



HIGH COURT OF AUSTRALIA

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Details of Filing

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Form 27D – Respondent’s submissions

Note: see rule 44.03.3.

S39/2024

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

5 BETWEEN: State of New South Wales
Appellant

and

10 Paulina Wojciechowska
First respondent

Registrar of NSW Civil and Administrative Tribunal
Second respondent

15 Commissioner of Police NSW Police Force
Third respondent

Secretary of NSW Department of Communities and Justice
Fourth respondent

20 Registrar of District Court of New South Wales
Fifth respondent

FIRST RESPONDENT’S SUBMISSIONS

PART I: PUBLICATION

25 1. This document is in a form suitable for publication on the internet.

PART II: ISSUES

2. Does an application to the NSW Civil and Administrative Tribunal (“NCAT”) seeking damages under s 55(2)(a) of *Privacy and Personal Information Protection Act 1998* (NSW) (“**PIIP Act**”) constitute a “matter”?

If the answer to (a) is yes → the appellant loses and the first respondent wins.

30 3. The first respondent prefers to state issue in [2] of the Appellant’s submissions as follows: “Does NCAT exercise judicial power in a matter within the meaning of s 75(iv) of the Constitution, thus exceeding its jurisdiction as not a State court, by reviewing a contravention or an alleged contravention of ss 8-19 of *PIIP Act* by a

public sector agency on an application by a resident of another State seeking damages under s 55(2)(a) of *PPIP Act*?”

PART III: NOTICE OF CONSTITUTIONAL MATTER

4. The appellant gave notice under s 78B of *Judiciary Act 1903* (Cth) (“**Judiciary Act**”). The first respondent does not press the cross-appeal so no further notice is required.

PART IV: APPELLANT’S NARRATIVE OF FACTS AND CHRONOLOGY

5. Certain facts in the appellant’s narrative and chronology are objected to. The first respondent will try to lodge her own chronology and seeks the Court’s leave to file it.

PART V: ARGUMENTS IN REPLY

V.A: NCAT’S JURISDICTION OVER CONTRAVENTIONS OF *PPIP ACT*

6. A court or a tribunal can make a valid determination if it has both relevant jurisdiction and powers: *Minister for Immigration and Multicultural and Indigenous Affairs v B and Another* (2004) 206 ALR 130 (“**Minister v B**”), 133 [6] (Gleeson CJ and McHugh J). The existence of jurisdiction is anterior to the existence of power: *CGU Insurance Ltd v Blakeley* (2016) 259 CLR 339, 353 [31] (French CJ, Kiefel, Bell, Keane JJ). The NSW Parliament created power to make orders in ss 55(2)(a)-(g) of *PPIP Act* and sought to confer it on NCAT, or, in the alternative, on the Local Court of NSW (“**Local Court**”) and District Court of NSW (“**District Court**”). For NCAT to be able to exercise that power, it must have the jurisdiction. In this matter that jurisdiction is referred to as “administrative review jurisdiction”: *Civil and Administrative Tribunal Act 2013* (NSW) (“**CAT Act**”), ss 4, 28-30, sch 3 cl 3, sch 4 cl 3, sch 5 cl 4; *Administrative Decisions Review Act 1997* (NSW) (“**ADR Act**”), ss 4, 7, 9, ch 2. For NCAT to have jurisdiction in proceedings seeking remedies in s 55(2)(a)–(g) of *PPIP Act* (if the proceedings do not require an exercise of federal judicial power), all of the following have to be met:

(J1) A jurisdictional fact of an application for an “administrative review” under s 55 of *PPIP Act* (“**Section 55 Application**”) made by a person with a standing;

- (J2) *Section 55 Application* has to be for a review of the conduct, being a contravention or alleged contravention of ss 8-19 of *PPIP Act* or of codes of practice (“**Contraventions**”): *PPIP Act*, ss 21, 32 and 52(1)–(2);

(J3) The Contravention has to have been previously the subject of an application under s 53 of *PPIP Act* (“**Section 53 Application**”);

(J4) *Section 55 Application* has to be in relation to the Contravention/s in the exercise of functions identified by, or conferred or imposed by or under the legislation: *ADR Act*, s 9(1).

7. NCAT proceedings no 2019/00382033 and NCAT proceedings no 2022/00194626
5 (“*Privacy Proceedings 1–2*”) were commenced by *Section 55 Applications* made within time, respectively on 3 December 2019 and on 14 June 2022: First Respondent’s Book of Further Materials (“**FR’s BFM**”) 19–20). They sought review of the Contraventions that had been previously the subject of the *Section 53 Applications*. Hence, in respect of *Privacy Proceedings 1–2*, Pts (J1)–(J3) are met. Pt
10 (J4) above is also met because:

- The NSW Police’s administrative and educative functions are identified as those in respect of which ss 8-19 of *PPIP Act* apply: *PPIP Act*, s 27(2);
- *Section 55 Applications* giving rise to *Privacy Proceedings 1–2* are in relation to the Contraventions in the exercise of the NSW Police’s administrative function.

15 8. Accordingly, NCAT would have the jurisdiction and power to review *Contraventions* in *Privacy Proceedings 1–2* unless they involved exercise of federal judicial power.

