

# Stay Safe From Lawfare (V1.0)

A Unified Kit for Self-Represented Respondents Facing Activist Tribunal Litigation

## Requirements:

- Adobe Acrobat Reader or similar (to fill in bracketed fields)
- Email access for serving Attorneys-General
- Ability to take screenshots (for proof of service)

**Disclaimer:** This template is for educational purposes. It does not constitute legal advice. Users are responsible for personalising and filing correctly. No liability is accepted for its use or misuse. The law stated herein is correct as of May 2026.

**Important Caveat:** Nothing here is legal advice and I am not your lawyer. Have a lawyer review this before you act - preferably one who has read *Burns v Corbett* and is not instinctively deferential to tribunals. But go in with your eyes open. These bodies are not neutral. They are not designed to be neutral. Know what you are walking into, and know that you have more ground to stand on than they want you to believe.

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# DOCUMENT 1: JURISDICTIONAL CHALLENGE

(Copy and paste the text below into your primary document)

## JURISDICTIONAL CHALLENGE AND APPLICATION FOR IMMEDIATE DISMISSAL

**Filed by:** [Respondent Name], Self-Represented Respondent

**Proceeding No.:** [Insert Proceeding Number]

**Date:** [Insert Date]

### PART 1: PROCEDURAL COMPLIANCE NOTICE (COVERING PAGE)

#### TO THE REGISTRAR OF THE TRIBUNAL

1. This filing raises a fundamental constitutional objection under ss 75(iv), 76(i), and 76(ii) of the Commonwealth Constitution, invoking the binding authority of the High Court of Australia in *Burns v Corbett* [2018] HCA 15. The Tribunal is constitutionally incompetent to entertain this dispute.
2. Jurisdiction is an absolute threshold and anterior question. No substantive step or procedural direction regarding the merits may lawfully be taken until this challenge is determined (*Citta Hobart Pty Ltd v Cawthorn* [2022] HCA 16 at [35]; *Wilson v Chan & Naylor Parramatta Pty Ltd* [2020] NSWCA 213).
3. For the avoidance of administrative doubt, the Tribunal is legally disabled from 'reserving' or deferring this jurisdictional determination to a final merits hearing. Where a fundamental constitutional bar is raised, forcing a Respondent to participate in merits-based procedural steps - including mediation, compulsory conferences, or the filing of affidavit evidence - constitutes an immediate, appealable error of law on the face of the record, as the Tribunal lacks the foundational capacity to issue such directions (*Citta Hobart* at [35]; *Burns v Corbett*). The threshold inquiry must be determined in isolation, immediately, and as a strict condition precedent to any other step in the administration of this file.
4. The Respondent demands this challenge be listed for an immediate directions hearing as a matter of priority - prior to the ordering of any evidence, cross-claims, or merits-based listings. Any attempt to bypass this threshold constitutes an error of law on the face of the record amenable to immediate prerogative relief.
5. A Notice of Constitutional Matter under s 78B of the *Judiciary Act 1903* (Cth) is filed concurrently herewith and has been served on the Attorneys-General of the Commonwealth and the State. Proceedings must be stayed to afford the law officers their statutory opportunity to intervene.
6. The Respondent intends no discourtesy to the Tribunal or its Members personally. The defect addressed herein is constitutional and institutional, not personal. However, the law is binding, and the Tribunal must give effect to it.

7. The Tribunal is on notice: failure or refusal to accord this challenge absolute priority will result in immediate escalation to the Supreme Court for writs of prohibition and certiorari, with costs sought on an indemnity basis against the initiating infrastructure where available.

## **PART 2: JURISDICTIONAL CHALLENGE**

### **A. The Tribunal Lacks Judicial Power**

1. The Tribunal has no lawful power to hear or determine this complaint. It is not a "court of a State" under Chapter III of the Commonwealth Constitution. Because the proceeding involves the exercise of federal judicial power, the Tribunal is constitutionally barred from acting (*Burns v Corbett* [2018] HCA 15; (2018) 265 CLR 304 at [1] per Kiefel CJ, Bell and Keane JJ).

