



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

CANDACE OWENS FARMER
Plaintiff

and

MINISTER FOR HOME AFFAIRS
First Defendant

COMMONWEALTH OF AUSTRALIA
Second Defendant

PLAINTIFF’S OUTLINE OF ORAL ARGUMENT

PART I: CERTIFICATION

1. This outline of oral submission is in a form suitable for publication on the Internet.

PART II: OUTLINE OF ORAL SUBMISSIONS

(1) THE MEANING OF SECTION 501(6)(d)(iv) OF THE *MIGRATION ACT*

2. Section 501(6)(d)(iv) means that a person does not pass the character test if, in the event the person were allowed to enter or remain in Australia, there is a risk that the person would cause disagreement or debate in the Australian community or in a segment of that community: **PS [7]-[21]; Reply [2]-[9]**.

- (a) There is no clear line between “*disagreement and debate*” on one hand and “*dissension or strife*” on the other.
- (b) It is necessary to give s 501(6)(d)(iv) work to do.
- (c) Only s 501(6)(d)(v) incorporates a “*danger*” requirement.
- (d) The use of the word “*incite*” does not support the defendants’ construction.

- (e) The legislative history indicates a deliberately broad meaning.

Migration Regulations 1989 (Cth), reg 2 (**JBA Vol 2 Tab 4 p 354**)

Explanatory Memorandum to the Migration (Offences and Undesirable Persons) Amendment Bill 1992 (Cth), p 4 [16]

Second reading speech to the Migration (Offences and Undesirable Persons) Amendment Bill 1992 (Cth) (**JBA Vol 7 Tab 34 p 1922**)

- (f) The fact that s 501(6)(d)(i)-(iii) deal with apparently quite serious harms does not support the defendants' construction.

(2) THE CONSTITUTIONAL VALIDITY OF SECTION 501(6)(d)(iv)

3. Section 501(6)(d)(iv) limits political communication occurring in Australia: **PS [24]-[30]; Reply [13]**. This limit on political communication is a burden on the freedom: **PS [31]-[37]; Reply [11]-[12]**.

Mulholland v Australian Electoral Commission (2004) 220 CLR 181 at [108], [110], [138], [186]-[187] and [337] (**JBA Vol 4 Tab 19 p 1153**)

Ruddick v The Commonwealth (2022) 275 CLR 333 at [155], [156] and [172] (**JBA Vol 5 Tab 22 p 1412**)

4. The purpose of s 501(6)(d)(iv) is the prevention of the eroding of social cohesion of the Australian community through disagreement and debate caused by the presence of certain non-citizens in Australia: **PS [14]-[19], [40]**. Either side's claimed purpose is not legitimate: **PS [41]-[42]; Reply [14]**.
5. Section 501(6)(d)(iv) is not necessary: **PS [44]-[46]; Reply [15]**.
- (a) The first obvious and compelling alternative is s 501 without s 501(6)(d)(iv): **PS [45]; Reply [15]**.
- (b) The second obvious and compelling alternative is in substance the original formulation of s 180A(1)(b)(iii) of the *Migration Act*: **PS [46]; Reply [15]**.
6. Section 501(6)(d)(iv) is not adequate in its balance: **PS [47]-[49]**.

(3) THE VALIDITY OF THE MINISTER'S DECISION

7. On the assumption the defendants' construction is correct, the Minister misconstrued s 501(6)(d)(iv) in two ways:

(a) The Minister did not construe "*discord*" as needing to be in the nature of "*strife, dispute, disharmony or dissension*": **PS [52]; Reply [16]**.

(b) The Minister did not construe "*discord*" as containing a requirement of the causation of harm to the Australian community, or a segment thereof, such that the person represents a danger to that community: **PS [54]; Reply [16]**.

(4) RELIEF

8. In addition to the other relief sought by the plaintiff, the Court should issue a writ of peremptory mandamus if s 501(6)(d)(iv) is invalid: **PS [61]-[67]; Reply [17]**.

Dated: 5 May 2025



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