9. Relevantly to *Privacy Proceedings 1–2*, the “administratively reviewable decision” in relation to *Section 55 Applications* is defined as such conduct of administrator contravening ss 8–19 that was previously the subject of a *Section 53 Application*:
20 *ADR Act*, s 7; *PPIP Act*, ss 21, 32, 55(1). Importantly, however, on a *Section 55 Application*, NCAT does not review:

(a) Any decision, finding or action in response to a *Section 53 Application*.

Relevantly s 53(7) of *PPIP Act* only creates notice obligations, but does not create or confer powers. In particular, in *Privacy Proceedings 1–2* NCAT does not review the
25 agency’s decision whether or not to pay compensation under s 53(7)(c) of *PPIP Act*.

(b) An agency’s conduct when performing a review on a *Section 53 Application*.

The exception to that would be if a *Section 53 Application* were for a review of conduct during the review on a previous *Section 53 Application*. However, *Proceedings 1–2* are not in respect of conduct by an agency during review on any
30 *Section 53 Application*.

V.B: NO MERITS REVIEW – INAPPLICABILITY OF SS 63 – 66 OF ADR ACT

10. NCAT’s “core” power exercisable in *Privacy Proceedings 1–2* is given in s 55 of *PPIP Act*. However, s 55(3) of *PPIP Act* provides that s 55 does not limit powers that

NCAT has by virtue of *ADR Act*. Hence, the scope of applicability of *ADR Act* arises as a question anterior to applicability of s 55 of *PIIP Act*.

11. If, in accordance with s 7 of *ADR Act*, s 65 of *ADR Act* is read by substituting “conduct” for “decision”, we obtain the following:

- 5 65 Power to remit matters to administrator for further consideration
- (1) At any stage of proceedings to determine an application for an administrative review under this Act of **a conduct**, the Tribunal may remit **the conduct** to the administrator who made it for reconsideration of the **conduct** by the administrator.
- 10 (2) If **a conduct** is so remitted to an administrator, the administrator may reconsider the conduct and may:
- (a) affirm **the conduct**, or
- (b) vary **the conduct**, or
- (c) set aside **the conduct** and make **a new conduct** in substitution for the **conduct** set aside.
- 15 (3) If the administrator varies **the conduct**:
- (a) the application is taken to be an application for review of **the conduct** as varied, and
- (b) the person who made the application may either:
- 20 (i) proceed with the application for review of **the conduct** as varied, or
- (ii) withdraw the application.
- (4) If the administrator sets **the conduct** aside and makes **a new conduct** in substitution for the **conduct** set aside:
- 25 (a) the application is taken to be an application for review of **the new conduct**, and
- (b) the person who made the application may either:
- (i) proceed with the application for review of **the new conduct**, or
- (ii) withdraw the application.
- 30 (emphasis added to emphasise the use of substituted words)

12. The same can be done in respect of s 66 of *ADR Act*. If we substitute “Contravention” for “decision” (including “administratively reviewable decision” and “administrative review decision” – see below for reasons), we obtain:

- 35 (1) A **Contravention** determining an application for an administrative review under this Act of a **Contravention** takes effect on the date on which it is given or such later date as may be specified in the decision.
- (2) If any such **Contravention** varies, or is made in substitution for, an administrator’s **Contravention**, the **Contravention** of the Tribunal is taken:
- 40 (a) to be the **Contravention** of the administrator (other than for the purposes of an administrative review under this Act), and

(b) to have had effect as the **Contravention** of the administrator on and from the date of the administrator's actual **Contravention**, unless the Tribunal orders otherwise. (emphasis added to stress the substitutes)

13. The reason for substitution of “Contravention” for “administrative review decision” is that – assuming NCAT is indeed conducting merits review – “administrative review decision” in respect of *Section 55 Applications* could not be any of remedies in s 55(2) of *PIIP Act*. This is because merits review involves substitution of “a decision of one person” for “a decision of another person”. As the decision in respect of *Section 55 Applications* is defined as conduct, the merits review would have to mean that “conduct” is substituted for “conduct” or, rather, “a Contravention by one person” is substituted for “a Contravention by another person”. However, the result of any such substitution is directly against the objects and purposes of *PIIP Act*, *ADR Act* and *CAT Act* and is manifestly absurd. Hence, the substitution of “conduct” or “Contravention” for “decision” demonstrates that the provisions of *ADR Act*, including ch 3 pt 3 div 3, providing for merits review (“**ADR Merits Provisions**”) are obscure, manifestly absurd or unreasonable: *Interpretation Act 1987* (NSW) (“**NSWIA**”), s 34(1)(b). Prima facie they suggest that NCAT should be performing Contraventions. Even on the most charitable construction, they proceed as if a past conduct could be undone. However, first, as a matter of fact, the past conduct, including any Contraventions, can never be undone, let alone by way of yet another Contravention. It is usually the case that the consequences of conduct cannot be undone either. An example of this would be a disclosure of personal information in breach of s 18 of *PIIP Act* and the consequences.
14. The absurdity discussed above is real and is not mere awkwardness of the language. As such, it warrants the use of extrinsic materials to clarify the meaning of the *ADR Merits Provisions: NSWIA*, s 34(2)(e). Explanatory Note, Administrative Decisions Tribunal Bill 1997 (NSW), 5 – which then became *Administrative Decisions Tribunal Act 1997* (NSW) (“**ADT Act**”) and later *ADR Act* – provides in respect of the current ch 3 pt 3 div 3 (ch 5 pt 3 div 3 at the time of the enactment of *ADT Act*):
- Subject to contrary provision being made by any relevant enactment, the function of the Tribunal on a review is to make the correct and preferable decision on the merits based on the material then before it. (emphasis added)
15. The subject of the *Section 55 Application* can only be the conduct (or, more specifically, the Contraventions): *PIIP Act*, ss 21, 32, 55. The conduct is a fact of the past and, as such, it can never be retrospectively varied, set aside or affirmed. Further,

