was done to me by the Respondent (being the posting of disclaimers along with a “WARNING!”) *because* I manifested the attribute of my background (which is Greek).

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

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

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

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

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

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

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

MORAL RIGHTS component

42. The appeal judge misidentifies the Moral Rights complaint at [2 (b)], which *specifically* lies in s 195AK:

"**Derogatory treatment of artistic work**. In this Part: ‘**derogatory treatment**’ , in relation to an artistic work, means:... (b) an exhibition in public of the work that is prejudicial to the author's honour or reputation because of the manner or place in which the exhibition occurs; or (c) the doing of anything else in relation to the work that is prejudicial to the author's honour or reputation.” (my emphasis)

43. The FCA gave no consideration to s 195AS, which lists defences available for breaching s 195AK which are:

"e) any practice, in the industry in which the work is used, that is relevant to the work or the use of the work; (f) any practice contained in a voluntary code of practice, in the industry in which the work is used, that is relevant to the work or the use of the work; (h) whether the treatment was required by law or was otherwise necessary to avoid a breach of any law; (i) if the work has 2 or more authors--their views about the treatment."

44. The appeal judge misidentified the *Division* and *Subdivision* of the Statute under which the Application for Remedy was being sought. Remedies for a Moral Rights breach are available under:

"***Division 7--Remedies for infringements of moral rights Subdivision A-Remedies for infringement of moral rights of authors****, 195AZA. Remedies for infringements of author's moral rights*"

The remedies available under s 195AZA are subject to s 203, which precludes the State Courts from giving relief for Moral Rights breaches. ***As relief is being sought, the Supreme Court of Victoria can't provide it***.

45. In misidentifying where in the Statute the remedy lies, the appeal judge, at [40], falls into additional error by ascribing jurisdiction to the Supreme Court to hear Moral Rights issues, stating that "The Supreme Court had jurisdiction to hear both causes of action (see s 195AZGH of the Copyright Act)".

The appeal judge paid no heed to the *Subdivisions of the Statute*. Relief is sought for Moral Rights under ***Subdivision A***, while the reference to s 195AZGH, is from ***Subdivision C*** *which preserves the State courts' jurisdiction to hear other matters including other Copyright matters*. [7]

46. By failing to correctly identify and delineate the State courts' and the Federal courts' jurisdictions regarding Moral Rights, the appeal judge improperly applies the principle of an *Anshun* estoppel to the "Copyright claim" (Moral Rights) at [23], to summarily dismiss the seeking of leave to appeal the FCCA judgment.

47. With reference to jurisdictional error defined in ***Kirk*** [60], (citing *R v Bolton),* " later decisions show, there are some forms of jurisdictional error (such, for example, as a failure to accord procedural fairness during the hearing**[81]**)"

Having at [26] declared "it is not necessary to address all the arguments advanced", my relevant Submissions and Authorities pertaining to estoppels run *in the face of a statute* were dispensed with, and no reason was given to explain why, in this instance, the FCA would run an estoppel,

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[7] S 195AZGH to which the appeal judge refers, is ***a separate subdivision of the act, irrelevant to the claim put before the FCCA & FCA,*** *that preserves the jurisdiction of other courts to considering* "***other rights*** *and remedies*":
"**Subdivision C--Miscellaneous,** Saving of other rights and remedies"

in the face of a statute. The Authorities [EXHIBIT 16]:
(a) **Chamberlain v Deputy Federal Commissioner of Taxation [1988] HCA 21; (1988) 164 CLR 502 (12 May 1988),** [1988] HCA 21, [20][16];
(b) **Coshott v Barry [2015] NSWCA 257 (28 August 2015), [2015] NSWCA 257**, [96];
(c) **Kok Hoong v Leong Cheong Kweng Mines Ltd**, Privy Council, 1964 ["Record of Proceedings"], [p. 37, lines 25-44] [p. 24, lines 13-15];
(d) **Kok Hoong v Leong Cheong Kweng Mines Ltd**, Privy Council, 1964 ["Judgment"], [para. 4, p. 6-7], [para. 4, p. 7-8]
(listed in Exhibit 16 as nos. 4, 1, 2,& 3 respectively)

