FROM ‘CULT’ TO ‘RELIGION’

A THESIS SUBMITTED IN FULFILMENT OF THE REQUIREMENTS FOR THE GRADUATE DIPLOMA IN ARTS IN THE SCHOOL OF POLITICS AND INTERNATIONAL RELATIONS AT THE UNIVERSITY OF NEW SOUTH WALES

BY STEPHEN MUTCH MA LLB (UNSW)

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PREFACE

The narrative of this thesis has concentrated on government action against Scientology in Victoria in the 1960s, where legislation was preceded by a wide-ranging inquiry which set a precedent for other states.

Research has been conducted primarily at the New South Wales Parliamentary Library, with further research undertaken at the Victorian Parliamentary Library and the Department of the Parliamentary Library, Parliament of Australia. Additional newspaper reports have been obtained from the State Library of Victoria and the Australian National Library.

Research has focused on government reports, parliamentary proceedings, newspaper reports, legal cases and propaganda emanating from the Scientology organization. The amount of primary material available on the public record alone is enormous, and more than sufficient for the purposes of this dissertation.

However, there is a paucity of academic material in the field of government responses to 'cults' and consequently little theoretical or conceptual analysis. It is intended that further research will be conducted in this field for a PhD dissertation.

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CLAIMS FOR RELIGIOUS FREEDOM ENABLED THE 'CULT' OF SCIENTOLOGY TO OVERCOME GOVERNMENT SUPPRESSION, WIN LEGAL RECOGNITION AND GAIN TAX EXEMPT STATUS AS A RELIGIOUS INSTITUTION IN AUSTRALIA

FROM 'CULT' TO 'RELIGION'

'the struggles for political participation and political representation took place primarily in the religious arena, with dissenters eventually winning hard-fought for political recognition'[1]

'in his autobiography, Over My Shoulder, publisher Lloyd Arthur Esbach remembered taking lunch with …Ron Hubbard[2] *in 1949. Hubbard repeated a statement he had already made to several other people. He said he would like to start a religion, because that was where the money was'*[3]

[1] Beth Gaze & Melinda Jones, *Law, Liberty and Australian Democracy* (The Law Book Co., 1984), p. 244
[2] The founder of Scientology
[3] Jon Atack, *A Piece of Blue Sky* (Carol Publishing Group, NY, USA, 1990), p. 137

INTRODUCTION

This thesis examines how the Scientology[4] organization, which was characterized as a harmful 'cult' dabbling in pseudo-psychology, quackery, the high pressure selling of dubious personal development courses and the exploitation of followers, (and continues to be the subject of complaints), was able to wage a campaign for religious freedom to overcome government suppression, win legal recognition and then tax exempt status as a religious institution in Australia.

The conclusion of the thesis is that the decision of the High Court in *The Church of the New Faith v. The Commissioner of Pay-roll Tax (Victoria)*,[5] was influenced inappropriately by s. 116 of the *Australian Constitution* and created an unsatisfactory test for the definition of 'religion'. The decision, which granted state pay-roll tax exemption to the Church of Scientology, and is applied by the Commonwealth Commissioner of Taxation, provides tax exempt status to groups popularly characterized as 'cults' and widely seen to be harmful.

[4] Church of Scientology International, *What is Scientology – A guidebook to the world's fastest growing religion* (Bridge Publications, Los Angeles, 1993), 'The word Scientology is taken from the Latin *scio*, which means "knowing in the fullest sense of the word", and the Greek word *logos*, meaning "study of". Scientology means literally "knowing how to know"', p. 4

[5] *(1983)* 154 C.L.R 120

Definitions of 'Cult' and Characterization of Scientology as a 'Cult'

For some time academics, particularly in the social sciences,[6] have described the emergence of increasingly sophisticated methods of mind influencing and social coercion, and the harmful utilization of these techniques in groups commonly referred to as 'cults'[7], sects or alternative religions (or new or minority religious movements). [8]

Ian Freckelton [9]notes that the term 'cult' has its origins in the Latin *'colere'* and '*cultus*', which were 'both neutral words relating to worship or veneration' and has 'only more recently taken on perjorative connotations',[10] which is why Eileen Barker coined the term 'New Religious Movements' while 'Marc Galanter has preferred the term "charismatic groups"'. [11]

David Millikan describes a 'cult' as 'an elitist group that takes control of its members to a point where they are deprived of personal freedom and

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[6] Benjamin Beit-Hallahmi, *The Illustrated Encyclopaedia of Active New Religions, Sects and Cults*, (The Rosen Publishing Group, New York, 1993), says 'the Church of Scientology has inspired probably more social science research and more media attention than any other similar group', p. 257

[7] Rachel Kohn, 'Cults and the New Age in Australia', in *Many Religions, All Australian: Religious Settlement, Identity and Cultural Diversity*, Gary D. Bouma (ed.), (The Christian Research Association, 1996), says 'the existence of groups in Australia which have virtually held members hostage through intimidation, deprivation and confinement has given rise to community concern about the extent to which the public should know the policies and activities of religious, spiritual and therapeutic groups, and in some cases to curtail them', p. 155

[8] Beit-Hallahmi, '*The Illustrated Encyclopaedia'*,as is apparent from the encyclopaedia's title and see also David V Barrett, *'Sects, "Cults" and Alternative Religions – A World Survey and Sourcebook'*, (Blandford A Cassell Imprint, UK, 1996), which categorises such groups into those with Christian origins, those with Eastern origins, esoteric and new-pagan movements and psychology and self-help groups.

[9] Ian Freckleton, '"Cults", Calamities and Psychological Consequences' in *Psychiatry, Psychology and Law*, Volume 5, Number 1, April 1998, p. 3

[10] Freckelton, '"Cults", Calamities', says 'the description "cult" for at least three decades has generally been employed judgementally, signifying little more than that the group concerned is said to be dominated by an influential figure and is dangerous or ideologically distasteful', pp. 3-4

[11] Ibid, p3

initiative. It isolates its members from society, severs their relationship with family and friends and presses them entirely into the service of the cult leader's all-consuming vision. This is accompanied often by the development of special language and thought forms, and a profound manipulation of the members' sense of guilt … even the most fleeting moments of doubt about an aspect of cult belief or behaviour would be attributed to the evil propensities of the person concerned.'[12]

Louise Samways differentiates between 'closed' cults, where 'members live physically isolated from mainstream society' and 'open' cults, those groups 'who have all the characteristics of cults but are very open about their activities in the community', which she submits has been facilitated by the development of 'more sophisticated indoctrination techniques'. Samways describes Scientology as an open cult.[13] The techniques she describes include hypnosis, enhanced by 'three extremely powerful social factors (called "influence processes")' which include 'behaviour modification, obedience to authority and conformity to group expectations'.[14] She submits that 'there are at least a hundred known cults operating in Australia'.[15]

Rachael Kohn notes that 'the term "cult" is used most often when discussing groups with a dominant leader, who emerges from obscurity with a teaching which owes its substance to an array of influences, making it peculiarly syncretistic, but with claims to originality and uniqueness.' [16] She describes

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[12] David Millikan, *Imperfect Company. Power and Control in an Australian Christian cult*, (William Heinemann Austral - ABC), 1991) pp. 13-14
[13] Louise Samways, *Dangerous Persuaders. An expose of gurus, personal development courses and cults, and how they operate in Australia*, (Penguin Australia, 1994) p. 3.
[14] Ibid, p. 9.
[15] Ibid, p. vii.
[16] Kohn, 'Cults and the New Age', p. 151

Scientology as an example of a 'larger, more organized' cult which provides 'an outer circle of less committed followers with some of the "low level" teachings or products', while maintaining 'highly protected upper levels of experience and teaching for those prepared to be obedient to the organization's dictates and to pay considerable sums of money for the stream of courses they offer.'[17] Author Michael Jordan reports that Scientology claims 'to enjoy the devotion of seven million members worldwide', which, he says, 'puts it among the largest, wealthiest and most influential of all religious cults.'[18]

Although the terminology and definition of 'cults' is disputed by some, who prefer a term such as 'minority religious groups', [19] for the purposes of this dissertation, it seems sufficient that such groups, with particular reference to Scientology, are popularly recognized and described as 'cults,' have attracted adverse public attention, have been the subject of complaints, have attracted adverse government action and are widely regarded as harmful. It is shown in the narrative of this thesis that the Scientology organization is referred to in an adverse manner throughout as a harmful 'cult' by politicians, government officials, journalists and complainants.

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[17] Ibid, p. 152

[18] Michael Jordan, *Cults – from Bacchus to Heaven's Gate*, (2nd ed. M. Jordan, 1999) p. 72

[19] NSW Anti-Discrimination Board, *Discrimination and Religious Conviction*, (NSW ADB 1984), state 'we have been careful to use the terms "religious group" or "religious movement"' in 'contrast with the words "cult" and "sect", popular terms often used interchangeably to refer to unpopular minority religious groups in a derogatory and emotionally charged manner', saying 'we have preferred the term "new religious movement" to the term "cult", which has perjorative connotations in modern usage', p. 519

Governmental Response to Scientology and Other 'Cults' in Australia

Australia has yet to be the location of tragedies involving 'cults' of the scope seen overseas. These include the mass suicide of 900 members of the People's Temple in Guyana, the death in conflagration of some 80 members of the Branch Davidians at Waco, Texas in 1993, the suicide of dozens of members of the Order of the Solar Temple in Canada and Switzerland, in 1994 and the sarin gas attack in Tokyo in 1995 by Aum Supreme Truth, resulting in the death of 12 subway commuters.[20] However, three 'notorious' groups, Aum Supreme Truth, the Solar Temple and the Branch Davidians, have had 'significant connections with Australia'.[21]

Even though the more spectacular and serious incidents have occurred offshore, and these have not involved Scientology, complaints about groups popularly characterized as 'cults' have resulted in governmental responses in Australia, particularly with respect to Scientology. Governmental and/or parliamentary inquiries have been held in Victoria and South Australia and specific legislative action taken in Victoria, Western Australia and South Australia against Scientology, which was characterized throughout as a 'cult,' harmful to its followers and a danger to the community.

Indeed, when delving into the extant, limited research undertaken in Australia on 'cults', this group emerges as the first and most widely known to attract the adverse attention of Australian governments in the last forty

[20] Barrett, 'Sects, "Cults" and Alternative Religions', p. 13
[21] Kohn, 'Cults and the New Age' notes that Aum purchased a pastoral property in Western Australia and tested chemicals on sheep, the leaders of the Solar Temple had attempted to conduct ceremonies at Uluru and a number of Australians became disciples of David Koresh, p. 149.

years. No other alleged 'cult' has attracted anywhere near the amount of Government attention that has been devoted to Scientology. The alleged 'cult' has itself has been highly public and forthcoming in its response to criticism, and has often resorted to litigation to advance its position. It has been involved in cases concerning the custody of and access to children,[22]the payment of state government tax[23]and private suits against individuals, including government appointed officials and politicians.[24] Scientology has also spawned imitators, some of whom have also attracted unwelcome attention. [25]

'Cults' other than Scientology have also attracted some government, departmental or parliamentary attention, albeit sporadically. In 1977 a New South Wales Opposition MP, Tim Moore, moved a motion to establish an inquiry into the Children of God, which was defeated by one vote.[26] In 1987 Victorian police raided a property at Eildon to free up to fourteen children held in a cult known as 'The Family', who had been obtained by fraud from their birth mothers by guru Anne Hamilton-Byrne for a 'scientific experiment' and held for around fifteen years. The children were controlled by cruel, often brutal discipline and the administration of drugs.[27]

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[22] Freckelton, '"Cults", Calamities', p. 27 cites *Re B and G (Minors) 1985 FLR 135*, affirmed *Court of Appeal 1985 FLR 493*

[23] *Church of the New Faith v Commissioner of Pay-Roll Tax (Victoria) (1983) 154 CLR 120*

[24] See fns. 145 & 147 below

[25]Kevin Victor Anderson, *Report of the Board of Inquiry into Scientology*, (Govt. Printer, Melb.,1965), *Anderson Report*. Anderson describes one such imitator in chapter 29 of the report, entitled 'On the Fringe'. In addition, the Kenja organization derived much from Scientology. See S. B. Mutch MLC, speech on motion "Cult Activity in New South Wales", *NSW Hansard, Legislative Council*, 22 April 1993 at p. 1445.

[26] *NSW Parliamentary Debates (Hansard)*, 24 February 1977, pp. 4486-4508

[27] Sarah Hamilton-Byrne, *Unseen, Unheard, Unknown* (Penguin Books Australia, 1995)

In 1992, the Children of God were subjected to action by child welfare authorities in Victoria and New South Wales, including raids on group homes and the temporary removal of children, but this 'did not secure in convictions'. [28] In NSW, the leader of the Kenja personal development group, whose methods and doctrine was heavily borrowed from Scientology, was charged with 'alleged sexual molestation of minors' [29] following parliamentary exposure, resulting in one conviction of indecently assaulting a 13 year old girl. Several other charges involving three other girls were either dropped or resulted in acquittals.[30] In 1999 Senator Grant Chapman raised concerns in federal parliament about the operation of a group operating in South Australia called the Vibrational Individuation Program. [31] A report of the New South Wales Anti-Discrimination Board in 1984 also outlines instances of alleged discrimination by governments against groups described as cults.[32]

Scientology and 'Religion'

Scientology spans much of the descriptive range of the types of groups complained about, having been described as 'a secular psychotherapy movement' which 'soon developed into a "religion".'[33] This evolution, and indeed the official recognition of Scientology as a 'religion' under federal

[28] Kohn, 'Cults and the New Age,'p. 154
[29] Ibid, p. 155
[30] *Sunday Telegraph*, 17 October 1999, article entitled 'Guru guilty'.
[31] Max Wallace, 'An Argument for a Senate Select Committee Inquiry into Cultic Conduct in Australia', a draft paper attached to a submission dated 21 June 1999 to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into Australia's efforts to promote and protect freedom of religion and belief*, which details a chronology of key events relating to government and other action against 'cults', p. 6
[32] *Discrimination and Religious Conviction* (Sydney, NSW Anti-Discrimination Board, 1984) compiled by Juliet Sheen, Project Officer.
[33] Beit-Hallahmi, *The Illustrated Encyclopaedia*, p. 257.

law in Australia, makes it particularly interesting in an examination of the effect that the concept of 'religious freedom' has had on the commitment of governments to continue to pursue action against Scientology, particularly as Scientologists have sought to describe government action against them as political oppression of a religious minority and part of a long tradition of religious persecution.[34]

Practical benefits accrue to groups acquiring the label 'new religions,' terminology which carries an acceptable, even positive connotation. This was commented upon by Tom Sackville, a former British MP, who said, in a recent article on the British government's response to cults, that 'the official title used for cults (in Britain) is the one the cults prefer themselves, "New Religious Movements." This conveniently reinforces the official stance of neutrality – how could Ministers possibly take a view for or against a religion ? It also gives cults a spurious respectability.'[35]

Chapter Summaries

Chapter one of the thesis describes the appointment in Victoria of a one man Board of Inquiry into Scientology by the Bolte Liberal and Country government, in response to a campaign by the media and the Labor Party Opposition in the Legislative Council. Criticisms of the organization

[34] For example, see *Scientology: The Other Case* – Submission to the Rt. Hon. Sir Keith Joseph Bart MP, State Secretary for Social Services (UK) on the suggested psychotherapy registration resulting from the Foster Report (Church of Scientology, May 1972), which identifies the Scientology struggle with that of the early Christian church

[35] Tom Sackville, 'Cults – The British Government Response', in *FAIR News*, Summer 1999, extract in *Cult Watcher*, Vol. 1 No. 3, December 1999, (Cult Information and Family Support Inc. (CIFS)), saying also 'if you are an organization whose real aim is to exploit financially, and in many cases mentally and physically, large numbers of vulnerable young people, being referred to by Government as a "Religious movement" is not unhelpful', p.4

included the claim it was a money making 'cult' dabbling in psychology and hypnotism to the extent of 'brain washing', quackery and the selling of dubious, personally invasive courses in self-development, among other things. The public inquiry led to the enactment of government legislation designed to suppress Scientology indirectly, by providing for the registration of psychologists and regulation of psychological practices in general, including hypnosis, and directly, by banning certain activities including courses, techniques and instruments employed by the organization. The Opposition, which had proposed legislation directed specifically against Scientology, but with respect only to the charging of fees and the use of the E-meter (a form of lie detector), opposed the legislation except for those sections dealing specifically with Scientology.[36]

Chapter two describes a change in policy at the federal level. Following a favourable decision under the *National Service Act 1951 (Cth)* in 1970, where a Scientology Minister was exempted from conscription, Scientology, as the Church of the New Faith, was given formal recognition as a religion by proclamation under the *Marriage Act 1961(Cth)* in 1973 by Attorney-General Senator Lionel Murphy of the Whitlam Labor administration. [37] This recognition became a major factor in the unraveling of proscriptive state legislation.