the list of remedies, including ancillary orders such as costs orders, available on the *Section 55 Application* are specified in s 55 of *PPIP Act* and are directly incompatible with *ADR Merits Provisions* requiring substitution of conduct for conduct. Merits review in accordance with *ADR Merits Provisions* (which include ch 3 pt 3 div 3) would mean that NCAT cannot order an agency to pay money despite explicit provision in s 55(2)(a) of *PPIP Act*. Accordingly, *PPIP Act* does make “contrary provision”. This means that, to the extent that they create the merits review, the provisions of *ADR Act* are inapplicable to proceedings commenced by *Section 55 Applications*, regardless of whether the relevant *Section 55 Application* could also involve the exercise of federal judicial power. In all proceedings under s 55 of *PPIP Act*, it is not a function of NCAT to undertake a merits review. Hence, *ADR Act* is incapable of limiting the power in s 55 of *PPIP Act*. In particular, they are incapable of abrogating NCAT’s power under s 55(2)(a).

16. Alternatively, *ADR Merits Provisions* are constitutionally invalid for the purposes of *Privacy Proceedings 1–2*, as they is an attempt to confer an executive power in respect of a matter listed in ss 75–76 of the Constitution. They should be read down.

17. Summarising, *ADR Merits Provisions*, including ch 3 pt 3 div 3 of *ADR Act*, are not engaged. They are inapplicable to proceedings commenced under s 55 of *PPIP Act* and, in any event, they are invalid in respect of *Privacy Proceedings 1–2*.

V.C: DOES S 78 OF CAT ACT APPLY?

18. The appellant appears to assert that s 78 does not apply to *Privacy Proceedings 1–2* as:

- They were or should have been commenced against the NSW Police;
- The NSW Police is a public service agency: (e) of the “public service agency” definition in s 3 of *PPIP Act*;
- Public service agencies lack legal personality;
- “The person” in s 78(2) refers to an entity with legal personality.

19. Thus, the appellant concludes, the NSW Police is not “the person” within the meaning of s 78(2). Hence, a proper certificate under s 78 identifying the NSW Police as a payer cannot be issued and, thus, filed with the Local or District Courts. It follows, according to the appellant, that orders under s 55(2)(a) are not enforceable and, hence, are not binding. This reasoning is incorrect for one or more of the reasons below.

20. First, assuming that the definition of the person in *NSWIA* creates a category of entities with legal personality, it does not follow that s 78 does not apply to orders listed in ss 55(2)(a), (g) of *PPIP Act*. Rather, this would only mean that the first respondent

erroneously named “NSW Police Force” or “Commissioner of Police” as a party to her *Section 55 Applications*. This is because:

- 5 a. A breach of ss 8-19 of *PIIP Act* is a type of tort. First, it can amount to a breach of statutory duty: *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410; *Ultimate Property Group Pty Ltd v Lord* (2004) 60 NSWLR 646; *McDonald t/as BE McDonald Transport v Girkaid Pty Ltd* [2004] NSWCA 297; *PIIP Act*, s 62(1). Second, it is a “statutory” tort where jurisdiction of NCAT is capped at 40,000.00. Accordingly, the proper respondent to any *Section 55 Application* is the State of New South Wales (“**State of NSW**”) under s 9B of *Law Reform (Vicarious Liability) Act 1983* (NSW) unless the State of NSW denies its vicarious liability.
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- b. Any proceedings arising under s 55 of *PIIP Act* are civil proceedings: *PIIP Act*, ss 69, 21; *Crown Proceedings Act 1988* (NSW) (“**CrP Act**”), s 3. The NSW Police Force is “the Crown”, see its definition in: *CrP Act*, s 3; *NSWIA*, s 13A; *Police Act 1990* (NSW) (“**Police Act**”), s 8. Accordingly, the proper respondent to
15 *Privacy Proceedings 1–2* would be the State of NSW: *CrP Act*, s 5. Conveniently, the first respondent commenced at the District Court proceedings no 2021/00273675 and 2022/188364, in which she, respectively, seeks damages in tort, including under s 55(2)(a), as well as leave under s 34B (“**District Court Proceedings**”). *District Court Proceedings* name as the defendants both the State
20 of NSW and the Commissioner of Police. Removing the “Commissioner of Police” as a party would make them compliant with any such requirement.
21. Second, *Privacy Proceedings 1–2* as well as *District Court Proceedings* name the “Commissioner of Police” as a party (Amici’s BFM 3, 15, 31, 54), in accordance with the advice of NCAT that this is a proper way to identify the NSW Police (FR’s BFM
25 20). The Commissioner of Police is a natural person and thus has a legal personality. Section 78 applies to natural persons.
22. Third, s 78(2) only requires identification of a person: cf *Uniform Civil Procedure Rules 2005* (NSW) (“**UCPR**”), r 7.20. Any reference to the NSW Police would identify State of NSW, which is a body politic: *NSWIA*, sch 4. In the alternative,
30 NCAT’s registrar should identify the State of NSW.
23. Fourth, an imperfection in the enforcement mechanism does not mean a determination is not binding between the parties against their will. It is ‘not essential to the exercise of judicial power that the tribunal should be called upon to execute its own decision’: *Brandy v Human Rights Commission & Equal Opportunity Commission* (1995) 127

