

SUPREME COURT OF QUEENSLAND

CITATION: *Bell v State of Queensland* [2022] QSC 80

PARTIES: **TREVOR BELL**
(applicant)
v
STATE OF QUEENSLAND
(respondent)

FILE NO/S: BS No 3761 of 2021

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 6 May 2022

DELIVERED AT: Brisbane

HEARING DATE: 12 August 2021

JUDGE: Burns J

ORDER: **The orders of the court are that:**

- 1. The application is dismissed.**
- 2. The witness, Robin Bristow, is directed to show cause within fourteen days why a copy of the affidavits read on the hearing of this application, the exhibits tendered at that hearing, the transcript of his oral evidence at that hearing and this judgment should not be provided to the Director of Public Prosecutions (Qld) or the Commissioner of the Queensland Police Service to consider whether a prosecution should be commenced in relation to the affidavit he affirmed on 13 May 2021 and/or the evidence he gave at the hearing.**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – DECISIONS TO WHICH JUDICIAL REVIEW LEGISLATION APPLIES – EXCLUDED DECISIONS – where the applicant is a member of an unincorporated association called the “Noosa Temple of Satan” – where the applicant sought approval under s 76(1) of *Education (General Provisions) Act 2006* (Qld) to deliver “Satanic” religious instruction in State schools – where approval was refused – where the refusal was on the ground that the Noosa Temple of Satan had no entitlement to provide religious instruction – where the applicant applied under Part 3 of the *Judicial Review Act 1991* (Qld) for a statutory order of review of that refusal – whether the

applicant has standing to apply for a statutory order of review – whether the refusal was a decision of an administrative character made under an enactment – whether the refusal was otherwise amenable to review under Part 5 of the *Judicial Review Act 1991* (Qld) – whether a declaration should be made that the Noosa Temple of Satan is a religious denomination or society for the purposes of s 76(1) of *Education (General Provisions) Act 2006* (Qld)

EDUCATION – INSTITUTIONS – SCHOOLS – GOVERNMENT – RELIGIOUS EDUCATION – where the applicant is a member of an unincorporated association called the “Noosa Temple of Satan” – where the applicant sought approval under s 76(1) of *Education (General Provisions) Act 2006* (Qld) to deliver “Satanic” religious instruction in State schools – where approval was refused – where the refusal was on the ground that the Noosa Temple of Satan had no entitlement to provide religious instruction – where the applicant seeks a declaration that the Noosa Temple of Satan is a religious denomination or society for the purposes of s 76(1) of *Education (General Provisions) Act 2006* (Qld) – whether the Noosa Temple of Satan is a religious denomination or society for the purposes of s 76(1) of *Education (General Provisions) Act 2006* (Qld)

Education (General Provisions) Act 2006 (Qld), s 76
Judicial Review Act 1991 (Qld), s 20, s 25, s 30, s 43
Uniform Civil Procedure Rules 1999 (Qld), r 566, r 569

Ainsworth v Criminal Justice Commission [1992] HCA 10; (1992) 175 CLR 564, followed
Alphafarm Pty Ltd v H Lundbeck A/S & Ors [2014] HCA 42; (2014) 254 CLR 247, cited
Australian Firearms and Munitions Pty Ltd v Attorney-General [2018] FCA 1442, cited
Buck v Comcare (1996) 66 FCR 359, cited
Chancellor Park Retirement Village Pty Ltd v Retirement Village Tribunal & Ors [2003] QSC 276; [2004] 1 Qd R 346, cited
Church of Christ (Non-Denominational) Inc v Minister for Territories and Local Government [1985] FCA 391; (1985) 61 ALR 541, cited
Corporation of the City of Enfield v Development Assessment Commission [2000] HCA 5; (2000) 199 CLR 135, cited
Commissioner of Land Tax for the State of New South Wales v Joyce [1974] HCA 39; (1974) 132 CLR 22, cited
Innes v Electoral Commission of Queensland [No 2] [2020] QSC 293, cited
Griffith University v Tang [2005] HCA 7; (2005) 221 CLR 99, followed
Lyons v Queensland [2016] HCA 38; (2016) 259 CLR 518, followed

Minister for Immigration and Ethnic Affairs v Naumovska (1983) 88 ALR 589, cited

Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd [2018] HCA 4; (2018) 264 CLR 1, cited

Sica v Attorney-General for the State of Queensland [2021] QSC 309, cited

The Church of the New Faith v The Commissioner of Pay-Roll Tax (Vic) [1983] HCA 40; (1983) 154 CLR 120, discussed

Theosophical Foundation Pty Ltd v Commissioner of Land Tax (1966) 67 SR (NSW) 70, cited

Watkins v Commissioner for Corporate Affairs [2021] SACAT 10, cited

XYZ v The Commonwealth [2006] HCA 25; (2006) 227 CLR 532, cited

COUNSEL: The applicant appeared on his own behalf
GA Thompson QC with F Nagorcka for the respondent

SOLICITORS: The applicant acted on his own behalf
GR Cooper, Crown Solicitor, for the respondent

