Submission No 21

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

Organisation: Robert Balzola and Associates (Legal) Pty Ltd

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Robert Balzola & Associates (Legal)
Mr Robert Balzola
Grad Cert Arts (Theol)
Grad Dip Leg Prac; Grad Dip Mil Law
B.Ec LLB LLM MA (Theol)

MARN: **0108072**
ABN: **77 143 726 943**
MIA No.: **1423**

Level 8 25 Restwell Street
BANKSTOWN NSW 2200

Your reference:
Our reference: ADACH

The Chair
Portfolio Committee No.5 – Legal Affairs
Legislative Council of New South Wales
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

26 April 2020

To the Chair

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

To the Chair and Committee,

I make this submission in reply to your open invitation to submissions that closes today and for inclusion in your report on 27 February 2020.

This submission is marked for public publication.

I await your acknowledgment with thanks.

Yours faithfully

Robert Balzola

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SUBMISSION

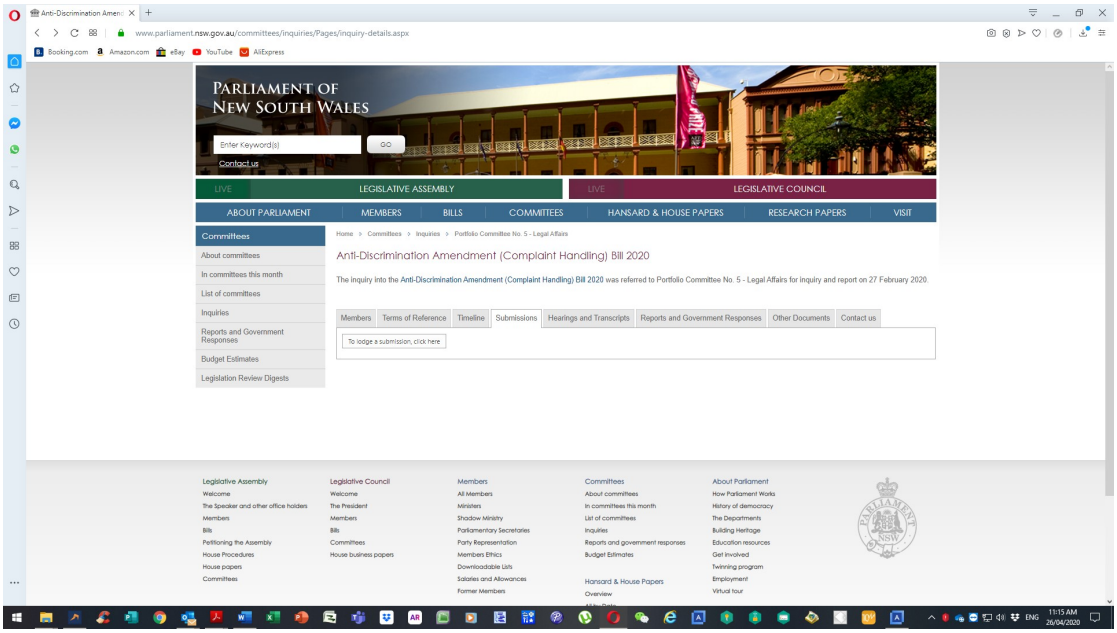
IN REPLY TO THE
INQUIRY INTO THE
ANTI-DISCRIMINATION ACT
(COMPLAINTS HANDLING BILL) 2020

26 APRIL 2020
ROBERT BALZOLA

Introduction

This is a submission in reply to advertised invitation to make submission to the inquiry into the *Anti-Discrimination Amendment (Complaint Handling) Bill 2020* found at the following link:

https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2583#tab-submissions



I note that at time of lodgment of this submission this inquiry is open to end of this day.

Background

My practice and the representations on behalf of my past and present clients is at the heart of this Inquiry.

My client base includes the following Respondents to over a hundred complaints lodged by Garry Burns under the *Anti-Discrimination Act 1977* ['the Act']:

1. John Sunol
2. Bernard Gaynor
3. Dr Christine Sindt
4. Geoffrey McKee

A significant number of these complaints have been referred to the Civil and Administrative Tribunal of New South Wales' Administrative and Equal Opportunity Division for determination under the various statutory powers under the Act.

This submission therefore is of the highest relevance and importance for reasons which follow, as this submission has direct practitioner access to a dominant and 'lion share' of the case history repository within this jurisdiction, as to the current administrative performance of the current Act passed in 1977 to the present day. As such, this submission provides direct and empirical evidence and declared facts against the policy failure of the existing Act against its policy objectives originally intended by this Legislature in 1977.

This submission includes factual and legal evidence of the policy impact and legal consequences following direct participation in the administrative processes over a seven year period (i.e. from 2014 to date), that lies at the centre of this statutory amendment contained in the *Anti-Discrimination Amendment (Complain Handling) Bill 2020*.

