

**Submission  
No 166**

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

**Name:** Mr Ganesh Sahathevan

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## Submission

Hon Robert Borsak MLC  
The Chairman  
Portfolio Committee No. 5 - Legal Affairs

Dear Sir

### Anti-Discrimination Amendment (Complaint Handling) Bill 2020 (the Amendment)

This submission is authored in the context of the long title of the Amendment:  
*An Act to amend the Anti-Discrimination Act 1977 to provide clear and reasonable rules for the acceptance of complaints by the NSW Anti-Discrimination Board; and for related purposes*

The NSW Anti-Discrimination Board (the Board) by definition hears matters that concern minorities. These issues are often the subject of intense public debate. In recent times judicial officers in New South Wales, including senior judges, have chosen to make their views on these matters known outside the confines of their judgements and courtrooms.

The comments of The Chief Justice Of NSW Mr Thomas Bathurst on the issue of xenophobia, and the response it elicited from the Daily Telegraph's Mr Tim Blair is as well known as it is unedifying<sup>1</sup>. Subsequently, regardless of the merits of the Chief Justice's comments an apprehension of bias can reasonably be expected in anyone who has a matter before NSW's courts where the arguments may be construed as being contradictory of the Chief Justice's published views.

This apprehension of bias is exacerbated by the reaction to the obiter of Mr Justice Desmond Fagan in *R v Bayda, R v Namoa (No 8)*<sup>2</sup>, where Fagan J's judgement appears to have been undermined by the media statements of senior counsel, with the tacit approval of senior judges<sup>3</sup>. That The Chief Justice and The Attorney General Mr Mark Speakman had chosen just last year to publicly lend their support to a Muslim organisation that had publicly accused Fagan J of impartiality and dereliction of duty when handing down that decision can only add to the apprehension of bias<sup>4</sup>.

Further there seems to be a determination on the part of the most senior judges in NSW

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1 Blair T, Why Bother With Elections? Tim Blair Blog Posts. Located at <https://www.dailytelegraph.com.au/blogs/tim-blair/why-bother-with-elections/news-story/c156979d06c840fb53693235d362a624>

2 [2019] NSWSC 24

3 Sahathevan,G Judge Fagan's decision likely target of proposed anti-vilification laws; research into political Islam, jihadism, also a likely target- senior judicial officers undermining Fagan suggests that no one will be safe if proposals enacted. Located at [https://justicepaosgavel.blogspot.com/2020/03/judge-fagans-decision-likely-to-target.html?fbclid=IwAR2cpptoqZWwuJce\\_X-BC2JoljLbZXMyLlwq15EioatrIZ1jYxhW8ynwJu4](https://justicepaosgavel.blogspot.com/2020/03/judge-fagans-decision-likely-to-target.html?fbclid=IwAR2cpptoqZWwuJce_X-BC2JoljLbZXMyLlwq15EioatrIZ1jYxhW8ynwJu4)

4 Sahathevan,G Muslim Legal Network accused Sup Crt Judge Fagan of lacking fairness, failing to perform his role of administering justice impartially: Soon after his Chief Justice Tom Bathurst praised MLN for upholding the rule of law : " doing a good job, cannot see how you can do it better"  
Located at <https://justicepaosgavel.blogspot.com/2020/02/muslim-legal-network-accused-fagan-j-of.html>

to express their views on such matters regardless of the consequences both to the judicial system and to Australia's international relations. An example can be found on the Supreme Court NSW website, in a document titled *The intersection of Australian law and the Islamic faith: a selection of cases* The Hon Justice M J Beazley AO. Affinity Intercultural Foundation.