- [1] By s 76(1) of the *Education (General Provisions) Act 2006 (Qld)* (**Education Act**), a minister or an approved accredited representative of a “religious denomination or society” has an entitlement to give religious instruction in State schools to students who are members of that denomination or society.
- [2] The applicant, Trevor Bell, and another man, Robin Bristow, are members of an unincorporated association known (by them at least) as the “Noosa Temple of Satan” (**Temple**). In March 2021, they made application for approval to deliver “Satanic” religious instruction at four nominated State schools. Their application was refused on the ground that the Temple “has no entitlement to provide religious instruction” because it “is not a religious denomination or society for the purposes of” s 76(1) of the Education Act.
- [3] By this amended application,¹ Mr Bell (who is legally qualified) seeks a statutory order of review in relation to that “decision” under Part 3 of the *Judicial Review Act 1991 (Qld)* (**JR Act**)² and, further, orders setting the “decision” aside along with a declaration to the effect

¹ The initiating document was an Originating Application. It ought to have been an Application for a Statutory Order of Review (see s 25 of the JR Act and r 566 of the *Uniform Civil Procedure Rules 1999 (Qld)* (**UCPR**)), but no point was taken about that irregularity: Transcript: 1-4. The Originating Application was amended by leave at the hearing; Transcript: 1-9.

² The application for review was made pursuant to s 20 of the JR Act. The grounds specified in the amended application are that: (a) the “making of the decision was an improper exercise of power in that the reasons given for the decision were irrelevant considerations which should not have been taken into account”; (b) there was “no evidence to justify the [decision-maker’s] conclusions that most Satanists do not believe in Satan or that the Temple had insufficient membership”; (c) there “was a failure to take into account the membership number of the Temple”; (d) to “the extent that the reasons were relied on due to the [decision-maker’s] understanding of the legal criteria necessary to constitute a religious denomination or society, the [decision-maker] made an error in law”; and (e) “there was a failure to accord procedural fairness in that the decision was made without asking the Temple for further information on the issues the decision maker was relying upon”.

that the Temple is a religious denomination or society for the purposes of s 76 of the Education Act.³

- [4] For the reasons that follow, Mr Bell’s application must be dismissed.

The application for approval

- [5] It is useful to commence with some largely uncontroversial facts concerning the application for approval.

- [6] In that regard, I was informed by the parties that, for a religious denomination or society to avail itself of the entitlement conferred by s 76(1) of the Education Act, the Department of Education has published a “Religious Instruction Policy Statement” and what is described as a “Form 1” on its website. By completing the Form 1 and providing it to a school principal, the religious denomination or society notifies the principal of its intention to provide religious instruction in the school and applies for approval of a person or persons as accredited representatives. Of course, the power to approve a person as a representative is by s 76(1) vested in the Minister. However, I was asked to assume that the power to approve a person as a representative was delegated by the Minister for Education to school principals. There is no evidence to that effect, but I proceed on the faith of that assumption.

- [7] On 1 February 2021, a completed Form 1 was provided to the principals of four State schools. Each was signed by “Robin Bristow (aka Brother Samael Demo-Gorgon), Spiritual Leader and Founder of The Noosa Temple of Satan”. In an attachment to those Forms, Mr Bristow and Mr Bell were nominated as the “accredited representatives” for whom approval was sought. Mr Bell was nominated as the “religious instruction coordinator”. By the Forms, it was proposed that the title of the proposed program be “Satanic Religious Instruction” and that its “aims and goals” were to “provide students with information about the religion of Satanism, including belief in Satan as a supernatural being, the canons of conduct and the tenets” and to “help students analyse the information and critically evaluate the religion of Satanism”.

- [8] The Forms eventually found their way to a senior officer of the Department of Education. For reasons I explain below (at [14] to [17]), I agree with the submission made on behalf of the respondent that it was not for the recipient school principals to determine whether the Temple was a religious denomination or society and entirely appropriate that the respondent’s position on that question be formulated by a suitably qualified officer within the Department.

- [9] On 5 March 2021, the Deputy Director-General of the Department of Education forwarded a letter to Mr Bristow in which, relevantly, the following was stated:

“It is the Department of Education’s position that the Temple is not a religious denomination or society for the purposes of section 76 of the Act.

From statements publicly attributed to you, the department understands that the Temple was established in response to the Australian Government’s proposal for a religious discrimination Bill and that most of the people who follow Satanism, do not believe that Satan exists.

Accordingly, the department considers there is a real question whether the

³ These orders were sought pursuant to s 30 of the JR Act.

Temple's true purpose is political as opposed to religious. There is also limited evidence to demonstrate that the Temple has sufficient membership in order to be regarded as a denomination or society.

Therefore, as the Temple is not a religious denomination or society for the purposes of section 76 of the Act, it has no entitlement to provide religious instruction in Queensland state schools. To the extent that your proposal is an application for approval under section 76 of the Act, it is not a valid application."