Chapter three describes how the Scientologists resolved in 1980 to pursue the issue of pay-roll tax exemption in Victoria,[38] following recognition as a

[36] Hon. J. M. Walton, *Victoria Parliamentary Debates (Hansard)*, (1965/66), Vol. 281, p. 2392
[37] Which was elected on 2 December 1972. See Hughes, Colin A. *A Handbook of Australian Government and Politics, 1965-74*, Australian National University press, Canberra, 1977 p. 13
[38] *Age* – 'Scientologists seek recognition', 21 November 1980

religion under federal laws and the withdrawal of anti-Scientology legislation in Western Australia and South Australia. The exemption under s. 10b of the *Pay-roll Tax Act 1971 (Vict.)* was for 'pay-roll tax wages paid or payable "by a religious or public benevolent institution, or a public hospital"'.[39] The exemption under similar provisions had already been granted to Scientology in other states,[40] and so a challenge was launched against the refusal of the Victorian Commissioner for Payroll Tax to grant an exemption. The chapter outlines the loss by Scientology at the trial, the unanimous verdict against Scientology by the Victorian Supreme Court and subsequently the unanimous reversal of this decision by the High Court of Australia in October 1983. The reasoning behind the judgements and the importance of the final landmark decision are examined, including the benefits which accrued to Scientology as a result of its admission to the religious fraternity.

The conclusion of the thesis is that in defining the word 'religion' in the context of a Bill of Rights style provision, namely s. 116 of the Australian Constitution, even though the matter did not arise under that section, the High Court adopted a broad definition that would probably not have been intended by the legislators involved. The definition enunciated in *Church of the New Faith,* which remains current, allows organizations, which are widely regarded as harmful 'cults', to obtain taxation exemptions under federal and state statutes.

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[39] *The Church of the New Faith v. The Commissioner of Pay-roll Tax (Victoria)* (1983) 154 C.L.R. 120 at p. 120

[40] *The West Australian* – article entitled 'Judges: Scientology is a religion' by Margot Lang, 28 October 1983, noted that Scientology had already been exempted from pay-roll tax in WA, SA, NSW and the ACT

It is argued that a better definition, based on legislative intention, would have taken into consideration whether such organizations are beneficial or harmful, applying a test that they should at least contribute to the well-being of followers before they are categorized for legal purposes as religious. Alternatively, as any legal definition of ‘religion’ becomes an artificial and unsatisfactory construction, alternative political approaches might be investigated to overcome the restrictions imposed by s. 116 and the decision of the High Court in *Church of the New Faith*, as this has resulted in governments lending considerable, though arguably inadvertent support to such groups. The full extent of this support is unknown, as these groups are not required to lodge taxation returns.

CHAPTER ONE

A PUBLIC INQUIRY AND LEGISLATIVE ACTION AGAINST SCIENTOLOGY IN VICTORIA

The Anderson Board of Inquiry (Vic.) (1963)

'an uneasy stirring'

In November 1963, the Liberal government of Victoria appointed Kevin Victor Anderson QC, 'to inquire into, report upon, and make recommendations concerning Scientology as known, carried on, practised and applied in Victoria'.[41] Anderson concluded his report to parliament on 28 September, 1965. [42]

Scientology is described in the Anderson report as a package of theories dealing 'with a variety of real and imagined activities and conditions of the mind' and techniques, being 'a conglomeration of procedures based on misconceptions of psychiatry, psychology, psycho-analysis and other sciences, as well as a very heavy leavening of procedures that are its founder's own brain child'.[43] These were based on the writings of Lafayette Ronald Hubbard, an American science fiction author who claimed to have discovered 'the modern science of mental health', which he named

[41] Order in Council, 27 November, 1963. *Victorian Government Gazette*, 28 November, 1963 – No. 931 at p. 3547
[42] *Anderson Report*, p. 173
[43] Ibid, p. 12

'Dianetics'[44], and which he developed into Scientology.[45] The techniques involved courses of training which Anderson found utilized 'potentially harmful hypnotic processes' and where promises were made that techniques were available 'to increase IQ and improve personality',[46] among other things.[47]

Anderson noted that all these activities were directed by governing director Hubbard, the 'founder and master',[48] through 'a world-wide organization named Hubbard Association of Scientology International (the HASI), which promotes the practice of Scientology and canvasses for adherents in most of the countries of the Western World',[49] allegedly all for profit. Anderson found; 'the practice of Scientology is a business, and its attraction lies in the opportunity it affords for making money'.[50]

Under the heading 'Development of Official Interest in Scientology', Anderson noted that 'for a few years before the appointment of this Board there had been an uneasy stirring in various places in respect of Scientology'. He reported that members of the Mental Health Authority, (who had been advised of concerns by the Chief Commissioner of Police in 1957), the Vice-Chancellor and the University Student Chancellor of the University of Melbourne, the Victorian Branch Medical Secretary of the

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[44] Church of Scientology, *What is Scientology ?*', 'The word Dianetics comes from the Greek words *dia,* meaning "through" and *nous,* meaning "soul"', p. 4
[45] *Anderson Report*, p. 12
[46] Ibid, p. 14
[47] Ibid, Prefatory Note, p. 1. These include offers to '"make the able more able", to remove "suppression" ... to proof people against mental and physical illness and to bestow a variety of other benefits, offering sure success by allegedly infallible means'
[48] Ibid, p. 13
[49] Ibid, p. 1
[50] Ibid, p. 170

Australian Medical Association and Melbourne newspapers (which in 1961 declined to accept advertisements from HASI) had all expressed concern about or were 'alive to the potential harm' of the activities of Scientology. In the case of the Victorian Branch Medical Secretary, concern had taken the form of occasional statements in the press about Scientology, which had 'resulted in scurrilous attacks on him by the Scientologists'. The Vice-Chancellor had seen fit 'on two separate occasions' to warn students about ' "city practitioners" who were offering services purporting to be psychological to assist them in their studies'. [51]

In a series of feature articles, the Melbourne newspaper *Truth*,[52] had made 'pointed attacks on Scientology',[53] which appeared 'over a period of about three years',[54] alleging brainwashing and alienation from families.[55] For example, in a front page article entitled 'Challenge', (in which Scientology was described as 'bunkumology' and 'the crank cult to end all cults'), the *Truth* reported on alleged attempts by Scientology to intimidate its critics, expressed the opinion that it should be put out of business and detailed 'evidence' to support this opinion.

This included: a university student told after completing a free IQ test that he had homosexual tendencies which Scientology could cure, a polish migrant forced into hiding from scientology after signing a £600.00 promissory note for courses to be undertaken, a 19 year old chemistry student who refused to

[51] Ibid, p. 4. Anderson says, 'in eight years to 1964, Scientology became strongly entrenched in Victoria,' (Prefatory Note, p. 1)
[52] A popular newspaper rather than a journal of record
[53] Ibid, p. 4
[54] Ibid, p. 7
[55] Russell Miller, *Bare-Faced Messiah,* (Michael Joseph, London, Penguin Books Ltd, U.K., 1987), p. 250

take asthma treatment after being convinced by Scientology that his complaint was punishment for killing his wife in a previous existence and a schoolboy told he had low intelligence after a free Scientology IQ test and needed to pay for a Scientology course to pass his matriculation. The Truth stated that 'cases of husband turning against wife, son against father and girl against brother (sic) are tragically common in Scientology', alleging this was a deliberate Scientology policy and citing inflammatory statements from a pamphlet issued by Ron Hubbard entitled, *Why some fight Scientology*, as evidence of the aggressive attitude of the 'cult'.[56]

Anderson reported that all this 'growing public interest … culminated in statements in the Legislative Council by the Honourable J. W. Galbally MLC and the Honourable J. M. Walton MLC',[57] both members of the Labor Party Opposition, Galbally being leader in the upper house. On 15 October 1963, Walton formally requested files pertaining to Scientology and the Minister for Agriculture obliged, subject to material relevant to current proceedings in the Supreme Court being excluded. [58] Largely on the basis of material contained in the files, Walton raised his concerns about the activities of Scientology in the Address in Reply debate on 16 October, 1963.[59]

Walton alleged that Scientology sold courses in 'amateur psychoanalysis' to people who had responded to invitations to do an intelligence test and

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[56] *Melbourne Truth*, 2 December 1961 – No. 3707. (Film 5191- The Newspaper Room, State Library of Victoria).
[57] *Anderson Report*, p. 4
[58] *Victoria Parliamentary Debates*, Forty-Second Parliament, Third Session, (1963-64), Vol. 272, (*Victoria Hansard*), 15 October 1963, p. 1033
[59] Ibid, p. 1179

answer a written questionnaire. The courses, he noted, which were conducted in small rooms, included the use of the E-meter or lie detector,[60]used in connection with verbal questions about intimate personal details, and commands that go on 'for hours at a time until the person is completely under the control of the auditor'. He alleged that a 'thorough system of brain washing is conducted' and asked, 'should an organization that practises psychotherapy be permitted to operate without having to fulfil the requirements of the *Medical Act*?'[61]

He cited claims in the main Scientology textbook, entitled *Dianetics – A Modern Science of Medical Health*, that 'dianetics will help the reader to eliminate any psychosomatic illness', that it 'offers to medical doctors, psychiatrists, psychoanalysts … a new theory and technique which makes accessible for therapy, diseases and symptoms which hitherto were unusually complex and obscure'. He noted that claims were made in *Dianetics* that 'dianetic therapy' had been tested in 270 unselected cases and that 'psychosomatic ills such as arthritis, migraine, ulcers, allergies, asthma, coronary difficulties (psychosomatic – about one-third of all heart trouble cases), tendonitis, bursitis, paralysis, (hysterical), eye trouble (non-pathological) have all responded as intended by the therapist, without failure in any case'. [62] He argued that with a number of respected authorities believing the organization to be harmful, 'at least an inquiry should be held',[63] into the organization which he alleged had already dealt with over

[60] Barrett, *Sects, 'Cults'*, describes the function of the E-Meter as 'the subject … holds two tin cans which are connected to an E-Meter in front of the auditor. In a similar way to a lie-detector, this measures electro-magnetic skin conductivity and resistance,' p. 253.
[61] *Victoria Hansard*, pp. 1182-3
[62] Ibid, 1181

10,000 people in Australia. He called for government action to be taken 'even if amending legislation is required'.[64]

On 19 November 1963, Galbally moved a Censure Motion against the Government, 'for the purpose of discussing the deliberate and obstinate failure of the Government to take appropriate action against a group of charlatans who for monetary gain are exposing children of tender age, youths and adults to intimidation and blackmail, insanity and even suicide, family estrangement and bankruptcy, despite repeated warnings from the Mental Health Authority and other informed and responsible persons and bodies'.[65] In debate he referred to claims by Scientology that it could cure 70 percent of man's illnesses and claims that dianetics was the only 'specific (cure) for radiation (atomic bomb) burns'.[66] Arguing that this constituted 'medical quackery', he submitted that 'the Government should have introduced legislation along the lines of that dealing with the cancer quacks and the poliomyelitis quacks', as suggested by Dr. Cunningham Dax, the Chairman of the Mental Health Authority.[67]

Galbally was supported by Walton, who raised concerns about the control exercised over and conditions of pay of people working in Scientology. He alleged that Hubbard had decided to dispense with wages and pay instead by commission, which was a one-sided incentive scheme (to solicit people to undertake courses) where the agent received '£8 a week for working much

[64] Ibid, 1186
[65] Ibid, Vol. 273, Tuesday, 19 November, 1963 at p. 2127
[66] Ibid, p. 2132
[67] Dr. Cunningham Dax submitted that the Government should 'prohibit the advertisement of treatment for nervous or mental disorders or of psychological testing,' it being 'very highly dangerous and may easily

longer than a 40-hour week'. Because of the security checking staff were put through, which involved answering embarrassing questions about their personal life,[68] with the answers being placed in a file and a copy sent overseas, Walton alleged that staff were open to blackmail, and would therefore be reluctant to bring forward complaints about the organization. He also alleged that the organization known as Hubbard Association of Scientologists International, which claimed to be non-profit, in fact passed on 10 percent of takings to Hubbard himself, a substantial amount in view of the fact that 'collections' in Victoria alone amounted to more than £2,000 a week.[69]

The Censure Motion was lost on party lines, but Galbally continued to press the matter. He introduced a Private Member's bill on 26 November, 1963. The object of his *Scientology Restriction Bill* was 'to prohibit the teaching and practice of Scientology for fee or reward and the use in relation to such teaching or practise of any apparatus or device for recording or measuring personal reactions, impulses or characteristics'.[70]

Whatever the merits of Galbally's Bill, the Government used its numbers to bring it to an end. On 5 December 1963, the Minister for Health announced that 'the Government does not propose to proceed with debate on this Bill this session ... the Government has appointed a Board of Inquiry to investigate Scientology, and it is desirable that the matter be left where it is

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result in schizophrenics failing to get treatment, suicides resulting or people with hysterical symptoms becoming extremely dangerous'.

[68] Ibid, p. 2149

[69] Ibid, p. 2150

[70] *Anderson Report*, p. 4 - The Board of Enquiry was appointed the following day. A copy of the two page Bill appears in *Victorian Legislative Council Bills Introduced*, Session 1963-64, A. C. Brooks, Government Printer.

at the moment'. [71] Galbally expressed his dismay at a move he said 'was instituted to thwart the passage of my measure'. [72] His pleas were ignored.

Anderson was authorized to investigate all aspects of Scientology as practised in Victoria, and he approached his task with vigour. Jon Atack, author of an expose of Scientology, noted that 'the Board consisted of one man, Kevin Victor Anderson. He conducted his inquiry with considerable showmanship and ferocity, taking nearly two years to investigate and present his immense report'.[73]

The report of the one-man Board of Inquiry was in many respects a *tour de force*. It laid bare every conceivable aspect of Scientology as practised in Victoria, and its conclusions were unremittingly hostile to the organization. Anderson didn't mince his words. His much quoted prefatory note begins, 'Scientology is evil, its techniques evil, its practice a serious threat to the community, medically, morally and socially; and its adherents sadly deluded and often mentally ill'.[74]

Anderson found that existing laws were 'not adequate to deal with the problem', which he described as 'a special course of conduct not adequately controlled by law namely the invasion of the field of mental health and

[71] *Victoria Hansard*, Vol.. 273, p. 2968
[72] Victoria Hansard, Vol. 274, 25 March 1964, p. 2271
[73] Atack, *A Piece of Blue Sky*, noted 'the report was 173 pages long and had nineteen appendices. The evidence of 151 witnesses was gathered into a supplement of 8,290 pages', pp. 154, 159. The *Anderson Report* noted that the team of the Chief Government Shorthand Writer performed the 'colossal task of recording nearly 4,000,000 words covering nearly 9,000 pages', p. 173)
[74] *Anderson Report*, p. 1

propagating of harmful psychological practices'.[75] He pointed out that 'despite the affinity between psychology and medicine no assistance in the control of the practice of psychology is to be obtained from Victorian legislation relating to the medical profession'. Referring to existing law under the *Medical Act 1958*, he noted that 'in Victoria there is no statutory prohibition on the practice of medicine or surgery as such by other than legally qualified medical practitioners'.[76]

On the question of religion and belief, Anderson found a clear distinction between belief (which anyone should be entitled to hold) and practice, saying of Scientology that 'notwithstanding its weird theories and peculiar practices based on them, it is a system of beliefs which any person is at liberty to hold, just as whoever wishes may believe that the moon is made of green cheese'.[77] The same freedom applied whether Scientology was a religion or not.[78] However, with respect to practice he was clear that 'the carrying into practice of such theories by pernicious techniques from which grave harm results is quite a different matter'. He noted that 'those who claim that their beliefs constitute a religion cannot, under the cloak of such "religion", pursue a course which is evil and a danger to the mental health of the community … nor are they entitled to proselytize by calculated

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[75] Ibid, Anderson referred to existing laws of fraud, negligence, breach of contract, assault – with potential for civil actions, (the efficacy of which he was not prepared to express a view upon) and the even more fraught areas of treason, sedition**,** blasphemy and conspiracy, p. 168

[76] Ibid, He noted that the only form of control exercised was through Section 24 (1), which prevented unregistered practitioners from recovering any charge in a court of law for operations, advice or prescriptions, and Section 24 (3) which prevented unregistered practitioners from using various medical titles. He stated that the rationale behind this was that medicine could only effectively be practiced in association with a hospital system from which those unqualified were excluded, but that no similar safeguards had yet developed in respect of psychology, where, he submitted, the 'problem of the unqualified psychologist is substantial', p. 169-70

[77] Ibid, p. 169

[78] Ibid, p. 147 'they have the same freedom, even though it is not a religion'.

deception'. He made the stark point that ' a group of people, by claiming that its particular religion requires the killing of human beings by way of sacrifice, does not obtain a licence to kill according to its creed'.[79]

He cited legal authority to support his point, that even if Scientology could be categorized as a religion, (he was adamant it could not), the Government could still legislate to proscribe harmful practices. The chief decision was *Adelaide Company of Jehovah's Witnesses Inc. v. The Commonwealth* [80], where the High Court held unanimously that 'the Parliament of the Commonwealth was not prevented from making laws prohibiting the advocacy of doctrines or principles which, though advocated in pursuance of religious convictions, were prejudicial to the prosecution of a war in which the Commonwealth was engaged'. Anderson commented that this meant that 'even where there are constitutional guarantees as to freedom of religious beliefs the advocacy of such beliefs may be curtailed or prohibited in the national interest'.