Representation

I attach Schedule of matters I have obtained leave on behalf of my clients pursuant to s.45 of the *Civil and Administrative Tribunal Act 2013* and in higher Courts including:

1. Local Court of New South Wales
2. District Court of New South Wales
3. Supreme Court of New South Wales
4. Supreme Court of New South Wales, Court of Appeal
5. High Court of Australia

Table of Annexures

A table of annexures referred in this submission is provided with those annexures at the end of this submission.

Israel Folau – Rejection by newly appointed ADB President on groungs of vexatiousness

At this point, it is important to raise the recent media statements flooding the media on the reported decision of the newly appointed President of the ADB, the Hon Annabelle Bennett in declining a recent complaint, again by Garry Burns, this time against celebrity former Rugby New South Wales player Israel Folau:

The Media Statement titled *NSW Board declines complaint against Folau* reports on 16 April 2020:[1]

> **'A discrimination complaint lodged by a gay rights activist against code hopping rugby star Israel Folau has been declined by the NSW Anti-Discrimination Board on the grounds it was "Vexatious". '**
>
> **'But ADB president Annabelle Bennett this week wrote to Mr Burns "declining" the complaint because she was satisfied it was vexatious and "a flagrant abuse of process such that no further actions should be taken" '.**

[1] AAP: in www.9news.com.au 16 April 2020 released 2:54pm

> **'The president wrote that the inference was that the settlement sought by Mr Burns was "directed to the payment of money" '.**
>
> **'She (the president) noted the activist had disregarded the confidential nature of the process by issuing a media release…'**
>
> **'Dr Bennett also wrote that Mr Burns had sent numerous "inappropriate" emails to Mr Folau's lawyers'.**

A second attached media statement by Pink News titled *LGBT+ activist loses discrimination complaint against Israel Folau over infamous Instagram post claiming 'hell awaits' gay people*.[2]

In this statement, the incoming and recently appointed President of the ADB Dr Bennett (replacing Stepan Kerkyasharian AO) makes all of the following determinations on the Complaint being:

1. ***vexatious***;
2. "flagrant" ***abuse of process***;
3. for a ***colateral purpose*** i.e. directed to the payment of money;
4. ***Disregard for the confidential nature*** of the process; and
5. ***Inappropriate communications*** with respondent's (Folau's) lawyer.

Policy intent of original 1977 Act

I attach:

1. **New South Wales Hansard** – Legislative Assembly, Anti-Discrimination Bill, moving by the Hon Neville Wran, Premier, 18 November 1976.
2. **New South Wales Hansard** – Legislative Assembly, Anti-Discrimination Bill, 2nd Reading Speech by the Hon Neville Wran, Premier, 24 November 1976.

[2] Pink News: Online www.pinknews.co.uk

3. **New South Wales Hansard** – Legislative Assembly, Anti-Discrimination (Homosexual Vilification) Bill, Mover of 2nd Reading of Bill: Speech by Clover Moore, Member for Bligh, Premier, 11 March 1993.

Long term systemic abuse by ADB and by extension the NCAT

It is submitted that my clients and I have been subjected to seven years of this conduct by Burns, and by extension, the ADB and its past Board and President, in excess of and grossly exceeding in viciousness, vileness, quantity and contempt for all processes to which the Board and the ADB have been entrusted.

It is shocking that it has taken this amount of time for an incumbent President on the first occasion in over seven years, to find on a single count of complaint by Garry Burns and to immediately recognise the 'flagrant' abuses of law.

I will address thse particulars of the longitudinal seven year history below. It is necessary to juxtapose the policy intent of the original ADA legislation as to what its original purpose and policy intent was, and what is has become today as a system of persecution against the very policy intent raised by initial Legislature when the 1977 Bill was being enacted.

It will be shown below that, despite clear and unambiguous presentation of the persistent vexatiousness, flagrant abuse of process, collateral purpose in seeking monetary payments, flagrant disregard for the confidential nature of the complaints and inappropriate communications with my clients lawyer (myself), the ADB and first President has not only accepted the complaints by Garry Burns in large number, they have systematically ignored and demonstrated contempt for both my clients, myself as an office of Tribunal, with leave, and the administrative process itself and the very policy intent of the purpose of enabling legislation to which the Board has been entrusted.

Systemic abuse by the ADB

It is submitted that the Board and its President, by its past and present conduct over at least the last seven year period, has conducted itself with bias, contempt, ridicule and disregard towards respondents of Garry Burns and operated against the statutory framework within which it has been entrused by this Legislature.

The Board and its President, it is submitted, has a longitudinal history of systemic abuse of their powers, vexatiousness and bias upon evidence which follows.

It is clear for this reason, reading the Hon Mark Lathams' speech of 8 August 2019,[3] that the persistent systemic abuse of process by the ADB has now reach paroxysm and how now reached a point of public outrage that can no longer permit the abuses within the Board and its President:

GARY BURNS

The Hon. MARK LATHAM (15:20): I bring to the attention of the House letters forwarded to me recently by Mr Gary Burns, a serial complainant to the Anti-Discrimination Board of NSW. Mr Burns has lodged hundreds of trivial and vexatious complaints, mainly directed at a Queensland resident, Bernard Gaynor, but also a series of media commentators. Unbelievably, in a New South Wales justice system experiencing long court delays and a lack of resources for the volume of work, Mr Burns has been allowed to eat up huge amounts of public money and staff time pursuing his personal obsession with comments about sexuality. He has used these New South Wales tribunals to pursue interstate residents and even third party comments on social media.

