

AUSTRALIA / JUDGMENT

Faraj v Hanson

[2026] NSWCATAD 264**COURT**

Civil and Administrative Tribunal

DECIDED

01 September 2026

BEFORE

J van der Plaat, Senior Member

CASE / FILE NUMBER

2026/00242997

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Civil and Administrative Tribunal New South Wales

Medium Neutral Citation: Faraj v Hanson [2026] NSWCATAD 264**Hearing dates:** On the papers**Date of orders:** 01 September 2026**Decision date:** 01 September 2026**Jurisdiction:** Administrative and Equal Opportunity Division**Before:** J van der Plaat, Senior Member**Decision:** (1) Pursuant to Section 50(2) of the Civil and Administrative Tribunal Act 2013, the hearing is dispensed with.
(2) The proceedings are dismissed for want of jurisdiction.**Catchwords:** CIVIL PROCEDURE — Summary disposal — Dismissal of proceedings – no jurisdiction**Legislation Cited:** Anti-Discrimination Act 1977 (NSW)
Civil and Administrative Tribunal Act 2013 (NSW)
Justice Legislation Act (No 2) 2017 (NSW)**Cases Cited:** Attorney-General for New South Wales v Gatsby (2018) 99 NSWLR 1; [2018] NSWCA 254
Burns v Corbett (2018) 265 CLR 304; [2018] HCA 15
Burns v Gaynor [2025] NSWCATAD 65
Gaynor v Attorney-General of New South Wales [2020] NSWCA 48
Gaynor v Burns [2025] NSWSC185**Texts Cited:** None cited**Category:** Procedural rulings

Parties:	Hussein Faraj (Applicant) Pauline Hanson (Respondent)
Representation:	Applicant (Self-Represented) Gillis & Co (Respondent)
File Number(s):	2026/00242997
Publication restriction:	Nil

REASONS FOR DECISION

Facts

On 18 February 2026, the Applicant made a complaint to Anti-Discrimination NSW (ADNSW) against the Respondent, alleging a contravention of the Anti-Discrimination Act 1977 (NSW) (AD Act), ss 49ZD and 49ZE. The specifics of the complaint are not presently relevant.

Both s 49ZD and s 49ZE are contained in Division 4 of Part 4BA of the AD Act which is the division concerned with protection from vilification of persons or a group of persons on the ground they have or do not have a religious belief or affiliation.

Specifically, s 49ZE(1) states:

49ZE Religious vilification unlawful

- (1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for or severe ridicule of—
 - (a) a person on the ground the person—
 - (i) has, or does not have, a religious belief or affiliation, or
 - (ii) engages, or does not engage, in religious activity, or
 - (b) a group of persons on the ground the members of the group—
 - (i) have, or do not have, a religious belief or affiliation, or
 - (ii) engage, or do not engage, in religious activity.

On 29 April 2026, ADNSW wrote to the respondent seeking a written response. No response was received from the respondent and on 10 June 2026, the Applicant requested that the complaint be referred to this Tribunal.

On 11 June 2026, ADNSW referred the matter to the Tribunal pursuant to the AD Act, s 93(a).

On 22 June 2026, the Tribunal made the following orders and directions:

“1 The Applicant is to provide to the Respondent and the Tribunal written submissions and any material the Applicant intends to rely on in respect of the issue of jurisdiction by 4pm, Friday 3 July 2026.

2 The Respondent is to provide to the Applicant and the Tribunal written submissions and any material the Respondent intends to rely on in respect of the issue of jurisdiction by 4pm Friday 17 July 2026.

3 The Applicant is to provide to the Respondent and the Tribunal any written submissions and material in reply by 4pm Friday 24 July 2026.

4 Notes:

On 11 June 2026, the Tribunal received a referral from the President of the Anti-Discrimination Board (NSW).

The Tribunal notes the decisions of *Gaynor v Burns* [2025] NSWSC185 and *Burns v Gaynor* [2025] NSWCATAD 65 and considers it may not have jurisdiction to deal with the referral. If the Tribunal determines it lacks jurisdiction to deal with the referral, the proceedings may be dismissed.