Anderson further noted that the Chief Justice in the *Jehovah's Witnesses* case, Sir John Latham, referred with approval to some United States decisions 'dealing with restrictive action which the government was entitled to take to curtail or punish allegedly religious practices, even though constitutional safeguards for the freedom of religious belief existed'. In particular, the case of *Reynolds v. The United States*[81] was cited, in which Waite C. J. had said that where, for example, plural marriages were not allowed by law, 'can a man excuse his practices to the contrary because of his religious beliefs ? To permit this would be to make the professed

[79] Ibid, p. 147
[80] (1943) 67 CLR 116, (1943) ALR 193

doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances'. Anderson noted in conclusion that 'where there are no constitutional guarantees, the position of the State would be at least as strong', which was presumably a reference to the constitutional position of the State of Victoria. [82]

With respect to the question whether Scientology could properly be called a religion, Anderson stressed that the inquiry was 'not concerned to determine whether the beliefs that were held by Scientologists were religious or otherwise'. This did not restrain him from offering the opinion that 'in fact, Scientology is not a religion',[83] a sentiment repeated on a number of occasions.[84]

Anderson found that Scientology had made a belated attempt to present itself as a religion and protest that its members were being 'persecuted because of their religious beliefs', only when it became apparent during the course of the inquiry that it had been revealed in an unfavourable light. Apart from the occasional reference to Scientology as a 'religious brotherhood' and claims for some affinity with Buddhism during the inquiry,[85] Anderson noted that Scientology was very concerned to establish itself as a 'precise science' rather than a religion and cited an undated pamphlet from the HASI which stated that 'the HASI is non-religious – it does not demand any belief or faith and is not in conflict with faith'.[86]

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[81] (1878) 98 US 145
[82] *Anderson Report*, pp. 167-8
[83] Ibid, p. 147
[84] Ibid, For instance, 'Scientology in Victoria does not remotely resemble anything even vaguely religious, and no serious claim was made that it did,' at p. 167
[85] Ibid, p. 147
[86] Ibid, p. 149

As to the earlier adoption of ecclesiastical titles by Scientologists in the period about 1955-58, Anderson found that this was an early attempt to 'exploit the favourable attitude which the community usually adopts towards ministers of religion'. He said these attempts were along lines suggested by Hubbard, being specific directions issued by him to assume clerical garb and titles to facilitate entry to hospitals 'to inveigle the sick and distressed into Scientology'. Anderson also dismissed claims that the 'founding churches of Scientology', which had been established in the United States, were religious in nature, stating that 'on such evidence as the Board heard … one would not classify their practices as those of a religion'. He submitted that 'their beliefs did not appear in evidence' in the issued handbook which dealt merely with the conduct of rituals and a section headed 'The Church of Scientology Creed', which asserted the inalienable right of man to be free and 'that the spirit alone may save or heal the body'. In any event, he held that the organization in Victoria had not developed such churches.

Anderson noted claims that the E-meter was a 'valid religious instrument used in Confessionals', that 'in the early days of Scientology in Victoria weddings were performed' and that 'some Scientologists claim to be "doctors of divinity" … bestowed by a hubbardian institution in America'. He dismissed the claims for the E-meter, saying that 'in the course of being audited with an E-meter, a preclear is forced to tell his most intimate and shameful secrets and he does not make such disclosures as part of a religious practice' and noted that the weddings were 'supplementary to the conventionally recognized nuptials'. He felt no need to comment further on the status of the Hubbard degrees.[87]

[87] Ibid, pp. 147-8

Anderson devoted some time to an examination of Hubbard's attitude towards established religion. He concluded that 'Scientology is opposed to religion as such, irrespective of kind, or denomination. The essence of Hubbard's axioms of Scientology is that the universe was created not by God, but by a conglomeration of thetans who postulated the universe. Sometimes God is referred to as the Big Thetan. Many of the theories he propounds are almost the negation of Christian thought and morality'. He concluded that 'in a community which is nominally Christian, Hubbard's disparagement of religion is blasphemous and a further evil feature of Scientology'.[88]

An interesting passage in the report deals with a statement issued by Hubbard to the effect that the London and Commonwealth offices of Scientology would be 'transferred to Church status when the founding Church of Washington DC is given full tax exemption'. A Scientology witness, Mr. Williams, is reported to have 'repudiated the suggestion that tax exemption had anything to do with the proposal to give "Church Status"'.[89]

In his general conclusions Anderson was unequivocal; 'the Inquiry has revealed the real nature of Scientology and its serious threat to the mental health of the community, and it is evident that its continued practice should not be permitted'.[90] He therefore made recommendations aimed at suppressing Scientology through public exposure and controlling Scientology by controlling the practice of psychology. The latter would be achieved through registration and then prohibiting unregistered practitioners from conducting potentially harmful psychological practices, including

[88] Ibid, p. 152
[89] Ibid, p. 148

hypnosis,[91] the use of intelligence tests and the use of E-meters (lie detector tests). He was sceptical about the efficacy of prohibiting Scientology by name, pointing out that the HASI had already registered a new name[92] and that such action might bestow the quality of martyrdom upon Scientologists.[93]

While the legislation proposed was aimed specifically at Scientology, according to his brief, Anderson noted that 'the method recommended of dealing with Scientology necessarily involves the surveillance of practices and conduct by persons other than Scientologists'. [94] He therefore canvassed the need for wide exemptions to the provisions of the proposed legislation. [95]

The report was tabled in the Legislative Assembly on 5 October 1965 and was sensationally reported the next day. On page one, after reporting that Anderson had recommended the banning of Scientology and noting the £37,500.00 cost, the Australian luridly quoted Anderson under the sub-heading 'perversion', saying that 'it should not be thought that the foregoing examples exhaust the case in which matters of sex or perversion were dealt with in an obscene and uninhibited way, nor that they mark the limits of mental depravity reached', and noted that 'one section of the report, appendix 19, which dealt with moral laxity, was too obscene to be printed as

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[90] Ibid, p. 167

[91] Ibid, Hypnosis to be defined in terms similar to that in the *English Hypnotism Act 1952 (15 and 16 Geo. and 1 Eliz. 2, c.46*) p.169 and 'enlarged to describe more specifically scientology processes which involve a series of commands, repetitive or otherwise, designed or intended to be used for the purpose of inducing the absence or lessening of inhibitions and repressions', p171

[92] Ibid, p. 167, The College of Applied Philosophy

[93] Ibid, p.169

[94] Ibid, p. 172

[95] *Anderson Report*, suggested that various social workers, officials of marriage guidance organizations, teachers in universities, personnel officers, ministers and other individuals engaged in recognized or usual activities of any bona fide religion, along with qualified medical practitioners and dentists, should prima

part of the whole report for public circulation'. [96] An extensive article followed which paid particular attention to such claims, for example, that during processing normal sexual inhibitions were lowered and 'teenage female auditors discuss the most intimate and disgusting sexual matters with their male preclears'.[97]

It remained now to be seen how the Bolte Liberal government would respond to the potentially controversial recommendations of this sensational, emphatic report - one which might be expected to be treated with some caution.

The Psychological Practices Act (Vic.) (1965)

'a very dramatic response'

In fact the Victorian government's response to the Anderson report was exceedingly prompt. On 10 November 1965, less than five weeks after the report had been tabled in parliament, 'a Bill to provide for the registration of psychologists, the protection of the public from unqualified persons and certain harmful practices, and for other purposes', was debated in the Legislative Assembly. Entitled the *Psychological Practices Bill*, it was introduced by Mr. Manson, Minister without Portfolio,[98] and assented to on 14 December 1965.

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facie be exempted, in view of the fact that various techniques of psychology 'are in varying degrees of constant application in almost every occupation and walks of life', p. 171-2

[96] *Australian*, 6 October 1965 – 'Report calls for ban on scientology'

[97] *Australian*, 6 October 1965 – 'Scientology Report – The Exposure of an Evil. QC finds cult debased and a fraud'

[98] *Victoria Hansard*, (1965-66), Vol. 280, p. 1342

The legislation followed the basic recommendation of the Board of Inquiry and provided for the establishment of a Victorian Psychological Council, with wide powers to regulate the practice of psychologists. The 'practice of psychology', as applied to individuals or groups, was given a broad definition. It included the evaluation of behaviour or cognitive processes or adjustment through the interpretation of tests for assessing mental abilities, aptitudes, interests, attitudes, emotions, motivation or personality characteristics. It also included methods of assisting emotional or behaviour problems at work, family, school or personal relationships and the use of tests, techniques or devices for assessing mental abilities, aptitudes or personality.

Teachers in prescribed educational institutions were exempted. [99] The list of exemptions was expanded in further sub-sections to include; medical practitioners, priests or ministers of recognized religions (being those authorized to celebrate marriages under Commonwealth law or those proclaimed in the Government Gazette for the purposes of the act) acting in accordance with the accepted practices of the religion, and students. Finally, provision was also made to add to or amend the list of exemptions by executive fiat, published in the Government Gazette.[100]

Hypnotism, for entertainment, demonstration or performance purposes 'to which the public are admitted whether on payment or otherwise', was banned, except for registered psychologists and medical practitioners and except in cases where special permission was granted by the Council, and

[99] *Psychological Practices Act, (Victoria) No. 7355 of 1965* in Acts of Parliament 1965 (7238 – 7371) p. 661, s. 2 (1) (a) (b) (c)

only then under the supervision of a medical practitioner. A further exemption was provided for dentists in the course of their practice.[101]

With respect to Scientology, the legislation contained some draconian provisions. Section 30 (1) banned the use of a 'galvonometer E Meter' or other instrument for detecting (or being represented to detect) emotional reactions (unless registered, exempted or given consent). Section 31 (1) imposed a ban on the teaching, practice or application of Scientology for fee or reward, and also made it an offence to advertise or hold out to be willing to teach Scientology. Section 32 required any person to hand over all Scientology records relating to individuals for destruction or other disposal by the Attorney General, who had the power to order the seizure of Scientology records not surrendered. These sections provided for substantial fines ($500 for using an E Meter and $200 for failing to surrender documents) and even imprisonment (2 years) for non-compliance with s.31 (1).

The Minister noted that a bill with as wide an application as possible was preferred, as merely banning various pieces of equipment (a reflection on the re-introduced Galbally bill[102]) would 'merely have checked the organization temporarily and Scientology might once again flourish in another guise'. Therefore section 39 (1) which provided that no unregistered person 'shall practise psychology for fee or reward', was aimed 'specifically at any

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[100] Ibid, s. 2 (2) (3) (4) (5) (6) & (7)

[101] Ibid, s.26. Hypnotism was banned entirely on or by those under the age of 21. It was defined as including mesmerism or similar acts inducing sleep or trance where susceptibility of the mind to suggestion or direction was increased (or intended to be), but not including self-induced states.

[102] *Victoria Hansard*, Vol. 279 (1965-66) - Galbally's *Scientology Restriction Bill* was introduced into the Legislative Council for the third time on 15 September 1965, p. 40

revival of Scientology, with its pernicious practices, under another name or guise'.[103]

In the Legislative Assembly, the parliamentary Opposition supported the immediate implementation of those provisions aimed at Scientology, saying that they were almost identical with the provisions contained in Galbally's Private Member's Bill, but that the remainder of the legislation should be 'examined by a select committee representative of all parties'.[104]

The issue of exemptions for recognized religions was flagged by the Opposition as an area of great concern. Dr. Jenkins noted that the list of religions recognized under Commonwealth law for the celebration of marriage did not include those other than a list of Christian churches and the Jewish faith. He felt that this might be rectified by the proclamation of other religions, but felt that the matter warranted 'closer consultation and examination.'[105]

The issue was explored exclusively by Mr. Holden in his second reading contribution. He noted that the proposed legislation provided that 'recognized religion' meant 'a religion any of whose priests ministers or members are as such authorized to celebrate marriages under the law of the Commonwealth relating to the celebration of marriages or any religion which is proclaimed by the Governor in Council by proclamation published in the *Government Gazette* to be a recognized religion for the purposes of this section.' Referring to the *Australian Government Gazette* No. 48 of 30

[103] *Victoria Hansard*, Vol. 280, (1965-66) - Mr Manson, p. 1345
[104] Ibid, Mr. Stoneham, p. 1906 & 1908

May 1963, he noted that the religions listed consisted of 48 in number, of which 47 were Christian religions and the other was Judaism. He noted that this list of exemptions, which depended on federal action, could be extended under another provision which allowed the Victorian Governor in Council to publish an order in the *Government Gazette* declaring that the proposed Act or any provision thereof did not apply to any person or class of persons. He felt that this was unacceptable as it meant that any religious group not listed under the federal proclamation, such as the Hindus, would have to go 'cap in hand' to ask for an exemption from the Minister. However, the fact that the Governor in Council could extend the list of exemptions also meant that he could refuse to recognize any religion not listed. Stating that 'everyone is entitled to his own beliefs, and it should not be necessary for any religion to have to approach a Government and ask for an exemption', he concluded that the clause should be re-drafted.[106]

Mr. Sutton, for the Government, outlined a rationale for those sections aimed specifically at Scientology when he said, 'the falsity of a theory or doctrine is not the concern of a Parliament in a pluralist society, until it takes shape in the public arena and becomes a menace to the common good. That is what Scientology has done and what it has become. It is time it was banned as a commercial enterprise'.[107] He also noted that "Mr. Anderson stressed that Scientology is not a religion; hence Parliament cannot be accused of violating freedom of conscience in suppressing it as a menace to the community.'[108]

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[105] Ibid, p. 1876
[106] Ibid, pp. 1897- 8
[107] Ibid, p. 1881
[108] Ibid, p. 1883

It was moved by Mr. Stoneham and seconded by Dr, Jenkins, for the Opposition, that the bill, excepting for those sections dealing specifically with Scientology, should be referred to a Select Committee for examination and report. The motion was defeated by the Government and the Second Reading agreed to without further division.

In the Committee stages, the issue of religion was re-visited by Mr. Lovegrove. He noted that the Commonwealth proclamation related to the celebration of marriage, to which some religions 'take a different view'. The implication was that they might not desire to be registered under the Commonwealth provisions. He pointed out that religions not recognized federally included religions that preceded by thousands of years the Christian and Jewish faiths, concluding that 'when one enters this field of religion one does so only with the best of advice, and one does not do it with purely political motivation.'[109]

Also in the Committee stages, in a cameo performance from government member Mr. Birrell, a real hint of foreboding emerged. He said that although he agreed with the contents of Anderson's report, he wanted to point out that 'this provision will cause difficulty for Government's in the future', noting that another controversial group, the Exclusive Brethren, had already become the target of those who wanted to apply the reasoning behind this bill to others seen by some as 'fringe operators in the spiritual-moral field'. Nevertheless, conforming to party political imperatives, he stated 'all Honourable members must agree that the practice (of Scientology) cannot be

allowed to continue without some response from a responsible Parliament, and this is a very dramatic response'. For his trouble he was castigated by the following speaker from the Opposition, who decried his 'nebulous' contribution.[110]

Debate in the Legislative Council was even more intriguing. Mr. Galbally, who had done so much to bring Scientology into the spotlight, was troubled by the result. He thanked the Government for kindly references to the role played by Walton and himself, but then declared; 'I assure the House that I will have no part whatsoever of this Bill. The whale said to Jonah, "If I hadn't opened my big mouth, this would not have occurred," and the House may think that if I had not said so much three years ago, we might not have found ourselves in this pickle to-day'. [111]

He was adamant that the Government's bill was 'a direct assault on freedom of speech, thought and ideas', pointing out that his bill did not seek to ban Scientology, but merely sought to 'stop these people from gorging on the community and charging fees'. He stated, 'I believe we should not interfere with freedom of thought and association'.[112] He found a myriad of faults with the Government's expanded legislation, being particularly scathing of the definition of psychological practice, which he alleged was wide enough to catch football coaches, newspaper leader writers and poker players.[113]

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[109] Ibid, 1910-11
[110] Ibid, p. 1913
[111] Ibid, p. 1998
[112] Ibid, p. 2373
[113] Ibid, Vol 280, pp. 1992-1998 - the Hon. P. V. Feltham alleged it would catch 'social workers, marriage guidance counsellors, sociologists, business administration advisers, management counsellors, industrial training officers, probation officers, Gallup poll workers, personnel officers in industry, and even the members of Alcoholics Anonymous', p 2380

Among other things, he was critical of the fact that people seeking exemptions would have to apply to the Minister alone, and alleged that nuns and lay preachers would not enjoy the religious exemption afforded to priests and ministers, [114] concluding that 'this Bill is too silly to contemplate and the country will quickly rise up in arms against it'. He proposed that 'this House could pass the clauses in the Bill which dealt with Scientology and scrap the rest'.

Mr. Walton had similar concerns. He wondered where the legislation would leave hypnotherapists (who used hypnotism as an essential part of their practice), stating that the Hypnotherapists Association was now threatened with extinction and pointing out that in Canada, legislation enacted to control hypnotism made provision for hypnotherapists. He reiterated that the Opposition wanted Scientology controlled, not banned, and complained that the expensive Anderson inquiry (which had cost £35,293[115]) had delayed legislative action for two years, concluding that the legislation was 'too much too late'.[116]

Perhaps the most perceptive and politically courageous contribution came from Government member Mr. G. J. Nicol of Monash Province, who rose to support the sentiments expressed by Galbally and the Opposition. He declared that the Bill was 'a measure which started out to authorize an execution but which will, in fact, cause a massacre'. He pointed out that the bill was a 'complete negation of many of the freedoms guaranteed under the

[114] Ibid, p. 1992
[115] Ibid, p. 1108. Information provided by Mr. Bolte (Premier and Treasurer) in response to a question from Sir Herbert Hyland.
[116] Ibid, p. 2386 -7

Atlantic Charter', particularly the 'freedom of religion and the freedom of speech'.

He was scathing of the report of the Board of Inquiry, alleging that it exceeded its terms of reference, allowed crusading zeal to outweigh sound judgement, used intemperate language and lacked weight and balance (owing to the fact that it was compiled by one individual). He was also critical of the proposed delegation of power from parliament to the executive, as the Council was to report to the Minister who was also responsible for deciding upon exemptions after casting a very wide net (a power he referred to as the dragnet clause).

