

## **LAW REFORM COMMITTEE**

### **Inquiry into oaths, statutory declarations and affidavits for multicultural community**

Melbourne – 2 August 2002

#### Members

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#### Witness

Mr H. Dellal, Executive Director, Australian Multicultural Foundation.

**The CHAIRMAN** — Mr Dellal, on behalf of the Victorian parliamentary Law Reform Committee I welcome you to today's hearings. The Hansard staff will take a transcript of proceedings which will be sent to you for you to amend as appropriate and then return to the committee staff. In inviting you to speak, Mr Dellal, it would be beneficial for the committee to hear any points you would like to make following which we will ask some questions of you.

**Mr DELLAL** — Thank you, Mr Chairman. I am here wearing two hats: one is as the executive director of the Australian Multicultural Foundation, a national foundation that promotes multiculturalism and cultural diversity in the interests of all Australians.

**The CHAIRMAN** — How long have you been in that role?

**Mr DELLAL** — I have been in the role as its executive director for the past 13 years. I am its founding director along with Sir James Gobbo, who is its founding chairman and has now returned as chairman after his stint as Governor of Victoria.

Wearing my second hat, I am special adviser to the National Police Ethnic Advisory Bureau, which advises all police commissioners of Australasia on multicultural affairs. That bureau has been in existence for the last 10 years, auspiced under Victoria Police, and it reports to the chief commissioners' conference. It was established through a joint initiative of the foundation and Victoria Police 10 years ago.

I would like to start by bringing to the committee's attention a couple of issues that may be of interest to the committee for the future and for its deliberations. One is that the Australian Multicultural Foundation, through the commonwealth government the, Department of Immigration and Multicultural and Indigenous Affairs, has been commissioned in association with the world conference on religion and peace, Royal Melbourne Institute of Technology and Monash University, to conduct a series of consultations with religious, government and community organisations. It is a part of a broader study in religion, cultural diversity and social cohesion in contemporary Australia.

The aims and objectives of the project are to identify the current and emerging issues as a basis of policy recommendations to government, and to provide a basis for informed debate and concrete action in different sectors of the Australian community regarding Australia's multi-faith society. It is really looking at those issues of religion and its role in terms of social policy. We commenced at the beginning of this year and are halfway through the year-long research.

Basically the research is to profile the current religious diversity in the Australia context within a brief historical framework, and map out the extent of inter-faith dialogue and cooperation; to examine the current contributions of religious groups are currently making and can make to the development of our four civic values — cultural respect, civic duty, social equity and productive diversity.

It aims also to identify the current and emerging issues, challenges and possibilities regarding the interface of religious groups within Australian society and each other, including areas of further research and exploration; to document and analyse recent occurrences of racist and bigoted attacks, both verbal and physical, on faith communities and their members, including post-11 September; to suggest policy and program initiatives that foster a healthy and interactive religious diversity and that utilises religion as an asset and resource for Australia's social, political and economic wellbeing; and to develop material for information kits to encourage dialogue, interaction and cooperation between Australia's faith communities at local, state and national levels.

As well, the project aims to investigate the feasibility of an Australian interfaith body and a structure to advise the commonwealth government, other governments and non-government bodies on religious issues and in terms of social policy, and investigate a data resource for the

construction of an electronic network for transmission of information to religious groups at local regional and national levels.

We have undertaken quite a large process. We have undertaken a series of consultations with religious leaders right across Australia with key community organisations in each capital city. We have also undertaken a series of consultations with relevant commonwealth government departments throughout Australia, and we have also commissioned a series of four papers, which includes looking at Aboriginal spirituality, as well as a paper on looking at educational material about Islam and the contribution of Muslim Australians to Australia's development.

In addition to that, we have also just about completed 14 microstudies of communities and groups, I suppose, localities representing the various denominations right across Australia. Unfortunately I cannot leave you the case studies because they are incomplete. They are in a current draft form, and this is a compilation of the 14 microstudies, bar two or three we are still writing up, across Australia where we actually went in with our researchers and spent time with the communities looking at the interaction between faiths, local councils, local government and the communities themselves. As you would know, in many localities you would find, for example, a mosque on one side, a synagogue on the other side and a Roman Catholic church on the other side, so looking at the interaction of all that and their roles with local councils, police, law, order and justice issues and just settlement issues, so when this is available it makes for very interesting reading and will actually formulate a lot of our policy recommendations because it is from the grassroots level.