Mr Burns described this activity as "his work in life". The letters reveal Mr Burns' true state of mind. How such an individual has been allowed to milk the New South Wales human rights system beggars belief. Clearly, the experience has emboldened him to the point where he feels comfortable in sending menacing letters to a member of Parliament, trying to warn me off from mentioning his matters in the course of my work. I have asked questions on notice about Mr Burns and his serial complaints to the Anti-Discrimination Board of NSW, followed up by the NSW Civil and Administrative Tribunal [NCAT]. I have not received adequate responses from the Attorney General, but I will persist in my work.

Most disturbingly, the first letter I received ends with Mr Burns advocating for George Pell to "be bashed to death in prison by a bikie using a dumbbell from the prison gym". The second letter, which I received today after my launch of the binary pack yesterday, again makes abusive and improper suggestions about my good self. This is the person whose serial complaints have been entertained and at times encouraged, by the Anti-Discrimination Board of NSW. At every turn the Department of Attorney General and Justice has backed Mr Burns in his vengeful campaign against Mr Gaynor

[3] Parliament of New South Wales: Hansard – Legislative Council extract 8 August 2019

> and others. No effort has been made to do what common sense would require—sitting this person down and telling him the New South Wales human rights and justice system is not there as his personal plaything to pursue grudges and vexatious nonsense. The president of the Anti-Discrimination Board of NSW has failed in her responsibility to tell Mr Burns of this reality and I would argue the Attorney General has also failed as the second gatekeeper.
>
> But I can say this to Mr Burns and anyone else who wants to try to warn me off my work: I am not easily intimidated. I believe in the genuine privilege of being a member of Parliament. We must pursue matters with due regard to our independence, our facts and the public interest. I will not be intimidated, but I will be pursuing these matters. I strongly urge the Attorney General, the president of the Anti-Discrimination Board of NSW and those running NCAT to realise that Mr Burns' file is full and that he has lodged so many trivial vexatious matters at huge public cost that we can no longer go down this path. Sanity must prevail and Mr Burns must be pulled into line.

The Parliamentary speech raises the 'classic' identifiers of sytemic abuse:

1. The duration of the abuse in excess of at least 7 years if not the whole period from commencement of anti-homosexual vilifcation laws in 1993.
2. The fact that the abuse emanates from a single complainant, Garry Burns.
3. The fact that the Administrative and Judicial systems are heavily overburdened.
4. Yet, this complainant is given a licence to 'milk the human rights system' and make this activity a *'work in life'*.
5. That the Attorney General and Justice has *'at every turn backed Mr Burns'* is in my submission the key point – **Systemic Abuse**.
6. Burns has used the process as his *'personal play thing'* again with the full approbation of the ADB, NCAT and the Attorney General.
7. *'No effort has been made to do what common sense would require…'* [Latham] a further statement in support of the submission put in Parliament as a tantamount statement of ***Systemic Abuse*** by the Attorney General, the ADB and by extension the NCAT.

"But For" the Folau matter

The points now made clear, resulting in the initiative of the Hon Mark Latham MLC, to finally, after 16 years of systemic abuse.

The combination of the eruption of Parliamentary attention to this long overdue point, the ***cause celbre*** of *Israel Folau* and the immediate reaction by the incumbent incoming President of the ADB in making her determination on or about 16 April 2020, is tantamount to the point that the Board is in public shame and disgrace and only for this reason has finally succumbed to the final realisation that it cannot continue to ignore its audit trail of policy failure when measured against its statutory obligations.

ss.49ZS and 49ZT of the Act – Significant policy purpose

The original Anti-Discrimination Act 1977 did not include provision for homosexual vilification and discrimination:

> *'The Government is being careful in this legislation not to declare at this stage discriminatory acts involving homosexual acts to be unlawful.'*[4]

The Premier refers in his speech to an *'investigation'* followed by *'recommendation to Government'* [loc. Cit.].

It appears from the subsequent conduct of the ADB since at least 1993, given our longitudinal experience over the last seven (7) years within the Tribunal, that one or more of the following factors have occurred in forming the long term culture of the ADB, either alone or in combination, to undermine the policy intent of the Act and destroy public confidence in the ADB and by extension, the Civil and Administrative Tribunal of New South Wales:

1. The stututory reports pursuant to section 122 of the Act for the period 1993 to 2019 (a period of 16 years) to the Minister have either underplayed or simply

[4] Anti-Discrimination Bill: NSW Legislative Assembly – Hansard, 24 November 1976 p.4352

not reported the significant fact that the bulk of the complaints received by the ADB are emanating from one single complainant, Garry Burns; and/or

