



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
MELBOURNE REGISTRY**

BETWEEN:

WHITE AUSTRALIA PARTY INC
First Plaintiff

THOMAS ANTHONY SEWELL
Second Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA
First Defendant

THE ATTORNEY-GENERAL OF THE COMMONWEALTH
Second Defendant

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

PART I: INTERNET PUBLICATION

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

PART II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

The implied freedom of political communication

2. The purpose of Pt 5.3B of the Code — to protect the Australian community from organisations that engage in conduct that seriously harms the community and poses a threat to the security of the Commonwealth and its system of representative democracy (DS [44]) — is legitimate, and important.

Vic [26]-[35]; *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408 (**JBA V14, T67**) at [30]-[32], [54]-[55] (Gageler CJ, Gordon and Beech-Jones JJ), [165], [168]-[169] (Gleeson J), [218]-[221], [244]-[246] (Jagot J).

3. Among other things, conduct of the kind encompassed by the definition of “hate crime” in s 114A.3 of the Code results in the intimidation and silencing of targeted groups. By protecting against such harms, Pt 5.3B of the Code promotes “[e]quality of opportunity to participate in the exercise of political sovereignty” (*McCloy v New*

South Wales (2015) 257 CLR 178 at [45] (French CJ, Kiefel, Bell and Keane JJ)) and therefore enhances the system of representative and responsible government that the freedom exists to protect.

Vic [30]-[31]; Gelber and Murphy, “The Harms of Hate Speech”, in Heinze et al (eds), *The Oxford Handbook of Hate Speech* (**JBA V19, T88**, beginning at **6662**) at **6663-6668**. See also *Tajjour v New South Wales* (2014) 254 CLR 508 (**JBA V11, T55**) at [197] (Keane J); *McCloy* (2015) 257 CLR 178 (**JBA V9, T41**) at [5], [47], [84] (French CJ, Kiefel, Bell and Keane JJ).

Chapter III

4. The fundamental common law values underlying the *Lim* principle are centrally concerned with the protection of the life, liberty and bodily integrity of the individual.

YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs (2024) 99 ALJR 1 (**JBA V17, T79**) at [9], [14], [18] (Gageler CJ, Gordon, Gleeson and Jagot JJ).

5. If the *YBFZ* framework is to be applied to assess the constitutional validity of a power to impose a detriment on entities other than natural persons, both limbs of the justification inquiry may more readily be satisfied than in the case of a power to detain, or interfere with the bodily integrity of, a natural person:
 - 5.1. the range of legitimate purposes of the power to impose the detriment may be broader; and
 - 5.2. the power may more readily be characterised as reasonably capable of being seen as necessary for such a purpose.

Vic [43]-[45]; *YBFZ* (2024) 99 ALJR 1 (**JBA V17, T79**) at [239] (Beech-Jones J).

Dated: 9 September 2026



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SARAH ZELEZNIKOW