Part of the consultation also included a submission base where we invited submissions from the Australian community. We asked for electronic submissions as well as hardcopy submissions. We have now been able to put the data together, and hopefully this will be made available when the research itself is completed.

In the case studies there have obviously been a number of recommendations and a number of issues raised in terms of religion and social cohesion, but also areas in terms of access and equity, which includes issues such as justice, law and so forth. Hopefully when these documents are made available some of these areas may be of interest and usefulness to your study.

We will be able to, as I said at the end of the submission, have a publishable report as well as being able to develop a series of position papers for which we have commissioned experts on selected topics. We will also be able to have a knowledge base for the possible formation of an interfaith council to advise governments and also information kits ready for publication on interfaith dialogue, interaction and cooperation, and also material ready for publications on Islam and Muslims in Australia. I thought I would bring that to your attention.

The other project that I wish to bring to your attention, wearing my other hat with the police, is that we have produced for operational police a publication called *A practical reference to religious diversity for operational police*. How this came about was that we actually went to all police jurisdictions and asked them what were the 20 most important questions in their mind regarding religions in Australia when dealing with the community. We had hundreds of questions, so we took the top 20, which we felt was more appropriate to their day-to-day operations. We compiled this particular reference guide, which includes Buddhism, Hinduism, Islam, Judaism and the Sikh faith.

It looks at various issues like oaths and affirmations and what to do and what not to do in regard to police. We are now in the process of putting together a second edition. This edition has been so popular that it is in fact being used by international police as well in Europe and in America as a guide because we have put it on our Internet. Our second edition will include now Aboriginal spirituality, the Baha'i and Christianity. People have asked, 'Why Christianity and why was it not included in the beginning?', but given our multicultural society and given the fact that with the police and certainly with other providers we have a very inclusive approach in providing services. We cannot assume that all of our police officers are of Christian faith. Given the mix now, when

we have Muslim police officers, we have Buddhist police officers, Hindus and so forth, we cannot assume that they also understand the faith of Christianity when dealing with the mainstream community as well as those who have no particular faith and do not necessarily fully understand certain practices and traditions across all faiths.

We believe it was a very important inclusion in our document. The second edition is currently at the printer. In the document itself we address issues like protocols. To give one example:

‘Would a Sikh refuse to take an oath on a Bible in a court of law?’.

‘Yes. A Sikh can refuse to take an oath on a Bible as this is not recognised as a Sikh’s religious book. It is more appropriate to ask a Sikh to take an oath on part of a sacred hymn, daily prayers written in a small manual called a gutka.

Protocol for a Sikh taking an oath on the gutka: the gutka, once taken from a Sikh religious centre, must be kept wrapped in a neat cloth. The gutka must be kept in a clean, uncontaminated environment, free from alcoholic drinks and tobacco products and at a level where no one touches it without first washing his or her hands and must not be left on a seat. The person holding the gutka must not have tobacco or alcohol in his or her possession’.

It is very important to further understand the way such religious literature or books are treated. It is not just a matter of having it ready, but it is also a question of how one treats these holy or sacred books of various religions. These are the sorts of things that are included in the religious guide for police in terms of religious practices and policing, as well as many other things such as physical contact and other sensitivities.

I have gone through the various suggested questions that you may want to ask, and I have responses to those. If you want to ask the questions or if you wish me to answer the questions then either way.

**Mr KATSAMBANIS** — It is probably appropriate to go through the questions. How important do you think it is for people to be able to swear an oath in accordance with their religious beliefs or their traditions, or alternatively, do you think that people with a strong religious belief would consider a non-religious affirmation to be equally binding on their conscience in a court of law?