Pointing out that the only denominations at that time authorised to celebrate marriages under Commonwealth legislation were the Christian and Hebrew religions (which would therefore be automatically exempted from the provisions of the Act), he warned that the legislation threatened a serious interference with religious practice, condemning the fact that it would be left in the hands of one man (the Minister of Health) to say if other denominations, including the myriad religions of a non-Christian character – Buddhist, Moslem, Shinto, Confucian, Bai'Hai and many others, were 'proper religions'. He was critical of the fact that the proposed legislation authorized an outside body, the Commonwealth Government, to determine for the purposes of Victorian legislation what constituted a religion. He urged the Government to delay all but those sections of the legislation dealing specifically with Scientology. [117]

It fell upon the Hon Archibald Todd, seconded by the Hon. A. W. Knight, for the Opposition, to move that the Bill, with the exception of clauses 30, 31 and 32, which dealt with Scientology, be referred to a Select Committee of the House for examination and report. In debate on the motion Mr. Galbally was specific in his concern about the religious provisions of the Bill, saying 'one urgent reason why this Bill should go to a Select Committee concerns one of our greatest freedoms here, namely, the freedom of religion'. He raised a specific concern that the Sisters of the Poor and the Sisters of Charity might not be able to take advantage of the religious exemption, which applied to 'priests or ministers'. He also noted that a Christian Scientist from Washington, a lay preacher, was to give a lecture in Melbourne and that the Bill invited the prospect of police attending to stop the lecture. Despite these concerns, the motion was defeated by the Government on division by 22 votes to 9. Mr. Nicol was absent from the count. For the Government, Mr. Dickie reasoned that a Select Committee would only 'traverse the same ground as that covered by the Anderson inquiry'.[118]

During the Committee stages the Minister for Health indicated he was troubled by the concerns raised by Mr. Galbally about the exemption for recognized religions. He said 'there is nothing sinister in what we are setting out to do here. We want to do the right thing by all recognized religions. The question posed by Mr. Galbally does raise a problem. It has been published in the press recently that adherents of Scientology who originally claimed that it was not a religion are now seeking its registration

[117] Ibid, p. 2382 -5
[118] Ibid, pp. 2395-7

under Commonwealth legislation as a religion for the purpose of celebrating marriages'. He therefore reported progress on the clause, to enable the matter to be further considered.

When the Committee of the Whole was re-convened later that day, the Minister stated that in law the definition of 'priest or minister' had a wide definition to include the functionaries of religions, and that nuns and religious orders of brothers would be exempted under the category of teachers, or were otherwise unpaid for counselling activities and therefore not caught by the legislation. In response to concerns raised by Mr. Walton and Mr. Swinburne, the Minister of Health undertook to delay the proclamation of those sections dealing with hypnotism, to enable him to examine 'all aspects of the problem'.[119]

However, on the matter which had the potential to undercut the entire purpose of the Bill, the question of what constituted a religion, the Minister was silent. Perhaps his enquiries had assured him that Scientology would get nowhere in its attempt to gain recognition under federal law. Therefore the legislation was passed, Achilles heel and all.

Sections of the *Psychological Practices Act* empowering the Attorney General to issue a warrant for the seizure of Scientology documents were proclaimed in the mid-afternoon of 21 December 1965 and at around 5pm, police, reportedly in the company of two officers of the Attorney-General's department[120] (and Health Department officials[121]), entered Scientology

[119] Ibid, p. 2415-19
[120] *Age*, 22 December 1965- 'Thousands of Files in Scientology Raid'

headquarters and asked the organization's secretary to hand over files and records. A search was conducted of the premises, files burning in drums at the rear of the building discovered and a search made of the adjacent alley, where a file had allegedly been passed through a window and placed in a car. It was reported that about 4,000 personal files on clients were seized and taken away in a table-top truck to be delivered to the Attorney-General,[122] where they would be 'studied by officials of the Crown Law and Health Departments, who would report to him "in due course"'.[123]

The Australian reported on 23 December 1965 that police were hunting for files that had allegedly been taken elsewhere and that 400 files taken from Scientology headquarters were being examined. It was also reported that "signs advertising free introductory lectures about scientology had been removed, but two large illuminated signs were still standing.[124] Three months later the Victorian Government approached the Federal Postmaster-General to see if action could be taken to stop Scientology literature being posted through the mail from addresses in Victoria. The Government was advised that the Federal department had no power to intervene, but Chief Secretary Mr. Rylah warned that 'anyone found posting illegal Scientology pamphlets or dropping them into letter boxes would be liable to prosecution', presumably under state law.[125]

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[121] *Sydney Morning Herald*, 22 December 1965 - 'Scientology files seized in raid'
[122] Also reported in the *Australian* (date)- 'Scientologists burn papers during raid'
[123] *Herald*, 22 December 1965 – 'Scientology files to be examined'
[124] *Australian*, 23 December 1965 - 'Hunt for hidden Scientology files' (The free introductory lecture signs would have offended against s. 31 (1) but a large sign, perhaps merely depicting the name "Scientology," would not have been caught by the section.) The report of 400 files seized conflicts with the report in The Australian that 4,000 files were seized, but I have no information to confirm either one.
[125] *Age*, 11 March 1966 – 'New Scientology probe sought'

Meanwhile, the lord and master of the Scientologists had not taken developments lying down. In response to the Anderson Report, Hubbard, following his propensity to attack rather than defend, produced a lengthy document entitled *Kangaroo Court. An Investigation into the conduct of the Board of Inquiry into Scientology*,[126] which began with a diatribe which stated, *inter alia* that 'only a society founded by criminals, oragnized by criminals and devoted to making people criminals, could come to such a conclusion …the foundation of Victoria consists of the riff-raff of London's slums – robbers, murderers, prostitutes, fences, thieves – the scourings of Newgate and Bedlam … the growth of ideas which require freedom of expression and security under the law, is stunted under a system which still applies the old grim solutions to problems which have passed away … the niceties of truth and fairness, of hearing witnesses and weighing evidence, are not for men whose ancestry is lost in the promiscuity of the prison ships of transportation'.[127]

The tract is a long argument against the alleged excesses of the Anderson inquiry, including the allegation that it was a biased witch hunt, as well as a justification for Scientology, making the assertion that it is a religious movement. Hubbard makes an audacious attack on the integrity of the inquiry and upon the inquirers, Anderson and Just. He alleges that Anderson, 'bullied and intimidated witnesses', was 'bigotted (sic), extremely biased, pompous and obsessed with his own importance', was incompetent and prejudged the issues, among other things. He alleged that 'early on in

[126] Author unstated, *Kangaroo Court* (Hubbard College of Scientology, Saint Hill Manor, East Grinstead, Sussex, England, 1967)
[127] Ibid, p. 3

the Inquiry, Anderson and Just began a systematic campaign of vilification' against Scientology.[128]

In a prelude to *Kangaroo Court*, Scientology is described as 'a religious philosophy, designed and developed to make the able more able'. It is later claimed that 'Scientology, though not based on Buddhism, regards itself as the spiritual successor of Buddhism and shares certain beliefs with Buddhism and early Christianity, amongst others …'. The Electrometer, or E-meter, is described as an 'aid to confession'.[129] Hubbard alleged that Anderson found that Scientology was not a religion 'against the weight of the evidence', in the process displaying his 'prejudice and incapacity', having 'prejudged the question'. Anderson is quoted from the Inquiry transcript as having said 'as I understand it, Scientology is not a religion; it is not taught as such, so I am not concerned to investigate it along those lines'.[130]

Hubbard submitted that there was 'ample evidence to demonstrate beyond a shadow of a doubt that Scientology is basically a religion'. The definition he relied upon was that to be found in *Webster's New 20th Century Dictionary* which in essence stated it to be 'belief in divine or superhuman power or powers to be obeyed and worshipped as the creator and ruler of the universe; expression of this belief in conduct and ritual'.

He referred to the Articles of Incorporation of the Hubbard Association of Scientologists International, which stated its purpose to be to 'establish a

[128] Ibid, pp, 11, 12 & 14
[129] Ibid, pp. 4-5

religious fellowship association for the research into the spirit and human soul and the use and dissemination of findings.' He submitted that there were several statements in the transcript confirming the religious claims of the organization, such as 'a Scientologist is a first cousin to the Buddhist, a distant relative to the Taoist … the creed of the Scientologist is freedom for all things spiritual on all dynamics' and 'Scientology is a religion in the oldest sense of the word, a study of wisdom. Scientology is a study of Man, as a spirit, in his relationship to life and the physical universe … it is non-denominational' and further, 'Scientology tries to help an individual to realize his full spiritual potential in life'.[131] However he alleged that both Anderson and Just 'had fixed opinions that Scientology was not a religion or system of beliefs', claiming that 'the Board could not reconcile them (Scientologist's views on spiritual matters) with the Board's own personal Roman Catholic beliefs'.[132]

He cited the *Jehovah's Witnesses* case referred to by Anderson to support his contention that Scientology fell within a broad definition of religion, quoting a passage from the judgement of the Chief Justice, Sir John Latham, when he said 'the scope of religion has varied greatly during human history. Probably most Europeans would regard religion as necessarily involving some ideas or doctrines affecting the relation of Man to a Supreme Being. But Buddhism, one of the great religions of the world, is considered by many authorities to involve no conception of a God … it is not an

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[130] Ibid, p. 38
[131] Ibid, pp. 38-9
[132] Ibid, p. 47

exaggeration to say that each person choses the content of his own religion.'[133]

In conclusion, Hubbard stated his case, saying that 'the gulf between science and religion has been bridged, and a search into the relationship between mind and spirit has produced results far beyond the original expectations of Scientologists. Scientology is a religion. It has been a religion since its inception as an inquiry into the human condition'.[134] Hubbard's overall conclusion was defiant, and possibly prophetic: 'we will be here teaching and listening when our opponent's names are merely miss-spelled references in a history book of tyranny'.[135]

Even Hubbard's unauthorised, critical biographer, Russell Miller, noted that 'the storm caused by the Anderson report was not merely restricted to ephemeral headlines: it provoked further and continuing media investigation into Scientology and prodded governments into taking punitive measures against the church. The reaction, sociologist Roy Wallis noted, was comparable to an international moral panic'.[136] Miller was highly critical of the tenor of the Anderson report, saying that to 'condemn the church as "evil" was to brand its followers as either evil or stupid or both – an undeserved imputation'.[137]

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[133] Ibid, p. 41
[134] Ibid, p. 48
[135] Russell Miller, op. cit, p. 255
[136] Russell Miller, Ibid, p. 254 – refers to Roy Wallis, *The Road To Total Freedom*, London 1976
[137] Ibid, p. 253 Miller wrote about the Anderson report, 'in its intemperate tone, its use of emotive rhetoric and its tendency to exaggerate and distort, it bore a marked similarity to the writings of L. Ron Hubbard'

Whether its followers deserved the imputation or not, the Anderson report's condemnation of Scientology and the Victorian government's response had inexorable ramifications elsewhere, with other states moving to implement draconian legislation against the 'cult,' effectively banning it in three states. In 1968 the West Australian government passed the *Scientology Act* and in 1969 the South Australian government passed the *Scientology (Prohibition) Act.*

CHAPTER TWO

CONTINUED SUPPRESSION, FEDERAL RECOGNITION AS A RELIGION AND THE UNRAVELING OF STATE LEGISLATION

The legislation in Victoria did have a suppressive effect on the Scientology organization. In a retrospective article published by the *Age* in 1980, Mr. Allsop, a Scientologist, claimed that before the enactment of the legislation in 1965, 'Melbourne had one of the biggest churches in the world, maybe (sic) 8,000 people, but one by one they left'. However, he claimed that by 1968, despite the legislation, the Church was back on its feet and was holding suburban house meetings.[138]

Certainly there was plenty of evidence in newspaper articles to suggest that at least by 1969, meetings of Scientologists were being held in suburban houses in Victoria. In July 1969, the president of the Victorian Scientologists, Mr. I. J. Tampion, claimed that 'services' were being held every Sunday night at Hawthorn, with meetings at five other locations. He claimed that the Church was operating within the law, saying however, that 'we don't intend for that law to remain'. He said that the E meter (which was specifically prohibited) was not being used, and claimed that the authorities were well aware of their activities. The address of 'headquarters' was published and it was noted in the article that no signs identified the premises (a suburban house), which contained a chapel, two offices, an

[138] *The Age*, 16 July 1980 – article entitled "A Church Returns and Finds a Home – Rebirth of Scientology", by Damien Murphy

interview and reception rooms. It was also reported that a donations box was installed in the entrance hall with a 'sign asking for donations for the expansion of Scientology'. Mr. Tampion said that the 'movement was beginning to grow and become organized after a complete collapse when it was first banned'. [139]

Claims that the Government was effectively turning a blind eye to the activities of Scientology may have prompted some reaction. The situation in Victoria degenerated into a series of skirmishes between the Scientology organization and the Government and its agents. The Crown Law Department began to examine the legal implications of the reported open meeting of Scientologists and the Minister for Health threatened to amend the legislation if necessary to 'make sure Scientology can't reappear in Victoria and bring distress and unhappiness to people'.[140] This was followed by a police investigation ordered by the Acting Premier, Sir Arthur Rylah.[141]

In reply the Scientologists announced they would picket parliament house and hold a meeting at which Scientology would be taught in defiance of the legislation. [142] This was in conjunction with the arrival of the head of Scientology's legal department (along with an English QC), who was eager to issue a writ to challenge the Victorian ban. [143] A group of 20

[139] *Age*, 19 July 1969 – 'Scientology back again,' by Ron Holdsworth. Also *Herald*, 12 September 1970 – 'Cult of Scientology. It lives on at Balaclava,' which described suburban home meetings and *Mercury*, 10 October 1970 –'They are at it again – but not in Tasmania. Those Mind Benders called Scientologists,' which noted Scientologist claims that they were again operating in Victoria
[140] Unsourced article circa 1969 'Check on cult meeting'
[141] *Herald*, 19 July 1969 – 'Rylah Orders Probe into Scientology'
[142] *Age*, 11 August 1969
[143] *Age*, 6 August 1969 – 'Scientology brings in legal chief on Vic. Ban'

Scientologists demonstrated at Essendon airport when the Premier returned from a trip abroad, with one demonstrator wearing a clerical collar and a metal cross around his neck declaring that the protest was against 'religious persecution'.[144] The writ seeking damages was directed against Kevin Anderson, now a Supreme Court judge, and counsel who had assisted the inquiry, Gordon Just, now a County Court judge. It was claimed that in their report on Scientology they were biased, went beyond their terms of reference and damaged the operations of Scientology.[145]

The Government responded by introducing the *Evidence (Boards and Commission) Bill*, which was designed to retrospectively defeat any such writ, which was apparently an unprecedented action against a government inquiry in Victoria.[146] Not to be stopped, the Scientologists issued writs for libel against Anderson and the Attorney-General.[147]

Efforts were also made to suppress Scientology at a federal level. In September 1968, fifty copies of the infamous publication entitled *Kangaroo Court* were seized by the deputy customs officer in Adelaide and forwarded to Canberra for examination.[148] In July 1969 Scientologists demonstrated outside the Australian consulate office in New York against the legislation in three Australian states, and presented a petition to the Consular-General

[144] *Herald*, 28 July 1969 – 'Bolte home to protest.' This was at a time when Scientology claimed about 1,000 members, with several hundred active members. See *Age*, 6 August 1969 Op. cit
[145] *Age*, 29 April 1970 – 'Scientologists suing judges.' *Canberra Times* reported on the same date that the judges had been accused of 'committing a misfeasance in a public office - 'Damages claim by Scientologists'
[146] *Australian*, 23 December 1971 – 'Harassed Scientologists cry "fascist"'
[147] *Canberra Times*, 28 September 1971 – 'Judge is sued'
[148] *The Advertiser*, 18 September 1968 – article entitled '50 Books of Cult Seized'

seeking Federal intervention to "stop the repression of religion in Australia."[149]

In May 1972, a prospective English migrant, Mr. Geoffrey Silver, claimed that he had been denied entry to Australia as an assisted migrant because he noted Scientology as an employer on his application form. He claimed that he had been told this 'off the record' by a migration officer and that he had also been denied other entry visas.[150] His story was partly confirmed in Federal parliament in November, when in answer to a Question Without Notice on the matter, the Minister for Immigration, Mr. Forbes, said that consideration of Mr. Silver's application had included his association with Scientology, and that 'assisted passages were not granted to known adherents of Scientology.'[151] The Australian consulate in New York had been subjected to another protest and received a letter to pass on to the Immigration Minister, demanding that Silver be allowed to enter Australia.[152]

A decade later, some interesting details of the operations of the Australian Security Intelligence Organization (ASIO) were revealed in a High Court case. [153] The Scientologists sought a declaration that ASIO was continuing to unlawfully collect and disseminate information about them, particularly to prospective employers. This was an unwelcome surveillance and intrusion that had apparently been going on for some time.