MISLEADING AND DECEPTIVE TRADING

48. The appeal judge further denied me the capacity to fully present my submission at the hearing of 28/6/2016 by shutting-down reference to my List of Authorities, specifically to the Authorities dealing with *deception where information has been deliberately concealed*.
Listed at no. 7 of my Authorities [EXHIBIT 16]**:**
"**Takhar v Gracefield Developments Ltd & Ors [2015] EWHC 1276 (Ch) (06 May 2015)**:
"66. Elsewhere in the Commonwealth, it has been held that a judgment can be set aside for fraud even if the new evidence could reasonably have been obtained for the original trial. The point was addressed in depth by the New South Wales Court of Appeal in *Toubia v Schwenke* [2002] NSWCA 34, (2002) 54 NSWLR 46. Handley JA, with whom Heydon JA and Hodgson JA agreed, concluded (in paragraph 41) that "*In an action for fraud, a plaintiff must prove that he was deceived but need not prove that he was diligent*". " (my emphasis)

49. The relevant passage, on "Actionable Misrepresentation", derives from **Toubia v Schwenke [2002] NSWCA 34 ,** at [15] [8] , on which the ***Takhar*** ruling rests.

50. The FCA ruling on the Misleading and Deceptive Trading claim was at the end of a chain of procedurally unfair actions that began in the FCCA:
(**a**) Neither in the Interlocutory Submission [EXHIBIT 8], or the Affidavit in support of it [EXHIBIT 9] did the third and fourth defendants seek summary dismissal on, *Anshun*, or make any reference to it.
(**b**) *Anshun* was introduced by the primary judge on 9 September 2015 on the oral submission by counsel for the third and fourth defendants who put it to the FCCA judge that Misleading and Deceptive Trading could

[8] 15 It must be established that the representee was deceived when he acted on the fraudulent misrepresentation. Knowledge of the truth at the relevant time would be an answer to an action under s 66. The relevant principles are summarised in Spencer Bower, Turner and Handley "Actionable Misrepresentation" 4th ed at pp 116-7:

> "*A representee who knows or discovers the truth in time is not deceived. Such knowledge is a good answer to any form of proceeding based on the misrepresentation. A representee cannot be misled by a statement which he knew to be false. ... It is sufficient that the facts became known to the representee from whatever source before he altered his position; ... a representation normally continues during the interval between its communication and any alteration of position under its inducement. ... The representee's knowledge of the truth must be full and complete. Partial and fragmentary information, or mere suspicion will not do; 'suspicion, doubt and mistrust do not have the same consequence as knowledge'.*"

have and should have been pursued at VCAT (in August 2011) - notwithstanding the preclusion to VCAT, a *tribunal*, from hearing such a claim, per s 86 of the TRADE PRACTICES ACT 1974.

(**c**) The primary FCCA judge off his own motion applied *Anshun* with regard to the Supreme Court – not VCAT – in his subsequent written judgment without giving reason for the swap.

(**d**) The FCCA judge, on permitting *Anshun after my written response had been filed with the court*, denied me opportunity to make any submission in response to what was effectively an ambush.

(**e**) The word "Anshun" was orally relayed by the primary judge. As a lay-person I took it to be legal nomenclature expressed in French, “ancien estoupail", intending to mean a "traditional/historic" estoppel.

(**f**) That the estoppel was not “ancien", but "Anshun", only became known when the written form of the word was used in the 25 November 2015 notice from the Deputy Associate advising of the 10 December listing for “mention” [EXHIBIT 17]. The significance of this is, that submissions that could have been made against *Anshun* in the FCCA before the matter was dismissed on those grounds, were denied opportunity to be heard. The first "opportunity" to argue against *Anshun* occurred after the dismissal.

(**g**) In addition to the absence of reference to *Anshun* in the interlocutory submission for summary dismissal, there was no reference to “VCAT”. A VCAT Affidavit, which under the circumstances was germane to the court's consideration, was not available for submission, and no opportunity was availed for future submission.

(**h**) The VCAT Affidavit, extract provided as [EXHIBIT 18], was filed on 12 February 2012 by myself and Lee-Anne Raymond. In it we submitted our understanding in 2012 that the actions by the third and fourth defendants had breached their contract because of their "change of mind" about the art. In the Supreme Court of Victoria, in March 2014, however, the third defendant proclaimed his total ignorance of art, art theory, art history, evincing instead that (**in short**) his actions in violation of our Moral Rights were not a "breach of the contact" (per se), but were corollary to the professed ignorance of art and ignorance of the responsibilities and obligations to artists by an art gallery. The nature of the misrepresentation, proscribed by s 53 of the TPA, is run thus: that in order to procure the contract the third and fourth defendants created an impression that was false. The false impression was of experience in the field of art, which in testimony given to the Supreme Court of Victoria was established to be a falsehood.