- [10] On 12 March 2021, Mr Bristow replied to the letter from the Deputy Director-General. The purpose of his letter was, he stated, "to provide you with more information and to request that you reconsider your position". Mr Bristow then wrote:

"Yes, the Temple was created in response to the proposed Religious Discrimination Bill but we do not see how that is relevant to your decision. We are a religion that objects to Christian authoritarianism. The proposed Bill seeks to entrench and expand Christian power. Of course it motivated us to create a church to gather and empower Satanists to oppose the proposed new laws. No true Satanist could sit back and watch. As a church we have a religious purpose which is manifested by political activism. In any event, many traditionally recognised religions have their genesis as organisations which included strong political agendas in response to social movements.

The Department may be confused by laws regarding tax exempt status for religious groups. In order to gain and keep tax exempt status, religious organisations must steer clear of endorsing political parties. Our application to conduct religious instruction classes is not a case regarding the Temple's tax exempt status therefore the political activity of the Temple is irrelevant.

We do not know the proportion of Satanists who believe in Satan and neither does the Department. The same could be said of all religions. There are no doubt millions of nominal "Christians" who do not believe that Christ was the son of God. The statement is mere supposition and is irrelevant considering it is a feature common to all religions.

Regarding membership numbers, there is no legal authority prescribing the minimum number of members required ... for a religious denomination or society but there are areas where we can get some guidance. The Australian Bureau of Statistics gathers data on religious affiliations in Australia. It recognises over 11 religious denominations which have less than 50 members in Australia. Also, under the Associations Incorporations Act 1981, it is possible to incorporate an association with just 7 members.

The Temple has over 8,500 followers and likers on its Facebook page. In person meetings have been discouraged due to Covid-19 concerns but our Black Mass ceremony in October 2020 was sold out. Three families have requested us to provide religious instruction to their children.

The Education (General Provisions) Act 2006 and the Regulations do not

prescribe a minimum membership number of members that are required in order to qualify as a denomination or society. To the contrary, there is no minimum number of attendees that are required for a religious instruction class. The minimum therefore is one which would indicate a legislative intention that smaller denominations not be disqualified.

The reasons for rejecting our application are either erroneous or irrelevant. If we cannot resolve this matter with the Department we will make an application to the relevant court seeking a declaration that the Temple is a religious denomination or society and is therefore entitled to apply to conduct religious instruction lessons.

We ask that the Department reconsider its decision by Friday the 20th of March 2021 otherwise we will proceed with court action seeking a declaration.”

- [11] The Deputy Director-General responded by email on 19 March 2021. He re-affirmed the Department’s position, that is to say, that the Temple was not a religious denomination or society for the purposes of s 76(1) of the Education Act and that it therefore had no entitlement to provide religious instruction in Queensland State schools.

The threshold issue – a jurisdictional fact

- [12] Chapter 5 of the Education Act is concerned with religious instruction. Its solitary provision, s 76, is in these terms:

“76 Religious instruction in school hours

- (1) Any minister of a religious denomination or society, or an accredited representative of a religious denomination or society, which representative has been approved by the Minister for the purpose, shall be entitled during school hours to give to the students in attendance at a State school who are members of the denomination or society of which the person is a minister or the accredited representative religious instruction in accordance with regulations prescribed in that behalf during a period not exceeding 1 hour in each week on such day as the principal of that school appoints.
- (2) Instruction in accordance with a regulation may be given in State primary and special schools during school hours in selected Bible lessons.
- (3) A separate reading book shall be provided for such purpose.
- (4) Instruction of a kind mentioned in subsection (2) is not to include any teaching in the distinctive tenets or doctrines of any religious denomination, society or sect.
- (5) Notwithstanding anything in this section, any parent of a student in attendance at a State school may withdraw such student from all religious instruction in such school by notification in writing to the principal that the parent desires the student to be so withdrawn.

- (6) The provisions pursuant to this section shall not apply or extend to students enrolled in the preparatory year at a State school.”

- [13] It will be seen that s 76(1) of the Education Act gives to “any minister” of a “religious denomination or society” or an “accredited representative” of a “religious denomination or society” an entitlement to provide religious instruction to students at a State school who are members of that denomination or society. The instruction may be given during school hours, on a day determined by the principal, and it is not to exceed one hour each week. In the case of “accredited representatives”, they must also be approved by the Minister for Education for that purpose but approval may only be given where the person represents an entity which is a “religious denomination or society” within the meaning of s 76(1). Importantly though, and whether a minister or accredited representative, the entitlement to provide religious instruction arises by force of the statute only where an entity is a “religious denomination or society”.
- [14] Such a statutory entitlement is properly to be regarded as both objective and self-executing. To borrow from the observations made by Gageler J in *Lyons v Queensland*,⁴ the entitlement under s 76(1) does not allow for any “administrative choice”; the prescription – a religious denomination or society – is “either met or not met independently of any action, inaction, knowledge or opinion of a person administering” the Education Act.⁵ Put another way, no “decision by anybody is required to bring about”⁶ the entitlement.
- [15] It follows that the entity’s character as a “religious denomination or society” is a jurisdictional fact⁷ which must exist before a minister of the religious denomination or society has any entitlement to provide religious instruction *or* before an accredited representative of the religious denomination or society may be approved by the Minister for Education (or her delegate) for that purpose.
- [16] Here, the position taken by the Deputy Director-General on behalf of the Department (and, ultimately, the respondent) and communicated to Mr Bristow involved no administrative choice. It could not “itself confer, alter or otherwise affect legal rights or obligations”⁸ and, to the point, it was not a “decision ... under an enactment” capable of review under Part 3 of the JR Act.⁹ Either the Temple was a religious denomination or society or it was not. The position taken on behalf of the respondent could never have any bearing on that question.
- [17] Of course, that is not to say that s 76(1) of the Education Act does not confer any decision-making powers. The subsection incorporates a power on the part of the Minister for Education to approve an accredited representative as well as a power on the part of school principals to decide the day of the week during which the religious instruction may be