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[149] *The Australian*, 30 July 1969 – article entitled 'New York Ignores Protest Against "Hitler" in Australia', by Fred Knight
[150] *The Sydney Morning Herald*, 25 May 1972 – article entitled 'Scientologist says migration barred'
[151] *The Australian*, 1 November 1972 – article entitled 'Scientology man not allowed in'
[152] *The Herald (Melbourne*), 16 November 1972 – article entitled 'Australia "land of intolerance'" by Jack Cannon
[153] *Church of Scientology v. Woodward, (1983) 154 CLR 25*

Although the declaration was rejected in the first instance, on appeal it was held that judicial review was available, but that the onus of proof upon the plaintiff would be heavy, including the possibility that much of the evidence would be subject to Crown privilege. Following the death of Aickin J. before he had delivered his judgement, the Court was equally divided on the possibility of the plaintiff having any chance of success if the matter went to trial, and so the matter was dismissed on the prevailing opinion of the Chief Justice.[154]

Recognition as 'religion' under federal law

'wildfire expansion now'

The Gellie conscription decision

At the end of 1970 a legal milestone occurred in the campaign of Scientologists to gain acceptance as a religion, although it was some time before the full ramifications emerged. Acting under federal jurisdiction, a Perth Petty Sessions Magistrate granted an exemption to Scientologist Minister Jonathan Gellie from conscription under the *National Service Act 1951(Cth).* The magistrate found the Church of the New Faith to be a religion for the purposes of the Act, which exempted ministers of religion from rendering national service.

In his judgement, the magistrate noted the legislation 'prohibiting' the teaching, application or study of Scientology in South Australia and the legislation 'prescribing' its activities in Western Australia. However, he

[154] Gaze & Jones, *Law, Liberty*, pp. 222-226

concluded that ‘many of the great religions of today have been banned at some time of their development, not least of which the Christian religion, and I could hardly think that this could be considered grounds that it was not, whilst banned, a religion’. He further noted the opinion of Chief Justice Sir John Latham in the 1943 Jehovah’s Witnesses case, quoting the Chief Justice saying, ‘what is religion to one is superstition to another’.[155]

The Gellie decision gave heart to the Scientologists and impetus to their campaign to have the state legislation overturned. So too did the election results in South Australia on 30 May 1970, where the Hall Liberal Country League was defeated and replaced by the Dunstan Labor administration and in Western Australia on 3 March 1971, where the Brand Liberal-Country Coalition was defeated by the Tonkin Labor Party. The new administrations, although expressing no approval of Scientology *per se*,[156] had both opposed the anti-Scientology acts on civil liberties grounds when in opposition and might be expected to reverse them.

Marriage Act Proclamation of 1973

Another important political milestone occurred in August 1972 when Senator Murphy, Labor’s Federal Senate Leader and spokesman on legal affairs, announced that a Federal Labor Government would formally recognize the Church of Scientology under the *Marriage Act 1961 (Cth)*.

[155] *Daily News*, 10 December 1970 – ‘ “New Faith” Minister Granted Exemption’
[156] In fact a number of Opposition members had expressed concern about it activities.

The effect of this would be that Scientology would be officially authorized to conduct marriages in all Australian states.[157]

The Murphy announcement caught some of his federal colleagues by surprise. A contretemps developed when the Labor Whip in the House of Representatives questioned Murphy's ability to commit the party to a policy initiative without consulting the 'councils of the Labor Party', stating his own belief that 'Scientology is not a religion'. [158] Several other Labor MPs reportedly said 'they could not understand why Senator Murphy had agreed to recognize an institution which was widely regarded as harmful'. [159]

However, Murphy was able to enlist the support of his state colleagues in South Australia, where the Attorney-General announced helpfully that the anti-Scientology legislation would be repealed. [160] Support was not so forthcoming in Victoria, where state Labor sources reportedly said that 'there had been no change in policy since Labor supported the Victorian ban on Scientology'.[161] There may have been further tussles behind closed doors, and a week after his bombshell Murphy was to issue a statement making the point that he 'expressed no approval of or endorsement of' Scientology. He was just concerned to ensure that the 'principles of religious freedom be upheld'.[162]

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[157] *Advertiser*, 25 August 1972 – 'Scientology law repeal planned'.
[158] *Age*, 26 August 1972 – 'Senator's pledge on cult invalid'
[159] *Australian*, 25 August 1972 – 'Scientology makes a comeback'
[160] Ibid
[161] *Age*, 25 August 1972 – 'Labor all clear on Scientology'
[162] *Canberra Times*, 28 August 1972 – '"No faith" in belief of group'

But the Murphy pronouncement was to stand and upon the election of the Whitlam Labor government in December 1972, the die was cast. On 15 February, 1973, a proclamation was issued in the *Commonwealth Gazette* listing 'certain religious bodies and religious organizations' to be recognized denominations for the purposes of the *Marriage Act 1961-1966*. Included among a number of newly recognized religions was the Church of the New Faith Incorporated.[163]

The proclamation was an executive action not requiring legislation, but in response to a question from Senator Greenwood, Attorney-General Murphy said, 'section 116 of the Constitution .. in effect, guarantees that there will be no discrimination between religions.. There are religious sects which may earn the disapproval of many sections of the community, but it seems to me that under the Constitution the Australian Government has an obligation not to discriminate against sects. I think that this is a bad system. I think it is quite wrong that there should be incorporated in an Act of this Parliament some requirement that, in effect, the Government recognizes religious denominations. I think that there should be another system',[164] noting in a response to a follow-up question by Senator Greenwood that 'even if it were a little more cumbersome, it would have been much better to provide that various reputable persons should be registered to carry out these marriage ceremonies'.[165]

[163] No. 20, 15 February 1973, p.2
[164] *Australia. – Parliamentary Debates*, Senate, 13 March 1973, p. 343-344. Senator also referred to the Incorrporation of the Church of the New Faith under SA and NSW laws and the Gellie decision by a magistrate exercising Federal jurisdiction
[165] Ibid, p 350

Whatever qualifications Murphy might have expressed about his views on the legislative system or the merits of Scientology as a religion, his proclamation was greeted with jubilation in worldwide Scientology quarters. Murphy reportedly advised Scientology headquarters of his decision while on a visit to London. He was rewarded with high praise in the organization's newspaper entitled *Freedom*, which produced a front page story lionizing him. Scientologist Mrs. Mary Sue Hubbard, the 'controller for the founder,' noted that 'honest politicians do exist and Australia can look forward to an exciting future under the Labor government.'[166] L. Ron Hubbard himself was moved to declare 'there's no reason not to create a wildfire expansion in Australia now. Disseminate more, train more, audit more'.[167]

Winding Back State Legislation

'Scientology is winning'

Even before the decision to list Scientology under section 26 of the *Marriage Act 1061 (Cth*) had been announced by the Government, Scientologists were proclaiming that the recognition would make the Victorian 'ban null and void, because it specifically exempts organizations acknowledged under the *Marriages Act.'* It was further claimed that 'recognition would greatly help in the repeal of the ban on Scientology inWA and SA' and that 'many Liberal members of Parliament in WA had

[166] *Nation Review*, 28 April 1973 – 'Religion on the march – Scientology's new reverence', which also noted that the church was now operating in Melbourne, Perth, Adelaide and Sydney and that 'although 20,000 members have passed through the books, officials agree that 3,000 would be close to the actual number of practising brethren'
[167] *Melbourne Observer*, 15 April 1973 – 'Scientology Plans a Big Comeback'

said that they would never have banned Scientology if it had been a religion'.[168]

In fact, the new Labor government in Western Australia had already introduced a bill, the *Scientology Repeal Bill*, on 14 November 1972, to repeal the whole of the *Scientology Act 1968*, on the basis that it had proved to be unenforceable and in accordance with its previous opposition to the measure as a matter of policy principle.

In South Australia, where a Labor government had been elected ten months prior to the Labor government in Western Australia, moves to repeal the *Scientology (Prohibition) Act 1968* had also proceeded. Consideration was being given to introducing a *Psychological Practices Bill*, as foreshadowed by the now Premier, Don Dunstan, in his speeches opposing the 1968 legislation, and this needed investigation.

Following the election a committee was appointed by the Chief Secretary to examine the question, and according to the Attorney-General, the deliberations of that Committee had occupied a much longer time than expected.[169] However, when the second reading of the *Psychological Practices Bill* and its cognate the *Scientology (Prohibition) Act 1968 Repeal Bill* were introduced on 21 November 1972, just a week after the WA repeal bill was introduced, the South Australian parliament had the benefit of the *Report of the South Australian Committee of Inquiry into the Registration of Psychologists*, to assist in its deliberations.

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[168] *West Australian*, 13 February 1973 – 'Religious status for Scientology'

In Victoria, where it had all started, it was to take another decade and a strong rearguard action by authorities before a bill to amend the *Psychological Practices Act 1965*, so as to remove those sections relating specifically to Scientology, was introduced in 1982.[170] Four years passed before the impact of the 1973 *Marriages Act* proclamation finally hit home in Victoria when Mrs. Elaine Allen, the leader of the Scientologists in Victoria, was 'registered' under state provisions as a minister of religion. The Acting Minister for Health, Mr. Jona, said that she was the only Scientologist in Victoria, as the only ordained Minister, permitted to use the E-meter. He also affirmed that if other Scientologists were found to be using the device the Government would act, stating 'the spirit of the legislation must be preserved'.[171]

However, the Victorian government had finally bowed to the inevitable, with the State Registrar of Ministers for Religion , Mr. J. M. Ryder, officially registering her under the denomination 'Church of Scientology Incorporated.' The Chief Secretary, Mr. Dickie, while recognizing that the Commonwealth *Marriage Act* took precedence over the Victorian *Psychological Practices Act,* after having delayed Mrs. Ryder's registration to obtain legal advice, declared, somewhat lamely, that 'we certainly would not tolerate the practices which were part of their cult before 1964'. He also

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[169] *South Australia Parliamentary Debates* (Hansard) Session of 1972, (A.B.James, Govt. printer, Adelaide, 1973), on 22 November, 1972 – referred to in a speech by the Attorney-General p. 3393

[170] *Age*, 25 June 1982 – 'Scientology ban lifted', reported that a bill had been introduced into the Legislative Council on 24 June 1982, that there were about 6,000 practising Scientologists in Victoria, despite the ban, and that the Liberal Opposition did not oppose the repeal bill

[171] *Age*, 20 May 1977 – 'Scientology E-meter back at $20 an Hour'. Jona also admitted that the Government had not been able to prevent a visiting Scientology minister from NSW from conducting services in Victoria, Unsourced and undated photocopy of article from National Library of Australia entitled 'Jona: We're Watching'

maintained, ‘she is recognized as a minister of religion but whether we recognize Scientology as a religion is entirely another thing’.[172]

Notwithstanding the Government’s attitude, the Scientologists were jubilant. Mrs. Allen said, ‘we’ve been given the green light … it’s been a long time coming and it is a great victory’. Headquarters in England were reportedly in ‘raptures,’ a spokesman declaring ‘its beautiful. We’re going to clear the planet earth. Scientology is winning and its wonderful’.[173]

[172] *Age*, 19 May 1977 - ‘State says yes to Scientology minister’

[173] Unsourced photocopy of newspaper report from National Library circa June 1977 referred to above entitled ‘Jona: We’re watching’ and subtitled ‘ “Raptures” at church’s world HQ’. With membership in Victoria claimed to be 5,000, with 50 on staff, 40 ministers in training and about 20 students on courses, things were certainly looking more promising for Scientology, although on those numbers a recruitment victory over planet earth was still a long way off

CHAPTER THREE

MEMBERSHIP OF THE RELIGIOUS FRATERNITY

Landmark Decision. The Pay-roll Tax Case of 1983

' a very old form of tax avoidance'

With recognition as a religion under federal laws and the withdrawal of anti-Scientology legislation in Western Australia and South Australia, in 1980 the Scientologists had resolved to pursue the issue of payroll tax exemption in Victoria.[174] The exemption under s. 10b of the *Payroll Tax Act 1971 (Vict.)* was for 'pay-roll tax wages paid or payable "by a religious or public benevolent institution, or a public hospital"'.[175] The exemption under similar provisions had already been granted to Scientology in other states,[176] and so a challenge against the refusal of the Victorian Commissioner for Payroll Tax to grant an exemption, might have been expected to have a reasonable prospect of success.

However, Mr. Justice Crockett of the Victorian Supreme Court was in no doubt that the claims of Scientology to be a religion for the purposes of pay-roll tax exemption were a 'sham'. He described the organization as a 'grotesque parody of Christianity' and its practices as 'no more than a mockery of religion'.[177]

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[174] *Age* – 'Scientologists seek recognition', 21 November 1980
[175] *The Church of the New Faith v. The Commissioner of Pay-roll Tax (Victoria)* (1983) 154 C.L.R. 120 at p. 120
[176] *West Australian* – 'Judges: Scientology is a religion' by Margot Lang, 28 October 1983, noted that Scientology had already been exempted from pay-roll tax in WA, SA, NSW and the ACT
[177] *Age* – 'Scientology religion claim sham, says judge', by Prue Innes and Aileen Berry, 19 December 1980, p. 3

He had delivered judgement on 18 December 1980 on the appeal by Scientology against the refusal of the Victorian Commissioner of Payroll Tax to grant it tax exemption as a religious institution. Judge Crockett found that the aims of Scientology were best summed up by its spokesman before the Anderson inquiry as being 'to increase the efficiency and well-being of the individual … and society as a whole'.[178] He held that the religious trappings of Scientology were a device which was cynically adopted, first in the United States,[179] to 'enable such attendant advantages as would thereby accrue', and then in Victoria to avoid 'destruction' under the provisions of the *Psychological Practices Act 1965.* This legislation had 'driven the organization underground', or 'into other States', and there was no 'better method to avoid destruction than to simulate', and become accepted as a religion'. [180]

Evidence of this deception was to be found in the literature of the organization itself, which contained 'unequivocal rejection of the notion that Scientology is a religion', had later been interpreted afresh and had been supplemented with new works. His Honour provided as an example of an 'unequivocal rejection', a statement in a Scientology magazine entitled 'Testing', which said 'H.A.S.I. (the Hubbard Association of Scientologists International) is non-religious – it does not demand any belief or faith nor is it in conflict with faith. People of all faiths use Scientology'. He also noted

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[178] *Sydney Morning Herald* – 'Not religious, Judge rules – Scientologists lose appeal', 19 December 1980, p. 9

[179] *Church of the New Faith*, pp. 102. He noted that the Bill of Rights in the U.S. bestowed a cherished guarantee of religious freedom so that 'the masquerade in that country might be thought to have been beneficially possible.'

[180] Ibid, p. 103

that 'there can be found in none of Mr.Hubbard's publications written in the 1950s and early 1960s any claim that Scientology was religious in content or intent.'[181]

With respect to the alleged re-interpretation, he noted that this involved some dressing up of Hubbard's 'literary output', the vast mass of which meant that they could not be rewritten or destroyed. Therefore 'prologues were sometimes added and often a gummed page was included as a frontispiece', stressing 'the supposedly religious nature of the intellectual revelations to be found described in the book itself'. [182]

With respect to new works, including two new books, *The Scientology Religion, The Church of Scientology* and *The Church of Scientology: Background and Ceremonies*, his Honour was satisfied that, 'prior to 1966 none of these books was published in the form in which it now is to be found'. This was despite claims that they were republications of earlier works. He concluded that: 'each of these works is clearly intended to invest Scientological teachings with a conceptual doctrine that is fundamentally religious and to dress up the practices and ceremonies in a manner designed to give verisimilitude to such doctrine by the use of symbolism and paraphenalia of a kind which people, at least in Western Countries, have come to associate with participation in religious activity'.[183]

Judge Crockett noted that the 'cosmetic changes' made by Scientology and the 'new image assiduously cultivated' since the enactment of the

[181] Ibid, p. 99
[182] Ibid, p. 101

Psychological Practices Act 1965, had been 'singularly successful'. He examined administrative decisions which had favoured the organization, including the proclamation under the *Marriage Act 1961 (Cth)*, payroll tax exemptions in other states and the ACT. However, he held that they were not relevant to the present determination, as it was not known what material had been put before the officer who made the decision and no reasons were given. [184]

He also looked at the judicial or quasi-judicial decisions made in Australia, including the Gellie decision under the *National Service Act*, a decision of the Victorian Town Planing Appeals Tribunal in 1973 and defamation case considered by the Western Australian Supreme Court in 1978. He criticized all the decisions, saying that 'in no instance does it appear that the history of the development of the cult was investigated fully or at all'. With respect to the Gellie decision, he said that 'no attempt was undertaken to cast doubt on the bona fides of the organization's holding itself out as a religion' and that a 'liberal' interpretation had been adopted of the term 'religion'. He was critical of the Victorian Town Planning Appeals Tribunal, which had allowed Scientology a permit to use certain land as 'a place of worship', for being overly influenced by the *Marriage Act* proclamation and for 'accepting at face value' the claim of the appellant that it was engaged in 'religious' activities. Finally, he criticized Brinsden, J., in the case of *Church of Scientology v. Anderson*[185] for relying on the evidence of two so-called 'expert' witnesses, a Catholic and an Anglical priest, who had relied

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[183] Ibid, pp. 101-2
[184] Ibid, p. 106
[185] (1980) W. A. R. 71

upon three documents only to decide that Scientology amounted to a religion. [186]

Having noted that 'it is not for me, of course, to pass any judgement on the correctness or otherwise of the doctrines of Scientology',[187] his Honour nevertheless concluded that 'Scientology as now practiced, is in reality the antithesis of religion' and that 'the adroitness' with which it had so 'cynically adapted' itself, served only to 'rob the movement of the sincerity and integrity that must be cardinal features of any religious faith'.[188] Apart from the question of 'masquerade' perpetrated by those party to the 'deception', Mr. Justice Crockett also ruled that for those who may genuinely believe in the principles of Scientology, 'gullibility cannot convert something from what it is to something it is not".[189]

In February 1981 the Scientologists lodged an appeal to the Full Court, which consisted of three judges. It was dismissed unanimously on 5 May 1982.