(**i**) Grievance on being denied the ability to produce the VCAT Affidavits to the FCCA was referenced in my 26/5/2016 *OUTLINE OF SUBMISSIONS (SUMMARY)* [EXHIBIT 19], in the “Arguments” to point 5. And an objection to being denied this was made orally to the judge in the FCA on 28/6/2016.

(**j**) The FCA, subsequent to my expressing grievance, mischaracterised s 53 of the TPA in the judgment. The mischaracterisation by the FCA leaves s 53 of the TPA to be without any effect, an ornamental clause. The appeal judge reversed the party-at-fault. Instead of fault lying with the deceiver for the deception, the FCA instead placed the fault with the victim deceived. On being deceived, the victim failed their duty to

themselves making them at-fault for the deception done by the deceiving party.

(**k**) This returns to the question of "Actionable Misrepresentation" (p 12 footnote 8 this Affidavit), in which the FCA judge, after reversing the duty under s 53 of the TPA, applies *Anshun* at Reason [40], finding "that Mr Vakras, exercising reasonable diligence, could have become aware of at the time". Such a finding could/should not have been made had my submissions on misrepresentations been allowed.

(**l**) (And) Having from the outset dispensed being required to address the "extensive" submissions, Reason [26], the FCA judge gave no consideration to my submission, equally germane, that *Anshun* requires an assessment of merit, which in the context of the TPA claim, the FCA never considered.

AFFIRMED* by the deponent
at [*place*] in [*State or Territory*]
on [*date*]. Melbourne Victoria
4/11/2017

Before me:

Signature

[*name and qualification of witness administering oath or affirmation*]
Denise Weybury
Deputy Registrar

*[delete if inapplicable]

[redacted]
Signature of deponent

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M3 of 2016 17

BETWEEN:

DEMETRIOS VAKRAS
Plaintiff

and

FEDERAL COURT OF AUSTRALIA
FEDERAL CIRCUIT COURT OF AUSTRALIA
ROBERT RAYMOND CRIPPS
REDLEG MUSEUM SERVICES PTY LTD

Defendants

APPLICATION FOR AN ORDER TO SHOW CAUSE

To: The Defendants
305 William St, Melbourne VIC 3000 (first and second defendants)
[redacted] Road, [redacted] (third and fourth defendants)

TAKE NOTICE that this application has been made by the plaintiff for the relief that is set out below on the grounds that are set out below.

IF YOU INTEND TO DEFEND the proceeding you must file a notice of appearance in the office of the Registry named above.

IF YOU ARE WILLING TO SUBMIT to any order that the Court may make, save as to costs, you may file a submitting appearance in the office of the Registry named above.

THE TIME FOR FILING AN APPEARANCE is as follows:

(a) where you are served with the application within Australia – 14 days from the date of service;

(b) in any other case – 42 days from the date of service.

THE RELIEF CLAIMED is

Demetrios Vakras
[redacted] Street [redacted]
Telephone: [redacted]
Fax: [N/A]
Ref: [*Demetrios Vakras*]

1. Mandamus and Certiorari to quash the judgment and orders made in the first instance by the FCCA and by the judge of the FCA in the exercise of its appellate role in the following matters:
(FCA) VID 163 of 2016 - (Vakras v Cripps [2016] FCA 955) judgment delivered 15/8/2016;

("First Instance") MLG2122 of 2014 - (Vakras v Cripps & Anor [2016] FCCA 20) judgment delivered 27/1/2016.

2. Invoking the High Court's original jurisdiction under s 75 (v) of the Commonwealth of Australia Constitution Act for an issue/grant of a writ of Mandamus together with a writ of certiorari to quash the judgments of Davies J and Burchardt J of the Federal Court of Australia (FCA) and Federal Circuit Court of Australia (FCCA), respectively, to the effect that the FCA/FCCA be compelled to determine and make judgments in accordance to law – according to the statutory requirements wherein the matters lie – and by exercise of procedural fairness.

THE GROUNDS ON WHICH THE RELIEF IS CLAIMED are:

1. Invoking the court for a Constitutional writ of Mandamus is made necessary by the Federal courts not exercising jurisdiction according to law, and failure to accord procedural fairness.

