

Media release
For immediate release 23 June 2017

Homosexual vilification in the age of new media.

Lawyers are keen to resolve federal issues of homosexual hate speech.

Australian Lawyers for Human Rights (**ALHR**) welcomes the High Court of Australia's decision to grant special leave to Garry Burns to appeal a NSW Court of Appeal decision that the NSW Civil and Administrative Tribunal (**NCAT**) has no power to determine anti-discrimination matters between residents of different States.

The Court of Appeal was asked whether the NCAT could hear and determine a dispute arising under the *Anti-Discrimination Act 1977* (NSW) between a resident of New South Wales and a resident of another State.

Mr Burns originally wished to enforce orders against two respondents (who reside in two other States) who, according to NCAT, had engaged in homosexual vilification in contravention of the NSW Act. The Court of Appeal decided that a State tribunal such as NCAT is not a "court of a State" and therefore is unable to exercise judicial power to determine matters between residents of two States.

ALHR's Vice President, Kerry Weste, said: "This appeal deals with significant constitutional issues that will affect many jurisdictions across Australia. But, for everyday Australians, they would be wondering why, in the age of social media, a tribunal like NCAT cannot arbitrate and resolve a claim for vilification by a resident of NSW against any other person, regardless of where they reside in Australia."

Ms Weste continued: "For Mr Burns and the LGBTI community, this case is also of the highest importance because it will indirectly bear upon the NSW homosexual community's rights to prosecute vilification claims against residents of other States who use technology to communicate across State borders."

"Pending the High Court's decision and any amendments to the laws of NSW or the Commonwealth, it would seem", said Ms Weste, "that people in other States can engage in harmful public acts of homosexual vilification with impunity from NSW law so long as the vilification is communicated by a non-resident of NSW across State or Territory borders".

"Homosexual vilification is hateful, cruel and harmful and warrants the strongest legal sanctions. Australia should lead in this area of human rights protection. Whatever the decision that eventuates in the High Court, ALHR will request that the Council of Australian Governments tables the constitutional issues arising from Mr Burns's case, as well as the issue of the need for uniform Australian homosexual vilification laws which can be fully enforced throughout Australia by appropriate courts or tribunals, at its next meeting."

Media Contact: Matt Mitchell

M: 0431 980 365 **E:** media@alhr.org.au

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and a secretariat at La Trobe University Law School in Melbourne. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.