⁴ *Lyons v Queensland* [2016] HCA 38; (2016) 259 CLR 518, 534.

⁵ *Lyons v Queensland* [2016] HCA 38; (2016) 259 CLR 518, 534 [50]. And see *Buck v Comcare* (1996) 66 FCR 359, 361-362.

⁶ *Minister for Immigration and Ethnic Affairs v Naumovska* (1983) 88 ALR 589, 601.

⁷ *Corporation of the City of Enfield v Development Assessment Commission* [2000] HCA 5; (2000) 199 CLR 135, 148; *Chancellor Park Retirement Village Pty Ltd v Retirement Village Tribunal & Ors* [2003] QSC 276; [2004] 1 Qd R 346, [18]-[20].

⁸ See *Griffith University v Tang* [2005] HCA 7; (2005) 221 CLR 99, [89].

⁹ See *Australian Firearms and Munitions Pty Ltd v Attorney-General* [2018] FCA 1442, [68].

delivered. However, those powers are only enlivened where the jurisdictional fact – the existence of a religious denomination or society – is made out.

- [18] The absence of a reviewable decision is sufficient to dispose of Mr Bell’s application for a statutory order of review pursuant to s 20 of the JR Act. That application must be dismissed. It also means that part of the relief sought pursuant to s 30 of the JR Act – an order setting aside the “decision” – is misconceived. Such an order would, if made, be in the nature of certiorari but that remedy will not be available where a decision has “no legal effect or consequence” because there is “nothing to be quashed”.¹⁰ This part of the application must also be dismissed.
- [19] All that remains of the application is the part which seeks a declaration pursuant to s 30 of the JR Act to the effect that the Temple is a religious denomination or society for the purposes of s 76(1) of the Education Act. As to this, the power to grant relief under this provision of Part 3 of the JR Act is also dependent on the existence of a reviewable decision. Nonetheless, the court may still proceed as though the application was an application for relief under Part 5 of the JR Act for a declaration.¹¹ Because of the way in which the primary application was argued at the hearing, this would be appropriate if, on the evidence placed before the court, such a declaration should be made.¹² It also provides a suitable vehicle for this court to determine the central question in this case, that is to say, whether the Temple is a religious denomination or society.¹³

The evidence

- [20] In support of his application, a series of affidavits was relied on by Mr Bell; three were affirmed by him and a fourth by Mr Bristow. Mr Bristow was also cross-examined at the hearing. That was revealing because critical portions of his affidavit were demonstrated to be entirely false, a topic to which I shall later return.
- [21] As I earlier observed (at [7]), Mr Bristow holds himself out as the founder and “spiritual leader” of the Temple and, in that respect at least, his evidence was supported by Mr Bell. In his role as leader, Mr Bristow uses what he has described as his “drag name”, Brother Samael Demo-Gorgon. He settled on that name after consulting a website and looking for the most demonic name he could find. As recently as May 2021 he was unsure whether he was a Satanist but, when giving evidence, he said that he had “reconsidered” and was now prepared to describe himself as a “non-theistic Satanist”. He agreed that, for him, Satanism was a “very effective political tool”.

¹⁰ *Ainsworth v Criminal Justice Commission* [1992] HCA 10; (1992) 175 CLR 564, 581, 595; *Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd* [2018] HCA 4; (2018) 264 CLR 1, [28];

¹¹ UCPR, 569; JR Act s 43(3). By s 43(3), if the court considers that the relief sought should not be granted on an application for review but that the relief may have been granted if it had been sought “in an action begun by writ of summons or originating summons by the applicant at the time of starting the application for review”, the court may, instead of refusing the application, order the proceeding to continue as if it had begun” in that way. See *Sica v Attorney-General for the State of Queensland* [2021] QSC 309, [12].

¹² If it is considered that such a declaration should be made, it would usually be necessary to first order that the proceeding continue as if started by Originating Application, but (in error) this proceeding was in fact begun in that way.

¹³ See, e.g., *Corporation of the City of Enfield v Development Assessment Commission* [2000] HCA 5; (2000) 199 CLR 135, 146.