(i) The FCA exceeded its jurisdiction in its replacing the sections of the statute (RDA) being appealed from – being ss 9 & 13 of the RDA – and ruling in place of those sections, on 18C;

Further, both Federal courts:

(ii) interpolated criteria absent from the statutes regarding the matter(s) before them (eg, the FCCA, required “motive” for discrimination; that all matters, though not about discrimination, were required to have been included in a complaint to the HRC) and on those interpolations made adverse rulings;

(iii) made erroneous assertions, such that matters which exclusively lay in the Federal jurisdiction were said to instead lie in the jurisdiction of other (State) courts (Moral Rights relief), and as a consequence making adverse rulings (*Anshun*);

(iv) failed to properly consider the statutes under which the matters lay, or failed their obligations according to those statutes due to the failure to properly consider/consult them;

(v) misapplied - disregarded/dispensed with - the requirements of the statutes (ie disregard of s 18 of the RDA by FCCA; disregard of the separate Subdivisions in the Copyright Act and applying an element from Subdivision C, 195AZGH, as constituting an element necessary to Subdivision B, 195AZA, by the FCA);

(vi) took into consideration elements absent and irrelevant to the statutes under which the matters lay and disregarded requirements of the sections of statutes within which the matters raised lie, (RDA and Moral Rights);

(vii) wrongly and without reason gave statutes a meaning adverse to their intent and application, and on doing so, based their finding on that error (Specific to FCA: the acts proscribed by s 9 1(A) & s 13 of the RDA were turned into defences for breaching s 9 (1) of RDA ; the TPA s 53 was given a meaning contrary to its application which permitted for an adverse finding. According to this meaning, s 53 would apply against the victim of deception not the deceiver, therefore disavailing the right to prosecute a claim under s 53 on an "own failure").

(viii) disregarded their obligations under law in failing to accord procedural fairness [re Refugee, citing Kioa v West, [167], and Re Refugee, [210].

2. In invoking the Court to exercise its Original Jurisdiction under s 75 (v) of the Constitution for a writ of Mandamus that the court (HCA), in exercising original jurisdiction be required to consider ss 31 & 32 of the JUDICIARY ACT 1903, in line with the majority of the High Court in Santos (Edwards v Santos Ltd [2011] HCA 8 (30 March 2011)), [3], [4], [5], [13-20], and in particular, Santos [53], "The writ of certiorari is not mentioned in s 75(v) of the Constitution, but it may issue in the exercise of an implied ancillary or incidental authority to the effective exercise of s 75(v) jurisdiction."

3. The grounds for this matter coming to this court were made necessary by the following sequence: dismissal by the FCA of an application seeking leave to appeal a summary dismissal by the FCCA on an interlocutory submission – a process that precludes an appeal to any domestic court.

4. This Application is supported with an Affidavit.

This application shall be heard at the time and place stated [if a summons is to be served with the application] in the summons served with this application / [if no summons is to be served with the application] in a summons to be served at a later time.

This application was filed by the plaintiff.

Dated 4/1/2017

[redacted]
.....(signed).....
[Demetrios Vakras]

The plaintiff's address is [redacted] Street, [redacted].

The plaintiff's address for service is [redacted] Street, [redacted].

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M3 of 2016 7

BETWEEN:

DEMETRIOS VAKRAS
Plaintiff

and

FEDERAL COURT OF AUSTRALIA
FEDERAL CIRCUIT COURT OF AUSTRALIA
ROBERT RAYMOND CRIPPS
REDLEG MUSEUM SERVICES PTY LTD
Defendants

PLAINTIFF'S SUBMISSIONS

Part I - Plaintiff's Submissions With regard to High Court Rule 25.03.2
Outline of Submissions

1. Invoking the High Court of Australia's (HCA) original jurisdiction under s 75 (v) of the Commonwealth of Australia Constitution Act for an issue/grant of a **writ of Mandamus** together with a writ of certiorari to quash the judgments of Davies J and Burchardt J of the Federal Court of Australia (FCA) and Federal Circuit Court of Australia (FCCA), respectively in the following judgments:
(a) VID 163 of 2016 - (Vakras v Cripps [2016] FCA 955) judgment and orders delivered 15/8/2016;
(b) MLG2122 of 2014 - (Vakras v Cripps & Anor [2016] FCCA 20) judgment and orders delivered 27/1/2016.

2. But for the FCCA refusing to exercise jurisdiction according to law in multiple instances and failing to accord procedural fairness the consequence of which was a summary dismissal, the FCA would not have had the opportunity to also fail exercising its jurisdiction or have the opportunity to also deny procedural fairness the consequence of which was dismissing the Application seeking leave to appeal the FCCA decision.

3. That the court (HCA) dispense with the time-limit with regard to Rule 25.07.2 of the High Court Rules 2004 and that the court allow for "such further time as is, under special circumstances, allowed by the Court or a Justice" [Grounds and Reasons outlined in point no. 3 of Affidavit], noting that the Rules give the court express right to "enlarge" "Any period of time fixed by or under these Rules" under Rule 4.02.