The document is a transcript of a speech delivered by the former President Of The Court Of Appeal and current Governor of NSW, Her Excellency Margaret Beazley QC AO. The speech was delivered at an event organised by the Affinity Intercultural Foundation, the local arm of the Turkish Gulen movement, which has been declared by the Government of Turkey to be a terrorist movement. Apart from that designation, the movement has been found to foster links among members of the judiciary and government as part of its effort to promote its views on sharia and government<sup>6</sup>. It has been accused of

influence peddling<sup>7</sup>. Even SBS, which is usually averse to publishing anything that might cast any ethnic group in a less than positive light was driven in 2016 to publish a story critical of the Gulen movement titled *Turkey's 'most-wanted terrorist' and his well-connected friends in Australia*<sup>8</sup>. SBS also published a warning from Ambassador Ahmet Vakur Gökdenizle of Turkey:

*Turkey ambassador warns of possible 'threat' from Gulen's Australian followers*<sup>9</sup>

The fact that there are Youtube recordings of the then President Of The Court Of Appeal speaking at Affinity events add to the perception that the most senior judges in NSW are determined to promote their personal views on minority issues regardless of the consequences.

Additionally even if bias or apprehension of bias is ignored it cannot be assumed that any NSW board would have the skills required to investigate the facts of any complaint in this modern world of digital communication. For example The Australian reported in January 2019 that even the NSW Legal Admission Board (LPAB), which is chaired by the Chief Justice, was happy to accept as credible and true a story published on the Net under a pseudonym which purported to expose a conspiracy involving this writer, George Soros, Donald Rumsfeld, Tony Blair and Malaysia's Mahathir Mohamad<sup>10</sup>. The report was accepted as true without any reference to this writer, and again the consequences

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5 Located at link [http://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Speeches/Pre-2015%20Speeches/Beazley/beazley\\_20140827.v2.pdf](http://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Speeches/Pre-2015%20Speeches/Beazley/beazley_20140827.v2.pdf)

6 See **The Turkish exception: Gallipoli, Gulen, and capitalism**, located at link <https://www.abc.net.au/radionational/programs/archived/encounter/turkey-gallipoli-g%C3%BClen-capitalism/4853162#transcript>;

7 The Ottoman Caper Part II - Australian Institute of International Affairs

<http://www.internationalaffairs.org.au/australianoutlook/the-ottoman-caper-part-ii/>

8 Located at link <https://www.sbs.com.au/news/turkey-s-most-wanted-terrorist-and-his-well-connected-friends-in-australia>

9 Located at link <https://www.sbs.com.au/news/turkey-ambassador-warns-of-possible-threat-from-gulen-s-australian-followers>

10 Butler, B

Bizarre blog claims used to deny man right to practise law, The Australian, 17 January 2019 [shorturl.at/dkuJ9](http://shorturl.at/dkuJ9). See also Sahathevan G When senior Australian judges decide that Najib Razak's blocking of websites reporting the 1MDB theft was due to "defamatory" publications, Australia has a problem: Will Australia do like Malaysia did 20 years ago to address the problem?

Located at <http://realpolitikasia.blogspot.com/2019/12/when-senior-australian-judges-decide.html>

to Australia's international relations of giving credence to a report that even today is considered farcical seem to have been ignored.

In light of the above, it is not unreasonable for anyone brought before the Board to be concerned that while there may be a right of appeal to the Supreme Court, personal views will prevail over the strength of any evidence offered in defence. These biases, real and apprehended are not matters that can be corrected. Senior members of the judiciary and civil service are in a position to insulate themselves from any real public interrogation of their views and actions<sup>11</sup>.

It is therefore in the interest of fairness and justice to ensure that the bar for having a complaint accepted by the Board, at first instance, be set at a higher level as proposed in the Amendments. It should be remembered that even at first instance the costs of defending against a complaint is probably beyond the means of most people. To paraphrase Her Honour Judith Gibson of the NSW District Court : if Parliament fails to recognise the problems inherent in the work of the Board, "we are going to have a significant loss of faith in the courts as the significant provider of justice, and that is a matter of great concern."<sup>12</sup>

Ganesh Sahathevan  
25 April 2020

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11 See for example **How police pre-crime units targets citizens allegedly too obsessed with public officials**  
<https://www.crikey.com.au/2017/10/05/cops-and-health-professionals-can-decide-if-youre-too-obsessed-with-a-public-official/>

12 Hagar Cohen 'Defamation is back big time', says senior judge, but warns victories may be Pyrrhic.ABC The World Today;