[22] In his affidavit, Mr Bristow deposed that the Temple was “devoted to the education, practice, celebration and promotion of the religion of Satanism”. The name, “Noosa Temple of Satan”, is registered as a business name. There is also a “trademarked logo” featuring a pentagram along with a Facebook page and website devoted to the Temple. According to Mr Bristow, the Temple’s communications often use “black or dark coloured colour schemes” and often finish with “Hail Satan”. He deposed that “during religious ceremonies and for some special occasions” he wears “a black cloak, holds a replica skull and, if practical, [uses] candles”. Mr Bristow further deposed that he is “responsible for guiding [the Temple’s] objectives, purposes and day to day activities”. To do so, he consults with members of his leadership team whom he nominated as Mr Bell and a graphic designer who manages the Temple’s social media activities. No other members of the Temple were identified.

[23] Mr Bristow deposed that the Temple was “created” by him in December 2019 for the following purpose:

- “7. My personal goal in creating the Temple was to create a high profile Satanic religious group that could access the special rights and privileges that are available to all religions.
8. I have become very mindful of the need for the Temple to meet the legal criteria of a religious organisation. Since starting the Temple, the activities and objectives have evolved over time as I have tried to ensure as much as possible that it qualifies as a religious organisation.
9. The Temple’s purpose is to promote three key ideas. The first is the belief in Satan as a supernatural spirit, the second is a commitment to follow the example of Satan by rebelling against the Christian God’s authority and the third is the use of classic Satanic symbols and rituals such as pentagrams, black cloaks, skulls, candles and phrases such as ‘Hail Satan’.
10. The supernatural belief of Satan that the Temple aims to promote is the Satan of the Bible. In particular, it is the Satan as described in the book of Job. This is the supernatural spirit we will preach to our students in religious instruction classes and users of our chaplaincy services.”

[24] Mr Bristow went on to depose that the Temple “encourages canons of conduct that give effect to” a belief in Satan. He continued:

- “11. These are practices which challenge Christian authority and which test the faith of Christians. In a contemporary Australian context that means the Temple engages in and encourages practices such as:
 - Encouraging secular laws so as to reduce Christian power;
 - Encouraging lawful practices which many Christians disapprove of such as gay and lesbian lifestyles;
 - Exposing flaws in Christian values by highlighting double standards and hypocrisy;
 - Taking advantage of special rights and privileges that are normally only accessed by Christian groups; and

- Conducting theological debates to sow seeds of doubt in the minds of Christian believers.”

[25] Mr Bristow also deposed that, on 30 October 2020, he “organised and presided over our first ever Black Mass ritual” and that he intended this to be an “annual event”. Due to “Covid-19 restrictions and the cost of security” it was limited to “a room of 36 attendees”. Elsewhere in the same affidavit, Mr Bristow deposed that the “event” was “sold out” and that there were “approximately 20 attendees”.

[26] Mr Bristow deposed:

“14. In addition to traditional theistic Satanists, the Temple accepts and welcomes non-theistic Satanists. They are followers who believe in the code of conduct and perhaps engage in some of the rituals but do not believe in Satan as a supernatural spirit.

15. The Temple does not keep a register of members or followers and there is no application or admission process. If people agree with what the Temple is doing and consider themselves part of its community then they are automatically welcome.”

[27] Mr Bristow went on to add that, as of 13 May 2021, the Temple had 6,992 Facebook followers (with 3,118 page likes), voluntary donations to assist the Temple had been made by 71 people and the Temple had received 86 orders for the sale of Temple “merchandise”.¹⁴

[28] In one of Mr Bell’s affidavits he explained that before children could lawfully attend any of the classes proposed to be conducted by the Temple, their “parents needed to change the children’s enrolment details regarding religious instruction”. Exhibited to that affidavit was a copy of emails forwarded by the parents of three separate children in December 2020 and January 2021 making such a request and, in particular, asking that their children’s religion be recorded as Satanism and providing their consent to their children “receiving religious instruction” from the Temple. In this regard, when Mr Bristow was cross-examined at the hearing, he canvassed parents of children to make representations to their local school for their children to receive religious instruction from the Temple. Part of that process involved him standing outside one of the schools dressed in a hood and black robe carrying a plastic skull he purchased from Woolworths. He attempted to pass out leaflets to children as they entered the school. Also, through the Temple’s website and Facebook page, parents of children were encouraged to participate in “some kind of religious education” to be provided by the Temple, and the three parents to whom Mr Bell referred responded.