### **B. Political Communication Core Constitutional Defence**

2. The Respondent's statements constitute protected political communication on matters at the very centre of contemporary public policy, federal administration, and ongoing legislative debate. Specifically, the controversy involves the following direct evidentiary statements made by the Respondent:
  - **(a) [Insert Date]:** The Respondent published/stated: "[Insert exact quote here - e.g., *Biological sex is immutable. A man cannot become a woman. This is not hate speech; it is biology.*]" This statement directly addresses the intersection of gender identity ideology with biological sex-based rights and public policy, explicitly aligning with the statutory definitions maintained by the Commonwealth Parliament in Section 3 of the *Workplace Gender Equality Act 2012* (Cth).
  - **(b) [Insert Date]:** The Respondent published/stated: "[Insert exact quote here - e.g., *Single-sex spaces must be legally protected to preserve child safeguarding and fair sport.*]" This statement directly addresses contemporary legislative debate regarding public safety, child protection, and sporting governance.
  - **(c) [Insert Date]:** The Respondent published/stated: "[Insert exact quote here - e.g., *Gender identity ideology cannot override sex-based language or statutory definitions.*]" This statement directly addresses the proper structural limits, overreach, and perceived ideological weaponisation of administrative anti-discrimination frameworks.
3. The above communication resides at the absolute core of national public discourse. Such communication is strictly shielded by the implied freedom of political communication under the Commonwealth Constitution (*Lange v Australian Broadcasting Corporation* [1997] HCA 25; *Coleman v Power* [2004] HCA 39). This structural freedom protects robust, deeply critical, exhausting, or offensive speech where it directly addresses governmental, legislative, and socio-political matters. The necessity of this protection is further elevated by recent judicial expansions of statutory definitions within federal frameworks, making public criticism of such legal shifts a matter of paramount political importance.

### C. Attraction of Federal Jurisdiction ss 76(i) and 76(ii)

4. The Respondent's reliance on these constitutional and statutory defences instantly gives rise to a 'matter arising under the Constitution or involving its interpretation' under s 76(i), and a matter 'arising under laws made by the Parliament' under s 76(ii). For the structural avoidance of doubt, these federal dimensions are entirely severable from, independent of, and cumulative to any diversity jurisdiction under s 75(iv). Should it be established that the parties reside within the same State boundary, the attraction of exclusive Chapter III federal jurisdiction remains fully engaged, completely intact, and self-sustaining by the independent operation of ss 76(i) and 76(ii) (*Citta Hobart* at [33]).

### D. Inseparability of Victimisation, Harassment, and Vilification Claims

5. Any ancillary claims of victimisation, harassment, defamation, or vilification arising from the Respondent's protected political communication equally engage the implied freedom. These claims cannot be severed or carved out to preserve a remnant of Tribunal jurisdiction; the entire controversy is infected by the constitutional question and must be dismissed.

### E. Section 109 Statutory Inconsistency

6. Further and in the alternative, the provisions of the State/Territory enactment relied upon by the Applicant are inconsistent with the *Sex Discrimination Act 1984* (Cth), the *Workplace Gender Equality Act 2012* (Cth), and/or other Commonwealth laws, rendering the State provisions inoperative to the extent of the inconsistency pursuant to s 109 of the Constitution.
  - **(a) Direct Operational Conflict:** The State/Territory provision purports to penalise or restrict expressions regarding biological sex and gender identity that are otherwise lawful, contemplated, or implicitly protected under the federal architecture. While federal discrimination law contains highly specialised, text-confined interpretations of "sex" (*Tickle v Giggle*), the Commonwealth architecture simultaneously maintains strict, binary, biological definitions of "man" and "woman" in parallel statutes like the *Workplace Gender Equality Act 2012* (Cth).
  - **(b) Impairment of Commonwealth Frameworks:** By superimposing a lower, highly subjective local threshold for "vilification" or "harassment" onto public policy debate, the State/Territory enactment penalises a citizen for using the exact definitions operationalised by the Commonwealth's own legislative frameworks. The State law thereby alters, impairs, or detracts from the operation of federal law.
7. The assertion of this statutory inconsistency independently and instantly gives rise to a matter arising under a law made by the Parliament, or involving its application, thereby attracting exclusive federal jurisdiction under s 76(ii) of the Constitution.