**Mr DELLAL** — Some yes and some no. I know, for example, just speaking with Sheik Fehmi the other day, the Muslim imam from the Preston mosque — he pointed out that their view is that if you could include in the oath — so far as they are concerned it is an oath — the words, ‘in the name of Allah’, would suffice. You would not necessarily have to have the Koran present at the courts, but the inclusion of the word ‘Allah’ would be seen as an oath. So far as they are concerned that is an oath because you are taking the name of Allah when you are taking an oath. They would see that as an oath. In some cases I know there are certain people within the religions themselves who would see that it is important to be able to swear an oath in accordance with the traditions of their own religion. It is one of those situations that will probably require a lot of consultation and flexibility.

**Mr LANGUILLER** — On a point of clarification, the Islamic Council of Victoria submitted to the committee that the Koran should not be used in a court of law. Do you have any comments on that?

**Mr DELLAL** — No, if that is what they say. In my dealing with Sheik Fehmi, he pointed out that if the words, ‘in the name of Allah’ were to be included then that would suffice and it was not necessary to have the Koran in a court of law. He said that as well, and I suspect they would be concurring with the Islamic Council of Victoria.

**Mr LANGUILLER** — The reason I pointed that out is that you would be aware, of course, that the Koran with the best of intentions in some jurisdictions is being used and being

provided by courts of law. In some cases we are told that individuals actually bring the Koran, but the courts make it available — some courts, anyway.

**Mr DELLAL** — That is right. This is why I am saying that it becomes an individual choice after a while if people believe they want to swear with a Koran. There is a historical factor to this because there is a perception that people believe if you are going to a court of law you are automatically either presented with a Bible or nothing, and they do know that the wording does not include Allah, so they will bring their Koran just in case. I think that is a perception by some of the people, and I think it is trying to get some sort of way of getting people to understand that courts of law are taking these sorts of views in consideration now. If there were changes in the wording, if ‘in the name of Allah’ was included and people knew about that then you might see less of that happening, but at the moment not everyone is quite sure of what happens.

**Mr BOWDEN** — We value your suggestions about some possible reported problems with the current system. I have about three areas I would like to mention and perhaps you could help us with your reactions to those. For instance, have you heard of problems with ethnic stereotyping, where assumptions are made that people from a particular ethnic background will necessarily be of a particular religion or religious at all; secondly, discrimination: for example, witnesses’ choice of oaths or affirmations being challenged or inappropriately taken into account in court proceedings; and thirdly, a simple lack of cultural sensitivity on the part of judges or staff, lawyers and others, so this adds up to a less than successful experience for the people involved?

**Mr DELLAL** — Taking the first point in terms of ethnic stereotyping, this is an issue that is across the board. For example, in some cases you have descriptors, or people describe people in such a way by saying, ‘of Middle Eastern appearance’, and if you are Middle Eastern you are automatically a Muslim. There is that perception, and that is incorrect. We know there are Christians, there are Orthodox and there are Jewish as well. Not all are of Muslim faith. That also extends further when you look at areas such as former Yugoslavia where there is the perception that it is orthodox but yet you have Bosnians, Muslims and a number of other faiths, and again with the subcontinent in terms of India most people would think you are either a Hindu or a Sikh, or what have you, yet there are Muslims and other faiths, Buddhists and so forth. There are assumptions that are made based on people’s descriptions, descriptors as you may want to call them, which can cause some difficulty with people.

The discrimination in terms of choice of oath and affirmations — not to my knowledge. I have not become aware of any of those sorts of situations. However, with lack of cultural sensitivity on the part of judges, court staff and lawyers and others, yes: I have only anecdotal evidence of such issues of lack of cultural understanding in terms of understanding about one’s culture and understanding the traditions of one’s practices. A court of law is quite a frightening thing for witnesses and for a number of people. You may find in the case of lawyers or judges that they may be asking questions and people just may respond with a yes because that is all they know how to respond with because they have a very different view when it comes to law, justice and policing, so everything is a yes. Whether it is right or wrong, it is just a yes or a no. These sorts of things do not help the cause and you do not actually create an environment where you are trying to ascertain the truth simply because some people have not bothered to go further and understand the cultural nuances, practices and traditions of various cultures and people.