[29] As already mentioned, Mr Bristow was cross-examined on his affidavit. He agreed that the Temple was started by him in response to a religious discrimination Bill introduced into Federal Parliament. Part of the motivation was to persuade the Commonwealth Government to “scrap” the Bill and replace it with a Human Rights Act. The idea of a “Temple of Satan” was inspired by an American group called the “Satanic Temple” which was featured in a film called “Hail Satan”. Mr Bristow confirmed that he does not believe in any supernatural deity but asserted that this was “not the view of the Temple”. When asked to identify the followers and supporters of the Temple, Mr Bristow replied:

“Well, there’s – there are three people who actively run the Temple. And

¹⁴ See Exhibit 7.

we would consider our supporters and followers mainly on our Facebook page, as well as those who've attended our socials and our Black Mass."¹⁵

- [30] As to the Black Mass, Mr Bristow admitted that he had described it as a "blasphemous Rocky Horror Picture Show". That was the description he used when interviewed for a podcast on 16 December 2020.¹⁶ During this interview, he described the Black Mass as "just a chance to have a dress up fun night". He said it was, "Very camp, very entertaining and it should give people a few giggles". He went on to say:

"Satanists do not believe in Satan. They don't believe he exists, so that's the first principle. The only people who believe Satan exists are Christians. So it's very funny when of course we get accused of believing and worshipping Satan, because that's not true at all.

...

So Satan is a metaphoric symbol for us ... He is a symbol of rebellion, questioning, always questioning, and also causing a little bit of mischief as he goes along. So that's, for us, what Satan represents. I mean it goes much deeper than that as well. It's all about supporting bodily autonomy as I said so we support a woman's right to choose, euthanasia, I personally support legalising drug use and we want to get religion out of politics. So these are all parts of what we call Satanic change that we want in Australia, especially secularism, that is one of our chief aims as well."

- [31] Later in the interview, Mr Bristow said that he was an atheist and that "most Satanists are atheists". He told the interviewer that "[w]e don't believe in the occult and the supernatural". This view, he agreed, reflected the view of the Temple at the time of the interview although Mr Bristow said that this had changed.
- [32] A recording was made of the Black Mass.¹⁷ During this assembly, Mr Bristow said, amongst other things:

"They are here. Thank you everyone. The sermon for tonight. The Noosa Temple of Satan is a non-theistic Satanic organisation. That means we do not worship or believe in a literal deity, but rather, that we view Satan as a powerful metaphor for rebellion and for arbitrary authority, as well as a champion of enlightenment, advocating for critical thought and reason, even when in opposition to popular opinion.

Our six core principles are: rebellion - we revere Satan as a metaphoric figure who symbolises rebellion against tyrannical and arbitrary authority, personal sovereignty and rational scepticism.

Compassion - we believe that we must be compassionate and use our strengths to aid those around us wherever it is sensible to do so.

Enlightenment - we believe in enlightenment and we encourage scepticism

¹⁵ Transcript: 1-14.

¹⁶ A transcript of the podcast was tendered: Exhibit 2.

¹⁷ A transcript of this assembly was also tendered: Exhibit 3.

and a drive to remain informed and educated.

Critical thought - we encourage critical thinking in all of our actions and beliefs. We reject tradition for the tradition's sake and supernaturalism. We promote an understanding and acceptance of modern scientific discoveries.

Autonomy - we believe in bodily autonomy, that everyone should have the ultimate control over their own bodies.

And finally, indulgence - we reject the concept of an afterlife and thus recognise that all that can be done will be done in this life. We therefore encourage indulgence in the pleasures of life so long as no undue harm is caused.

You may ask, why do we practise rituals? Rituals to a Satanist are not magical or mystical in any way but is rather a way for us to focus our thoughts and centre ourselves. It helps to strengthen our sense of community within the group and many of us just appreciate the aesthetic of it.”

- [33] Mr Bristow accepted that if the Temple was permitted to provide religious instruction to particular children in schools, one consequence would be that any children who did not participate in the Temple's program would be put out of the class while the Temple's lesson was delivered. He accepted that this would cause disruption but maintained that this was “not the main reason why” the Temple sought approval. In that regard it should also be recorded that when Mr Bristow was interviewed for an article appearing in the *Brisbane Times* on 20 July 2021, he told the journalist that the preferred position of the Temple was that “no religion is allowed in State schools – that families do that in their private time”. Mr Bristow accepted when giving evidence at the hearing that this reflected the view of the Temple as well as his own.
- [34] Mr Bristow also accepted that, for an article published by the *Star Observer* on 18 October 2020, he told the journalist that the Temple was established “in response to the Morrison Government's proposal for a religious discrimination Bill” and that it was “all-embracing”, adding that he would “hate to call it a religion”. He was quoted accurately as saying “[w]e don't believe that Satan exists”. He also said, “it's completely non-religious and secular, but it seems to have caused a lot of irritation”. Similarly, Mr Bristow accepted the accuracy of a quote attributed to him in an article published by *The Courier Mail* on 24 April 2021 to the effect that he did not “worship anything except myself” and that he did not believe in “Satan as a supernatural being”.
- [35] Towards the conclusion of his cross-examination, several propositions were put to Mr Bristow. When doing so, he said that he understood the common belief of the Temple to be “disdain and distrust of Christians”. He accepted that there had been “no regular process of worship”, and that both theistic and non-theistic Satanists are welcomed. Indeed, he agreed that he did not care what the belief of the members was and that they could “believe in whatever they like”. Further, he accepted that it was not a requirement for members of the Temple to believe in any kind of supernatural being. No vow was administered or oath taken, and no other obligation was imposed on them.
- [36] Lastly, Mr Bristow was referred to paragraph 10 of the affidavit he affirmed in support of Mr Bell's application. Although extracted earlier (at [23], it is worth reproducing for ease of reference:

“The supernatural belief of Satan that the Temple aims to promote is the

Satan of the Bible. In particular, it is the Satan as described in the book of Job. This is the supernatural spirit we will preach to our students in religious instruction classes and users of our chaplaincy services.”