2. The staututory reports are not and could not possible have addressed at any time in the 16 year period the issues arising from the clear notice over the 16 year period those complaints from Garry Burns to the ADB pursuant to s.122(1)(b) of the Act, as to *'research undertaken by the Board'* on *'any recommendations that the Board considers appropriate for the elimination or modification of legislative processes that discriminate on a ground referred to this this Act against any person or class of persons'*.
3. The Board has ignored the workload of the Board, particularly the paramount fact that the vast majority of complaints lodged with it have at all times been from a single complainant, Garry Burns.
4. If a simple report were produced showing the total number of anti-vilification and homoseuxal discrimination complaints lodged with the ADB under ss.49ZS and 49ZT of the Act, the overwhelming number of complaints would be from a single complainant, Garry Burns.
5. In addition to this, an examination of the complaints have a consistent symmetry. A perusal of these hundreds of complaints as referred by the Hon Mark Latham are substantially tainted by the very grounds Her Honour Annabelle Bennett now rejects the complaint against Israel Folau on 16 April 2020 by Garry Burns i.e. they are ***vexatious, abuse of process, collateral purpose, disregard for confidential nature and inappropriate communications by this serial complainant.***

In each occasion we have attempted to bring precisely these points to the ADB's attention, we were discarded out of hand, and violently so.

Complaint to ADB in 2015

One noted example in the *John Sunol* constellation of complaints lodged by Garry Burns involves ADB Complaints References C2015/0204 & C2015 0318.

I attach documentation of our attempts to bring to the ADB's attention the very grounds now relied upon by the current President as to refusal of the Folau complaint:

1. On 3 and 12 June 2015 I wrote to ADB Conciliation Officer Troy McGuire against the conduct of the ADB in its complaints handling procedures in the matter of John Sunon on complaints C2015/0204 and C2015/0318 (attached).
2. On 23 June 2015 I received the attached reply dated 23 June 2015.

It is clear the then President ***Stepan Kerkyasharian AO*** fails to address any of the carefully itemised and articulated errors patent wihtin the acceptance of these complaints that any reasonable examination of the two complaints would reveal.

The case put before him clearly articulates the specific grounds where any reasonable investigation of a complaint would reveal that these two complaints as examples, could not possibly rise to the standard required for either investigation of the complaints under Part 9 of the Act, followed by separate exercise of power of referral under powers including sections 93A, 93B, 93C and 95 of the Act.

Instead, the President replies with broad-sided rebuffs as to the imputations of *'rubber stamping'* and refuses to strike out the complaints without any reason or merit in the body of his reply. The President's response is cursory, indignant and high handed.

It is only now that the current Parliament Bennett is alive to the type of flagrant disregard the past President Kerkyasharian and its Board has shown the highest contempt for those suffering systemic abuse by the ADB in its own bias, against its own statutory and policy framework.

Establishment of the Anti-Discrimination Board in 1977

It is necessary to examine what the statutory framework is supposed to be as originally enaceted by the Legislature of New South Wales.

NSW Legislative Assembly – Hansard 18 Nov 76

Notwithstanding omission of provisions against homosexual vilification and discrimination in the original 1977 enactment, the policy power balance is made clear by the Premier in the statutory framework:

> *'The bill also constitutes the Anti-Discrimination Board (ADB), consisting of three members. The President shall be a judge of the District Court… .'* [5]

The Premier goes on to explain to the Parliament:

> *'It (the ADB) will act in an advisory capacity to the Government in this area and will make regular reports to the Government on its operations. It will examine those statutory provisions for the current law, and those government policies and practices that are discriminatory, and will make recommendations to the Government in this respect.*'[6]

NSW Legislative Assembly – Hansard 24 Nov 76

In his 2nd Reading Speech on the 1977 legislation, the Premier states:

> *'The whole concept of the bill is to… provide the mechanism by which these grounds of discrimination can be properly examined by the Anti-Discrimination Board that is to be established, and the criteria by which acts of discrimination… will be determined on the recommendation of that impartial body'.* [7]

It is fundamental therefore, that the pretext of the operation of the ADB:

[5] Anti-Discrimination Bill: NSW Legislative Assembly – Hansard, 18 November 1976 p.3193
[6] Loc. Cit.
[7] Hansard, Op. Cit. 24 November 1976, p.3450

1. Is an ***impartial body***
2. Acts as an ***advisory body*** to the Government
3. Makes ***periodic reports*** to the Government

It is submitted for reasons which follow, the empirical evidence against the ADB is incontrovertible:

1. The ADB is not impartial. It is ***partial***, ***biased***, ***systemically vexatious*** and inimical to the proper operation of the Act against the broader statutory law and Constitutional framework. This point will be raised to its climax below.
2. The ADB has not examined or investigated complaints put to it, particularly the more than 100 complaints filed by Garry Burns, in any meaningful way.
3. Attempts to bring this fact to the attention of the predecessor to the ADB, Mr Stepan Kerkyasharian AO, has been met with contempt for the respondents I have assisted and by extension, myself.

s.122 ADA – Duty of ADB to Report to Minister

With limited understanding of the administrative arrangement between the ADB and the Minister, I refer to section 122 ADA as to the current statutory duty of the ADB to report to the Minsiter as prescribed.