Young, CJ, noted that the account of Crockett J. at first instance, with respect to the history of the modification of Scientology's ceremonies and practices, had not been seriously challenged. He said of the works produced, that 'it is difficult to avoid the conclusion that one of the reasons for writing this way is that it permits an explanation of the functions or purposes of the organization to be trimmed to whatever advantage is sought or can be

[186] *Church of the New Faith*, pp. 107-8
[187] Ibid, p. 110
[188] Ibid, p. 109
[189] Ibid, p. 111

obtained'.[190] It seems that on this basis he acknowledged that 'a point must be reached where the court is able to say that a so-called religion is no more than a mockery', a point reached in the case of *United States v. Kuch (1968) 288 F. Supp. 439.,*[191] and apparently also by Crockett, J., who did not however refer to *Kuck.* Despite acknowledging this route, the Chief Justice refrained from endorsing it or otherwise. He left the point hanging and continued to follow his own long road to decision.

This began with the criticism that Crockett, J. had in fact made his decision on the basis of forming an 'opinion upon the truth of the doctrines propounded or making an assessment of the sincerity' of the 'founder or leaders or adherents of the particular cult in question'. This criticism was leveled even though the Chief Justice noted that 'the conclusions may well be right and there is undoubtedly some basis for them in the evidence'. Indeed, one wonders how a decision could have been made in *Kuch*, which the Chief Justice acknowledged, without such assessments. However, the Chief Justice felt that Crockett, J. might have offended the sage advice of Latham, CJ. in *Adelaide Company of Jehovah's Witnesses Inc. v. Commonwealth* [192] where he had said 'it is not for a court, upon some a priori basis, to disqualify certain beliefs as incapable of being religious in character'.[193]

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[190] Ibid, p. 116
[191] Ibid, p. 119
[192] *(1943) 67 C.L.R. 116* at p. 124
[193] *Church of the New Faith,* p. 119

The Chief Justice noted that 'the question is what Parliament meant by the words "religious institution"' in the *Pay-roll Tax Act 1971 (Vict.)* [194]and noted with approval the fact that the difficulties in arriving at a satisfactory definition had led courts to 'eschew the task of defining religion to any extent greater than is necessary for the particular task in hand'.[195] However, instead of confining his examination to the legislative intention at that time, he felt that the answer to the specific question depended upon the general question, 'is Scientology a religion ?' On this basis, he proceeded to examine a number of 'useful indicia', which did not seek to challenge the validity of the beliefs or the genuineness of the proponents, but rather provided some sort of guide as to what might constitute a religion.

These included three indicia specified in the United States case of *Malnak v. Yogi (1979) 592 F. 2d 197*, being the nature of the ideas, the comprehensiveness of the ideas and the trappings of the organization. To these he added three further indicia, being public acceptance, method of joining and commercialism. After examining Scientology in the light of each one and then 'drawing together all the indicia', he concluded that Scientology was not a religion.[196]

His Honour Mr. Justice Kaye, agreed substantially with the reasoning expressed by the Chief Justice, and determined to attempt to adhere to the 'primary rule of construction', to find the 'plain and ordinary meaning' of the words found in the statute. However, he also moved to a consideration of Latham's observations on the meaning of the word 'religion' in another

[194] Ibid, p. 123
[195] Ibid, p. 120

context and then referred to the decision in *United States v. Seeger*[197], a conscientious objection case, where it was held that 'a belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God' and therefore qualified for the religious exemption as a 'belief in relation to a Supreme Being'.[198]

His Honour felt that the American definition, which was wider than that adopted by dictionaries for the term 'religion', was not 'understood or used in everyday speech by Australians in that sense'. In addition, the British Courts had declined to follow *Seeger's* Case. Therefore, distilling the basic elements of religion common to the three dictionary definitions examined, as well as finding some guidance in the British cases, he found that a 'religion' is 'the recognition of the existence of a superior or supernatural being or power with whom an individual has a personal relation and upon whom his own existence depends', which 'may be without name' and 'may not be a single entity'. He added the rider that a person's 'relationship to his own deity is characterized by the belief that his is the true and only deity'.[199]

He found that the constitution and general rules of the Church of New Faith failed to 'disclose acknowledgement of a particular deity by all members .. or a relationship between all members with that deity' and that the Scientology literature contained 'repeated statements that Scientology is non-religious and it does not demand any belief or faith'. He also found that the 'processing' offered by Scientology to members of the public, for the

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[196] Ibid, pp. 123-8
[197] *(1965) 380 U.S. 163; 13 L. ed. 2nd 733*
[198] *Church of the New Faith*, pp. 131-2
[199] Ibid, p. 130

'purposes of improving their intellectual performance and emotional well-being without requiring adherence to or acceptance of any religious belief or faiths', were the same methods practiced by Scientology before and after the 'grafting' of 'methods' and 'formula having some semblance to religious dogma' and 'trappings'. He therefore concluded that Scientology was not a religion.

Mr. Justice Brooking felt no need to decide the question whether Scientology was a religion. However, he did advance the view that the *Psychological Practices Act 1965 (Vict.)*, which was still in force at the time of his judgement, defined Scientology as 'a system or purported system of the study of knowledge and human behaviour', and clearly comprehended that it was 'something other than a religion'. He did not need to decide the question, because whether Sceintology was a religion or not, it was clearly 'committing a criminal offence by holding itself out as being willing to teach Scientology' in contravention of the *Psychological Practices Act 1965 (Vict.)*. Therefore, 'so far as the State of Victoria is concerned' it was a 'body formed for an object illegal under the criminal law'.[200] He accordingly found against the appellant.

Despite this further setback, and the high cost of justice, the Scientologists were determined to take the matter further, indeed to the highest court in the land. [201] Their case came before three judges of the High Court of Australia

[200] Ibid, p. 140. He noted clear precedents to the effect that no person can obtain or enforce rights 'resulting to him from his own crime' (the quotation came from Sir Samuel Evans P. in *In the Estate of Crippen (1911) P. 108* at p. 112)

[201] *The Age*, 19 December 1980. Reported a Scientology spokeswoman saying that the case had cost $10,000 or $12,000 so far, but that they would 'spend as many thousands again, if we need to, to win'. Indeed, the amount of the assessment contested was only $897.80 (see *Church of New Faith v.*

on 30 July 1982 and it was ordered that it should be referred to the Full Court with leave to argue as on appeal. On 9 November 1982, the matter came before the Full Court,[202] where the Scientologists argued the reasons for seeking 'special' leave to appeal, submitting that the size of the organization in Australia, which they claimed to be 150,000, was one reason for the Court to hear the matter.

In addition, the Scientologists submitted that the attention of the Court was warranted because of the widespread legal exemptions afforded to religions under various Australian laws. It was submitted that certain religions were at risk of losing their tax exempt privilege, which constitutional lawyer David Solomon described as 'a very old and pure form of tax avoidance'.

Furthermore, it was noted that the High Court had never defined the meaning of the word 'religion', which appeared in the *Australian Constitution*.[203] The section of the *Constitution* referred to was s. 116, which states: 'The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.'[204]

Commissioner of Pay-roll Tax (1983) 1 V. R. 97, at p. 112), a clear indication that that the motivation to pursue the issue was for the broader benefits of a potential Court recognition of Scientology as a 'religion'

[202] *The Church of the New Faith*, p. 121-2

[203] *The Australian Financial Review* – article entitled 'Scientology's status challenged in court', by David Solomon. 10 November 1982, p. 7. Solomon noted that counsel for the Scientologists had referred to the fact that the Commissioner for Pay-roll Tax had also ruled that the Seventh-day Adventists were not a religious organization.

[204] *The Constitution – as in force 1 July 1999*, Office of Legislative Drafting, Attorney-General's Department, Canberra (CanPrint Communications Pty Ltd, Canberra), p. 53

The High Court agreed that the matter was one that warranted authoritative adjudication, noting that 'hitherto the concept of religion has received little judicial exegesis in Australia, whether under s. 116 or otherwise', and it was 'undesirable that the clarification of a concept important to the law of Australia should be left to the courts of other countries when there is an appropriate opportunity for the concept to be clarified by this Court.' The importance of the concept of religious freedom was noted, as was the fact that the judgements in the Supreme Court would influence judicial interpretation of s. 116, even though 'this case does not arise under s. 116 of the Constitution or under any part of its fourfold guarantee of religious freedom.'[205]

Before the Court, the Scientologists argued that the concept of 'religion' should be given a broad meaning, following the decisions in the United States and noting that Scientology drew much from Theravadan Buddhism, which was said to be 'atheistic or non-theistic'.[206] They also argued that a statement 'by an individual or by a group to the effect that the group is not a religion is not a critical admission in litigation'. [207] In reply, the respondent argued that 'resort to American cases decided under the influence of the guarantees of the First Amendment is inappropriate', preferring instead the assistance provided by British cases, which provided a narrower approach.[208]

[205] *Church of the New Faith,* 'although this case does not arise under s. 116 … it is inevitable that the judgements in the Supreme Court, so long as they stand without consideration by this Court, will influence the construction placed upon s. 116 of the Constitution by other Australian courts', Mason C.J. & Brennan J, p. 130
[206] Ibid, p. 124
[207] Ibid, p. 122
[208] Ibid, p. 127

The verdict of the High Court of Australia was stunning. Delivered on 27 October 1983, the unanimous decision of the Full Court, consisting of five judges, reversed the unanimous decision of the Victorian Supreme Court. It was reported to be a landmark decision and a 'triumph for Scientology'. It opened 'the way for many non-mainstream religions to claim the legal status of a church and all the financial and other privileges that go with that status'.[209]

Representatives of non-mainstream religions, including Ananda Marga, disciples of the Bhagwan Shree Rajneesh (Orange People) and the Unification Church (Moonies), welcomed the decision and saw it as a means to 'help them gain recognition'. [210] The financial benefits were significant. Spelled out by Mr. Justice Lionel Murphy in his judgement, they included exemptions on, 'stamp duty, pay-roll tax, sales tax, local government rates, and the taxes on motor vehicle registration, hire purchase, insurance premiums, purchase and sale of marketable securities and financial transactions' and 'many other State and federal laws which directly or indirectly subsidize or support religion'.[211]

His Honour was well aware of the potential implications of the decision, noting that 'the crushing burden of taxation is heavier because of exemptions in favour of religious institutions, many of which have enormous and

[209] *The Australian*, 28 October 1983 – article entitled 'Scientology wins status of church in High Court', by Carol Simmonds
[210] *The Sydney Morning Herald*, 29 October 1983 – article entitled 'Sects welcome court decision on Scientology', by Robert Thomson
[211] *Church of the New Faith,* p. 149. Mr. Justice Murphy quite deliberately included 'cults', saying 'any body which claims to be religious, whose beliefs or practices are a revival of, or resemble, earlier cults, is religious', at p. 151

increasing wealth'. [212] However, his view was clear: 'in the eyes of the law, religions are equal. There is no religious club with a monopoly of State privileges for its members. The policy of the law is "one in, all in"'.[213] Yet in truth the majority decision had just made the 'club' less exclusive.

If the minority definition of 'religion' provided by Mr. Justice Murphy had been accepted by the Full Court, the 'club' would have been opened up even further. He found that 'religion' meant 'any body which claims to be religious, and offers a way to find meaning and purpose in life'. [214] This of course could include practically any group of people, whether they be interested in sporting, social, cultural or even commercial activities. Perhaps his intention was to wreck the 'club', to render the definition meaningless, but his open-ended definition did not find favour with the majority, despite their wide definitions of the word 'religion'.

Mason C. J. and Brennan J. held that the definition was; 'first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on grounds of religion'.[215]

Wilson J. and Deane J. took a view which 'accords broadly with the newer, more expansive, reading of that term that has been developed in the United

[212] Ibid, p. 162
[213] Ibid, p. 150
[214] Ibid, p. 151
[215] Ibid, p. 136

States in recent decades'. [216] They said that there could be no 'formularized legal criterion, whether of inclusion or exclusion', but that certain 'indicia or guidelines', or 'aids', which would be 'derived by empirical observation of accepted religions', and the importance of which might vary from case to case, might be examined. They listed the most important of these as (1) belief that reality extends beyond that which is capable of perception by the senses, (2) ideas relating to man's nature and place in the universe and his relation to things supernatural, (3) standards or codes of conduct or practices having supernatural significance, (4) adherents, however loosely knit, constituting an identifiable group and (5) adherents themselves seeing the collection of ideas and/or practices as constituting a religion. [217]

Although they stopped short of Murphy J's all-encompassing definition, and short of the American position, the majority did support opening membership of the 'religious' fraternity to all manner of cults and sects and new religious movements. Mason C. J. and Brennan J. said 'there can be no acceptable discrimination between institutions which take their character from religions which the majority of the community recognizes as religions and institutions that take their character from religions which lack that general recognition'.[218] They even extended this protection, (and all the attendant financial advantages), to groups set up by bogus preachers. They said: 'charlatanism is a necessary price of religious freedom, and if a self-proclaimed teacher persuades others to believe in a religion which he propounds, lack of sincerity or integrity on his part is not incompatible with the religious character of the beliefs, practices and observances accepted by

[216] Ibid, p. 174
[217] Ibid, pp. 173-4

his followers.' [219] This judicial invitation to swindlers was endorsed by their brethren Wilson J.and Deane J., who said: 'regardless of whether the members of the applicant are gullible or misled or whether the practices of Scientology are harmful or objectionable, the evidence, in our view, established that Scientology must, for relevant purposes, be accepted as "a religion" in Victoria'.[220]

The idea that a 'religion' should be characterized by 'sincerity and integrity', as enunciated by Crockett J., was discarded in these judgements, as was his view, based on the evidence at first instance, that Scientology was a sham, though some comment was made that the scope of the evidence to be relied upon might have been lacking. Mason C.J. and Brennan J. noted for instance that 'if the case had been fought on the issue whether the corporation's purpose and activities were religious, the question of motivation may have emerged more clearly'.[221] Wilson J. and Deane J., with reference to *Kuck's* case, said 'there may be cases in which the fraud or hypocrisy of the founder and leader of a particular system of claimed beliefs and practices constitutes the straw that weighs the balance against characterization as a religion', but could not support Crockett J, on the basis that Scientology had some or a large proportion of genuine believers,[222] or at least their sincerity had not been attacked before the Court.[223] Apparently, *Kuck's* case would be limited to an extreme example, perhaps where it could

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[218] Ibid, p. 131
[219] Ibid, p. 141
[220] Ibid, p. 176
[221] Ibid, p.147
[222] Ibid, p. 171
[223] Ibid, p. 170

be said with certainty that all participants were involved in the fraud, or perhaps that the proportion or number of genuine adherents is insignificant.

The judges of the High Court generally avoided consideration of the intentions of the legislature in framing the 'religious' exemption under the *Pay-roll Tax Act 1971 (Vict.).* They gave little or no consideration to the caveat of the respondent, that the American cases were so 'affected' by constitutional guarantees that they had 'gone to extreme lengths in the interpretation of religion to sustain the provisions of State constitutions or statutes'. They declined to consider the view of Brooking J. that the applicant had based its claim on an illegal purpose, saying that no evidence had been led on it and that 'in any event, the statutory basis for it had since been removed by subsequent amendment'.[224]

Having effectively imposed such real and potential constraints on legislative action, and having quite deliberately extended religious privileges to (almost) all and sundry, Wilson J. and Deane J. concluded their joint judgement by inviting governments to close the door behind the bolting horse. They said: 'that does not, of course, mean either that the practices of the applicant or its rules are beyond the control of the law of the State or that the applicant or its members are beyond its taxing power.'[225] However, in the light of experience and the broad scope of the decision, it would require a courageous government to withdraw privileges already given.'

[224] Ibid, p. 177. This statement is surprising given that the issue in question was the payment of pay-roll tax in a specified period, from 1971, when the *Pay-roll Tax Act* came into force, to its amendment with the *Pay-roll Tax Act 1979 (Vict.),* which limited the exemption to wages paid 'to a person during a period in respect of which the institution satisfies the Commissioner that the person is engaged exclusively in religious work of the religious institution.' The amendment which removed the illegal purpose was presumably the *Psychological Practices (Scientology) Act 1982 (Vict.).* See Wilson J. & Deane J. at p. 165

[225] Ibid, p. 176

Scientologists thus achieved formal membership of the religious fraternity. It should be noted that their admission had not been universally opposed by long term members. Indeed, they had been able to enlist the support of some representatives of 'mainstream' religions. Apart from the two clerics who had given evidence on their behalf in their successful Western Australia defamation case against journalist Leslie Anderson, [226] they had been supported in Victoria in 1981 when 'ranking' members of three churches, Baptist, Catholic and Methodist, signed a petition entitled 'In the interests of religious freedom', calling upon the Victorian government to 'review the *Victorian Psychological Practices Act* and remove all prohibitive sections aimed at members of the Church of Scientology'. The petition also requested that 'in future no legislation be passed which discriminates against any minority because of its beliefs'. The Rev. Himbury said 'it is better to tolerate what we think is wrong rather than condemn things out of hand'. The petition concluded with the disclaimer, 'we do not necessarily imply agreement with the tenets and practices of the Church of Scientology'. [227]

[226] *The West Australian*, 21 December 1978, op. cit. The two clerics were 'the Rev. Father William James Uren, the dean of the St. Thomas More (sic) College at the University of WA' and 'the Rev. Richard Graham Borthwick, a senior tutor in philosophy at the university, of Onslow Road, Shenton Park'
[227] *The Age*, 18 April 1981 – article entitled 'Churchmen urge an end to bans on Scientology', by Louise Carbines

CHAPTER FOUR

THE CONTINUATION OF COMPLAINTS

South Australia Select Committee Report on Scientology 1985

'fobbing off excuses'

With success in the pay-roll tax case, Scientologists might well have thought that they could pursue their activities relatively unhindered, but they were yet again to be the subject of media and parliamentary attention. The Legislative Council of the South Australia parliament appointed a Select Committee on 5 December 1984 to 'inquire into and report upon the activities of the Church of Scientology Incorporated and in particular the method of recruiting used by the Church and methods of obtaining payment for the services provided by the Church'.[228]

The Committee noted that 'the issue of whether or not Scientology is properly described as a religion is considered by the Committee to be outside its terms of reference and not a useful subject to pursue'. It further noted 'the Committee has no intention of making any recommendations which might infringe Section 116 of the *Commonwealth of Australia Constitution Act* which relates to legislation in respect of religion, even if the case above cited (being the *Church of the New Faith*) is authority that the

[228] *The Burdett Report (South Australia*) *(1985),* op. cit., at p. 1. The Select Committee comprised six members of the Legislative Council and took ten months to report - on 10 October 1985

Church of Scientology is a religion for the purposes of the *Constitution Act'*,[229] which was a polite way of asserting state's rights.