4. Reliance is placed on the HCA ruling in **Craig v South Australia [1995] HCA 58; (1995) 184 CLR 163 (24 October 1995)** (*Craig*), [8], "Where

Demetrios Vakras
[redacted] Street [redacted]
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Fax: [N/A]
Email: [*vakras@*[redacted]]
Ref: [*Demetrios Vakras*]

available, certiorari is a process by which a superior court, in the exercise of original jurisdiction, supervises the acts of an inferior court or other tribunal. It is not an appellate procedure… Where the writ runs, it merely enables the quashing (8) of the impugned order or decision upon one or more of a number of distinct established grounds, most importantly, jurisdictional error (9), failure to observe some applicable requirement of procedural fairness..."

5. That, per ***Santos*** [1] (beginning at [5]), in order to "effect the complete relief to the plaintiffs mandated by s 32 of the Judiciary Act" that the parties defending this application pay costs.

6. **Errors in identifying jurisdiction**, (***Craig***) [11] [2]

(a) Both Federal courts denied that the Federal courts hold exclusive jurisdiction to hear claims for relief for a breaching of Moral Rights protections. The FCCA – despite submissions of the relevant sections of the Statute, ss 195AZA & 203 – wrongly asserted jurisdiction as being shared by it and the State courts and accordingly applied an *Anshun* estoppel. The FCCA misread the plain wording of the statute, and attributed to the words used in the statute a meaning not borne by them. The FCCA and FCA both disregarded the Divisions and Subdivisions of the statute. Both Federal courts indiscriminately applied statutory requirements derived from one Subdivision/part (ie, "C" within which is s 195AZGH) to another separate Subdivision irrelevant to it – specifically with regard to "B" within which is s 195AZA, for which relief available is subject to s 203 which precludes State courts' jurisdiction. [Affidavit points 21-28 & 42-46]

(b) The FCCA denied jurisdiction, and on denying its jurisdiction refused to exercise it with regard to hearing:
(i) the Moral Rights claim;
(ii) Misleading and Deceptive Trading claim; and
(iii) the adding of another party;
because it interpolated into the statutes a requirement submitted by the third and fourth defendants which was that all claims, though not about racial discrimination, needed to have been complained of to the HRC first. [Affidavit points 29, 30, 31]

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[1] **Edwards v Santos Ltd [2011] HCA 8 (30 March 2011)**

[2] ***Craig*** [11]: "An inferior court falls into jurisdictional error if it mistakenly asserts or denies the existence of jurisdiction… Such jurisdictional error can infect either a positive act or a refusal or failure to act. Since certiorari goes only to quash a decision or order, an inferior court will fall into jurisdictional error for the purposes of the writ where it makes an order or decision (including an order or decision to the effect that it lacks, or refuses to exercise, jurisdiction) which is based upon a mistaken assumption or denial of jurisdiction or a misconception or disregard of the nature or limits of jurisdiction."

7. **Failure** (concomitant to misidentification of jurisdiction) **to exercise jurisdiction**

8. **A misconstruing of the statute and the requirements of statute** in which the ruling fails the obligations required by the statute leading to jurisdictional error, ***Craig*** [12] [3]

(a) The FCCA interpolated a requirement that "motive" needed demonstration in Race Discrimination, premised on a misreading of the word "because" which is written into the statute, by introducing to it a meaning alien to the function of the statute. To repeat from the Affidavit accompanying this Submission, "because", in the context of its use in the statute means the following:

"I, Greek of race, used Greek words!" This is grammatically, and factually, correct, and is readily self-apparent:

(**a**) The subject (I) bears the attribute (Greek of race);

(**b**) And *because* the subject (I, with the attribute, Greek of race) used Greek words (consistent with the described attribute);

(**c**) an act was done to me by the Respondent (being the posting of disclaimers along with a “WARNING!”) *because* I manifested the attribute of my background (which is Greek). [Affidavit point 38]

By the interpolation of a criterion alien and in contradiction to the statute the FCCA concluded there was no "justiciable controversy". [Affidavit points 13-16]

ARGUMENT to the above point:
The statute requires no more than to show the existence of the relationship between the action with an attribute possessed - which is not synonymous to meaning a causal chain of action ("motive").