ANTI-DISCRIMINATION ACT 1977 - SECT 122

Annual report

(1) The Board shall, on or before 31 October each year, prepare and present to the Minister a report on--
  (a) the administration of this Act and the regulations during the period of 12 months ending on the preceding thirtieth day of June, and
  (b) the research undertaken by the Board during that period and any recommendations that the Board considers appropriate for the elimination or modification of legislative provisions that discriminate on a ground referred to in this Act against any person or class of persons.

(1A) The report shall include an account by the President of the administration of Division 2 during that period of 12 months.

(2) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after its receipt by the Minister.

(3) If a House of Parliament is not sitting when the Minister seeks to lay the report before it, the Minister is to cause a copy of the report to be presented to the Clerk of that House of Parliament.
(4) A report presented under subsection (3)--
(a) is, on presentation and for all purposes, taken to have been laid before the House, and
(b) may be printed by authority of the Clerk of the House, and
(c) if so printed, is taken to be a document published by or under the authority of the House, and
(d) is to be recorded--
(i) in the case of the Legislative Council--in the Minutes of the Proceedings of the Legislative Council, and
(ii) in the case of the Legislative Assembly--in the Votes and Proceedings of the Legislative Assembly,
on the first sitting day of the House after receipt of the copy of the report by the Clerk.

It is submitted for reasons which follow, the reporting of the ADB cannot at any time since the enactment of ss.49ZS and 49ZT ADA been consistent with the policy intent of the Act.

Ill conceived legislation

It is submitted that the construction of the Act and its related provisions in the *Civil and Administrative Tribunal Act of New South Wales 2013* [‘CATA’] have been rushed, ill conceived and subsequently having profound policy impacts and causing more litigation and legal argument at cost to both justice and the parties the subject of it. Such abuses could not have been reported accurately or at all to the Minister.

This is a constant theme running from the inception of this Bill in 1977 reflected in Hansard.

It is a submission that all Bills seeking to amend generically, have full regard to all the following policy impacts:

1. Commonwealth and State Constitutional Law
2. Other extant Acts of Parliament
3. The common law
4. Equity and other laws

The Act has been at the centre of systemic failure as a poorly drafted parcel of legislation along with the CATA. In *Burns v Corbett; Burns v Gaynor* [2018] HCA 15 amply demonstrates, the rushed and ill conceived legislation of the New South Wales Legislature has caused statutory havoc and failed to reach the desired policy outcomes in the legislation in the defence against vilification and discrimination laws.

In fact, the legislation has actually caused more harm in that confusion now reigns in critically ill conceived ares of so-called 'diversity jurisdiction' especially in provision of which Schedule 1[2] of making 'more than one complaint in one jurisdiciton'.

It is the overarching failure of the legislative process to do either of the following:

1. Ensure the legislation being produced is legally robust and cohesive to the Federal statutory and legal framework;
2. Applications between states is prohibited and the domain of Federal Court law.
3. Even then, the application of Federal diversity jurisdiction is limited and resulting in further hasty, ill conceived legislative amendment by the inclusion of s.34B CATA now itself the subject of dispute.
4. Constitutional limitations of which this legislation particularly relies are ignored.
5. The making of yet more laws because successive Boards and Presidents flatly and obstinately refuse to acknowledge or comply with statutory and Constitutional limitations on the Act they are entrusted to administer to with the ADA.
6. The fact that successive Boards and Presidents have systematically ignored or worse been invincibly ignorant of the statutory framework, particularly the Constitutional statutory framework esp. ss.74, 75, 76 & 77 of the *Commonwealth of Australia Constitution Act* and s.39 of the *Judiciary Act* (Cth) 1903 within which they operate, drawing cricitism from the President of the Law Society of New South Wales against the empanelment of sub-standard Presiding Members of the NCAT in its Monday Briefs in 2018.

Policy intent of bill

This submission now addresses the provisions of the 2020 Bill in detail and makes the following submissions on each item in the Anti-Discrimination Amendment (Compalin Handlin) Bill 2020:

1. **Schedule 1[2]:** Agreed. The very live issue of forum shopping is presently before the High Court of Australia in this matter in Gaynor v Local Court of New South Wales and is a paramount example of the failure to consider in detail the impact of finely tuned Federal jurisdiction to preserve the powers of the States and the Constitutional federal framework esp. s.39 Judiciary Act.
2. **Schedule 1[3]:** Agreed with proviso that this is not a solution. The current paradigm of drafting a statutory power that a President of the ADB is ordinarily statute and common law limited, is a policy admission of failure. Further the making of this provision again means it can be repealed at a later time, leaving the 'audit trail' of the ***suggestio falsi*** that the power to make explicit a duty upon the President to decline a complaint in certain circumstances emanates from this Act itself, rather than higher law such as the Common Law, Constitution or Convention. As I write this, I foresee as it always the case that the original powers that delimit the President accepting a complaint at first instance as with Corbett, Sunol, Gaynor and Abbott, are just some of many examples in the ADB where the the Board has again, either an invincible ignorance of the broader law or a contempt for it, and systemically ignores the statutory and Constitutional boundaries of its own powers when accepting complaints: amply demonstrated in *Burns v Corbett; Burns v Gaynor*.
3. It is made clear that the ADB has, for 16 years, been accepting complaints from serial complainants like Garry Burns, in full knowledge that the respondents are citizens of other States than New South Wales, has ignored its own statutory and constitutional limits and has, with full knowledge, broken the law.
4. The ADB has done so with impunity.

