Submission No 2

INQUIRY INTO ANTI-DISCRIMINATION AMENDMENT (COMPLAINT HANDLING) BILL 2020

Name: Mr Garry Burns

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The Anti-Discrimination Amendment (complaint handling) Bill 2020 is misconceived because there are already protections in place by the " board " to reject those complainants who lodge vexatious complaints upon receipt. Once a complaint is accepted by the " board " and investigated by the President's delegate under s.92 the President may decline a complaint during investigation if at any stage the President's investigation of a complaint is satisfied that ; (a) the complaint , or part of the complaint , is frivolous, vexatious , misconceived or lacking in substance. When the President has declined a complaint under s92 of the ADA, the President must refer the complaint to the Tribunal if he or she has received a written request from the complainant to do so (s 93A). S 96 of the ADA gives the Tribunal an unfettered discretion to grant leave for a complaint to proceed, which is not confined to the grounds on which the President declined the complaint, although the Tribunal may have regard to those grounds. The discretion must, however , be exercised having regard to the purpose of the legislative scheme established by the Act and be guided by the consideration that the refusal of leave will finally determine the complainant's rights under the scheme. Leave must be granted or refused depending on what is fair and just in the particular circumstances. It is for the plaintiff to establish that the leave should be granted as in (Ekermawi v ADT of NSW & Ors (2009) NSWSC 143 at (25-36 & 58-61) This is the correct approach in law because the President's decision under s 92 to decline the complaint was an administrative one, not one made by a court or tribunal upon whom the approach of the High Court in General Steel, is imposed. The test is that a claim will only be dismissed without hearing in circumstances where there is no personable cause of action disclosed on the pleadings and where it is clear that the Plaintiff's case is so untenable , that it cannot succeed. Whatever the contest between the parties might be , the question of leave must be determined having in mind the purposes of the Act, which include precluding unlawful discrimination and to permit those who have been discriminated against , a remedy. The bill of Mr Latham MLC to wind back protections afforded under the Anti-Discrimination Act 1977 must be rejected by the Parliament because the ACT is working ; it is holding people accountable for public acts that incite the requisite requirements under the application for complainants to lodge a complaint seeking remedy for vilification. In late 2017 the Hon Attorney General for NSW Mr Mark Speakman SC inserted into the CAT ACT 2013 PART 3A. S 34B is found in part 3A. A complaint can be laid in the NSW Civil and Administrative Tribunal (NCAT) but can be transferred to the General Division of the Local Court of NSW by leave of the Magistrate of that Court. It is undisputed that the NCAT lacks jurisdiction to hear a complaint in relation to a resident of another state because NCAT is not a court (see Burns v Corbett ; Burns v Gaynor (2018) HCA 15 ; 92ALJR 423) The proof that the Anti-Discrimination Act 1977 (NSW) is working is that Anti-Discrimination Campaigner Garry Burns has had upheld in the NCAT 62 complaints out of 65. The case law of Burns speaks for itself. Vexatious litigants who file proceedings without merit do not make it to the Tribunal let alone have nearly all their complaint's upheld at hearing. What we have here is a member of Parliament elected with a thin percentage of NSW voters doing the bidding of a few who don't want to see a tolerant Australian in 2020. That is the reason why the NSW Parliament must reject a Bill that's Un-Australian and misconceived. I ask the NSW Parliament to reject Mr Latham's Anti-Discrimination Amendment (complaint handling) Bill 2020 because it's misconceived and serves no valid purpose but to obstruct a workable law of the NSW Parliament.