There is no discretion for "interpretation" of the statute that would lie "within jurisdiction". The question was disposed of by Weinberg J in ***Macedonian Teachers Association of Victoria Inc v Human Rights & Equal Opportunity Commission & Anor [1998] FCA 1650 (21 December 1998)*** *[un-numbered])* ****1998) 91 FCR 8,39****

(b) The interpolation of "motive" is inconsistent with the intent of the RDA, which is derived from an International Treaty (Article 1 of the ICERD). Ss 31 & 32 of the VIENNA CONVENTION ON THE LAW OF TREATIES (Australian Treaty Series 1974 No 2) mandates it must be understood "in

[3] ***Craig*** [12] "...jurisdictional error will occur where an inferior court disregards or takes account of some matter in circumstances where the statute or other instrument establishing it and conferring its jurisdiction requires that that particular matter be taken into account or ignored as a pre-condition of the existence of any authority to make an order or decision in the circumstances of the particular case. Again, an inferior court will exceed its authority and fall into jurisdictional error if it misconstrues that statute or other instrument and thereby misconceives the nature of the function which it is performing..."

good faith" according to the "object and purpose" of the treaty. [4] [5] [6]

(c) The FCCA dispensed with requirements critical in the operation of the statute, notably s 18 of the RDA. The dispensing of s 18 by the FCCA violates the RDA statute. Though other reasons might exist for the doing of the act of discrimination, which are not discriminatory, that they might exist does not extinguish the discrimination. [Affidavit points17-19]

(d) Though the matter brought before the FCA sought leave to appeal a FCCA judgment over breaches under ss 9 and 13 of the RDA, the FCA refused to consider the appeal according to the sections on which the FCCA ruled. Instead the FCA considered whether the matter of discrimination was capable of showing violation under s18C, vilification/hatred, irrelevant to ss 9 & 13. The FCA refusal to grant leave sought is voided by this failure. [Affidavit 36-38]

(e) The FCA's disregard of the RDA is offensive to the intention of ICERD. The FCA ruling, with regard to its adverse effect on the application to s 9, cannot be permitted to stand as it makes the discrimination proscribed by law, lawful. The FCA's ruling sets precedent to permit doing what in ss 9 1(A) and 13 of the RDA are discriminatory, and makes acts of discrimination into defences to do discriminatory acts proscribed by s 9 1. [Affidavit 39-41]

(f) The FCCA misapprehended Moral Rights, by confusing this right with

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

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

[6] **Minister for Home Affairs of the Commonwealth v Zentai [2012] HCA 28 (15 August 2012)** "17. The primary question in this appeal is whether the Minister committed a jurisdictional error by purporting to determine ... a necessary condition for surrender, derived from Art 2.5 of the Treaty and, by operation of s 11 of the Act and reg 4 of the Regulations read with s 22(3)(e) of the Act, qualifying the powers conferred by the Act, had not been satisfied. It is necessary to consider the relevant terms of the Treaty and to do so in light of the rules of interpretation in the Vienna Convention on the Law of Treaties ("the Vienna Convention")".

"ownership", thereby failing to exercise jurisdiction because the FCCA could not understand how "ownership" was or could be affected, or removed by the doing of any act prejudicial to an author's honour or reputation. [Affidavit point 23]

(g) The FCCA failed exercising jurisdiction by not considering multiple statutory requirements regarding Moral Rights protections. These include a refusal to consider "reasonableness **in all the circumstances**", Moral Rights s 195 AS (1), as well as:

"e) any practice, in the industry in which the work is used, that is relevant to the work or the use of the work; (f) any practice contained in a voluntary code of practice, in the industry in which the work is used, that is relevant to the work or the use of the work; (h) whether the treatment was required by law or was otherwise necessary to avoid a breach of any law; (i) if the work has 2 or more authors--their views about the treatment."

Whether consent was "willingly" given s 195 AWA; [Affidavit points 27-28]

9. **Failure to accord procedural Fairness** - The consequence of failure to accord procedural fairness resulted in summary dismissal by the FCCA. A subsequent failure to accord procedural fairness by the FCA resulted in its failure to grant leave to appeal the FCCA judgment and orders.