ALR 1 (“**Brandy**”), 269 (Deane, Dawson, Gaudron and McHugh JJ). In any event, s 78 is not necessary to enforce orders against the agencies of the NSW Government. Per s 8 of *CrP Act* it is the NSW Treasurer that has a duty to pay the money under an order, could be compelled to do so, and would be in contempt if in breach.

- 5 24. Lastly, if s 78 is inapplicable to *Privacy Proceedings 1–2*, the first respondent says:
- Orders under s 55(2)(a) of *PPIP Act* are binding in any event due to: *PPIP Act*, s 55(2)(g), *CrP Act*, s 8, *CAT Act*, pt 5;
 - Noting s 33 of *NSWIA*, a corollary of inapplicability of s 78 by virtue of the NSW Police not being a person, would be the NSW Police’s lack of capacity to defend
- 10 proceedings or to pursue any monetary orders, including costs orders, against any party to any NCAT proceedings: cf *BVV v Commissioner of Police, NSW Police Force* [2023] NSWCATAD 134.

V.D: ARE ORDERS UNDER S 55 OF *PPIP ACT* ENFORCEABLE?

- 15 25. In addition to being enforceable under s 78 of *CAT Act*, all orders under 55(2) of *PPIP Act* are enforceable pursuant to s 55(2)(g) which provides for the power to make any ancillary orders, ie orders that are “accessory, auxiliary”: *Macquarie Dictionary* (9th ed, 2023) ‘ancillary’ (def. 1). Section 30(2) of *CAT Act* provides for the jurisdiction to make ancillary decisions defined as decisions other than interlocutory ones that are “preliminary to, or consequential on, a decision determining proceedings”: *CAT Act*, s
- 20 4. They include, decisions “concerning the awarding of costs in proceedings”.
26. Even if these ancillary powers were construed as not supporting enforcement of orders under s 55, these orders would be enforceable pursuant to NCAT’s implied or incidental powers. This is because a grant of power carries “everything necessary for its exercise”: *Grassby v R* (1989) 87 ALR 618; *Mirvac Homes (NSW) Pty Limited v Noakes* [2022] NSWSC (“**Mirvac**”). Also, ss 72 and 77 of *CAT Act* go to
- 25 enforceability of any such orders: *Zistis v Zistis* [2018] NSWSC 722 (“**Zistis**”).

V.E: INTERPRETATION OF “ADMINISTRATIVE”

27. The appellant errs in its interpretation of references “administrative review” in *ADR Act*, ss 53(6) and 55 of *PPIP Act*, and s 34, sch 1 cl 17 of *CAT Act*.
- 30 28. The references in s 55 of *PPIP Act* to “administrative review jurisdiction”, “administrative review” and *ADR Act* are merely part of a mechanism to confer jurisdiction on NCAT, a remnant from when the Administrative Decisions Tribunal was in existence.

29. As discussed above, the NSW Parliament never intended nor effected that the *Section 55 Applications* be reviewed by way of merits review. The adjective “administrative” in “administrative review” does not describe the manner of conduct of a review under s 55 of *PPIP Act*. Rather, it describes the nature of the conduct under review. In other words, the review pursuant to a *Section 55 Application* is a “review relating to administration; executive”: *Macquarie Dictionary* (9th ed, 2023) ‘administrative’. This construction is supported by the character of functions regulated by *PPIP Act*. For the NSW Police these are administrative and educative: *PPIP Act*, s 27(2). For other agencies these are all of their executive functions unless an exception applied.

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10 V.F: DO EXECUTIVE FUNCTIONS ALTER POWER IN S 55 OF *PPIP ACT*?

30. If *Privacy Proceedings 1–2* involve both “a matter” and the exercise of judicial power, the exercise or possibility of exercise of some “non-judicial” functions by NCAT does not alter the nature of the power created in s 55 of *PPIP Act* from judicial into executive; the flavour of the power “spreads” from the judicial power in s 55(2)(a) of *PPIP Act* to “non-judicial” functions, and not vice versa: *R v Murphy* (1985) 61 ALR 139, 147–148. If any functions, including these in *ADR Merits Provisions*, are inconsistent with *Kable v Director of Public Prosecutions* (1996) 189 CLR 51 (“**Kable**”), they should be read down or struck down as constitutionally invalid.

15

V.G: DOES *KABLE* MEAN S 78 IS INVALID?

20 The appellant appears to argue that s 78 is constitutionally invalid due to *Kable* doctrine. Submissions below proceed on the following assumptions:

(a) An attempt to confer upon a State court a function which substantially impairs its institutional integrity is constitutionally invalid: *Wainohu v State of New South Wales* (2011) 278 ALR 1, [44]–[45]; *Kable* 89–145.