#### **F. The Low Threshold Test Met in Full**

8. The Tribunal's incidental power to assess its own competence is confined to an exceptionally narrow inquiry: it requires only that the constitutional defence be genuinely raised and not incapable on its face of legal argument (*Citta Hobart* at [35]).
9. That threshold is comfortably satisfied. This Tribunal has already repeatedly accepted identical defences as genuine in gender-related vilification proceedings: *Blanch v Smith* [2024] NSWCATAD 20 (at [40], [55]) and *Dennis v Smith* [2024] NSWCATAD 91. The Respondent's defence stands squarely on all fours with these established precedents.

#### **G. No Merits Inquiry Permitted**

10. The Tribunal is legally forbidden from embarking upon an assessment of the ultimate strength or validity of the defence (*Citta Hobart* at [45]). Its role terminates the moment it confirms the controversy is genuine. Having identified a genuine federal question, the Tribunal's power is spent, and it must immediately drop the tool.

### **PART 3: ORDERS SOUGHT**

The Respondent seeks the following orders:

1. A declaration that the proceeding involves the exercise of federal jurisdiction under ss 75(iv), 76(i), and/or 76(ii) of the Commonwealth Constitution;
2. An order staying absolutely and holding in abeyance all interlocutory applications, cross-motions, or procedural demands filed by the Applicant pending the final determination of this prior, threshold Jurisdictional Challenge, on the basis that a statutory body lacking constitutional capacity cannot lawfully make ancillary or consequential orders against a Respondent;
3. An order dismissing or striking out the proceedings for want of jurisdiction pursuant to:
  - **[For NSW (NCAT)]** s 55(1)(b) of the *Civil and Administrative Tribunal Act 2013* (NSW).
  - **[For QLD (QCAT)]** s 47(1) of the *Queensland Civil and Administrative Tribunal Act 2009* (QLD).
  - **[For VIC (VCAT)]** s 75(1) of the *Victorian Civil and Administrative Tribunal Act 1998* (VIC).
  - **[For ACT (ACAT)]** s 32(1)(b) of the *ACT Civil and Administrative Tribunal Act 2008* (ACT).
  - **[For NT (NTCAT)]** s 49(1)(b) of the *Northern Territory Civil and Administrative Tribunal Act 2014* (NT).
  - **[For SA (SACAT)]** s 77(1) of the *South Australian Civil and Administrative Tribunal Act 2013* (SA), on the basis that the Tribunal lacks jurisdiction as a matter of constitutional law (*Burns v Corbett*).
  - **[For WA (WASAT)]** s 27(1) of the *State Administrative Tribunal Act 2004* (WA), or alternatively an immediate strike-out on the basis that the Tribunal is not a "court of a State" under Chapter III of the Constitution and its jurisdiction is spent (*Burns v Corbett*, *Citta Hobart*).
  - **[For TAS or other jurisdictions]** The Tribunal lacks jurisdiction as a matter of constitutional law (*Burns v Corbett*). The Respondent moves for immediate dismissal on that basis alone, independent of any statutory dismissal provision.
4. Alternatively, an order that the Tribunal declines to deal with the application;

5. An order that the Respondent's costs of and incidental to this Jurisdictional Challenge be paid by the Applicant on an indemnity basis pursuant to **[NSW: s 60 NCAT Act / QLD: s 102 QCAT Act / VIC: s 109 VCAT Act / ACT: s 48 ACAT Act / NT: s 63 NTCAT Act / SA: s 57 SACAT Act / WA: s 87 SAT Act]**, on the basis that the Applicant commenced proceedings in a forum manifestly lacking constitutional competence, forcing the Respondent to incur unnecessary expenditure (*Wilson v Chan & Naylor*). The Respondent explicitly notes that the Tribunal's ancillary jurisdiction to award costs survives a threshold constitutional dismissal for the sole purpose of regulating an abuse of the Tribunal's infrastructure (*Wilson v Chan & Naylor Parramatta Pty Ltd* [2020] NSWCA 213 at [23]–[31]).

## **PART 4: NOTICE OF INTENTION TO SEEK INDEMNITY COSTS**

### **NOTICE TO THE APPLICANT:**

The Applicant is hereby placed on formal notice that the initiation and maintenance of proceedings in a non-judicial statutory tribunal lacking constitutional capacity to determine federal matters is an abuse of process.