The nature of procedural fairness relied on is summarised in) **Re Refugee Review Tribunal; Ex parte Aala [2000] HCA 57 (***Re Refugee***)** [7]

(a) The judge of the FCCA misapprehended the only question in the matter of discrimination coming from the HRC that the FCCA was required to adjudicate. Termination by the HRC **did NOT lie** in ***46PH, 1*** *(a) ("the President is satisfied that the alleged unlawful discrimination is not unlawful discrimination"*). Based on denials to doing the acts complained of by the third defendant to the HRC, the Termination acknowledges that the actions in the complaint, **if true**, are discrimination and therefore, appropriately, Terminated the complaint on **46PH (1) (i)**, "the President is satisfied that

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[7] ***Re Refugee***: Gleeson CJ [1] "if there was a denial of procedural fairness, and, if so, whether the consequence is that prohibition should go under s 75 (v) of the Constitution" and at [85] "If a breach of the fair hearing rule has occurred, the second issue is whether, but for the breach, the prosecutor would have obtained [the order/outcome/finding sought]"

(And) "Failure to accord procedural fairness" as a jurisdictional error is defined in **Kirk v Industrial Relations Commission; Kirk Group Holdings Pty Ltd v WorkCover Authority of New South Wales (Inspector Childs) [2010] HCA 1 (3 February 2010)** (*Kirk*) [60], (citing *R v Bolton):*

" later decisions show, there are some forms of jurisdictional error (such, for example, as a failure to accord procedural fairness during the hearing**[81]**)".; and

Beaumont J at [210]: ""The general principle applicable in the present circumstances was well expressed by the English Court of Appeal (Denning, Romer and Parker LJJ) in *Jones v National Coal Board*[219], in these terms:'There is one thing to which everyone in this country is entitled, and that is a fair trial at which he can put his case properly before the judge. ... No cause is lost until the judge has found it so; and he cannot find it without a fair trial, nor can we affirm it.'"

there is no reasonable prospect of the matter being settled by conciliation". However, in the face of the HRC Termination, and admission to the FCCA by the third defendant to doing the acts previously denied, the judge interpolated "motive" as an additional necessary condition for an action to be discriminatory. On its own interpolation, the FCCA concluded there was no "justiciable controversy". [Affidavit points 5, 10-12, and 14-16]

(b) The FCCA introduced *Anshun*, not the third or fourth defendants, and after doing so provided no opportunity for submissions until after the summary dismissal. [Affidavit point 50 (a) - (g)]

(c) The FCA, after considering a matter of discrimination as *vilification*, and making an adverse judgment on those grounds, subsequently concluded that all the submissions made at the 28/6/2016 hearing were superfluous and "need not be addressed". The FCA ran an estoppel in the face of a statute having given no consideration to the authorities presented against doing so. [Affidavit point 47]

(d) The FCA misinterpreted ss 52 & 53 of the TPA. S 53 of the TPA was misapprehended to imply the following effect, a victim misled can only prosecute themselves as it is their own “lack of diligence” that “allowed” them to be misled. Having shut-down the presentation of submissions on "actionable misrepresentation", the FCA wrongly and in the absence of those presentations ruled to permit deception to occur. [Affidavit [points 50 (i), & 48-49)

Part II - Plaintiff's Submissions With regard to High Court Rule 25.03.2 (a)
“*stating why the matter should not be remitted to another court or, if the plaintiff submits that it should be remitted, identifying the Court to which it should be remitted***”**

1. The circumstances that have resulted in invoking the original jurisdiction of this court (HCA) preclude the matter being remitted to any other court. This is the consequence of the success of the third and fourth defendants in the FCCA in the first instance and FCA in dismissing leave sought to appeal:

   (a) Upon their interlocutory application to the FCCA for a summary dismissal of proceedings made under s 17A (2) (Summary Judgment) of the FEDERAL CIRCUIT COURT OF AUSTRALIA ACT 1999;

   (b) which made necessary a seeking of Leave to Appeal the FCCA decision under the Federal Court of Australia Act 1976 s 23P, s 24(1A), s 24(1D);

   (c) the dismissal by the FCA of leave to appeal the FCCA decision; and that

   (d) s 24 (1AA) of the FEDERAL COURT OF AUSTRALIA ACT 1976 precludes appealing a judgment of this nature (“An appeal must not be brought from a judgment referred to in paragraph (1)(a), (d) or (e) if the judgment is: (a) a determination of an application of the kind mentioned in subsection 20(3)”), being “for leave or special leave”; and

(e) s 33 (4B0 (a) (c) of the FEDERAL COURT OF AUSTRALIA ACT 1976 precludes any appeal from a judgment on the previously referred to grounds being brought to the High Court.

2. Save for the TPA (ss 52, 53), the statutes before the Federal courts, over whose decisions a writ of Mandamus is sought, derive from international covenants, legislated by Parliament into law and carry obligations external of the Australian judicial system. These are the ICERD, legislated by Parliament into the RDA under s 51 “(xxix) external affairs” of the constitution; and the ICESCR (as well as the Berne Convention) legislated by Parliament into the Moral Rights obligations under s 51 “(xxix) external affairs” as well as s 51 “(xviii) copyrights, patents of inventions and designs, and trade marks”. The specific elements of the International Covenants are the Moral Rights obligations and protections which are defined in Article 15 1 (c), & 3 of the ICESCR (as well as Berne convention 6bis); and the obligations to prevent Racial Discrimination which are defined in the ICERD, Articles 1 & 5.