25

31. (b) Powers repugnant to or inconsistent with federal judicial power are the ones that substantially impair institutional integrity of State courts: *Kable* 98, 104, 107, 127–128, 132–133.

(c) The Constitution does not require States to maintain any State courts other than the Supreme Courts: Constitution, Ch III; *Wainohu* 25 [46]; *K-Generation v Liquor Licensing Court* (2009) 237 CLR 501 (“**K-Generation**”), 543–544 [151]–[153]; *Kable* 103, 111, 139.

30

(d) Both judicial and non-judicial powers, including those offending *Kable*, may be conferred on a non-State court.

(e) Subject to *Kable*, non-judicial power may be conferred on a State court: *Burns v Corbett* (2018) 265 CLR 304 (“**Burns**”), [54]; *K-Generation* 544 [153].

(f) The legislation is to be construed as not exceeding legislative powers of the NSW Parliament, and to promote the purpose or objects of the legislation: *NSWIA*, ss 31-33.

5 (g) The legislatures intend to enact legislation that is valid: *Residual Assco Group Ltd v Spalvins* (2000) 202 CLR 629 (“**Assco**”), [28];

(h) Legislatures intend to enact legislation that is not meaningless, futile or nonsensical: *Weedon v Davidson* (1907) 4 CLR 895, 905 (Barton J); *Attorney-General (Cth) v Huynh* (2023) 97 ALJR 298, [35] (Kiefel CJ, Gageler and Gleeson JJ), [135], [137]–[139] (Gordon and Steward JJ), [229] (Edelman J).

10 32. If a power is conferred on a court other than the Supreme Court in breach of the *Kable* doctrine, these outcomes are possible:

(O1) The court becomes incapable of exercising federal judicial power.

(O2) The grant of power is invalid and has to be read down.

15 (O3) if the remedy in (b) is not available, the grant of power has to be struck down.

33. *K-Generation* at [152]–[153] supports options (O2)–(O3). Below two scenarios are explored: (S1), where the *Kable* doctrine is not breached, and (S2), where it is breached because, save for s 78, the power exercisable on *Section 55 Applications* is executive.

20 **V.G.1. Section 78 Does Not Breach Kable Doctrine (S1)**

34. *Kable* does not render s 78 constitutionally invalid, as it does not attempt to confer powers, including any power inconsistent with or repugnant to the integrity of State courts. First, the power exercisable in *Privacy Proceedings 1–2* is judicial. Second, unlike in *Kable*, s 78 does not confer any power on either the Local or District Court. These Courts (including the registries) are not involved in any requisite sense in the process under s 78. In particular, no judgment can be issued under s 78. All that s 78 provides for is filing of the NCAT-issued certificate with the registry of one of those Courts. This permits a person seeking to enforce NCAT’s order to use enforcement provisions under the relevant court rules, including *UCPR*, eg a garnishee order. Admittedly, the first respondent would not need to use the *UCPR* enforcement against the State of NSW: *CrP Act*, s 8.

V.G.2: If s 78 breaches Kable doctrine (S2)

35. On one view, if s 78 offends *Kable* doctrine, the Local and District Courts would then become non-State courts incapable of exercise of federal judicial power. In that scenario, s 78 would continue to operate in respect of State judicial power. The consequence in respect of federal judicial power would be that NCAT would have no jurisdiction to hear and determine *Privacy Proceedings 1–2*. That would activate the pathway in Pt 3A. This construction is consistent with s 33 of *NSWIA*, as it promotes objects and purposes of *PPIP*, *CAT* and *ADR legislation*, and preserves the validity of laws: *Assco* [28]; *Wainohu v New South Wales* (2011) 243 CLR 181, [97].
36. On another view, preferred in *K-Generation*, the Local and District Courts would nevertheless remain State courts. If this is correct, the appropriate remedy would be to strike down the offending provisions, such as *ARD Merits Provisions*. This approach saves the validity of legislation and is consistent with s 31 of *NSWIA*.

V.H: EFFECTS OF ALLEGED INAPPLICABILITY OF S 78

37. If there is “a matter” and it is listed in ss 75–76 of the Constitution, the NSW Parliament lacks legislative power to confer executive power in its respect. If, by virtue of inapplicability of s 78, the power created by s 55 of *PPIP Act* were executive, then, in respect of matters in ss 75–76 of the Constitution, the creation of that power would be constitutionally invalid.
38. However, in reality, even if s 78 were constitutionally invalid or did not apply to orders under s 55 of *PPIP Act*, NCAT’s orders would be binding between parties due to s 55(2)(g) of *PPIP Act*, implied/implicit powers, civil penalty or contempt provisions, or s 8 of *CrP Act*. For the same reason the power created in s 55 of *PPIP Act* is judicial and *Privacy Proceedings 1–2* involve a determination of “a matter”. In respect of matters within the ambit of ss 75–76 of the Constitution, such as *Privacy Proceedings 1–2*, Pt 3A of *CAT Act* applies.