5. The ADB has been supported by the Attorney General in its deliberate and systematic denial of the operation of Constitutional and other laws with respect to diversity jurisdiction.
6. The Attorney General, at the Hon Mark Latham MLC rightly notes, has done nothing to reign in the abuses of process which the incoming President now easily identifies in the Folau matter.
7. The outgoing President and any person sitting on its Board, must and will be brought to justice for the harm they have intentionally inflicted upon the respondents who have had to endure several years of abuse of process encouraged and faciliated by the ADB, the NCAT and the Attorney-General's Office.
8. **Schedule 1[4]:** Noted.
9. **Schedule 1[5]:** Noted.
10. **Schedule 1[6]:** Noted.
11. **Schedule 1[7]:** Noted.
12. **Schedule 1[9]:** Noted.
13. **Schedule 1[11]:** Noted.
14. **Schedule 1[14]:** Noted.

Failure to promptly raise new s.34B CATA legislation before High Court of Australia in 2017 hearing

It is submitted, the ADB and the President have, on the one hand, shown systemic bias against respondents, whilst simultaneously ignoring its own statutory limitations to the point of embarrassment of the Solicitor General for New South Wales before the High Court of Australia, where the Applicant in three of the five High Court matters in the Burns v Corbett; Burns v Gaynor [2018] HCA 20 matters, were the State of New South Wales and the Attorney-Genral for New South Wales and had, in such haste, had this Legislature amend the CATA Act by insertion of s.34B of that Act to attempt to cure diversity jurisdiction matters (which have not been cured at all), the Applicants to those High Court matters did not bring initally the fact of the amendments to the High Court of Australia until it was raised vicariously by other

Attorneys-General at the Final Hearing to the embarassment of Michael Sexton SC, Solicitor-General for New South Wales.

It was open to the State of New South Wales through its Solicitor General to not only raise the matter, but to discontinue its Application for Leave to Appeal in 2017. Instead, the Attorney-General did not do so, instead incurring costs on the State of New South Wales by costs order in the High Court of New South Wales.

In fact, there are five (5) High Court of Australia Costs Orders, three of which were incurred by the New South Wales taxpayer for this high watermark of partisan bias and systemic abuse which by virtrue of the High Court of Australia decision in Burns v Corbett; Burns v Gaynor, has been proven to be completely indefensible.

In short, the State of New South Wales has reached its high water mark of embarrassment as it has attempted to defend its long string of actions to which my clients have been subjected to, defending the indefensible

Case matters leading to the High Court of Australia

This submission does not do justice to the harm inflicted on my clients.

The abuses of process cannot be reduced to writing. Like any gross abuse, writing a book about it is nothing like experiencing the harm and injury causes the demands justice and restitution to those who have endured it.

At risk of repeating myself, the systemic abuses perpetrated by the ADB, the NCAT and the Attorney General have resulted in damages and harm to my clients and myself.

The damages are substantial as are the anticipated claims against these perpetrators for the economic, financial, reputational and psychological harm deliberately inflicted.

It is now time to make these perpetrators pay, directly and personally for their wrongs.

List of all known complaints lodged by Mr Burns against Mr Gaynor [Pre-High Court of Australia]

I now list those complaints and matters in which I can recount I have assisted in the Tribunal, or made representations to the ADB, or appeared in the various Courts:

Complainant: **Garry Burns**

Respondent: **Bernard Gaynor**

Note: Despite numerous written requests, the New South Wales Anti-Discrimination Board has refused to provide an updated list of complaints

Serial	Date	Complaint Number	Status
1.	29 April 2014	C2014/0339	Withdrawn
2.	5 May 2014	C2014/0373	Referred to NCAT (1410372)
3.	7 May 2014	C2014/0374	Referred to NCAT (1410372)
4.	20 May 2014	C2014/0392	Referred to NCAT (1410372)
5.	14 July 2014	C2014/0564	Referred to NCAT (1410625)
6.	29 July 2014	C2014/0615	Referred to NCAT (1410625)
7.	4 August 2014	C2014/0634	Referred to NCAT (1410625)
8.	5 August 2014	C2014/0636	Referred to NCAT (1410625)
9.	1 September 2014	C2014/0716	Referred to NCAT (1510160)
10.	15 September 2014	C2014/0766	Declined
11.	30 September 2014	C2014/0791	Referred to NCAT (1510161)
12.	20 October 2014	C2014/0834	Declined
13.	24 October 2014	C2014/0842	Referred to NCAT (1510160)
14.	22 December 2014	C2014/0988	Declined
15.	24 December 2014	C2014/0989	Referred to NCAT (1610473)
16.	24 December 2014	C2014/0990	Declined
17.	12 January 2014	C2015/0123	Declined
18.	3 February 2015	C2015/0124	Referred to NCAT (unknown)
19.	9 February 2015	C2015/0125	Referred to NCAT (1610471)