In any written submissions, parties should address whether a hearing on the issue of jurisdiction can be dispensed with under s 50(2) of the Civil and Administrative Tribunal Act 2013 (NSW) (CAT Act). If the Tribunal determines that a hearing can be dispensed with, the proceedings may then be determined on the papers without a hearing. “

The applicant complied with orders 1 and 3. The respondent did not comply with order 2 and made no submissions and filed no material. On 17 July 2026, the Tribunal received a notice of representation by legal practitioner or agent.

Applicant's Submissions

The applicant submitted that the Tribunal should:

“1 Provide a direction that if the respondent contends the Tribunal lacks jurisdiction on the ground that the matter is between residents of different States, the respondent file and serve evidence of her place of residence as at the date of commencement of proceedings, and that the proceedings not be dismissed for want of jurisdiction unless and until that jurisdictional fact is established by evidence;

2 Determine the legal question as to the scope of the constitutional limitation be determined on the papers pursuant to s 50(2) of the CAT Act, but any disputed or unproven question of fact as to the respondent's residence not be determined without an oral hearing;

3 In the alternative, if the jurisdictional fact is established and the Tribunal determines that it is unable to exercise jurisdiction (i) an order dismissing the proceedings expressly and solely for want of jurisdiction, without any determination of the merits, (ii) a notation recording the dates on which the complaint was lodged with ADNSW and the referral was received by the Tribunal; and (iii) a notation that the applicant has foreshadowed an application to an authorised court under s 34B of the CAT Act;

4 Provide written reasons pursuant to s 62 of the CAT Act.

5 Provide liberty to apply.”

For the following reasons, the Tribunal dismisses the proceedings for want of jurisdiction.

Issues for consideration

The issues to be considered are:

Whether the Tribunal should proceed to determine the issues on the papers and without a hearing?

Whether the determination of the application by the Tribunal would involve an exercise of federal jurisdiction?

Issue 1

Pursuant to s 50 of the CAT Act, hearings are required for Tribunal proceedings, subject to exceptions outlined in that section. Generally, hearings are open to the public unless the Tribunal orders otherwise, s 49 CAT Act. One of the exceptions provided by s 50 is that the Tribunal may dispense with a hearing if it is satisfied that the relevant issues can be adequately determined in the absence of the parties by considering any written material provided to the Tribunal and the Tribunal has afforded the parties an opportunity to make submissions about the proposed order and taken any such submissions into account.

In its orders dated 22 June 2026, the Tribunal provided an opportunity for both parties to make submissions as to whether the Tribunal should determine the issue of jurisdiction without an oral hearing. The applicant in its written submissions of 3 July 2026 consented to the jurisdictional issue being determined on the papers but that any disputed or unproven question of fact as to the respondent’s address not be determined without an oral hearing.

The respondent made no submissions.

Considering the applicant’s submissions and for the reasons set out below, the Tribunal does not consider there to be any dispute or unproven question of fact.

I am satisfied that the issues can be adequately determined by the Tribunal in the absence of the parties. Accordingly, pursuant to s 50(2), I order that the issue of jurisdiction be determined without a hearing, that is, the issues be determined “on the papers”.

Issue 2

In *Burns v Gaynor* [2025] NSWCATAD 65 SM Gatland stated at [18]-[21]:

In *Burns v Corbett* (2018) 265 CLR 304; [2018] HCA 15, the High Court decided that the Tribunal was not able to exercise federal jurisdiction of the kind referred to in the Constitution, ss 75 and 76. This is because, as Leeming JA later explained in *Gaynor v Attorney-General of New South Wales* at [131]; citing *Attorney-General for New South Wales v Gatsby* (2018) 99 NSWLR 1; [2018] NSWCA 254, the Tribunal is ‘a tribunal in respect of which federal jurisdiction cannot be vested, notwithstanding that it may, in some circumstances, exercise judicial power.’

Federal jurisdiction includes matters where residents of different states are the subject of a referral to the Tribunal by the President of the NSW Anti-Discrimination Board because such referrals seek that the Tribunal exercise its general jurisdiction under the Civil and Administrative Tribunal Act, s 29; but not, for example, its administrative review jurisdiction: Civil and Administrative Tribunal Act, s 30.