V.I: INTERACTION OF EXECUTIVE FUNCTIONS AND JUDICIAL POWERS

39. The appellant’s argument that, because the NSW legislature conferred the power in s 55 of *PPIP Act* on NCAT, the nature of that power should be construed as executive is a call to uphold an alleged parliamentary intention. However, to the extent that this type of intention could have existed prior to *Burns*, starting from the amendment consequent on *Burns* that inserted Pt 3A of *CAT Act*, that intention can no longer be said to exist. Hence, the conferral of powers on NCAT can no longer signify intention to create an executive power.

40. The concurrent grant of executive and judicial powers/functions does not necessarily transform the judicial power into executive power. However, it may result in the necessity to read down or strike down some provisions: eg *PPIP Act*, s 55(7).

V.J: NCAT AND AAT NOT ANALOGOUS

5 41. There are material differences between NCAT and Administrative Appeals Tribunal (“AAT”) in terms of their position in each of the relevant jurisdictions. These differences mean that analogies between NCAT and AAT can be productive of a material error. Unlike AAT’s, NCAT’s position is analogous to the Board of Appeal in *British Imperial Oil Co Ltd v FCT* (1925) 35 CLR 422. This needs to be contrasted
10 with the position of the Review Board in *Shell Co of Australia Ltd v FCT* (1930) 44 CLR 530 after the legislative changes. Both of these cases resulted in different outcomes. The position analogous to NCAT meant that the grant of power on the Board was constitutionally invalid. The position analogous to Review Board meant that the grant of power was constitutionally valid.

15 V.K: SECTION 69 OF PPIP ACT

42. A civil cause of action in relation to Contraventions is not precluded by s 69. Particularly, the action for a breach of statutory duty is available in respect of breaches of ss 8-19. The Contraventions can also constitute a criminal conduct: ss 62–63. Nothing in s 21 or s 32 provides that the only way of pursuing Contraventions is by
20 way of Pt 5. Sections 21(2) and 32(2) are not an extension of s 69(2).

V.L: IS THERE A MATTER?

43. The appellant now says there is no matter because: (NM1) All that *PPIP Act* does is it creates a right to make an application to NCAT; (NM2) In proceedings involving a claim under s 55 of *PPIP Act* NCAT performs merits review.

25 V.L.1: *What is a matter?*

44. “Matter” has two elements: “the subject matter itself as defined by reference to the heads of jurisdiction set out in [Ch] III [of the Constitution], and the concrete or adequate adversarial nature of the dispute sufficient to give rise to a justiciable controversy”: *Hobart International Airport Pty Ltd v Clarence City Council* (2022) 96
30 ALJR 234 (“*Hobart Airport*”), [26]–[36]. There can be no matter unless subject exceptions, the determination can result in the Court granting relief resolving a controversy between parties. In other words, the matter requires orders “capable of being made by a court in the exercise of coercive judicial power which, subject to appeal, authoritatively determines the question about the right, duty or liability in

controversy. There is no added need for the order to be capable of being enforced by execution.”: *Hobart Airport* [48]. Further, the matter requires a standing in the sense of a right to seek one or more of those persons from a court an order that would operate to resolve the controversy: *Hobart Airport* [26]–[27], [49], [79].

5 45. Most “matters involve the determination of a duty or liability in one party and a correlative right or standing in another person to enforce the duty or liability”: *Minister v B* 134 [8]. However, matters do not necessarily require “a right”. There may be a “matter” even though there is *no lis inter partes* or adjudication of rights, eg
10 “orders concerning judicial advice to trustees or company liquidators, the administration of assets or the giving of consent to the marriage of a ward of the court”: *Minister v B* 134 [8].

46. *Privacy Proceedings 1–2* involve a controversy between defined persons or classes of persons about the liability of the NSW Police. The right or duty created in s 55 of *PPIP Act* owes its existence to federal law or depends upon federal law for its
15 enforcement: *LNC Industries Ltd v BMW (Australia) Ltd* (1983) 49 ALR 599, 602; *Northern Territory of Australia v GPOA and Others* (1999) 161 ALR 319, 340 [90]. The first respondent has a standing to commence them and NCAT’s determination resolves that controversy subject to appear rights. Hence, there is a matter.

V.L.2: Creation of rights by NCAT versus duties in ss 8-19

20 47. If ss 8-19 do not create duties or rights existing prior to NCAT’s determination, any breach of ss 8-19 becomes impossible. If the information protection principles do not exist prior to NCAT’s determination, they could never be breached. In fact, it is unexplained by the appellant why they would be listed in *PPIP Act* at all if all that happens is that they are created by NCAT de novo on each occasion when a *Section*
25 *55 Application* is made. Presumably, the essence of the appellant’s submission is that they are guidelines for NCAT when creating those rights and duties. Even then, the appellant’s construction lacks integrity in a Dworkin sense.

48. The correct construction is that *PPIP Act* creates rights and duties in addition to the procedural right to make an application to NCAT. Hence, *Attorney General (NSW) V FJG* (2023) 111 NSWLR 105 (“**AG v FJG**”) ought to be distinguished. In *AG v FJG*
30 NCAT was reviewing the actual decision of the Registrar of Births, Deaths and Marriages and would be able to substitute its own decision for the Registrar’s decision. In *Privacy Proceedings 1–2* NCAT is unable to do so for reasons discussed

above, including that it has no power to do so as it has no power to substitute one Contravention for another Contravention.