20.	27 February 2015	C2015/0135	Declined
21.	Unknown	C2015/0201	Declined
22.	13 April 2015	C2015/0263	Referred to NCAT (1610477)
23.	14 April 2015	C2015/0264	Referred to NCAT (1610476)
24.	16 April 2015	C2015/0265	Referred to NCAT (1610474)
25.	26 May 2015	C2015/0332	Referred to NCAT (1610596)
26.	27 May 2015	C2015/0333	Referred to NCAT (1610595)
27.	Unknown	C2015/0339	Declined
28.	29 May 2015	C2015/0340	Referred to NCAT (1610475)

List of all complaints referred by the ADS to the NCAT

Bernard Gaynor

This is the list of all complaints agianst Bernard Gaynor prior to the High Court of Australia.

Serial	Date	NCAT Number	Complaints	Status
1.	11 Jul 2014	1410372	C2014/0373 C2014/0374 C2014/0393	Dismissed (under appeal)
2.	31 Oct 2014	1410625	C2014/0564 C2014/0615 C2014/0634 C2014/0636	Stayed pending appeal
3.	12 Mar 2015	1510160	C2014/0716 C2014/0842	Stayed pending appeal
4.	12 Mar 2015	1510161	C2014/0791	Withdrawn
5.	21 Jul 2016	1610471	C2015/0125	Proceeding - Case conference set for 14 December 2016
6.	25 Jul 2016	1610472	C2015/0124	Proceeding - Case conference set for 14 December 2016
7.	21 Jul 2016	1610473	C2014/0989	Proceeding - Case conference

				set for 14 December 2016
8.	21 Jul 2016	1610474	C2015/0265	Proceeding - Case conference set for 14 December 2016
9.	25 Jul 2016	1610475	C2015/0340	Proceeding - Case conference set for 14 December 2016
10.	25 Jul 2016	1610476	C2015/0264	Proceeding - Case conference set for 14 December 2016
11.	21 Jul 2016	1610477	C2015/0263	Proceeding - Case conference set for 14 December 2016
12.	25 Jul 2016	1610478	C2015/0402	Proceeding - Case conference set for 14 December 2016
13.	9 Sep 2016	1610596	C2015/0332	Proceeding - Case conference set for March 2017
14.	19 Sep 2016	1610595	C2015/0333	Proceeding - Case conference set for March 2017
15.	19 Sep 2016	1610598	C2016/0026	Proceeding - Case conference set for March 2017
16.	2 Nov 2016	1610719	C2016/0522	Proceeding - Case conference set for 21 December 2016

Post High Court further complaints

There have been several further complaints lodged against Gaynor by Burns since the High Court decision in 2017. These are also the subject of actions before the Supreme Court of New South Wales in Gaynor v Local Court of NSW & Ors [NSWSC 229924/2019], thence Court of Appeal [NSWCA 213377/2019] and presently High Court of Australia (again).

Tess Corbett

This is the list of all complaints agianst Tess Corbett:

ITEM	COMPLAINT NUMBER	STATUS
	Burns v Corbett [ADT 131029]	Dismissed
	Burns v Corbett [NCAT 1510228]	Dismissed
	Corbett v Burns [NSWSC 2014/280109]	Referred
	Corbett v Burns [NSWSC 2016/224875]	Referred

	Burns v Corbett; Burns v Gaynor [2018] NSWSC 3	Decided
	Burns v Corbett; Burns v Gaynor [2018] HCA 20 – S186	Appeal dismissed
	Burns v Corbett; Burns v Gaynor [2018] HCA 20 – S183	Appeal dismissed

John Sunol

There are at least 20 discrete matters listed in which we represented John Sunol. By far the most persecuted of all matters, John is a seriously debilitated former bus driver who lost his job, is known to have mental disability issues.

The matter of John Sunol is the most tragic of all. This matter has demonstrated the contempt of this system against this man who still to this day suffers the effect of persecution by Burns with the full approbation of the ADB and Tribunal.

No appearance of NCAT, Local Court NSW and President ADB in Courts of Law

It is a significant submission that the current law requires that unlike other admnistrative processes in the NCAT, where the complainant is given statutory right for referral to the NCAT by the ADB, it is the ***Complainant*** and not the President who appears in the NCAT hearing. This is distinguished from other administrative procedures to the NCAT where the statutory stakeholder and exerciser of the power that refers the process to the NCAT is not the applicant to the NCAT itself.