Part 3A of the Civil and Administrative Tribunal Act was inserted by the Justice Legislation Act (No 2) 2017 (NSW) and came into operation on 1 December 2017. Kiefel CJ, Bell and Keane JJ in *Burns v Corbett* noted that Part 3A provides a mechanism for matters to be heard by an authorised court instead of the Tribunal if, upon an application for leave by a person with standing, the court is satisfied that the Tribunal does not have jurisdiction to determine the application because its determination involves the exercise of federal diversity jurisdiction: *Burns v Corbett* (2018) 265 CLR 304; [2018] HCA 15 at [11].

Section 34B of the Civil and Administrative Tribunal Act provides:

- (1) A person with standing to make an original application or external appeal may, with the leave of an authorised court, make the application or appeal to the court instead of the Tribunal.
- (2) The authorised court may grant leave for the application or appeal to be made to the court only if it is satisfied that—
 - (a) the application or appeal was first made with the Tribunal, and
 - (b) the determination of the application or appeal by the Tribunal would involve an exercise of federal jurisdiction, and
 - (c) the Tribunal would otherwise have had original jurisdiction or external appellate jurisdiction enabling it to determine the application or appeal, and
 - (d) substituted proceedings on the application or appeal would be within the jurisdictional limit of the court.
- (3) An application for leave must be—
 - (a) filed with the authorised court along with—

- (i) an application or appeal that has been completed in the form and manner required under this Act for the kind of application or appeal concerned, and
- (ii) if the parties to the application or appeal have reached a settlement before leave is sought using a resolution process referred to in section 37—a copy of the terms of settlement, and
- (b) accompanied by the applicable fee (if any) payable in the Tribunal for the application or appeal unless it has already been paid to the Tribunal.

The applicant contends that the constitutional limitation established in *Burns v Corbett* (2018) 265 CLR 304; [2018] 15 depends upon a jurisdictional fact – that the parties were resident of different States at the commencement of the proceedings and there is presently no evidence before the Tribunal capable of establishing that fact.

Pursuant to s 28(2) of the CAT Act, the Tribunal is not bound by the rules of evidence and may inform itself on any matter in such manner as it considers appropriate, subject always to the requirements of natural justice (s 38(2) CAT Act).

Pursuant to Section 38(2) of the CAT Act, the Tribunal has an independent, overriding duty to satisfy itself that it possesses the jurisdiction to hear the case. To satisfy that duty, the Tribunal may undertake an inquisitorial or investigative procedure.

In relation to the respondent's residency status, the Tribunal notes that the publicly available Commonwealth Register of Senate Interests discloses that the respondent is a Senator of Queensland and owns two residential properties in Queensland. Publicly listed information also discloses that her electorate office is in Brisbane with a Queensland telephone number. Whilst there is no onus of proof on the applicant, this public information is just as freely available to him as it is the Tribunal. The Tribunal does not consider this information to be speculative.

The applicant submits that he “does not advance a positive case that the respondent resides in New South Wales.” The Tribunal has afforded both parties to make submissions on this point. The fact that the respondent provided no submissions does not preclude the Tribunal from informing itself, provided it does not conduct the matter on behalf of the respondent.

The applicant submits that he is a resident of New South Wales.

As explained by SM Gatland in *Burns v Gaynor* [2025] NSWCATAD 65, the Tribunal considers that the determination of the substance of the applicant's claim under the AD Act would involve the impermissible exercise of federal jurisdiction by the Tribunal.

It is clear from the applicant's submissions that he intends to pursue substituted proceedings under Part 3A of the NCAT Act. The Tribunal cannot determine whether the applicant would meet the requirements pursuant to the CAT Act, s 34B(2)(c), and makes no decision in that regard.

Accordingly, I am satisfied that the proceedings should be dismissed for want of jurisdiction.

Orders

Pursuant to Section 50(2) of the Civil and Administrative Tribunal Act 2013, the hearing is dispensed with.

The proceedings are dismissed for want of jurisdiction.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.

Registrar

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Decision last updated:

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