49. NCAT’s review in *Privacy Proceedings 1–2* involves the determination of the liability for the *Contraventions*. Only if the NSW Police is found to have contravened ss 8-19 of *PPIP Act* thus causing harm or loss, NCAT can order a remedy under s 55(2)(a): *PPIP Act*, s 55(4)(b). That remedy resolves the controversy subject to any appeal rights.

V.L.3: *Interaction of merits review, existence of matter, and judicial power*

50. NCAT does not conduct merits review. Further, extrinsic materials, eg section headings, disclose that the NSW Parliament considered the review under ch 3 pt 3 div 3 to be a matter: *ADR Act*, s 65. However, if the Court were persuaded that *Privacy Proceedings 1–2* involve no matter otherwise than by virtue of s 78, the first respondent says: if it is true that merits review means there is no matter (*AG v FJG* 127–128 [93]–[95]), then the logical contraposition of that truth is that the existence of matter means there can be no merits review. Accordingly, the NSW Parliament cannot validly confer executive power in respect of matters listed in s 75–76 of the Constitution. Hence, the only power that can be conferred in respect of *Privacy Proceedings 1–2* is federal judicial power.

V.L.4: *Scenario if no matter save for s 78 effect*

51. If the power created in s 55 of *PPIP Act* is executive (save for s 78), s 78 would not only transform the executive power into judicial. It would also transform the non-matter into a matter – this is because “there is one aspect of judicial power which may serve to characterise a function as judicial when it is otherwise equivocal. That is the enforceability of decisions given in the exercise of judicial power”: *Brandy* 268.

V.L.5: *Conclusions*

52. *Privacy Proceedings 1–2* constitute a justiciable controversy and are a “matter” within the meaning of s 75(iv) of the Constitution. Further, by reason of *District Court Proceedings* they fall within accrued jurisdiction of the District Court and, in fact, the first respondent should be allowed to proceed in any event: *Re Wakim Ex part McNally and Another* (1999) 198 CLR 511.

V.M. OTHER ERRORS

53. Victoria’s submissions, at [10], appear to refer to s 55(1) of *ADR Act* as providing the definition of “administrative reviewable decision”. The correct reference is s 7 of *ADR Act*.

54. The appellant refers to the first respondent's *Section 53 Applications* as complaints. However, the complaints can only be made to the Privacy Commissioner: s 45. The first respondent made no complaints within the meaning of *PPIP Act* (FR's BFM 19–20).

5 V.N: MODIFICATION VERSUS LIMITATION

55. Section 30 of *PPIP Act* refers to the ability to modify the application of information protection principles. Relevantly, modification does not include ability to abrogate or limit: *Macquarie Dictionary* (9th ed, 2023) 'modify' (def. 1). Conversely, "to limit" does not include modification: *Macquarie Dictionary* (9th ed, 2023) 'limit' (def. 6).

10 V.O. POLICY

56. NCAT has an obligation to give effect to policy if it is lawful and not unjust to do so: *ADR Act*, s 64. This is indistinguishable from the way the courts can take notice of government policies and is not inconsistent with the power in s 55 of *PPIP Act* (which is judicial): *Breckler* [83]; *R v Brown* [1994] 1 AC 212. If s 64 is inconsistent, it
15 would need to be read down as inapplicable.

PART VI: ARGUMENTS ON THE NOTICE OF CONTENTION

57. The power created in s 55 of *PPIP Act* is judicial. Claims under s 55, in particular those seeking damages, are a justiciable controversy answering the constitutional description of "a matter", and require an exercise of judicial power. At all material times the first respondent has been a resident of "another State" (Tasmania) (FR's
20 BFM 6, 19). The NSW Police is "a State" by virtue of being an emanation of the State of NSW: *Police Act*, s 8; *Crouch v Commissioner for Railways (Qld) and Another* (1985) 62 ALR 1. Hence, *Privacy Proceedings 1–2* fall within the ambit of s 75(iv) of the Constitution.

58. The State legislatures are unable to validly confer federal judicial power on not a State
25 court such NCAT: *Burns* [1]–[66], [67]–[146], [147]–[151], [203]–[261]; the Constitution; *Judiciary Act*, ss 38–39. If federal judicial power is purported to be conferred on NCAT, this activates the pathway in Pt 3A. Accordingly, subject to the courts referred to in Pt 3A being Ch III courts, the first respondent is entitled to be granted leave to proceed with *Privacy Proceedings 1–2* under Pt 3A. Below remaining
30 aspects of this argument are addressed.

VI.A: POWER EXERCISABLE IN PRIVACY PROCEEDINGS 1–2 IS JUDICIAL

59. It is not always possible to define a power or function as being exclusively executive/administrative or judicial. Powers may overlap, and some functions or powers may be conferred on either a court or an administrative body. Some functions
5 "may, chameleon like, take their colour from their legislative surroundings or their recipient" *Luton v Lessels* (2002) 210 CLR 333 (“**Luton**”), 387–388 [188]. There are various indicia of judicial power: *Luton* 387–388 [188]–[189] (Callinan J). Some indicia of judicial power carry more weight than others: *Attorney-General (Cth) v Breckler* (1999) 197 CLR 83 (“**Breckler**”), 126–127 [82]–[84]. They can be divided
10 into primary and secondary.

