Media Release SABM Australia expresses alarm at Malaysian Federal Court finding of Contempt. February 28, 2021

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SABM, a Malaysian diaspora community in Australia has expressed alarm at the decision of Federal Court of Malaysia finding of contempt of court against Malaysiakini. The Court determined that Malaysiakini is liable for the publishing of readers' comments and scandalising the court. Malaysiakini was fined half a million ringgit, more than twice the fine that was requested by the prosecution (AG's Chambers) and with a demand that fine had to be paid within days of it being levied.

The six of seven judges chose to apply 114A of the Evidence Act 2012 which allows the court to presume all comments from 3rd parties on the publisher's website, are those of the publisher. Evidence provided that the filtering system of Malaysiakini that blocks offensive language did not flag the reader comments but were removed as soon as the publisher was alerted were not accepted by the Court. In a dissenting judgment, Federal Court judge Nallini Pathmanathan said that Malaysiakini was not in contempt of court, as she felt it had successfully rebutted the presumption under Section 114A of being the publisher of the five comments. As Malaysiakini took down the objectionable content within 12 minutes of being alerted, Nallini felt that its "immediate response" demonstrated Malaysiakini's intention to not allow such contemptuous material on its website.

This decision will have a wide-reaching impact on news sites in Malaysia and in fact, any site that allows reader comments. The ruling could restrict discussion of issues of public interest and lessen the diversity of public opinion. A further development that sedition charges are being considered on both Malaysiakini editor-in-chief Steven Gan and MP Charles Santiago for comments made after the Federal Court decision have also cast a worrying shadow on freedom of speech that is guaranteed by Article 10 of the Federal Constitution.

SABM is urging Parliament to consider reforms to the applicable laws to reaffirm the guarantees of freedom of speech enshrined in the Federal Constitution.

*Saya Anak Bangsa Malaysia in Australia (SABM Australia) is a group of like-minded individuals of Malaysian origin based in Australia who advocate for enhanced governance in Malaysia.

Media enquiries: sabm.melbourne@gmail.com