We have had situations where language becomes a barrier. Anecdotal evidence has been brought to my attention where in some cases court staff have made fun of people in the way they speak. There has been anecdotal evidence in terms of some of the young people where their names have been changed because simply either a judge or someone else, or a lawyer, cannot pronounce the name and says, ‘Instead of me calling you Bia Bia, can I call you Bob?’, so the person agrees because of fear or whatever and they will just agree with anything. There are those sorts of insensitivities that have come to my attention in the courts.

**The CHAIRMAN** — We have another 5 minutes and there are important questions that I want to make sure we have time to run by you, so without limiting your contribution I want to make sure we get a comment on each of them and perhaps get further details as appropriate. Some witnesses have called for the removal of the religious oath entirely and its replacement with a non-religious affirmation which would be the only option. These witnesses argued that this would be fair as people would not be required to reveal their religious beliefs and the court would avoid the situation where some people are able to swear an appropriate religious oath but others are not. What is your view of this option?

**Mr LANGUILLER** — Can I supplement by saying that there was an article in the *Age* yesterday which revealed that the Ethnic Communities Council in fact suggests, among other things, perhaps, that the oath should be removed altogether.

**Mr DELLAL** — I am not sure if you are aware, but in Western Australia this issue was also the subject of an inquiry and changes have been made there. There was the suggestion that there should be no reference to a principal deity in the swearing of an oath, so some changes were made. I have brought it along so it can be tabled, and maybe it is something that you may want to consider under oaths and affirmations. The oath suggested by their equivalent of an ethnic communities council and police now reads:

I solemnly declare according to the religion and beliefs I profess that the evidence I shall give in this case shall be the truth, the whole truth and nothing but the truth.

It does not identify a particular principal deity. The affirmation reads as follows:

I sincerely declare and affirm that the evidence I shall give in this case shall be the truth, the whole truth and nothing but the truth.

These recommendations were forwarded to the Chief Justice of Western Australia, the Honourable David K. Malcolm AC, and I understand they are in operation now in Western Australia.

**The CHAIRMAN** — In responding to that question, are you supportive of there being breadth of options?

**Mr DELLAL** — I think so. I think now that there is some sort of precedent and there is a case where it seems to be working in a particular state, from what I understand, and there do not seem to be any major issues or problems, maybe that flexibility is something you would want to consider.

**Mr KATSAMBANIS** — How does that fit in with the point that you made earlier about the comments that the imam made to you?

**Mr DELLAL** — That is right. In that case it may be fairly difficult. I do not know if the imam or the Muslim community here in Victoria is aware of that. It would be interesting to see how the Muslim community in Western Australia reacted to that, given the fact that it is small, although it is also working. Whether small or not there is a still an active Muslim community in Western Australia and I think these suggestions have been passed, so it would be interesting to see how the Sheikh Fehmi or the Islamic Council view such a thing. They may not accept that.

**The CHAIRMAN** — Are you also aware of the commonwealth model that provides a choice?

**Mr DELLAL** — Yes. You mean the commonwealth Evidence Act?

**The CHAIRMAN** — Yes.

**Mr DELLAL** — Yes, that is right. I think in my view it is a matter of choice. Something like the Western Australian experience can be a positive way of looking at it. But I do not disregard what the sheikh is saying, either. I think that may be a way, too. I think in your initial question we are talking about flexibility and diversity, and there may not be one particular answer. There may need to be several options for people to make that choice, whether it is using the words ‘in the name of Allah’ for those Muslims who only recognise that as the oath; for those who do not want to identify a principal deity — which then answers your question about not necessarily identifying their religious belief as a public view — as well as those who do not necessarily have a particular faith, they can go to an affirmation, as has been suggested in the WA experience. So in my view it is that sort of flexibility.

**Mr LANGUILLER** — Juries are made up of ordinary people. I was recently told a very ordinary joke of bad taste — in my electorate, as a matter of fact. I was asked, ‘If there is a Pakistani, a Turk, a Lebanese and an Iraqi in the car, who is driving the car?’. ‘The cops’, they said.