- [37] It was put to Mr Bristow that this was a false deposition, a proposition he attempted to deny. When challenged on his denial, Mr Bristow was unable to point to a single person, whether associated with the administration of the Temple or otherwise, who holds to (or even once held) such a belief. Indeed, during re-examination, there was this illuminating exchange between Mr Bell and Mr Bristow:

“APPLICANT: If a member of the public had no interest in Satanism, could they be considered a member of the Noosa Temple of Satan? --- I don’t see why not.”¹⁸

Is the Temple a religious denomination or society?

- [38] This case has nothing at all to do with the question whether Satanism is a religion. Nor is it necessary to define what Satanism might be. Rather what is left of this case is only concerned with the question whether, on the evidence, the Temple is a religious denomination or society within the meaning of s 76(1) of the Education Act.

- [39] Of course, a religious denomination or society must necessarily pertain in some way to a religion or religions and that is why the submissions on both sides were directed in no small way to the legal characteristics of a religion and, on that point at least, there was common ground.

- [40] As to that, in *The Church of the New Faith v The Commissioner of Pay-Roll Tax (Vic)*,¹⁹ Mason ACJ and Brennan J, held that:

“... for the purposes of the law, the criteria of religion are twofold: 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 the grounds of religion.”²⁰

- [41] To determine whether a particular entity fulfills these criteria, an examination of the beliefs, practices and observances of its adherents is required.²¹ Mere assertion is not enough,²² and a claim that is rightly to be regarded as “not serious but merely a hoax” will not satisfy the

¹⁸ Transcript: 1-37.

¹⁹ *The Church of the New Faith v The Commissioner of Pay-Roll Tax (Vic)* [1983] HCA 40; (1983) 154 CLR 120.

²⁰ *Church of the New Faith v The Commissioner of Pay-Roll Tax (Vic)* [1983] HCA 40; (1983) 154 CLR 120, 133-136, 140.

²¹ *Church of the New Faith v The Commissioner of Pay-Roll Tax (Vic)* [1983] HCA 40; (1983) 154 CLR 120, 130, 148.

²² *The Church of the New Faith v The Commissioner of Pay-Roll Tax (Vic)* [1983] HCA 40; (1983) 154 CLR 120, 132.

prescription.²³ There must be “a real connexion between a person’s belief in the supernatural and particular conduct in which that person engages”²⁴ and, because of that, “mere ritual ... devoid of religious motivation, would be a charade”.²⁵

[42] Wilson and Deane JJ held that belief in the supernatural was “one of the more important indicia of a ‘religion’” and that another is “that the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance”.²⁶ Where “what is being put forward as being a religion is, in truth, no more than a parody of religion or a sham” it will not qualify. The same conclusion will be reached in “cases [where] 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”.²⁷ However, it should not be overlooked that the examination is to be focussed on the beliefs, practices and observances of the adherents 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 his followers”.²⁸

[43] In his submissions, Mr Bell submitted that the Temple “does not have to be a religion, a church, or a denomination ... [i]t merely must be a religious society”.²⁹ He went on to submit that such a society is comprised of “people with an interest in something that could be described as religious”. That formulation is not far removed from what was held by Sugeran JA (with whom McLelland JA agreed, and I respectfully adopt) in *Theosophical Foundation Pty Ltd v Commissioner of Land Tax*.³⁰ His Honour observed that although in its “primary sense”, “religious society” had a meaning equivalent to “religious denomination”, it:

“... may also comprehend more limited bodies of persons as, for example, religious orders and societies for specific religious purposes such as missionary societies. A society, in the relevant sense, is ‘a number of

²³ *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* [1983] HCA 40; (1983) 154 CLR 120, 151; *Watkins v Commissioner for Corporate Affairs* [2021] SACAT 10 (where the Tribunal held that the Church of the Flying Spaghetti Monster Australia was not formed for a religious, educational, charitable or benevolent purpose under the *Associations Incorporation Act* 1985 (SA)).

²⁴ *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* [1983] HCA 40; (1983) 154 CLR 120, 135.

²⁵ *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* [1983] HCA 40; (1983) 154 CLR 120, 140.

²⁶ *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* [1983] HCA 40; (1983) 154 CLR 120, 174.

²⁷ *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* [1983] HCA 40; (1983) 154 CLR 120, 171.

²⁸ *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* [1983] HCA 40; (1983) 154 CLR 120, 141.

²⁹ Transcript: 1-44.