   As the ICESCR and ICERD are numbered among the "nine core international human rights treaties" with regard to which an "Individual Communication" can be made to Petition the Office of the High Commissioner for Human Rights (OHCHR) of the United Nations in Geneva, and as Australia is a signatory nation to those Treaties, a petition to Geneva can become a prospective legal forum but only when all local remedies are exhausted.

Part III - Plaintiff's Submissions With regard to High Court Rule 25.03.2 (b) (c) & (d) - ORDERS SOUGHT

1. A writ of mandamus should be issued out of this Court directed to the first and second defendants to do what is obliged of them under law and do what is their duty under law in the matters VID 163 of 2016 & MLG2122 of 2014

2. A writ of certiorari be issued out of this Court quashing the decision of the Federal Court of Australia made on 15 August 2016.

3. A writ of certiorari be issued out of this Court quashing the decision of the Federal Circuit Court of Australia made on 27 January 2016.

4. On the decision of the Federal Court of Australia being quashed a writ of mandamus be issued out of this Court directed to the Federal Circuit Court to grant relief sought in race discrimination.

5. That damages payable to the plaintiff be ordered for first suffering racial discrimination and, then secondly in the seeking of relief, for the protracted and unreasonable conduct of the third and fourth defendants to defeat the claim, being further exacerbated by the first and second defendant’s failures

inter alia in their duty to rule according to law.

6. A writ of mandamus be issued out of this Court directed to the Federal Court of Australia to remit for trial the remaining matters (Moral Rights and Misleading and Deceptive Trading) and the inclusion of a second party to those matters (Lee-Anne Raymond).

7. ALTERNATIVELY a writ of mandamus be issued out of this Court directed to the Federal Court of Australia to allow the appeal sought of the Federal Circuit Court of Australia decision.

8. A declaration be issued from this court declaring that the decision of the Federal Court of Australia made on 15 August 2016 is invalid

9. That this court make orders to permit appealing the FCCA decision in the Full Court of the Federal Court of Australia under new judges as early as possible in 2017.

10. That this court make orders, invoking the FCFCA to exercise its original jurisdiction for a writ of mandamus under the JUDICIARY ACT 1903 - SECT 39B (1) to examine the finding by the FCCA judge in the Full Court of the Federal Court of Australia, as early as possible in 2017.

11. Such further orders this court deems fit.

Dated: 4/1/2017

[redacted]

.....(signed).....

[*Senior legal practitioner presenting the case in Court, or appellant if unrepresented*]

Name: [*Demetrios Vakras*]
Telephone: [redacted]
Facsimile: [*n/a*]
Email: [*vakras@*[redacted]]

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M3 of 2017

BETWEEN:

DEMETRIOS VAKRAS
Plaintiff

and

FEDERAL COURT OF AUSTRALIA
FEDERAL CIRCUIT COURT OF AUSTRALIA
ROBERT RAYMOND CRIPPS
REDLEG MUSEUM SERVICES PTY LTD
Defendants

HIGH COURT OF AUSTRALIA
FILED
- 4 JAN 2017
THE REGISTRY MELBOURNE

SUMMONS

To: The Defendants
305 William St, Melbourne VIC 3000 (first and second defendants)
[redacted] (third and fourth defendants)

Let all parties concerned attend before a Justice at *305 Williams Street, Melbourne* on [RETURN DATE TO BE FIXED] at [ ] on the hearing of an application by *Demetrios Vakras* for and order to show cause why a writ of Mandamus should not be issued against the orders and judgments of the FCA and FCCA in the matters
FCA) VID 163 of 2016 - (Vakras v Cripps [2016] FCA 955), 15/8/2016.
&
MLG2122 of 2014 - (Vakras v Cripps & Anor [2016] FCCA 20), 27/1/2016.

And, show cause why an order for a writ of Certiorari should not be made to quash the orders of the FCA and FCCA and why the matters should not be remitted for trial in the Federal Court of Australia.

Filed [ ]
4 January 2017

.....
Registrar

This summons was filed by Demetrios Vakras.

Demetrios Vakras
[redacted] Street [redacted]
Telephone: [redacted]
Fax: [N/A]
Ref: [*Demetrios Vakras*]