

Concise Response



No. NSD372 of 2023

Federal Court of Australia

District Registry: NSW

Division: General

MEHREEN FARUQI

Applicant

PAULINE HANSON

Respondent

The respondent (**Hanson**) relies on the following facts and matters in response to the concise statement filed by the applicant (**Faruqi**) on 13 June 2023 (**Concise Statement**):

1. Hanson admits paragraph 1 of the Concise Statement.
2. Hanson admits paragraph 2 of the Concise Statement.
3. Hanson admits paragraph 3 of the Concise Statement, save for the allegation that the complaint was an attempt to engage Hanson on the matter (which is denied).
4. Hanson admits paragraph 4 of the Concise Statement.
5. Hanson admits paragraph 5 of the Concise Statement.
6. Hanson admits that Faruqi is making that claim referred to in paragraph 6 of the Concise Statement, but denies the claim is true.
7. Hanson admits that Faruqi is seeking the relief set out in the originating application against Hanson as alleged in paragraph 7 of the Concise Statement, but denies that Faruqi is entitled to that relief.
8. Hanson admits paragraph 8 of the Concise Statement, but says that Faruqi must also establish that the relevant group is protected under s 18C of the *Racial Discrimination Act* 1975 (Cth) (**RD Act**).

Filed on behalf of (name & role of party)	Pauline Hanson, respondent		
Prepared by (name of person/lawyer)	Sue Chrysanthou SC and Timothy Smartt (counsel)		
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9. Hanson admits paragraph 9 of the Concise Statement.
10. In relation to paragraph 10 of the Concise Statement, Hanson:
 - a. admits that persons of colour (paragraph 10(a)) is a group protected by s 18C of the *RD Act*; and
 - b. denies that any other group referred to in paragraph 10 is protected by s 18C of the *RD Act*.
11. Hanson denies paragraph 11 of the Concise Statement.
12. In relation to paragraph 12 of the Concise Statement, Hanson:
 - a. admits that the position of senator does not inoculate the holder of that office against racism, racial hatred, discrimination and bullying; and
 - b. denies the remainder of this paragraph.
13. Hanson denies paragraph 13 of the Concise Statement.
14. Hanson denies paragraph 14 of the Concise Statement.
15. Hanson denies paragraph 15 of the Concise Statement.
16. Hanson denies paragraph 16 of the Concise Statement.
17. Hanson denies paragraph 17 of the Concise Statement.
18. Hanson admits that Faruqi is making the contention referred to in paragraph 18 of the Concise Statement, but denies that the contention is true.
19. Hanson denies paragraph 19 of the Concise Statement and relies on s 18B of the *RD Act* for its full force and effect.
20. Hanson denies paragraph 20 of the Concise Statement and relies on s 18B of the *RD Act* for its full force and effect.
21. Hanson denies paragraph 21 of the Concise Statement.
22. Hanson denies paragraph 22 of the Concise Statement.
23. Hanson denies paragraph 23 of the Concise Statement.
24. Hanson admits that Faruqi is making the contention referred to in paragraph 24 of the Concise Statement, but denies that it is true.

25. Hanson denies paragraph 25 of the Concise Statement.
26. Hanson admits that Faruqi is making the contention referred to in paragraph 26 of the Concise Statement, but denies that it is true.
27. In relation to paragraph 27 of the Concise Statement, Hanson:
 - a. says that Faruqi has made an allegation of being a white supremacist which, in the absence of any supporting detail, is scandalous, untrue and irrelevant to these proceedings; and
 - b. denies the remainder of the paragraph.
28. Hanson denies paragraph 28 of the Concise Statement.
29. Hanson denies paragraph 29 of the Concise Statement.
30. Hanson denies paragraph 30 of the Concise Statement.
31. Hanson denies paragraph 31 of the Concise Statement.
32. Hanson denies paragraph 32 of the Concise Statement.
33. Hanson denies paragraph 33 of the Concise Statement.
34. Hanson denies paragraph 34 of the Concise Statement.
35. Hanson denies paragraph 35 of the Concise Statement.
36. Hanson denies paragraph 36 of the Concise Statement and says further that Faruqi has no entitlement to claim on behalf of alleged harm suffered by other people.
37. Hanson denies paragraph 37.

DEFENCE UNDER SECTION 18D

38. Further, and in the alternative, in answer to the entire Concise Statement, Hanson says that the publication of the Tweet was done reasonably and in good faith in making a fair comment on an event and/or matter of public interest that was an expression of a genuine belief held by Hanson making the comment:

Event or matter of public interest

- a. Hanson's comment was on:
 - i. the conduct of Faruqi, a senator of the Australian parliament;

- ii. Faruqi's public statement on the death of the Australia's monarch on 9 September 2022; and/or
- iii. Faruqi's statement in relation to Australia as formally part of "racist" empire built on stolen lives, land and wealth in colonised peoples.

Fair comment

- b. It was fair for Hanson, an elected Australian senator, to make a public statement to express her opinion about the matters and events of public interest.

Expression of genuine belief

- c. The publication of the Tweet was an expression of genuine belief by Hanson.

In good faith

- d. Hanson published the Tweet in good faith, because:
 - i. she believed it to be true; and
 - ii. further and/or in the alternative, she believed it to be true and made it for the proper purpose of:
 - (i) discharging her role as an Australian senator in responding to viewpoints expressed by other senators; and/or
 - (ii) responding to an attack made on the monarch and Australia launched by an Australian senator in the immediate aftermath of the monarch's death; and/or

Reasonably

- e. It was reasonable for Hanson to publish the Tweet, in light of the following factors (relied on individually and in combination):
 - i. Hanson was an elected senator entitled to make a public statement responding to Faruqi's public statement;
 - ii. it was reasonable for Hanson to criticise a person who (in common with all residents of Australia) has the great privilege of living in a free and prosperous country, yet denigrates the country and its monarch in inflammatory terms that were likely to, and did, upset many of that country's people at a time of national mourning;

- iii. it was reasonable for Hanson to highlight in graphic terms the lack of gratitude displayed by someone who has emigrated to a country, is embraced by that country, and then proceeds to use the public platform granted by that country to denigrate it, in circumstances where there are scores of people around the world who long to be able to live in a place like that country;
- iv. it was reasonable for Hanson to use her public profile to put a viewpoint shared by many of her constituents and other people in Australia on the applicant's conduct; and
- v. there was, and is, a reasonable expectation that Faruqi, an Australian senator and someone who frequently makes inflammatory statements, will take criticism and public commentary in a robust fashion.

INVALIDITY OF SECTIONS 18C AND 18D

39. Further, and in the alternative, in answer to the entire Concise Statement, each of ss 18C and 18D of the *RD Act* infringe the implied freedom of political communication in the *Constitution* and are therefore:
- a. invalid in full;
 - b. in the alternative, invalid to the extent they use the words "offend", "insult" and "humiliate" in s 18C(1)(a);
 - c. in the alternative, invalid to the extent they use the words "offend" and "insult" in s 18C(1)(a); or
 - d. in the alternative, invalid to the extent they use the word "offend" in s 18C(1)(a).

This concise response was prepared by Sue Chrysanthou SC and Timothy Smartt, and settled by Bret Walker SC.

Certificate of lawyer

I Danny Eid certify to the Court that, in relation to the statement of claim filed on behalf of the, respondent, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 27 June 2023


Signed by Danny Eid

Lawyer for the Respondent

NOTICE OF FILING

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Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. 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.

The date of the filing of the document is determined pursuant to the Court's Rules.