

NOTICE OF FILING

Details of Filing

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Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

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.

Concise Statement

Federal Court of Australia
District Registry: New South Wales
Division: General

MEHREEN FARUQI

Applicant

PAULINE HANSON

Respondent

(a) The important facts giving rise to the claim:

1. At 11.51am (AEST) on 9 September 2022, the Applicant published the following tweet (**Applicant's tweet**):

Condolences to those who knew the Queen. I cannot mourn the leader of a racist empire built on stolen lives, land and wealth of colonised peoples. We are reminded of the urgency of Treaty with First Nations, justice & reparations for British colonies & becoming a republic.

2. At 4.05pm (AEST) on that same day, the Respondent published the following tweet (**Respondent's tweet**), 'quote tweeting' the Applicant's tweet:

Your attitude appalls [sic] and disgusts me. When you immigrated to Australia you took every advantage of this country. You took citizenship, bought multiple homes, and a job in a parliament. It's clear you're not happy, so pack your bags and piss off back to Pakistan. -PH

3. On 27 September 2022, the Applicant made a complaint about the Respondent's tweet to the Australian Human Rights Commission (**AHRC**) in an attempt to engage the Respondent on the matter.
4. The Respondent declined to participate in the AHRC process. As a result, on 8 March 2023, the AHRC complaint was terminated pursuant to section 46PH(1B)(b) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**) on the basis that a delegate of the President was satisfied that there was no reasonable prospect of the matter being settled by conciliation.
5. This claim was commenced pursuant to section 46PO of the AHRC Act on 3 May 2023.

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6. The Applicant claims that by the Respondent's tweet (**the act**), the Respondent has engaged in unlawful offensive behaviour because of race, colour or national or ethnic origin under Part IIA of the *Racial Discrimination Act 1975* (Cth) (**RD Act**).

(b) The relief sought from the Court (and against whom):

7. The relief sought is set out in the Originating Application filed on 3 May 2023. The relief is sought against the Respondent.

(c) The primary legal grounds for the relief sought:

8. In order to succeed in her claim, the Applicant must establish that:
- a. The act occurred otherwise than in private (that is, in public);
 - b. It was reasonably likely that she and members of the group (or some of them) were offended, insulted, humiliated or intimidated by the act; and
 - c. The act was done by the Respondent including because of the race, colour or national or ethnic origin of the Applicant or of the members of the group.

Was the act done in public?

9. It was conceded by the Respondent at the case management hearing on 1 June 2023 that the act was done in public (Transcript from case management hearing on 1 June 2023, T7:15-120). This element is not in issue in the proceeding.

Who is 'the group'?

10. The Applicant contends that the relevant group includes people who have the following attributes:
- a. Persons of colour;
 - b. Migrants to Australia;
 - c. Persons with migrant heritage, born in Australia;
 - d. Persons who by virtue of their appearance have been incorrectly identified as migrants;
 - e. Muslim people;
 - f. Persons with visible signs or expressions of religion;
 - g. Persons who have been told to "go back to where they came from" or variations of that phrase due to their race, colour or national or ethnic origin; and/or
 - h. Persons who have experienced racism.

Was the act reasonably likely to offend, insult, humiliate or intimidate the Applicant or other people in the group?

Impact on the Applicant

11. The Applicant was herself offended, insulted, humiliated and intimidated by the Respondent's tweet.

She has also suffered the harm set out at paragraphs 36 and 36 below.

12. The Applicant's position of power and status as a Senator in the Australian Parliament does not inoculate her against the severe, harmful effects of racism, racial hatred, discrimination and bullying.

13. The Applicant is **offended** and **insulted** by the insinuation that as a Muslim, migrant woman of colour, she is less entitled than other Australian citizens to live in Australia and enjoy the benefits and

opportunities afforded by her Australian citizenship, and less entitled than other Australians to participate in public debate.

14. The Applicant is **humiliated** at the suggestion that she does not belong in, and should withdraw from, public debate in Australia and that she does not belong in, and should remove herself from, Australia, being her only country of citizenship, if her views on politics or current affairs are not considered palatable to some including the Respondent.
15. The Applicant is **intimidated** both by the incitement to racial hatred and manifest racial hatred that is expressed by the phrase 'go back to where you came from', and variations of the phrase.
16. The Applicant has a deep understanding of the history of deployment of that phrase and phrases like it as a form of racial violence, and as a precursor and incitement to hate crimes and physical violence. As a result of her understanding and experience of the phrase, she finds it genuinely intimidating and was intimidated by the phrase.

Impact on other members of the group

17. Members of the group are reasonably likely to be offended, insulted, humiliated and intimidated to differing degrees depending on their lived experience of racism and discrimination.

Was the act done including because of the race, colour or national or ethnic origin of the other person or some or all of the people in the group?

