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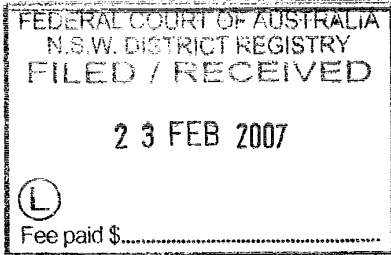
ORIGINAL

Form 16
(Order 11 rule 20)

IN THE FEDERAL COURT OF AUSTRALIA)
NEW SOUTH WALES DISTRICT REGISTRY)

No. NSD2490 of 2006

BETWEEN



DAVID JONES LIMITED
ACN 000 074 573
Applicant

THE AUSTRALIA INSTITUTE LIMITED
ACN 061 969 284
First Respondent

CLIVE HAMILTON
Second Respondent

DEFENCE OF FIRST AND SECOND RESPONDENTS

1 Paragraph 1 of the Statement of Claim is admitted.

2 As to paragraph 2 of the Statement of Claim, the First Respondent (**TAI**):

- (a) says that it is a company limited by guarantee and incorporated in the Australian Capital Territory;
- (b) otherwise admits the allegations therein.

3 As to paragraph 3 of the Statement of Claim, the Second Respondent (**Dr Hamilton**):

- (a) admits that he is and was at all material times the Executive Director of the First Respondent (**TAI**);
- (b) admits that in his capacity as such Executive Director, he is and was at all material times involved in the day to day activities of TAI;
- (c) otherwise does not admit the allegations therein (pending the supply of requested particulars).

4 As to paragraph 4 of the Statement of Claim, TAI

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- (a) denies that it carries on business;
- (b) says that it is an income tax exempt charitable entity under Subdivision 50-B of the Income Tax Assessment Act 1997;
- (c) says that it is a deductible gift recipient under Subdivision 30-BA of the Income Tax Assessment Act 1997, as an approved research institute;
- (d) says that the objectives for which it is established are:
 - (i) to conduct research that will contribute to a more just, sustainable and peaceful society,
 - (ii) to publicise the results of its research and analysis;
- (e) says that pursuant to, and for the purpose only of fulfilling, the objectives for which it is established, it
 - (i) carries out research and policy analysis,
 - (ii) participates in public debates on economic, social and environmental issues,
 - (iii) undertakes research commissioned and paid for by philanthropic trusts, governments, business, unions and community organisations;
- (f) says further in respect of sub-paragraph (a), that such reward as TAI may from time to time receive is received, and applied, for the purpose of funding the objectives for which it is established, and for no other purpose;
- (g) says further in respect of sub-paragraph (b) that it offers and promotes its research and analysis services for the purpose of funding its objectives and for no other purpose;
- (h) admits that in furtherance of its objectives, it sells a limited number of books (currently 4 titles only), all of which are either authored, or co-authored, by Dr Hamilton, and which address issues pertaining to a more just, sustainable and peaceful society, but says that it does not conduct the business of bookseller or the sale of books generally;
- (i) admits that in furtherance of its objectives, it sells (at a loss) copies of research and discussion papers prepared by it;
- (j) admits that it has members who pay a membership subscription;
- (k) admits that it seeks donations for its research activities;

- (l) says that the work in which it is involved, and the activities it undertakes, are carried out for the purpose of fulfilling the objectives for which it is established, and not for the purpose of promoting or soliciting the supply for reward of its commissioned research and analysis services, the sale and supply of books, the sale and supply of its research and discussion papers, or the supply of membership services, or for the purpose of commercial advantage;
- (m) admits that in furtherance of its objectives, it maintains the Website;
- (n) otherwise denies the allegations therein.

5 TAI admits paragraph 5 of the Statement of Claim.

6 Dr Hamilton admits paragraph 6 of the Statement of Claim.

7 As to paragraph 7 of the Statement of Claim, TAI and Dr Hamilton

- (a) admit the terms of the Media Release to which they refer as if fully set forth herein,
- (b) deny that the terms of the Media Release are accurately set out in the Statement of Claim.