Specifically, the President in Anti-Discrimination matters never the applicant in an NCAT procedure relating to discrimination complaints. The applicant is the complainant. This is distinguished from other jurisdictions of the NCAT such as the disciplinary hearings where the applicant is the disciplinary body or 'local authority' e.g. the Law Society of New South Wales in disciplinary proceedings against solicitors even where the complainant to a solicitor is usually an aggrieved client who claims professional misconduct. It is not the complainant but the Board of the Law Society of NSW who is the applicant.

This submission makes clear that the whole system is designed to favour the complainant. The system is designed to and ensures that the complainant has front running, amply supported by the ADB, the Attorney General and ultimately the NCAT itself.

Complaints to LSC and Law Society of NSW by Burns

In passing, I make note that in addition to the eggregious remarks to a host of third parties listed in the abovementioned affidavit of myself sworn 22 September 2016, that Burns has at every turn attempted to destroy my reputation and character. I attach my letter to the Legal Services Commissioner dated 22 June 2016 where Burns makes every possible manifestation of allegation against me in order to have me struck off, disparaged and humiliated.

To my knowledge, Burns has lodged at least eight complaints to the Legal Services Commissioner and/or the Law Society of New South Wales. None have been successful and most not even commenced investigation. All referred complaints have been found to be baseless but exhausted time and money dealing with them.

Legal, Financial and Social impact on respondent and practitioner

It cannot be overestimated the impact on Bernard Gaynor's life, John Sunol, Geoffrey McKee, Tess Corbett and their families, his children in terms of social and legal costs.

Whislt I am confident that this impact is indeed the purpose of the process, that the punishment is the process and that the whole procedure is to ensure the grinding demise of any person as the real policy intent of this legislation, it is further submitted that those personally and severally responsible for this conduct will not go either unnoticed or unpunished.

Indeed it takes a celebrity football player to be attacked on one single occasion whilst the likes of John Sunol, Tess Corbett, Bernard Gaynor, or Geoffrey McKee can be

systemically abused over a period of seven years with the full approbation of the Attorney General's Office, the ADB and the NCAT.

It is clear the sole and primary determinant of justice is recourse to Court of Public Opinion and that the ADB and its Board with the Attorney General cannot be relied upon to uphold the rule of law until and unless a high profile celebrity case backed by public denunciation in Parliament brings a spotlight to an entrenched and systematic history of abuse of process.

Only when expressly brought to public light, do these bureacrats, huddled in their offices, feel the sting of any public accountability and only then bergudgingly move on their long entrenched positions.

Contempt proven by the NCAT in 2018

In further support of the proposition of systemic abuse by these institutions, I attach the reported judgment in *Burns v Sunol* [2018] NSWCATAD 259. This action was an application in Contempt of Tribunal made against Garry Burns by John Sunol.

I attach an affidavit of myself which was read in open Tribunal being affidavit sworn 22 September 2016. An examination of the attached affidavit reveals that the conduct of Burns is identical to his conduct in Folau.

In this decision, Judge F Marks makes the following determination:

> [16] Accordingly, it follows that I am persuaded that it appears to me that ***the respondent is guilty of contempt of the Tribunal for the purpose of section 73 (1) of the Act***. It is then necessary to consider whether the respondent should be asked to show cause why a referral to the Supreme Court should not be made.

A reading of the affidavit in support demonstrates the conduct of Burns in all the circumstances demonstrate the consistent conduct of Burns in the ADB and Tribunal as expressed by President Bennett in *Folau*:

1. ***vexatious***;
2. "flagrant" ***abuse of process***;
3. for a ***colateral purpose*** i.e. directed to the payment of money;
4. ***Disregard for the confidential nature*** of the process; and
5. ***Inappropriate communications*** with respondent's (Folau's) lawyer

All these elements are abundantly present in the 2018 *Burns v Sunol* matter. Yet, for all this, the conduct of the ADB, the NCAT and Burns has continued, unrelenting, unrepentant, incessant to the present day.

Conclusion

This submission supports the Bill.

This submission ultimately calls for the closure of the ADB and restoration of all discriminatory, intimidation and vexatious conduct into the general criminal law as acts of general criminality to be determined uner criminal law before a criminal law justice. This submission acknowledges that the present paradigm of the agencies trusted with this legislation have no demonstrated capacity to administer, justly and with purpose, the provisions of this Act and their capacity to be accountable to the public interest. The conduct of the ADB has done nothing but bring the confidence of the public to a new low that only its abolition will restore.

Yours faithfully,

Robert Balzola

Annexures

1. AAP News Article 16 April 2020
2. Pink News Article *LGBT+ Activist loses discrimination complaint etc.*
3. NSW Hansard – extract 18 Nov 76
4. NSW Hansard – extract 24 Nov 76

5. NSW Hansard – extract 11 Mar 93
6. Letter from me to ADB 3 June 2015
7. Letter from me to ADB 12 June 2015
8. Letter from ADB 23 June 2015
9. Burns v Corbett; Burns v Gaynor [2018] HCA 15
10. Affidavit of myself sworn 23 September 2016
11. Burns v Sunol [2018] NSWCATAD 259