



(Your ref)

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(Date) 7 March 2022
(Sent by) Email

Company (Giles)

PRIVATE & CONFIDENTIAL – NOT FOR PUBLICATION

By Email: matthew@oaf.org.au

Matthew Landauer
Founder
OpenAustralia Foundation Limited

Dear Mr Landauer

URGENT LEGAL NOTICE – SENATOR ANDREW BRAGG

- 1 This firm represents the interests of Senator Andrew Bragg.
- 2 We write to you as the founder of OpenAustralia Foundation Limited (**OpenAustralia**) which is the creator of the following website <https://theyvoteforyou.org.au/>. We understand that OpenAustralia is registered as a charity with the Australian Charities and Not-For-Profit Commission (**ACNC**), and that TheyVoteForYou is a charitable program of OpenAustralia.
- 3 We are instructed that TheyVoteForYou contains a number of false and misleading representations about how our client has voted on a number of important issues and policies. Specifically, the misrepresentations included that our client:
 - (a) [Voted generally against closing the gap between indigenous and non-indigenous Australians;](#)
 - (b) [Voted consistently against increasing funding for public schools;](#)
 - (c) [Voted consistently against increasing funding for university education;](#)
 - (d) [Voted consistently against increasing investment in renewable energy;](#)
 - (e) [Voted consistently against increasing the Newstart Allowance rate;](#)
 - (f) [Voted consistently against the Paris Climate Agreement;](#)
 - (g) [Voted consistently against a carbon price;](#)
 - (h) [Voted consistently against increasing legal protections for LGBTI people.](#)
- 4 We address each misrepresentation below.
 - (a) **Voted generally against closing the gap between indigenous and non-indigenous Australians**
- 5 The bases for this assertion were that our client: was abstinent in voting on an urgency motion; voted 'yes' in a motion to acknowledge funding to close the gap; voted 'no' on a motion to call on Government to implement a plan to deal with COVID-19; and voted 'no' on a motion criticising the Government for working on closing the gap.
- 6 In fact, the above motions are procedural motions. They have no substantive effect on the legal rights and duties of Australians, nor to raise or lower funding or taxes.



7 On the other hand, our client voted for: the *Aboriginal Land Rights (Northern Territory Amendment (Jabiru) Bill*; the *Corporations (Aboriginal and Torres Strait Islander) Amendment Bill*; the *Territories Stolen Generations Redress Scheme (Consequential Amendments) Bill 2021*; and the *Territories Stolen Generations Redress Scheme (Facilitation) Bill 2021*.

8 Further, our client voted for the 2020-21 budget, which provided for: an additional \$150 million for indigenous Business Australia; \$100 million for indigenous housing in Queensland; \$46.5 million in grants to boost community grants for closing the gap; \$10.1 million for the Productivity Commission to provide oversight of the National Agreement on Closing the Gap; \$10.1 million for AITSIS; and \$439.8 million for the Clontarf Foundation, including \$7.6 Indigenous Advancement Strategy. We note that these votes did not form part of the calculus for making the assertion in paragraph 3(a).

(b) Voting consistently against increasing funding for public schools

9 The basis for the assertion made at paragraph 3(b) was that our client voted 'no' on two motions.

10 In fact, the only legislation which can change government spending are appropriation bills. None of the motions referred to for the purposes of making the assertion in paragraph 3(b) are appropriation bills. Voting in favour or against these motions would not have resulted in increased or decreased funding.

(c) Voted consistently against increasing funding for university education

11 The basis for the assertion made at paragraph 3(c) was that our client voted 'yes' three times in support of the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students Bill 2020*; and that our client voted 'yes' on the *Emergency Response Fund (Consequential Amendments) Bill 2019*, which abolishes the education investment fund.

12 In fact, the only legislation which can change government spending are appropriation bills. None of the motions referred to for the purposes of making the assertion in paragraph 3(c) are appropriation bills. Voting in favour or against any of these motions would not have resulted in increased or decreased funding.

(d) Voted consistently against increasing investment in renewable energy

13 The basis for the assertion made at paragraph 3(d) was that our client voted 'no' five times on motions and voted against disallowing ARENA regulations.

14 Senator Bragg voted against two disallowance motions related to ARENA regulations. One motion proposed disallowing s7 of the *Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021*. s7 expanded ARENA's functions to include 'priority low emission technologies' such as aluminium and steel, carbon capture and storage, soil carbon, clean hydrogen, and energy storage. These changes are designed to support renewable energy.

15 Further, the only legislation which can change government spending are appropriation bills. None of the motions referred to for the purposes of making the assertion in paragraph 3(d) are appropriation bills. Voting in favour or against these motions would not have resulted in increased or decreased funding.

16 On the other hand, our client voted for the 2020-21 and 2021-22 budgets which increased funding for renewable energy. We note that these votes did not form part of the calculus for making the assertion in paragraph 3(d).

(e) Voted consistently against increasing the Newstart Allowance rate

- 17 The basis for the assertion made at paragraph 3(e) was that our client voted 'no' four times on motions criticising the feral government, and voted on an inconsequential (and, if enacted, invalid) amendment to tax legislation.
- 18 In fact, the only legislation which can change government spending are appropriation bills. None of the motions referred to for the purposes of making the assertion in paragraph 3(e) are appropriation bills. Voting in favour or against these motions would not have resulted in increased or decreased funding.
- 19 On the other hand, our client voted for the 2020-21 and 2021-22 budgets which increased funding for household support. We note that these votes did not form part of the basis for making the assertion in paragraph 3(e).