Should the Applicant fail to withdraw the complaint within 7 days of service of this application, the Respondent will rely on this document to seek indemnity costs. Any step taken by the Applicant to progress this matter in this forum after being given clear notice of the absolute jurisdictional bar is inherently unreasonable, vexatious, and designed to harass (*Wilson v Chan & Naylor* [2020] NSWCA 213 at [23]–[31]).

## PART 5: KEY AUTHORITIES

Authority / Statute	Principle	Application
<b>Burns v Corbett</b> [2018] HCA 15	State tribunals cannot exercise federal judicial power (ss 75/76 matters).	Absolute core jurisdictional bar.
<b>Citta Hobart v Cawthorn</b> [2022] HCA 16	Low threshold: defence need only be genuinely raised and arguable on its face. Forbids merits inquiry.	Restricts the Tribunal to detecting the defence, not judging it.
<b>Lange v ABC</b> [1997] HCA 25	Establishes and defines the implied freedom of political communication.	Substantive constitutional shield.
<b>Coleman v Power</b> [2004] HCA 39	Protects robust, sharp, or offensive political speech.	Protects public debate from ideological vilification overreach.
<b>Blanch v Smith</b> [2024] NSWCATAD 20	Tribunal declined jurisdiction in transgender vilification case because of the implied freedom.	Direct, persuasive local precedent.
<b>Wilson v Chan &amp; Naylor</b> [2020] NSWCA 213	Tribunal has authority to decide preliminary question of jurisdiction; costs jurisdiction survives.	Power to dismiss and punish the Applicant with costs.
<b>s 77(1) SACAT Act 2013</b> (SA)	Empowers the South Australian Tribunal to dismiss or strike out proceedings lacking jurisdiction.	Explicit local legislative vehicle for South Australian matters.
<b>s 27(1) SAT Act 2004</b> (WA)	Details the State Administrative Tribunal's powers regarding dismissal and jurisdiction thresholds.	Explicit local legislative vehicle for Western Australian matters.

## **PART 6: CERTIFICATION**

I, [Respondent Name], certify that:

- (a) This document has been served on the Applicant;
- (b) A Notice of Constitutional Matter under s 78B of the *Judiciary Act 1903* (Cth) is filed contemporaneously;
- (c) That Notice has been served on the Attorneys-General of the Commonwealth and the State/Territory.

**Dated:** [Insert Date]

**Signature:** \_\_\_\_\_

# DOCUMENT 2: NOTICE OF CONSTITUTIONAL MATTER

*(Copy and paste the text below into your secondary document)*

## NOTICE OF CONSTITUTIONAL MATTER

**IN THE** [INSERT TRIBUNAL NAME, e.g., CIVIL AND ADMINISTRATIVE TRIBUNAL OF NEW SOUTH WALES]

**PROCEEDING NO.:** [Insert Proceeding Number]

### **BETWEEN:**

#### **[APPLICANT NAME]**

Applicant

*-and-*

#### **[RESPONDENT NAME]**

Respondent

### **TO:**

1. The Attorney-General of the Commonwealth of Australia
2. The Attorney-General of the State/Territory of [Insert State/Territory, e.g., New South Wales]
3. The Registrar of the Tribunal
4. The Applicant

**TAKE NOTICE** that this proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903* (Cth).

### **1. Nature of the Proceeding**

The Applicant has commenced proceedings in the Tribunal alleging [insert brief description, e.g., transgender vilification / discrimination] under the [Insert State/Territory Act, e.g., *Anti-Discrimination Act 1977* (NSW)] in relation to public statements made by the Respondent concerning gender identity policy and biological sex-based rights.

## 2. The Constitutional Question

The constitutional question arises from the Respondent's defence to the application, which directly engages the implied freedom of political communication under the Commonwealth Constitution (*Lange v ABC* [1997] HCA 25; *Coleman v Power* [2004] HCA 39).

The specific constitutional issues genuinely raised in controversy are:

- (a) Whether the provisions of the State/Territory enactment relied upon by the Applicant impermissibly burden the implied freedom of political communication, contrary to the Commonwealth Constitution;
- (b) Whether a non-judicial statutory State/Territory Tribunal, which is not a "court of a State" under Chapter III of the Constitution, is constitutionally disabled from exercising judicial power to determine a controversy involving the implied freedom of political communication (*Burns v Corbett* [2018] HCA 15);
- (c) Whether the provisions of the State/Territory enactment are inconsistent with the *Sex Discrimination Act 1984* (Cth), the *Workplace Gender Equality Act 2012* (Cth), and/or other Commonwealth laws, and are thereby rendered inoperative to the extent of the inconsistency pursuant to section 109 of the Constitution.

