



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: M50/2026
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Registry: Melbourne
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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

WHITE AUSTRALIA PARTY INC.
First Plaintiff

THOMAS ANTHONY SEWELL
Second Plaintiff

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and

THE COMMONWEALTH OF AUSTRALIA
First Defendant

THE ATTORNEY-GENERAL OF THE COMMONWEALTH
Second Defendant

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**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE
STATE OF TASMANIA (INTERVENING)**

Part I: Certification

1. This outline is in a form suitable for publication on the internet.

Part II: Outline of propositions to be advanced in oral argument

2. The Attorney-General adopts the Defendants' submissions that the impugned provisions are supported by the external affairs power and are not invalid as impermissibly burdening the implied freedom of political communication or infringing Ch III. The following additional points are made.

Implied freedom

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3. Members or former members of a "prohibited hate group" remain free to engage in political communication provided such engagement is otherwise lawful. Part 5.3B might limit the occasions on which political communication can be engaged in, but that is not itself a basis for constitutional invalidity particularly where its purpose is to avoid the risk of future harm (Tas [22]-[24]; *Tajjour v New South Wales* (2014) 254 CLR 508 at 566 [91], [111]-[113], [125]).

Ch III

4. The Plaintiffs' reliance upon *Graham v Minister for Immigration and Border Protection* (2017) 263 CLR 1 is misplaced. *Graham* concerned a provision under the *Migration Act 1958* (Cth) relating to the cancellation of visas. Section 203A(2)(c) prevented the Minister from being required to divulge confidential information to the Court when reviewing an exercise of power by the Minister. It was held to be invalid because it denied the Court evidence upon which the Minister's decision was based (at [65]-[66]). That is not this case. A court determining whether an offence has been committed under division 114B is not denied relevant evidence by the provisions of Part 5.3B. It proceeds based on the existence of a regulation specifying an organisation as a prohibited hate group.
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Dated: 9 September 2026



Sarah Kay SC
Solicitor-General for the State of Tasmania



Jenny Rudolf
Counsel for the Attorney-General (Tas)