(f) Voted consistently against the Paris Climate Agreement

- 20 The basis for the assertion made at paragraph 3(f) was that our client twice voted 'no' on motions which mention the Paris Climate Agreement.
- 21 In fact, only the Executive Government can enter into Treaties. Neither of these motions would have affected Australia being a state party to the Treaty.

(g) Voted consistently against a carbon price

- 22 The basis for the assertion made at paragraph 3(g) was that our client twice voted 'no' on motions supportive of a carbon price.
- 23 In fact, none of these motions would have had the effect of imposing a carbon price. Our client has never voted on legislation which would have imposed such a price.

(h) Voted consistently against increasing legal protections for LGBTI people

- 24 The basis for the assertion made at paragraph 3(h) was that our client voted 'no' on three motions proposed by the Greens.
- 25 In fact, none of these motions would have had the effect of increasing legal protections for LGBTI people.
- 26 On the other hand, our client: has consistently advocated for the protection of LGBTI people in the proposed *Religious Discrimination Bill* and has voted for the *Sex Discrimination Amendment*, which extended the definition of sexual harassment to include harassment on the basis of sexual orientation. We note that neither of these pieces of legislation form part of the calculus for making the assertion in paragraph 3(h).
- 27 Our client is also concerned that TheyVoteForYou claims to not be able to say anything concrete about how our client voted on:
- (a) [increasing workplace protections for women;](#)
 - (b) [increasing funding for road infrastructure;](#)
 - (c) [increasing the foreign aid budget;](#)
 - (d) [a constitutional enshrined First Nations voice in parliament;](#)

28 Our client's stance on these matters is a matter of public record. We address each representation below.

(a) Voted generally against increasing workplace protections for women

29 The basis for the assertion made at paragraph 27(a) was that our client was absent on five amendments to the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021*.

30 In fact, our client voted in favour of the primary Act: the *Sex Discrimination and Fair Work (Respect at Work) Amendment*. This Act extends the scope of the *Sex Discrimination Act* and extends the definition of sexual harassment. The Act also provides that sexual harassment can be a valid reason for dismissal, and provides enforcement mechanisms such as a 'stop sexual harassment order'. We consider it bizarre that the TheyVoteForYou website mentions our client's votes on a series of amendments to the primary Act, but does not include his vote on the primary Act itself.

(b) Voted consistently against increasing funding for road infrastructure

31 The basis for the assertion made at paragraph 27(b) was that our client voted 'no' on a committee motion.

32 In fact, the only legislation which can change government spending are appropriation bills. The motion referred for the purposes of making the assertion in paragraph 27(b) is not an appropriation bill. Voting in favour or against this motion not have resulted in increased or decreased funding.

33 On the other hand, our client voted for the 2020-21 and 2021-22 budgets which increased funding for infrastructure. We note that these votes did not form part of the calculus for making the assertion in paragraph 27(b).

(c) Voted consistently against increasing the foreign aid budget

34 The basis for the assertion made at paragraph 27(c) was that our client voted 'no' on a motion criticising the federal government.

35 In fact, the only legislation which can change government spending are appropriation bills. The motion referred to for the purposes of making the assertion in paragraph 27(c) is not an appropriation bill. Voting in favour or against this motion would not have resulted in increased or decreased funding.

(d) Voted consistently against a constitutional enshrined First Nations voice in parliament

36 The basis for the assertion made at paragraph 27(d) was that our client voted 'no' on a motion critical of the Government which calls for 'Treaty, Truth and Self-determination'.

37 In fact, a constitutionally enshrined First Nations voice can only be effected by a referendum carried in the majority of States and the majority of the country. This motion, even if it did explicitly call for a constitutionally enshrined voice, would not have affected constitutional change.

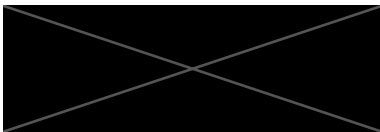
Misleading and deceptive conduct

38 As a registered charitable organisation with activities in trade or commerce you are required by law not to mislead or deceive in relation to those activities. This obligation is a broad one and applies even if a charity seeks donations or money only (i.e. without supplying a good or service).



- 39 The misrepresentations published on TheyVoteForYou concerning our client are not only false and misleading but are also extremely damaging to our client's good reputation. This is particularly so given that our client was a vocal advocate in support of same sex marriage during the debate that surrounded the Australian Marriage Law Postal Survey, a record of advocacy which has continued into recent times – most notably during the debates around the Religious Discrimination Bills and in his active support for the Uluru Statement - From The Heart. A simple Google search of our client would reveal this.
- 40 It is extremely disappointing that an organisation like OpenAustralia, who prides itself on being an independent, non-partisan, not-for-profit organisation, with the stated aim of giving all Australians the tools they need to effect the change they want has blatantly misled the Australian public on a Senator's voting patterns regarding important social and political issues.
- 41 Our client is presently considering what legal steps he will take against OpenAustralia in relation to the false and misleading representations that have been published of and concerning him. In the meantime, our client requires you to urgently and immediately amend the TheyVoteForYou website to accurately reflect our client's voting patterns and request that this occur within 7 days of the date of this letter.
- 42 Our client's rights are reserved wholly, including his right to bring a claim against OpenAustralia for misleading and deceptive conduct under Australian Consumer Law.
- 43 We request a response within 7 days of the date of this letter.
- 44 Finally, we emphasise that this letter is private and confidential and not for publication.

Yours faithfully
COMPANY GILES



Rebekah Giles
(Principal Director)