The report of the Select Committee noted that a number of complaints by dissatisfied 'customers' led to a media campaign, particularly on behalf of a Mrs. Sivam,[230] who had paid an initial $4,000.00 to Scientology and had arranged to pay another $24,500.00 for 'courses'.

Mrs. Sivam said that she had been asked to answer a survey by a person who stopped her in the street, but did not identify himself as a Scientologist. She was then invited to go to headquarters and answer a further series of questions, remaining there from 2.00pm to 2.00am the following morning. Later she was told that she would need to withdraw $4,000.00 from the bank in two instalments for Scientology 'courses'. She was subsequently accompanied to the bank by Scientologists to make the withdrawals.

Subsequently, 'arrangements' were made for her to sign a promissory note made out to a company located in Sydney. This was secured against a superannuation policy of her late husband, who had recently died in a car accident. Mrs. Sivam gave evidence that she was in a depressed state of mind as a result of her husband's death when she was approached by the Scientologists, and upon reflection approached the Department of Public and Consumer Affairs in an attempt to recover her money.

[229] Ibid, p. 2
[230] Ibid, p. 2

Evidence given before the Committee by the Director-General of the South Australian Department of Public and Consumer Affairs, Mr. M. Noblet, revealed that the Department had taken 2 ½ months, two letters and 23 telephone calls in an endeavour, which was ultimately successful, to assist Mrs. Sivam retrieve her money. He alleged that Scientologists had generally given 'fobbing off excuses whenever we contacted them'.[231]

Other witnesses before the Committee gave evidence that they were in a depressed and vulnerable state when approached by Scientology and that the organization asked for money immediately after auditing sessions, [232] where it was alleged by one that 'they (the Scientologists) were more or less hammering at me to spend money on the courses that they had put together'. He testified that he had walked into the premises at 3.10pm and did not leave until 11.30pm.' [233] Evidence was given about 'working long hours without adequate remuneration, payment of large sums of money in advance and considerable difficulty in recovering those sums when a consumer elected not to go with the courses' and of former recruits who had been 'bombarded with letters and other literature and contacted in other ways'. .[234]

The Select Committee identified three areas of consumer complaint in relation to the Church of Scientology in South Australia. These included (1) insufficient information on the nature, cost and extent of services provided

[231] Ibid, p. 3
[232] Ibid. One had had two strokes, another had suffered 'great loss and bereavement', another testified that Scientology 'struck' (asking that documents be signed), after a good auditing session when 'the person would be on an incredible high', another said that Scientologists asked him how much money he had in the bank and then 'attempted to persuade me to part with it' in a way he 'did not find acceptable at all', and yet another said he had been contracted as a field staff member to 'encourage people to come into the organization and part with their dollars', pp. 3-6
[233] Ibid, p. 5-6
[234] Ibid, pp. 6-7

was given to recruits or those who agreed to purchase and that a number of people approached were in a state of depression or anxiety, (2) it was difficult for dissatisfied consumers to obtain refunds and (3) recruits promised staff positions were not warned that these positions were voluntary and they would receive little payment for work done.

It therefore recommended (1) that the Department of Public and Consumer Affairs be requested to maintain surveillance over complaints by consumers and that they should discuss with the Church of Scientology the provision of better information to those purchasing services and (2) that the Department of Labour maintain surveillance over the payment of wages to people employed by Scientology. It was further determined that legislation should be considered if discussions with the two departments proved ineffective. It was noted that 'it would be unfair for such legislation to apply to the Church of Scientology alone' and therefore it 'should apply to all psychological or spiritual services for fee or reward'.[235]

It was noted that the terms of reference had not extended to organizations other than Scientology and so further inquiry would have to be conducted prior to any legislation. However, a model for possible legislation was presented in relation to 'any agreement for the provision of future psychological or spiritual services'. This involved a detailed written contract, a cooling-off period of seven days, a ceiling on advance payments, statutory remedies for non-compliance and penalties for non-compliance.[236]

[235] Ibid, pp. 7-8
[236] Ibid, p. 8

The report of the Select Committee was met with hostility by the Scientology organization, which had already refused to appear before the Committee, on the basis that its proceedings were 'a denial of natural justice and an infringement of the right to religious freedom'.[237] They presented a 2,000 signature petition to the President of the Legislative Council and 145 'mourners' carried a coffin from Victoria Square to Parliament House, the pallbearers wearing hats bearing the names of some Liberal members of the Legislative Council, including Burdett and Ritson, who had sat on the Committee. A spokesman, their Australian leader the Rev. Mark Hanna, from Sydney, alleged that Scientology was attacked because it opposed the abuses of psychiatry and that the report was 'the first step in the attack on all religions'.[238]

Further Complaint and Controversy

'illegal and immoral'

The Church of Scientology remains active in Australia today. Despite the status conferred upon it by the High Court, complaints have continued about practices on or by its recruits and adherents. A professional psychologist complained in 1994 that 'in the last few months I have listened to alarming stories from distraught and miserable ex-members of this 'church'. The numerous courses and auditing sessions these people had paid to attend appeared to have dramatically undermined, and possibly destroyed, their

[237] Ibid, p. 7
[238] *Advertiser*, 17 October 1985, 'Scientologists rally against Council report', by Paul Sommer

relationship with their families. They also gave consistent descriptions of being harassed when they tried to leave'.[239]

In a 1998 report of an *Inquiry Into Freedom of Religion and Belief*, the Human Rights and Equal Opportunity Commission noted that 'some submissions also alleged that certain cults forcibly imprison members as a means of punishment or behaviour modification. Mr. McClelland of CultAware provided numerous accounts, articles and affidavits from ex-members of the Church of Scientology who allege mistreatment, malnutrition and forced imprisonment at the hands of that organization'. [240]

In answer to claims that 'the behaviour of senior Scientologists over the last couple of decades has been both illegal and immoral', the organization allegedly responds that 'it has dealt with these problems'.[241] The Church remains controversial oversea[242] and is politically active in Australia, both 'up-front' and through its various front organizations. [243] The Human Rights and Equal Opportunity Commission's inquiry into freedom of religion and belief, which reported in 1998, received four individual submissions from official representatives of the Church of Scientology.[244]

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[239] Louise Samways, op. cit, says, p. 34. Samways, a Melbourne psychologist, was writing in 1994.
[240] Chris Sidoti, *Article 18. Report of the Human Rights and Equal Opportunity Commission*, (Sydney, 1998), says, p.57
[241] David V. Barrett, *'Sects, "Cults"'*, p. 252
[242] A recent French documentary critical of Scientology was aired on the SBS 'The Cutting Edge' programme on 9 May 2000, entitled 'Is Scientology Above the Law ?', produced by Paul Nahon & Bernard Benjamin
[243] Beit-Hallahmi, *The Illustrated Encyclopaedia'*,says 'Scientology operates numerous front organisations such as the Alliance for the Preservation of Religious Liberty, Narconon, the Citizens Commission on Human Rights, the Committee on Public Health and Safety .', p. 259. A one page pamphlet critical of psychiatry was distributed by a Scientologists demonstrating outside the Victorian Parliament to mark Mental Health Week on 18 October, 1999. The only source attribution on the pamphlet was 'the Citizens Commission on Human Rights'.

Representatives of the Church of Scientology 'produced a very lengthy submission'[245] in response to the discussion paper on Non-Fatal Offences Against the Person released by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General in August 1996. [246] The discussion paper was followed by a report published in September 1998, which noted that the Church of Scientology had submitted that the 'activities of religious groups should not be included but rather the activities of "de-programmers" should be', and commenting that 'the manifest inconsistency of such an approach did not appear to occur to them'.[247] The report contained a recommendation for a criminal offence of recklessly or intentionally causing harm to a person's mental health, including psychological harm.[248]

It is interesting to note that the Belgium Government is claimed in a recent press report to be the first to produce a legislative definition of 'sect' while the French have complained about '"shocking" White House support for Scientologists and Moonies' and the chairman of a French ministerial mission to combat cults has claimed that Scientologists are infiltrating European human rights associations, 'financing some of their work and collaborating on reports that condemned France "with virulence"'.[249]

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[244] Human Rights and Equal Opportunity Commission, op. cit, in Appendix 3, List of Submissions, p. 116.
[245] Model Criminal Code officers Committee of the Standing Committee of Attorneys-General, *Report, Model Criminal Code, Chapter 5, Non Fatal Offences Against the Person*, September 1998, p. 29
[246] Ibid, p. 195 – Appendix 3.

[247] Ibid, p. 29
[248] Ibid, p. 12
[249] Internet report that *Agence France Presse*, 11 June 2000, reports that 'France plans a new initiative against mental manipulation by cults' and from *The Guardian* 14 June that Alain Vivien, Chairman of a French Ministerial mission to combat the influence of cults, referred to the Belgium definition and claimed that 'religious sects, led by Scientologists, were infiltrating U. N. and European human rights associations, financing some of their work and collaborating on reports that condemned France "with virulence"', MESSAGE – ID: <8i330k8$1@news6.isdnet.net>

In addition, it is reported that the French government has created a crime of 'mental manipulation' in legislation which also enables judges to dissolve sects whose members are convicted of certain crimes, in addition to banning them from advertising or touting near schools, hospitals or retirement homes'. A spokeswoman for the Scientologists, who are not recognized as a religion in France, said 'this is a slippery slope for democracy … in Western Europe the only regime … to pass a law on mental manipulation was the fascist government of Mussolini'. [250]

It is therefore apparent that the issues of concern about Scientology and of concern to Scientologists, have not been adequately resolved and continue to remain on the political agenda.

MESSAGE – ID: <IIN15 2737$713.47990@news.goodnet.com>
[250] *SMH*, 24 June 2000, 'Mental manipulation now a crime as sects targeted'

CONCLUSION

The *Church of the New Faith* decision has indeed been confirmed as a landmark decision with far reaching implications. The Australian Human Rights and Equal Opportunity Commissioner, Chris Sidoti, has noted that 'religious organizations receive significant indirect financial support … through their tax exempt status worth tens of millions of dollars annually which represents subsidies by Australia's governments for religious activities provided to groups *which meet the High Court's definition of religion.'* [251](My italics). The extent of the taxation benefits gained by 'cults' such as Scientology are unknown because 'religions', like 'charities', are not required to lodge taxation returns. [252]

High Court's Decision Influenced by s. 116

In *Church of the New Faith* it was the express intention of the High Court to produce a definitive definition of the word 'religion' for the guidance of all. Even though the case to be decided was not a federal constitutional case under s. 116, the definition of 'religion' was to be decided as though it were. The High Court declared that it intended to adopt this approach so that interpretations of s. 116 would not be influenced by the definition of the Victorian Supreme Court, [253] apparently so that the meaning of 'religion'

[251] Andrew Naylor and Chris Sidoti, Leap of Faith: Religious Freedom in Ausgtralia, A. Tay and C. Leung (eds) *Australian Law and Legal Thinkers in the 1990's*, (University of Sydney, 1994), p. 435

[252] Max Wallace, 'The Purple Economy – the tax exemption for religion and religious wealth in Australia', the Skeptics Conference, Adelaide, November 1999, cites a report of the Industry Commission report *Charitable Organizations in Australia* which makes the point that the Commonwealth Treasury has no information on 'revenue foregone from exemption of income tax of charitable organizations as there is no requirement for them to lodge returns' and Wallace notes that 'organizations that advance religion' were not covered by the Industry Commission report, p. 2

[253] See fn. 205 supra

would be consistent in all legislative contexts or applications. This was despite the fact that the word in question appeared in the *Pay-roll Tax Act 1971 (Vic)* and was ostensibly to be defined for the purposes of that statute.

The respondents in *Church of the New Faith* had made the point in argument, in relation to the US precedents, that those decisions had been influenced by Bill of Rights considerations,[254] and it seems that the High Court predicated its decision on a rights and protections mindset engendered by consideration of s. 116. Wilson J. and Deane J., in particular, made no bones about the fact that they adopted a line in accordance with that 'developed in the United States',[255] which was based on the Supreme Court's interpretation of the federal Bill of Rights provision. However, in the United States the Bill of Rights applies by law to all the state jurisdictions. Section 116 does not extend to the states of Australia. Naylor and Sidoti agree that the language of the Court in Church of the New Faith is 'couched in terms of fundamental guarantees'and cite McLeish where he says that the emphasis in that case was 'on the rights of the individual, rather than the scope of legislative power'. [256]

The Nature of Section 116

Section 116 therefore provides an interesting case study of the difficulties encountered in the area of constitutional law, when provisions under judicial consideration are entrenched restraints on legislative action. It is one of the few provisions that can be found in the *Australian Constitution*, (which has

[254] See fn. 208 supra
[255] See fn. 216 supra

no general equivalent to the US Bill of Rights), which prohibit 'laws that infringe certain basic freedoms and rights'.[257] It was inserted into the *Constitution* largely because a minority religious group, the Seventh Day Adventists, were able to find a champion in delegate Mr. H. B. Higgins, to argue for the inclusion of words that would ensure that the Commonwealth government did not interfere with religious observances or minorities (by perhaps preventing Seventh Day Adventists from working on Sundays[258]) or impose a state religion on the community.

Although the drafters specifically excluded religion from the Commonwealth heads of power, a popular move to insert reference to 'Almighty God' in the preamble made non-religious voters and voters from marginal religions fearful that this would become a pretext to make Commonwealth laws with respect to religion, and that therefore some sort of protection or limitation should be inserted, ultimately in the form of s. 116. Although Quick and Garran failed to understand why 'such a negation of power which had never been granted and which, therefore, could never be legally exercised, was introduced',[259] it is explainable as a politically inspired balancing act to placate those who wanted religion out as against those who wanted it in. Although both insertions were probably seen as cosmetic padding, events were to prove that the Commonwealth government

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[256] Naylor, 'Leap of Faith', p. 428, and in fn. 29 cite McLeish, "Making Sense of Religion', p. 211

[257] *The Constitution as in force on 1 July 1999,* (Office of Legislative Drafting, Attorney-General's Department, Canberra, Commonwealth of Australia 1999), p. 9-10. Other examples being s. 51 (xxxi) (acquisition of property must be on just terms), s. 80 (trial by jury required in relation to some criminal offences) and s. 117 prohibits states from discriminating against non-residents of that State. Collectively these may be seen as a Mini Bill of Rights.

[258] McLeish, 'Making Sense', p. 218

[259] J Quick & R R Garran, *The Annotated Constitution of the Australian Commonwealth (1901)* (Sydney, Legal Books, 1976) p. 952, cited by McLeish, 'Making Sense', p. 221

would indeed 'make laws impacting on religion', [260] and the impact of s. 116 has had a profound, and I submit detrimental effect in *Church of the New Faith*. Although Higgins originally proposed that s. 116 should apply also to the States, perhaps fearing a backlash from the States, he accepted that it should apply only to the Commonwealth. [261] This might provide some solace to those who fear the arbitrary limitation of legislative power imposed by an entrenched provision of this sort.

Section 116 is therefore somewhat of an anomaly. It is a Bill of Rights type provision, inserted as a sop to a persistent delegate, perhaps with some view to attracting the support of voters of marginal religions and largely at the behest of a vocal minority religious group, but which was considered to be irrelevant because the Commonwealth had no power to make laws with respect to religion, a field thought best left to the States. I submit that it does not sit well with the general thrust of the Anglo-legal traditions which generally underpin our system of law and government. These pre-suppose the sovereign nature of responsible government and the deference of the courts to the will of the elected legislature, where judges interpret statutes according to the legislative intention on a case by case, incremental basis, a process which arguably facilitates a greater degree of legal certainty.[262]

Intention of the State Legislature

[260] McLeish, 'Making Sense', p. 222
[261] Ibid, p. 220
[262] Hon M. McLelland QC, Submission to the Legislative Council Standing Committee on Law and Justice, *NSW Bill of Rights Inquiry*,29 March 2000, provides a recent exposition of the role and status of parliament and the courts and the need for legal certainty – arguing against a Bill of Rights for NSW

If the High Court had in fact determined what the Victorian legislature intended the word to mean, instead of attempting a comprehensive solution applicable also to s. 116, it is quite possible that an altogether different interpretation would have been reached. The High Court could have arrived at a definition of 'religious institution' in the context of the *Pay-roll Tax Act 1971 (Vict.),* (ie; 'a religious or public benevolent institution'), along the lines that it must be a benevolent institution or at the very least an institution the membership of which benefits the well-being of its adherents, who perhaps believe in some 'supernatural' phenomenon as part of an organized congregation. The fact that 'religious' is distinguished from 'benevolent' indicates that other non-religious organizations, provided they could prove 'benevolence', would benefit as well. It does not preclude the need for 'religious institutions' to be 'benevolent', and indeed it could be strongly argued that it was assumed that religions were 'benevolent' and therefore it was that same quality that was sought in exempt non-religious organizations.

