

2 August 2021

Senator the Hon. Sarah Henderson
Senator for Victoria
Parliament House
CANBERRA WA 2600

Dear Senator

Your complaint against Julian Burnside AO QC

It was reported in *The Weekend Australian* published on 31 July 2021 that you have made a complaint to the Victorian Bar about Julian Burnside AO QC.

I write on behalf of The Western Australian Bar to express our concern at your conduct.

According to the article, your complaint relates to a tweet by Mr Burnside (since deleted) in which Mr Burnside, in the context of commenting on the conduct of the Israeli government towards Palestinians and Israel's alleged violations of international law, compared the treatment of Palestinians with the treatment of Jewish people during the Holocaust.

According to the article, the basis of your complaint is that Mr Burnside may have engaged in behaviour likely to diminish public confidence in the legal profession.

The article is consistent with a tweet you published on 28 July, in which you called upon the Victorian Bar to 'strip' Mr Burnside of his appointment as Queen's Counsel and his Order of Australia (even though neither the Victorian Bar nor the Legal Services Commissioner has power to do either), and an interview you recently gave on Sky News which is available online.

I understand that the Victorian Bar Council has declined to deal with your complaint on the basis it lacks jurisdiction, and that your complaint has been referred to the Legal Services Commissioner.

As an Australian Senator, and as Chair of the Senate Legal and Constitutional Affairs Legislation Committee and Deputy Chair of the Senate Legal and Constitutional Affairs References Committee, your conduct is a matter of interest to all Australians insofar as it reflects on your attitude to fundamental democratic values. I note that on 17 June 2021 the Senate referred the *Constitution Alteration (Freedom of Expression and Freedom of the Press) Bill 2019* to the Legal and Constitutional Affairs Legislation Committee, of which you are Chair, for inquiry and report by 31 December 2021. The object of that bill is to enshrine the right of

freedom of expression including freedom of the press and other media within the Australian Constitution.

The WA Bar exists to promote objects which include (amongst other things) a dedicated commitment to promoting free speech, freedom of association and adherence to and respect for the rule of law, including equality before the law, untrammelled by oppression or tyranny from any quarter.

Freedom of speech is one of the cornerstones of a liberal democratic society. It entails not only the right to express views with which others may or will disagree, but to do so in strong terms and in a manner which may be insensitive or likely to cause offense.

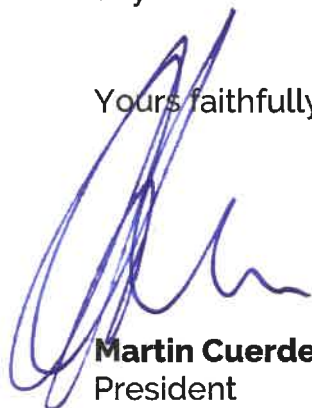
Regardless of what opinion one holds in respect of Israeli-Palestinian affairs (about which the Western Australian Bar holds and expresses no view), the subject matter of Mr Burnside's tweet is undoubtedly a matter of public interest and properly the subject of public debate and expression of opinion. Mr Burnside was entitled, like any Australian, to express his views on the subject, and to do so in strong terms even if others, including yourself, find them offensive. He did not forfeit his right to do so upon being appointed Queen's Counsel or receiving an Australian Honour.

As a member of the Australian Senate, you have a political and moral obligation to uphold, not undermine, the democratic liberal values on which Australian society is based. Your conduct in reporting Mr Burnside to the Victorian Bar and calling for him to be 'stripped' of certain privileges is a matter of grave concern, as it represents an attack on freedom of speech and is therefore inconsistent with one of the most fundamental of these values.

Further, your conduct illustrates that no matter how fundamental a right may be, it must never be taken for granted but must be jealously guarded and protected.

It is for these reasons that I write on behalf of The WA Bar to express our concern at your conduct.

Yours faithfully



Martin Cuerden SC
President