



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 09 Sep 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: M50/2026
File Title: White Australia Party Inc. & Anor v. The Commonwealth of A
Registry: Melbourne
Document filed: Form 27 (A-G of Qld) Outline of Oral Submissions
Filing party: Interveners
Date filed: 09 Sep 2026

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M50/2026

BETWEEN:

WHITE AUSTRALIA PARTY INC.
First Plaintiff

and

THOMAS ANTHONY SEWELL
Second Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA
First Defendant

and

THE ATTORNEY-GENERAL OF THE COMMONWEALTH
Second Defendant

**OUTLINE OF ORAL SUBMISSIONS OF THE
ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**

PART I: Internet publication

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

PART II: Propositions to be advanced in oral argument

A. *Head of Power*

2. If it is necessary to decide the point, the Court should find that Part 5.3B of the *Criminal Code* (Cth) is not supported by any nationhood power: **QS [6]**.
3. A nationhood power as broad as that for which the Commonwealth contends (whether sourced in s 61 or by implication) is not securely based in the text and structure of the Constitution. The Constitution is federal in nature and assigns only specific powers to the Commonwealth; a wide nationhood power (of whatever source) sits uneasily with that important feature: **QS [8]**.
 - *Pape v Commissioner of Taxation* (2009) 238 CLR 1, 50 [96], 60 [127]

Filed on behalf of the Attorney-General for the State of Queensland

9 September 2026

(French CJ), 117 [330], 124 [357] (Hayne and Kiefel JJ), 134 [397], 199 [569] (Heydon J) (**JBA, vol 10, tab 45, pp 3330, 3340, 3397, 3404, 3414, 3479**)

- Section 119 of the Constitution (**JBA, vol 1, tab 3, p 90**); Quick and Garran, *The Annotated Constitution of the Australian Commonwealth* (1901) 964-5 (**JBA, vol 19, tab 95, pp 6922-23**)
4. The defence power in s 51(vi) extends to addressing internal threats. That removes any logical or practical necessity for a broad nationhood power to address the same threats: **QS [8]**.
- *Thomas v Mowbray* (2007) 233 CLR 307, 324 [6] (Gleeson CJ), 363 [144]-[145] (Gummow and Crennan JJ), 503 [582]-[583] (Callinan J), 511 [611] (Heydon J) (**JBA, vol 12, tab 56, pp 4154, 4193, 4333, 4341**)
5. In any event, Part 5.3B would not come within the authorities that have recognised a nationhood power. Addressing the harm of hate crimes and organisations that assist in their commission is not something ‘peculiarly adapted to the government of a nation’. Nor is it something that ‘cannot otherwise be carried on for the benefit of the nation’.
- *Victoria v Commonwealth (AAP Case)* (1975) 134 CLR 338, 397 (Mason J) (**JBA, vol 12, tab 59, p 4532**)
6. The States can and do enact laws to address hate crimes: **QS [7]**.
- Eg offences listed in s 114A.3(3) of the *Criminal Code* (**JBA, vol 1, tab 4, p 230**)

B. Implied freedom of political communication

Appropriate level of analysis

7. The offence provisions in Div 114B impose no burden until a regulation is made under Div 114A (read with s 5 of the *Criminal Code Act 1995* (Cth)): **QS [9]**. Such a regulation will necessarily conform to the implied freedom, with the result that the whole of Part 5.3B can only operate conformably with the implied freedom.
8. The power to specify an organisation as a prohibited hate group in s 114A.2 is so heavily conditioned that any attempt to exercise it in a manner obnoxious to the implied freedom would be *ultra vires* Part 5.3B. That is especially so given that s 114A.4(1)(b) incorporates a proportionality test, thereby constraining the exercise of the power: **QS**

[11]-[14].

- *Wotton v Queensland* (2012) 246 CLR 1, 14 [22]-[24], 16 [32] (French CJ, Gummow, Hayne, Crennan and Bell JJ), 29-30 [74] (Kiefel J) (**JBA, vol 13, tab 62, pp 4984, 4986, 4999**)
- *Palmer v Western Australia* (2021) 272 CLR 505, 531 [68] (Kiefel CJ and Keane J), 558 [158], 559-60 [165]-[166] (Gageler J), 575-6 [208] (Gordon J) (**JBA, vol 10, tab 44, pp 3203, 3230, 3231-2, 3247-8**)

9. The plaintiffs seek to distinguish *Wotton* on the basis that ‘the inbuilt proportionality test’ was directed to the conditions that could be imposed: **Reply [11]**. That is not a point of distinction. Here, as in *Wotton*, the ‘inbuilt proportionality test’ conditions the exercise of the statutory power.

Preventing harm caused by hate crime is a legitimate aim

10. There is no threshold of harm required to qualify as a legitimate aim. At the level of principle, an aim of preventing *any* harm is legitimate, and capable of justifying a burden on the implied freedom, depending on the circumstances: **QS [24]**.

- *Clubb v Edwards* (2019) 267 CLR 171, 235 [196] (Gageler J) (**JBA, vol 7, tab 31, p 1952**)
- *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408, 1424 [54]-[55] (Gageler CJ, Gordon and Beech-Jones JJ), 1460-1 [245]-[246] (Jagot J) (**JBA vol 14, tab 67, pp 5457, 5493-4**)

11. In the alternative, even if seeking to protect against minor harms alone were an illegitimate aim, it cannot be fatal that this law pursues that aim alongside the aim of protecting against plainly more serious harms: **QS [25]**.

Dated: 9 September 2026.



.....
G J D Del Villar

.....
Kent Blore