## 3. How the Constitutional Question Arises

The Respondent has filed a Jurisdictional Challenge and Application for Immediate Dismissal concurrently with this Notice. The Respondent contends that by raising the implied freedom of political communication and statutory inconsistencies as a genuine defence to the complaint, the entire proceeding attracts federal jurisdiction under sections 76(i) and 76(ii) of the Constitution (*Citta Hobart Pty Ltd v Cawthorn* [2022] HCA 16).

As a consequence of the binding decision in *Burns v Corbett*, this Tribunal lacks the constitutional competence to determine or further entertain a matter attracting federal jurisdiction.

## 4. Notice to the Attorneys-General

Pursuant to section 78B of the *Judiciary Act 1903* (Cth), the Tribunal must not proceed to determine the matter until the Attorneys-General have been afforded a reasonable opportunity to consider whether they wish to exercise their statutory right to intervene in these proceedings or to move to remove the matter into the High Court of Australia. Accordingly, the Tribunal is structurally stayed from taking any further procedural, administrative, or interlocutory step until the mandatory notice period has expired or the law officers have formally declined intervention.

**MANDATORY FILING ATTACHMENT CHECKLIST:**

- Stamped copy of this Section 78B Notice.
- Copy of the filed Jurisdictional Challenge and Application for Immediate Dismissal.
- Electronic delivery and read receipts verifying service on all specified Attorneys-General offices.

**Dated:** [Insert Date]

**Signature:** \_\_\_\_\_

**Name:** [Respondent Name]

**Status:** Self-Represented Respondent

**Address for Service:** [Insert Email and/or Postal Address]

# DOCUMENT 3: USER MANUAL & TACTICAL PLAYBOOK

*(Do not file this section with the Tribunal. This is your operational guide.)*

## 1. Step-by-Step Customisation & File Naming Protocol

Before sending anything to the Tribunal or the Attorneys-General, you must format and name your electronic files with surgical precision.

### A. PDF Naming Conventions

Save your finished documents exactly as follows before emailing them to the Registry:

- [YourSurname]\_Jurisdictional\_Challenge.pdf
- [YourSurname]\_s78B\_Notice.pdf
- [YourSurname]\_Proof\_of\_Service\_AttorneysGeneral.pdf

This strict naming protocol immediately tells the Registry staff that this is a priority threshold matter, preventing it from being buried in a stack of routine administrative paperwork.

### B. How to Personalise Paragraph 2 (Part 2, Section B)

To make it completely undeniable that your defence is genuine, replace the generic text in Section B with your exact targeted comments. Use this format:

"The Respondent's statements constitute protected political communication, specifically:

\* On [Insert Date], the Respondent posted: '[Insert exact comment from Part 2, Section B(a)]'

\* On [Insert Date], the Respondent stated: '[Insert exact comment from Part 2, Section B(b)]'

\* On [Insert Date], the Respondent commented: '[Insert exact comment from Part 2, Section B(c)]'

These statements reside at the absolute core of contemporary public policy and legislative debate concerning gender identity laws."

## 2. Comprehensive National Service Directory

You must send copies of both completed documents to the Federal Attorney-General and your respective State/Territory Law Officer via email.

- **The Commonwealth (Federal):** s78B.Notice@ag.gov.au
- **New South Wales (NSW):** crownsol@cso.nsw.gov.au
- **Queensland (QLD):** Constitutional.Law@justice.qld.gov.au
- **Victoria (VIC):** s78b@vgso.vic.gov.au
- **Western Australia (WA):** s78b@sso.wa.gov.au
- **South Australia (SA):** CSO-Constitutional@sa.gov.au
- **Australian Capital Territory (ACT):** s78b@act.gov.au
- **Tasmania (TAS):** constitutionals78b@crownlaw.tas.gov.au
- **Northern Territory (NT):** s78b@nt.gov.au

### The Proof of Service Trap

Immediately after clicking send to the relevant emails above, open your Sent Folder. Take a clean, timestamped screenshot showing the recipient addresses, the date, and the attachments. Convert that screenshot into a PDF named [\[YourSurname\]\\_Proof\\_of\\_Service\\_AttorneysGeneral.pdf](#) and file it with the Tribunal. This eliminates any opportunity for the registry or the applicant to claim they never received proof.