You would be aware that I represent a very multicultural electorate with a very large Muslim community. I sometimes wonder about juries, and I must qualify this; I wonder not so much about judges and trained lawyers and counsellors, because I think they are a credit to the judiciary by and large in the way in which they handle cases, but juries are different. People are not trained like lawyers and judges and inevitably there is an enormous amount of prejudice in the community. You mentioned in parts of your report you will be researching into post-September 11. Do you not think that perhaps when some ethnic communities recommend that we should remove the oath altogether from the judiciary, they may be doing so with the best of intentions to protect witnesses when they are before courts and juries and to remove any potential of prejudice and damage to obtaining justice in a court of law?

**Mr DELLAL** — Yes, I would agree with that. I have been approached by a number of people who believe or feel that by the identification of not only their religion but their ethnicity or cultural heritage there is a fear of some sort of prejudice towards that. That is why these experiences have obviously been noted in that Western Australian experience and hence the move to look at their options. These are issues within the community, and we are certainly finding those sorts of issues coming out of our study as well in terms of the interrelationship, but importantly we are also finding that not just within service-provider type bodies but within communities themselves — amongst communities themselves as well — which becomes an issue and a challenge as to how we can best promote social harmony, cohesion and understanding amongst the various faiths and cultures. There are two sides to the issues; they are not just them-and-us issues. Given the fact of our diversity it is a much bigger agenda.

**Mr KATSAMBANIS** — On the issue of affidavits and statutory declarations which are also included in our terms of reference do you think the current classes of people permitted to witness these documents are sufficiently representative, or have you any examples of where people’s access to make a statutory declaration or swear an affidavit is limited?

**Mr DELLAL** — In some cases such as where you have justices of the peace, in particular within the various ethnic communities, there are not too many, so it makes it very difficult because of language and from the point of view even of people just trying to ascertain where they can go and get such affidavits. They know about the police but they do not necessarily knock on the police’s door. Maybe the local pharmacist, if he or she happens to be of that particular community, they may have some confidence in.

In general there is a good scope there. It is more about encouraging certain community members who fit on that list to declare themselves to be able to do it. It is more the other way rather than the breadth of it. If you look at the list, you have virtually everything there. I cannot think of any further additions you may want. You do have public officers, so things like people from — I am not sure if migrant resource officers would be included in some of those descriptions. I think they

should be listed under 'commonwealth employee' or 'public service-commonwealth'. It is more about communicating the availability and the identity of these people and where they are, more than extending the list.

**Mr BOWDEN** — The committee is required to examine cultural awareness training for court staff and others before whom affidavits are sworn. Do you have any views about what should be included in this training?

**Mr DELLAL** — It is an interesting question. We are working with courts at the moment, particularly with the Australian Family Court, which is going in leaps and bounds, looking at their training needs and issues. One of the things I find quite interesting is that currently courts do not collect data about language, birthplace and so on so there is no qualitative data on the range of clients they have to deal with. It is very difficult to try and work out your staff training needs if you are not sure specifically what it is that you need — whether it is for someone at the counter, for a tipstaff — someone in the court, or qualified bilingual workers.

Therefore this needs to be looked at, firstly to develop some qualitative data on the types of clients you are dealing with on a day-to-day basis in order to ascertain what your needs are so that you can develop the appropriate training in these areas. Some of it is a bit hit-and-miss and some of it is just responding because someone in the community has complained about a particular issue so suddenly people jump in and say, 'We'll try and fix this up'; but it is much more deep-rooted than that. When we are talking about the law courts we are talking about hundreds of years of heritage and history and there is a culture within that, and you cannot change that culture by knee-jerk reactions. Therefore the courts need to do a lot more work to collect some of this data, not in a way that gives the perception to the community that they are collecting data on people from different cultures; it is more about how can we improve our services and identify the clients that we are servicing daily.

**The CHAIRMAN** — Many thanks for your eloquent submission to our committee today.

**Mr DELLAL** — Thank you.

**Witness withdrew.**