³⁰ *Theosophical Foundation Pty Ltd v Commissioner of Land Tax* (1966) 67 SR (NSW) 70, 79, 82. And see *Commissioner of Land Tax for the State of New South Wales v Joyce* [1974] HCA 39; (1974) 132 CLR 22, 35.

persons associated together by some common interest or purpose, united by a common vow, holding the same belief or opinion, following the same trade or profession, etc: an association” (Oxford English Dictionary, “society”, III, 8) ... **A society as thus described, in which the common element pertains to or is concerned with religion, may aptly be described as a religious society.**” [Emphasis added]

- [44] For completeness, I add that it is unnecessary to decide whether, as the respondent submitted, a “reasonably substantial membership” was required to constitute a denomination or society³¹ because of what I am about to find. Nor is it necessary to say a great deal about Mr Bell’s submission to the effect that provisions of the *Human Rights Act* 2019 (Qld) have a bearing on the true construction of the expression, “religious denomination or society”; unless there is a constructional choice, s 48 of that Act has no work to do and here no such choice has been identified.³² Likewise, Mr Bell’s attempt to fragment the expression to search for a favourable meaning must be rejected.³³
- [45] That said, care is required in the assessment of the body of evidence before the court because much of what was asserted in the Forms signed by Mr Bristow and the correspondence forwarded by him to the Deputy Director-General as well as in his own affidavit has been demonstrated by his own admissions under cross-examination to have been false. In this regard, what Mr Bristow affirmed in paragraph 8 of his affidavit to the effect that he was “very mindful of the need for the Temple to meet the legal criteria of a religious organisation” should be noted because, in several important respects, the Forms, correspondence and affidavit bear little relationship to the truth but instead betray a desire to promote “facts” to fulfill what must have been thought to be the legal criteria. The result has been a jumble of confected nonsense.
- [46] Apart from Mr Bell and Mr Bristow, only one other person (the graphic designer) was identified by the evidence as a member of the Temple. Reliance on Facebook followers and page likers as members of the Temple and therefore adherents is an absurd notion. Similarly, reliance on the sending by three parents of emails to school principals as some measure of support for the assertion that the Temple was comprised of some followers who were interested in Satanism is unsound because there is no evidence that any of those parents were members of the Temple.
- [47] The Temple has no genuine connection to anything pertaining to religion. There is certainly no evidence of a shared belief in a supernatural being, thing or principle, let alone canons of conduct to give effect to such a belief. To the extent that Mr Bell submitted that the Temple amounted to a “religious society”, no common element pertaining to or concerned with a religion (or religions) was in evidence. Indeed, as best I can ascertain on the evidence, the identified members of the Temple are wholly irreligious. None of this should be surprising because the Temple was not formed (and nor has it been conducted) as a religious denomination or society; the sole reason for its existence was (and remains) to push a political barrow.

³¹ Relying on *Church of Christ (Non-Denominational) Inc v Minister for Territories and Local Government* (1985) 61 ALR 541, 545-547.

³² *Innes v Electoral Commission of Queensland [No 2]* [2020] QSC 293, [256].

³³ See *XYZ v The Commonwealth* [2006] HCA 25; (2006) 227 CLR 532, [19]; *Alphafarm Pty Ltd v H Lundbeck A/S & Ors* [2014] HCA 42; (2014) 254 CLR 247, 271-272.

- [48] It was therefore concerning to wade through what was advanced about the Temple to the school principals, the Deputy Director-General and this court. For example, it was claimed in the Forms that the “Satanic Religious Instruction” to be provided to students will include “information about the religion of Satanism, including belief in Satan as a supernatural being, the canons of conduct and the tenets”. In Mr Bristow’s letter to the Deputy Director-General of 12 March 2021, the claim was made that “[w]e are a religion” and that the Temple was a “church” with a “religious purpose”. In his affidavit, Mr Bristow deposed that the Temple was “devoted to the education, practice, celebration and promotion of the religion of Satanism” and that the “Temple’s purpose” included the promotion of a “belief in Satan as a supernatural spirit” and a “commitment to follow the example of Satan”. Then, Mr Bristow affirmed that the “supernatural belief of Satan that the Temple aims to promote is the Satan of the Bible” and that “[t]his is the supernatural spirit we will preach to our students in religious instruction classes.”
- [49] Aided by Mr Bell and perhaps another, Mr Bristow’s attempt to obtain approval to deliver “Satanic” religious instruction in State schools was nothing more glorified than a base political stunt. His persistence with that attempt through the medium of this proceeding has resulted in a deplorable waste of the resources of the State which had to be marshalled in opposition to the relief sought and the needless allocation of court time and resources to deal with it.
- [50] I have no doubt that the parts of Mr Bristow’s affidavit to which I have just referred are untrue. Whether his affirmation of those parts was deliberate and material to the outcome of this application will be for others to consider. A direction will accordingly be made to determine whether the court should initiate that consideration.
- [51] As for what remains of the substantive application, the Noosa Temple of Satan is not a religious denomination or society for the purposes of s 76(1) of *Education (General Provisions) Act 2006 (Qld)*. Mr Bell’s application for a declaration to the contrary effect is dismissed.