8 TAI and Dr Hamilton admit paragraph 8 of the Statement of Claim.

9 As to paragraph 9 of the Statement of Claim, TAI and Dr Hamilton

- (a) admit that the Media Release was prepared and issued by them for the purpose of publicising the Discussion Paper;
- (b) otherwise deny the allegations therein.

10 As to paragraph 10 of the Statement of Claim, TAI and Dr Hamilton

- (a) admit that in the Media Release, they made the representations pleaded in sub-paragraphs (a) and (b);
- (b) deny that they made the representation in sub-paragraph (c) and say that the Media Release states, in the alternative, as follows:

*When family department stores [including the Applicant, **David Jones**] show no conscience on these issues, or are inured to the effects of their behaviour, the situation is very unhealthy.*

- (c) as to sub-paragraph (d), admit that in the Media Release they represented that David Jones knowingly caused the publication of material, but deny that they

represented that David Jones knew that the material David Jones caused to be published could be used by paedophiles for their sexual gratification, and say that the Media Release does not assert or imply any connection between David Jones and paedophile activity;

(d) deny the allegations in sub-paragraphs (e) and (f).

11 Paragraphs 11 and 12 of the Statement of Claim are denied.

12 As to paragraph 13 of the Statement of Claim, TAI and Dr Hamilton

(a) say as to the whole of that paragraph that it pleads a state of affairs only as at the date of the Statement of Claim, and thus discloses no cause of action;

(b) plead to this paragraph on the assumption that it is intended to relate to the date of issue of the Media Release;

(c) deny the allegations in sub-paragraphs (a) and (b);

(d) deny the allegations in sub-paragraph (c) and repeat sub-paragraph 10(b) above;

(e) in respect of sub-paragraph (d), deny that David Jones does not knowingly cause the publication of material (advertisements featuring children), and do not admit the other allegations therein.

(f) deny the allegations in sub-paragraphs (e) and (f).

13 Paragraph 14 of the Statement of Claim is admitted.

14 Paragraph 15 of the Statement of Claim is denied.

15 Paragraph 16 of the Statement of Claim is admitted, save that TAI and Dr Hamilton say that the Corrective Media Release is Schedule A to the Application herein and not the Statement of Claim.

16 Paragraph 17 of the Statement of Claim is admitted.

17 Paragraphs 18, 19, 20, 21, 22, 23 and 24 of the Statement of Claim are denied.

18 In further answer to the whole of the Statement of Claim, TAI and Dr Hamilton say that the Media Release and the Further Media Release do not constitute conduct in trade or commerce in that:

(a) they comprise expressions of opinion by TAI and Dr Hamilton made in the arena of public debate on issues of general community interest;

- (b) they were issued in respect of issues of widespread public interest and concern;
- (c) the Media Release was issued in the course of addressing the said issues with a view to promoting an ultimate change in the law, by informing the community of these issues and to promote public debate including among lawmakers and legislators;
- (d) the Further Media Release was a response to a threat of litigation by David Jones and as such was not conduct in trade or commerce;
- (e) TAI does not engage in activities for the purpose of profit or commercial advantage and the media releases were not issued for that purpose or in the course of trading or commercial activities.

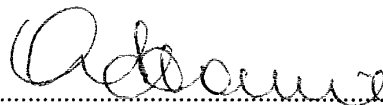
19 As such, neither the Media Release, nor the Further Media Release, nor any representation that may be conveyed by either release, constitutes trade or commerce within s52 of the Trade Practices Act.

Particulars

- (a) the Media Release and Further Media Release were prepared to address issues of widespread community concern and to raise public awareness of these issues, and to promote public debate, in furtherance of the objectives of TAI, generally and as a precursor to a forthcoming paper that would consider a range of policy measures, and changes to the law, that could reduce the risk of harm to children;
- (b) the Media Release, and the Further Media Release, were not activities of a trading or commercial nature, and were not published for the purpose of reward or profit;
- (c) the Media Release, and the Further Media Release, were published by TAI in furtherance only of the objectives for which it was established, and not for the purpose of reward or financial or commercial advantage or to advance or protect any business interest of TAI or any business associated with TAI.

Date:

22.2.07



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ARCHIBALD ADRIAN HOWIE
Solicitor for the first and second respondents

This pleading was prepared by Archibald Adrian Howie solicitor.

Version 1