## 3. Strategic Boundary Variations

### If the Parties are from the Same State (Same-State Fallback)

If both you and the applicant reside in the same State, diversity jurisdiction under s 75(iv) of the Constitution does not apply. However, as explicitly established in Part 2, Section C, Paragraph 4, your federal questions under ss 76(i) and 76(ii) remain completely operational, independent, and self-sustaining.

**Action:** Simply delete the text [75\(iv\)](#), from Part 1, Paragraph 1 and Part 3, Order 1. Your reliance shifts entirely to the constitutional implied freedom and statutory inconsistency arguments.

## 4. Tactical Troubleshooting & Contingency Playbook

### Scenario A: The Registry attempts to force a mediation or merits step.

**The Counter-Move:** Email the Registry Manager immediately. State:

"The Respondent notes the Registry's direction. However, pursuant to the binding High Court authority in *Citta Hobart Pty Ltd v Cawthorn* and the explicit notice in Part 1, Paragraph 3 of the Respondent's application, the Tribunal's jurisdiction is spent the moment a genuine federal question is raised, save for determining its own competence. Forcing a party to take a procedural step on the merits while an uncontradicted constitutional bar exists is a clear error of law. Please confirm this matter is listed for an immediate preliminary jurisdictional hearing."

### Scenario B: The Adjudicator tries to question the "fairness" or "offensiveness" of your speech at the table.

**The Counter-Move:** Refuse to let them pivot to the merits. Stand ground and state:

"With respect, Member, under the authority of *Citta Hobart* at paragraph 45, this Tribunal is explicitly forbidden from assessing the ultimate validity or persuasiveness of my defence. Your inquiry today is strictly confined to verifying whether a genuine constitutional controversy exists. Because it does - as established by this Tribunal's own decisions in *Blanch* and *Dennis* - your jurisdiction is spent. The matter must be dismissed immediately, and I object to any inquiry into the merits."

### Scenario C: The Applicant's legal representatives attempt to file cross-motions for summary judgment or demands for security for costs before the jurisdiction issue is resolved.

**The Counter-Move:** File a swift written response to the registry citing the strict structural anteriority of Chapter III limits and your explicit request in Part 3, Order 2. State:

"The Applicant's interlocutory applications are structurally premature and legally incompetent. As detailed in Order 2 of the Respondent's Challenge, until the threshold question of this Tribunal's constitutional capacity under *Burns v Corbett* is explicitly determined, the Tribunal lacks the incidental power to grant the relief the Applicant seeks. A body without jurisdiction cannot issue summary judgments or order security for costs; it can only identify its limits and drop the tool. The Respondent demands those applications be held in abeyance pending the priority hearing on jurisdiction."

## EMERGENCY ESCALATION PROTOCOL

If the Tribunal refuses to dismiss and proceeds to a merits hearing despite this challenge:

1. **State for the record:** "I object to this hearing proceeding. The Tribunal lacks jurisdiction. My jurisdictional challenge remains undetermined. I reserve my rights to seek prohibition in the Supreme Court."
2. **Do not participate in merits argument.** Do not answer questions about whether your speech was "offensive" or "reasonable." Repeat: "The Tribunal has no jurisdiction. I do not consent to any merits inquiry."
3. **Immediately after the hearing,** file an application for prohibition in the Supreme Court of your State/Territory. Use the same authorities (*Burns, Citta*). The Supreme Court will issue a stay.
4. **Costs warning to the Applicant:** Any costs they incur after being put on notice of the jurisdictional bar are likely unrecoverable and may be subject to an indemnity costs order against them personally.

**Important Final Caveat:** Nothing here is legal advice and I am not your lawyer. Have a lawyer review this before you act - preferably one who has read *Burns v Corbett* and is not instinctively deferential to tribunals. But go in with your eyes open. These bodies are not neutral. They are not designed to be neutral. Know what you are walking into, and know that you have more ground to stand on than they want you to believe.