18. The Applicant contends that the act was done because of her race, colour or national or ethnic origin **(the Attributes)**.
19. Section 18B of the RD Act provides that race, colour or national or ethnic origin need not be the only or even the dominant or a substantial reason for the act. Therefore, if the race, colour or national or ethnic origin of the Applicant was the reason or one of a number of reasons for the act, this element is satisfied.
20. Only one of the four attributes need be established as a reason for the impugned act.

Race & ethnic origin

21. These terms are to be read complementarily and are intended to be given a broad meaning.
22. 'Ethnic origin' is to be interpreted as set out in *King-Ansell v Police* [1979] 2 NZLR 531, taking into consideration characteristics such as shared history, separate cultural tradition, common geographical origin or descent from common ancestors, or a religion different to neighbouring groups. This interpretation is intended to provide the broadest basis for protection of groups such as Muslims. This term can therefore be interpreted as meaning 'ethno-religious' origin.
23. The term 'race' connotes the idea of a common descent, but is not limited to a single nationality and therefore extends to groups of people including Muslims.
24. The Applicant contends that in respect of the attributes of race and ethnic origin, the impugned act was done including because of her race and ethnic origin, including because she is Pakistani-born and Muslim.
25. For the foregoing reasons, the act was done including because of the Applicant's race or ethnic origin.

Colour

26. The Applicant contends that the Respondent directed her tweet toward the Applicant as a woman of colour and a person from a migrant background as a means to invalidate and delegitimise the Applicant's:

- a. entitlement to Australian citizenship,
- b. participation in public debate; and
- c. enjoyment of the many benefits of life in Australia.

27. The Respondent has a long and well-documented history of commentary implying that she holds white supremacist views. She has made countless hateful remarks over many years about Asian and Muslim people (both ethno-religious groups to which the Applicant belongs) and people of other races and ethno-religious origins.

28. For the foregoing reasons, the act was done including because of the colour of the Applicant's skin.

National origin

29. The phrase "pack your bags and piss off back to Pakistan" is a self-evident, direct and unequivocal reference to the national origin of the Applicant.

30. But for the Applicant's origins as a citizen of Pakistan, and her identity as a Pakistani-born Australian, the comment would not have been made, and could not sensibly or logically have been made.

31. The implication in the Respondent's tweet in the context of national origin is that people born overseas, including the Applicant, are less entitled than other citizens to enjoy the benefits and opportunities offered by Australia.

32. There is a further implication in the Respondent's tweet that people who are migrants from countries that may be considered less 'developed', prosperous, free or democratic than Australia should not be critical of any aspect of Australia or its political life, and that if they are, they should return to their country of origin.

33. For the foregoing reasons, the act was done including because of the Applicant's national origin.

Conclusion

34. Part IIA of the RD Act is intended to prevent people from seriously undermining tolerance within society by inciting racial hatred against individuals or groups because of their race, colour or national or ethnic origin.

35. The publication of the words 'pack your bags and piss off back to Pakistan' constitutes unlawful conduct under section 18C of the Racial Discrimination Act 1975, in that:

- a. the publication of the tweet is the impugned act;
- b. the act was done in public (as was conceded by the Respondent on 1 June 2023);
- c. the Respondent's tweet was reasonably likely in all the circumstances to offend, insult, humiliate or intimidate the Applicant and some of the members of the group;
- d. the Respondent's tweet did in fact offend, insult, humiliate and intimidate the Applicant and some members of the group; and
- e. the act was done including because of the race, colour or national or ethnic origin of the Applicant.

(d) The alleged harm suffered by the Applicant:

36. The Applicant and members of the group (or some of them) have suffered harm in that:

- a. They have suffered offence, insult, humiliation and intimidation.
- b. Exposure to racism, discrimination and racist bullying is inherently harmful to the Applicant and members of the group (or some of them), including by causing:
 - i. psychological distress,
 - ii. mental ill health,
 - iii. fear, including fear of imminent physical attack,
 - iv. hypervigilance, including to the extent of insomnia and lack of enjoyment of home and private life.
- c. Exposure to racism, discrimination and racist bullying is inherently harmful to the Applicant and members of the group (or some of them), including by:
 - i. causing inhibition and self-censorship in personal and professional life;
 - ii. creating feelings of being silenced;
 - iii. creating feelings of illegitimacy or invalidity of their views, opinions, experiences and expertise,
 - iv. causing them to second guess and 'tone police' their responses and reactions to situations in person and professional life;
 - v. creating feelings of isolation and stripping them of a sense of belonging;
 - vi. creating feelings of displacement, marginalisation and ostracisation;
 - vii. causing a reduction in enjoyment of their human rights.

37. Further, since and as a result of the Respondent's tweet, the Applicant has been subject to a torrent of abusive phone calls, social media posts and hate mail (including death threats, misogynistic and racially and sexually violent content). Many of these missives make direct reference to the Respondent's tweet and reiterate its racist and offensive remarks.

Certificate of lawyer

I Michael Bradley certify to the Court that, in relation to the concise statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 13 June 2023



Signed by Michael Bradley

Lawyer for the Applicant