



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 WA) 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

M50 of 2026

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 THE
STATE OF WESTERN AUSTRALIA (INTERVENING)**

PART I: CERTIFICATION

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

PART II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

2. Western Australia relies on its written submissions and proposes to address the following points by way of amplification of those submissions:

Question 2 of the Special Case - appropriate level of analysis (WA [5])

3. Pt 5.3B of the *Criminal Code* (Cth) may apply to a range of organisations, incorporated or unincorporated, based inside or outside of Australia, and with varying degrees of involvement in politics or protests (as compared to the legislation in *Ravbar v Commonwealth* (2025) 99 ALJR 1000 (**JBA Vol 16, Tab 76, 6125**), which conferred a discretionary power which could only be exercised in respect of one specific organisation) and the conduct captured by the definition of "hate crime" in s 114A.3 is broad.
4. The nature and extent of any burden on the implied freedom imposed by Pt 5.3B may therefore vary across its different potential applications. In its application to the plaintiffs, the burden imposed by Pt 5.3B is neither deep nor wide: **WA [24]**.
5. The Court should avoid "the risk of premature interpretation of [the provisions of Pt 5.3B] on the basis of inadequate appreciation of their practical operation" (cf *Mineralogy Pty Ltd v Western Australia* (2021) 274 CLR 219 [59] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ)) by determining the plaintiffs' challenge to the provisions of Pt 5.3B as if it were a challenge to them (and s 5 of the *Criminal Code Act 1995* (Cth)) in their application to the first plaintiff by the regulations specifying the first plaintiff as per the approach of Justice Edelman in *Ravbar* at [226]-[228], [248].

Re-opening of *McCloy*

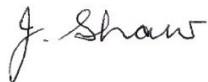
6. Western Australia adopts the position of the Commonwealth on the issue arising out of the written submissions of South Australia (**SA [28]**) as to whether the Court's decision in *McCloy v New South Wales* (2015) 257 CLR 178 (**JBA Vol 9, Tab 41, 2872**) needs to be re-opened.

7. That is, it is not necessary to re-open and overrule *McCloy*, which did not decide that structured proportionality was an essential or mandatory tool of analysis: see **Cth OOA [3]**.

Legitimate purpose

8. In the present case, there is a clear evidentiary basis for the legislatively perceived mischief of extremist ideologies inducing violence and other harms, and those extremist ideologies spreading despite existing laws: see **Cth OOA [10]; WA [21], [35], [37]**.
9. However, Western Australia adopts [27]-[28] of the written submissions of
 10 Queensland that Parliaments have latitude to respond to complex policy issues and to act prophylactically even where the evidence concerning harms is inconclusive.

Dated: 9 September 2026



Jean Shaw SC

Gregory Stockton