However, whatever definition was intended, it would be strange indeed for a legislature to contemplate providing tax exemptions for institutions which it did not consider to be either benevolent, so far as the community is concerned, or at least of benefit to the well-being of its adherents, and therefore beneficial to the community generally. It would be even more strange for a government to provide tax exemptions if an organization was considered to be damaging to its adherents and/or to the community. The legislature must be presumed to have had some reason for wishing to benefit 'religious institutions', and it is hardly presumptuous to assume that it would not wish to extend benefits to organizations widely regarded as harmful.

In addition, it is clear that the Victorian legislature would have had no intention of providing taxation benefits to Scientology, and would have intended a different, though not necessarily narrower definition of the word 'religion', than that which emerged in *Church of the New Faith*. The evidence for this is compelling.

The Act under consideration, the *Pay-roll Tax Act 1971(Vict.),*[263] was enacted by the same government that had passed the *Psychological Practices Act 1965 (Vict.)* and was defended by successor administrations of the same political persuasion until defeated by Cain Labor in 1982.[264] That Act defined Scientology as something other than a religion and banned most aspects of it, while allowing exemptions from the Act to those it considered to be legitimate 'religious' practitioners – by definition not Scientologists. For these exemptions the Government was content to rely on a list provided by proclamation under the federal *Marriage Act 1961(Cth),* to be added to by executive decision. As this list included only Christian religions and the Jewish faith at the time, and was not comprehensively amended until the Lionel Murphy *Marriage Act 1961(Cth)* proclamation in 1973, it is perhaps reasonable to suggest that it was those faiths, or those types of faiths, (being 'mainstream' or 'recognized' religious traditions), which were generally regarded as beneficial and worth supporting, that the Government might

[263] That legislation generally transferred the provisions of the *Pay-roll Tax Assessment Act 1941 (Cth)* to the state. Although the second reading debate (Victoria Hansard, 1971-72, Vol. 303, from p. 108) reveals an interesting attempt by the Opposition to extend exemptions to decentralized industries, it does not illuminate the rationale for religious exemptions, nor was 'religion' defined in the Act. Neither is it defined in the Commonwealth Act, except that Senator Leckie notes that the religious exemption 'is in accord with the treatment of those institutions under the NSW Act', Cth. Hansard, Senate, 2 April 1941 p. 477. Therefore the rationale for the exemption was probably derived from a NSW precedent, possibly the *Land and Income Tax Assessment Act* No. 14, 59 Vic. 1895 which provides relief for 'ecclesiastical' insitutions under s. 17 (v) but again does not define them. I have yet to discover any second reading reference.

[264] Hughes, *A Handbook of Australian Government*, p. 33

have had in mind when it considered the term religion. However, whatever definition might have been applied, it is certainly arguable that the definition would have been different than that eventually adopted in *Church of the New Faith*, would most probably have incorporated 'value' considerations and would have certainly precluded Scientology.

Intention of the Federal Legislature

With respect to the Commonwealth Parliament, exemptions from taxation were set out in s. 23 (e) of the *Income Tax Assessment Act 1936 (Cth)* which provided exemptions for religious, scientific, charitable or public educational institutions. Debate at that time reflected the view that 'religions' performed benevolent functions. For instance, one speaker referred to 'great service to the poor of Australia'.[265] An academic commentator states, 'I suspect that the Commissioners for Taxation were Christians who saw it as their religious duty to protect what they understood to be the legitimate interests of their Churches from the burden of taxation for what they believed were legitimate reasons'. [266]

The 1936 Act was replaced with the *Income Tax Assessment Act 1997 (Cth)* which provides exemptions under s. 11.5 for a range of entities including charitable, religious or scientific. It could be argued that the Commonwealth Parliament thereby adopted the definition of 'religion' as set down in the 1983 *Church of the New Faith* decision. However, with the word entrenched in s.116, the Commonwealth was already bound to accept that

[265] Wallace, 'The Purple Economy', quoting from the speech of the Postmaster-General, p. 6
[266] Ibid, p. 6

definition. If it wished to preclude granting benefits to some organizations now deemed by the High Court to be 'religious' it would have had to re-examine the tax exempt status of all 'religious' organizations, a politically controversial course.

Academic Discourse on Section 116

To my knowledge there has been no legal attempt to test the decision in *Church of the New Faith*, though legal academics have criticized the test laid down by the Court,[267] and a sociology academic has criticized a decision by the Taxation office to apply the test against one group, the Raelians, on the basis that they believe the colonisers of the earth to be material beings from another galaxy, which according to the Tax office is not a supernatural belief. He compares the Raelian belief to the 'equally bizarre' Scientology belief that 'beings came to earth in spaceships millions of years ago to dispose of their galaxy's surplus population by herding them into volcanoes and blowing them up with nuclear weapons'.[268]

All these criticisms have been that the test is too 'narrow'. Sadurski observes that s. 116 enunciates two principles which 'display some tension', non-establishment and free exercise. The first, he submits, is suspicious of government assistance to religion (lest one or some be favoured over others) and the second contains an 'expanding dynamic', calling for 'exemptions and privileges' to facilitate the free exercise of religion. He argues for the

[267] Wojciech Sadurski, 'On Legal Definitions of "Religion"', *The Australian Law Journal*, December 1989, Volume 63, p. 834 and Stephen McLeish, 'Making Sense of Religion and the Constitution: A Fresh Start for s. 116', *Monash University Law Review* (Vol. 18, No. 2, 1992, p. 207
[268] Wallace, 'The Purple Economy', p. 4

adoption of a broad definition under the free exercise principle and a narrow definition under the non-establishment principle.

With respect to the free exercise principle, he argues that 'the costs of erring on the side of narrowness are that some religions (which, due to the definitional bias, will not be recognized as such) will not receive legal protection which other more mainstream religions receive. The danger of erring on the side of broadness is rather trivial; it is that some groups will successfully make unjustifiable claims for exemptions from legal burdens'.[269] He sees 'definitional bias' as the result of the majoritarianism of legislatures, which he submits act prejudicially or discriminate against unpopular minorities, which therefore need the especial protection of the Courts.[270] He quotes with approval Latham CJ. in *Jehovah's Witnesses*, where he says 'section 116 is required to protect the religion (or absence of religion) of minorities, and, in particular, of unpopular minorities'.[271]

However, the unjustified 'exemptions from legal burdens', in particular taxation, are hardly a trivial matter when they amount to substantial revenue foregone by governments, and have the additional effect of providing financial windfalls to groups which are widely regarded as harmful. On the other hand, s. 116 was intended to protect unpopular religious minorities

[269] Sadurski, 'On Legal Definitions', pp. 841-2
[270] Wojciech Sadurski, 'Last Among Equals: Minorities and Australian Judge-Made Law', *The Australian Law Journal*, Volume 63, July 1989, says minorities 'deserve special protection afforded by an extra-political body, because a referendum or a democratic parliament has an in-built systemic bias against respecting the interests of these minorities whose votes to not count and/or are seen as unpopular in the community', p. 480 and refers to examples of alleged 'discrimination' against 'minoritarian religious groups', including the Jehovah's Witnesses, the Church of Scientology, Children of God, Unification Church, Ananda Marga, Buddhists and Latter Day Saints, p. 484 (fn 69) as pointed out in the NSW Anti-Discrimination Board report *Discrimination and Religious Conviction* (1984), pp. 202-236
[271] Sadurski, 'Last Among Equals', p. 479

from government suppression under Commonwealth jurisdiction. To illuminate the point by example, could it be seriously contemplated that any government would wish to provide tax exempt status to a 'religion' that advocated child-adult sexual practices ? The answer is obviously no. However, to the question, should such a group be protected by a constitutional provision to facilitate freedom of speech and belief, the answer may well be yes, (although the rights of other minorites such as children, or even disadvantaged majorities, such as women, would need to be considered). Again, for example, would any government wish to provide tax exempt status for a 'religion', allegedly invented by a science fiction writer for the express purpose of gaining taxation exemptions, and which it has been claimed is exceedingly harmful to its participants. The answer is most probably not. However, whether a government should proscribe such an organization is another issue.

It is one thing to seek to protect unpopular religions from government interference, but another thing entirely to oblige a government (whether subject to constitutional constraints or not) to give equal benefits to all allegedly 'religious' organizations, whether they are considered to be good or bad, sincere or insincere, moral or immoral, beneficial or harmful, genuine or fake. (It was to these concepts that Crockett J. seemed to address his mind when he expounded on 'the sincerity and integrity that must be cardinal features of any religious faith'. Of course he was considering a state act that was not supposed to be subject to s. 116 constraints)[272]

[272] See fn. 188 above

The difficulty with a constitutional constraint such as s. 116 is that it gives rise to debate about the limitations it imposes on legislative action. Even if the section was supposed to mitigate against the Commonwealth granting any assistance to religions, when it does so assist the section is construed to mean that such assistance must be exercised neutrally or in a non-discriminatory manner, therefore assisting harmful groups as well as protecting them.

Therefore, any definition of 'religion', under an entrenched clause such as s. 116, is bound to cause difficulties and uncertainties in any practical application. In particular, it will always prove to be an unsatisfactory way to approach the granting of exemptions and privileges. [273] Future legal challenges to the *Church of the New Faith* decision are possible, but obviously problematic. This leads to suggestions for alternative approaches, which are necessarily of a political nature.

Alternative 'Political' Approaches

At a state level, there is no requirement for governments to follow the High Court's definition of 'religion'. Legislation could be enacted which sets down whatever definition of 'religion' is desired, and/or listing those organizations to be provided with exemptions or other benefits. The Australian Human Rights Commissioner has stated that 'section 116 of the Commonwealth Constitution does not affect the legislative powers of the

[273] Sadurski, 'On Legal Definitions', in fact noted that some some writers had concluded that any definition of religion is misconceived, 'that religious systems, as we know them, have nothing in common that distinguishes them from all other belief systems: hence "religion" cannot be defined at all'. To this he

states. The states therefore are not prevented from establishing a religion or from imposing any religious observance or prohibiting the free exercise of any religion, except Tasmania, which is the only State to provide for religious freedom in its constitution. They may, if they see fit, establish a state church or religion, oppress other religious beliefs and require a religious test as a qualification for any public 'office.[274] Even so, to pre-empt any possible High Court challenge to a new definition, state governments might be well advised to list the beneficiary organizations in the statutory instrument, or those excluded, although this would be politically provocative. This approach would also be considered discriminatory, but there is no legal barrier preventing a state government in Australia from acting in a discriminatory manner, apart from generic anti-discrimination statutes legislated by state governments themselves. Indeed, it is arguable that a great deal of legislation discriminates in one way or another.

Australia has acceded to the First Optional Protocol of the *International Covenant on Civil and Political Rights* (ICCPR), providing 'for the right to freedom of religion and belief, the right to equality without discrimination on the basis of religion and belief and the right to live free from religious hatred', but this only allows individuals to complain to the UN Human Rights Committee. The Commonwealth has declared the *Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief* to be 'a relevant instrument' for the purposes of the

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replied that in real life cases, courts are required to decide the issue in legal challenges where the issue of free exercise or non-establishment are raised, p. 840

Human Rights and Equal Opportunity Commission Act 1986 (Cth).[275] However, these instruments 'do not in any way constrain the legislative power of the states' and it is provided specifically in the HREOC Act that the declaration 'does not bind the states'.[276]

However, while there may be no prohibition on state governments enacting legislation which interferes with religious organizations, or practices, or even beliefs, the experience outlined in this thesis, with respect to state government actions against the Scientology organization, would provide a salutary *caveat* to any government wishing to re-visit that approach.

At the Commonwealth level the problem is more difficult. While ever a federal government chooses to make legislation impacting on religion, apart from constitutional alteration by referendum to delete s. 116, [277] it will always be subject to the restrictions and uncertain potential restrictions of s. 116, similar to the problems encountered in the United States, where, Sir Anthony Mason notes there is with respect to religion a 'bewildering array of confusing decisions'.[278] An alternative way of dealing with the provision

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[274] Chris Sidoti, *Free to Believe ? The Right to Freedom of Religion and Belief in Australia'* Human Rights Commissioner Discussion Paper No. 1 (Human Rights and Equal Opportunity Commission – February 1997) p. 16

[275] Sidoti, *'Free to Believe?',* p. 14

[276] Naylor & Sidoti, 'Leap of Faith', p. 430 The authors also note that the HEROC Act 'does not guarantee rights and it does not prohibit discrimination as it does not provide enforceable remedies', the Commissioner only being able to submit a report for tabling in parliament, p. 15

[277] In fact in 1988 a constitutional referendum proposal sought to 'extend the right to trial by jury, to extend freedom of religion, and to ensure fair terms for persons whose property is acquired by any government'. This proposal to extend s. 116 to the states was defeated in every state. See House of Representatives Standing Committee on Legal and Constitutional Affairs, *Constitutional Change – Select Sources on constitutional change in Australia 1901-1997* (The Parliament of the Commonwealth of Australia, 1997) pp. 113-4. A proposal to 'expressly guarantee freedom of speech and religion' was also defeated in 1944 (obtaining a majority in two states, SA & WA, pp. 82-3

[278] Sir Anthony Mason,'A Bill of Rights for Australia' (1989) 5 *Australian Bar Review* 79, cited in James T Richardson, 'Minority Religions ('Cults') and the Law: Comparisons of the United States, Europe ad Australia', (1995) *University of Queensland Law Journal*, Vol 18, No. 2, p. 205, fn. 96

of taxation exemptions for organizations deemed to be 'religious',[279] might be to abolish all 'religious' exemptions and replace them with a system exempting charitable organizations only.[280] While there are constitutional difficulties in defining 'religious' organizations, there are no similar bars to defining 'charitable'. Of course it would take a 'courageous' administration to attempt such a move**.** However, it is interesting that the Australian Treasurer recently issued a media release noting 'the Government has … agreed to the establishment of an independent inquiry into definitional issues relating to charities, churches and not-for-profit organizations,' to be completed by the end of this year.[281]

[279] Note the recommendation that 'the fiscal privileges enjoyed by religious bodies should be reviewed with a view to at least restricting their availability to religions which not only satisfy the present criteria but also have a substantial following in the United Kingdom and engage in genuine and overt acts of worship'. Sir John G. Foster, *Enquiry into the Practise and Effects of Scientology*, (London, Her Majesty's Stationery Office, 21 December 1971), p. 1

[280] Wallace, 'The Purple Economy', says that religious 'organizations should be made accountable like the rest of us and deductions only given for expenditure on truly charitable works', p. 26. See also S. B. Mutch (MHR Cook) adjournment speech seeking tightening of eligibility for 'religious and/or charitable exemptions', *House of Representatives Hansard*, 23 September 1997. The NSW Anti-Discrimination Board, *Discrimination and Religious Conviction*, (fn. 19 supra) recommended in 1984 that the state should ask the Law Reform Commission to conduct a review of religious fiscal privileges and that the Federal Attorney-General be approached to review Federal fiscal privileges, p. 172

[281] Treasurer's media release No. 022 of 13 April 2000

APPENDIX

In Australia in the 1960s three state governments took extraordinary and to this day unprecedented legislative action against the Scientology organization, which began operations in Australia in the mid 1950s.[282] Described as a 'psychotherapy movement', Scientology, encompassing the 'theory' of Dianetics, was devised and run from the United Kingdom by an American science fiction writer L. Ron Hubbard. The organization was to emerge as the Church of Scientology, ultimately benefiting from tax exemptions for 'religious institutions'.

It was claimed by a Scientologist that the organization had 8,000 followers in Melbourne at the time of government legislation in 1965.[283] However, an article in the Nation Review in 1973 estimated the Australia wide membership to be around 3,000, with the movement operating in Melbourne, Perth, Adelaide and Sydney.[284] A 1984 report of the NSW Anti-Discrimination Board notes that Scientology 'claims an active membership of 15,000' in Australia. Ian Gillman noted in 1988 that 'the active membership across Australia probably stands at about 2,000, with some thousands of others involved to varying degrees'.[285] A perusal of the Australian Bureau of Census figures for 1996 reveals that 2,332 Australians claimed the Church of Scientology as their religion.[286]

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[282] Ian Gillman, *Many Faiths, One Nation, A Guide to the Major Faiths and Denominations in Australia* (William Collins, Sydney, 1988) p, 368
[283] See fn. 138 supra
[284] See fn. 166 supra
[285] Gillman, *Many Faiths*, p. 368
[286] 1996 Census of Population and Housing, Religion by Sex, Counts of Persons by States, *C Lib – Census in Your Library, Basic Community Profile*, Disk 1 (Cth of Australia)

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CORRIGENDUM

Add to fn. 18 the words, 'However, see Appendix for details of Scientology membership claims in Australia, p. 100'

On p. 97 add fn. 274a to bottom paragraph, first sentence, at end of the words 'but this only allows individuals to complain to the UN Human Rights Committee'. Fn. 274a to read, 'Sidoti, *Article 18,* p. 21'