VI.A.1: *Primary indicia*

60. In this case the primary indicia are:

- Whether NCAT’s determination within jurisdiction will have binding force and effect for the parties even against their will.
- 15 • The nature of the exercise undertaken by NCAT;
- Whether NCAT’s “functions” purport to deprive those affected of access to the courts for the resolution of connected legal controversies: *Breckler* 126–127 [84].

VI.A.1.A: BINDING FORCE AND EFFECT

61. As partly discussed above, NCAT’s orders are binding, final and enforceable. A number
20 of provisions of *CAT Act* goes to the issue of enforceability. Relevantly, a “non-compliance, without lawful or reasonable excuse, is a contravention of s 72(3) for which a civil penalty can be imposed: s 77. Non-compliance with NCAT’s order is liable to be dealt with for contempt: s 73; cf *Re Colina; Ex parte Torney* (1999) 166 ALR 545, 579, 584 [122], [130]. Money orders can be enforced: s 78(2).
25 Nevertheless, binding force and effect are not the same as enforceability, including its effectiveness. To be binding no direct enforceability needs to exist: *Brandy* 269.

62. NCAT can enforce its own decisions even in the absence of express provisions in enabling legislation: *Mirvac* [24]–[42]. In *Mirvac* NCAT had power to issue an order for possession: *Agricultural Tenancies Act 1990 (NSW)* (“*AT Act*”), s 21(1)(i).
30 However, there was no explicit provision giving it power to issue warrant for possession to enforce its own orders: *AT Act*. Nevertheless, there was no need to seek the issue of a writ of possession from the Supreme Court because of ss 21(1)(a), (4)(b) of *AT Act*. Subsequently NCAT issued the warrant for possession: *Mirvac Homes (NSW) Pty Limited v Noakes* [2022] NSWCATCD 49. Likewise, s 55(2)(g) of *PPIP*

Act creates power to enforce orders under s 55(2)(a) and to make and enforce costs orders. See also r 39 of *CAT Act* providing for interest to run from the date of NCAT's orders rather than from the filing date under s 78.

63. Accordingly, any order under s 55 of *PPIP Act*, has binding force and effect. It is also enforceable. The presence of enforceability is one of the most important indicia indicative that the nature of the power is judicial.

VI.A.1.B: NATURE OF THE TASK

64. Under *PPIP Act* NCAT determines if there was a breach of the duties in ss 8-19 of *PPIP Act*. The possibility of a breach both presumes and requires a pre-existing duty. Thus, NCAT's decision under *PPIP Act* relates to pre-existing rights and obligations. If ss 8-19 did not amount to duties existing prior to a claim under s 55 of *PPIP Act*, there would be no possibility that the Contravention could ever exist.

VI.A.1.C: DEPRIVATION OF ACCESS TO COURTS

65. This indicium requires consideration of the position of the given court or tribunal within the jurisdiction. The availability and nature of a review by a court are relevant considerations: *Luton* 387–388 [188]–[189] .

66. NCAT's decisions are only appealable to NCAT's Appeal Panel, and as of right only on questions of law: *CAT Act*, s 80. Facts are only appealable with leave: *CAT Act*, s 80(2)(a). Decisions of NCAT's Appeal Panel are appealable to the Supreme Court of NSW only on the questions of law, but require leave: *CAT Act*, s 83(1). NCAT: *CAT Act* s 34 , pt 3A. In relation to *Privacy Proceedings 1–2* access to judicial review can be denied because of the availability of NCAT's review; *CAT Act*, s 34. Hence, NCAT's review under *PPIP Act* involves the exercise of the judicial power: *British Imperial Oil Company Ltd v Federal Commissioner of Taxation* (1925) 35 CLR 422.

VI.A.2: *Secondary indicia*

VI.A.2.A.: REQUIRES INDEPENDENCE AND TENURE TRADITIONALLY ENJOYED BY JUDGES

67. A review under s 55 of *PPIP Act* involves a hearing between a person with standing and the public sector agency: *PPIP Act*, s 55(1). The agencies enjoy privileged positions: eg *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW). Only in extraordinary circumstances they are not a better-resourced party. Both the agencies and NCAT are emanations of State of NSW. Orders under s 55 of *PPIP Act* do not require any consent of parties, and are a de facto ostracism of the conduct of an agency: eg, *PPIP Act*, s 55(2)(a), (d). They can be embarrassing to the NSW Government. A desire to avoid such ostracism can motivate the NSW Government to

use its powers, influence, and resources to resist the possibility of unfavourable judgements. This places adjudicators in a position of unilateral susceptibility to the agencies.

68. The obligations imposed by *PIIP Act* are an essential safety control imposed on the agencies entrusted with the personal information, especially given their increasing ability to collect, store, and use large amounts of data. They were introduced:

- To address legal frameworks' deficits in addressing technological and bureaucratic threats to privacy: Robin Creyke et al, *Control of Government Action: Text, Cases & Commentary*, (LexisNexis Butterworths, 5th ed, 2019) 1172–1173 [20.1.5]–[20.1.7].

- Following the discovery of “massive illicit trade in information involving government departments, the police, lawyers, financial institutions and private investigators” in NSW: New South Wales, *Parliamentary Debates*, Legislative Council, 17 September 1998, 7600 (J. W. Shaw, Attorney-General).

- As NSW was under increasing international pressure to protect its data. “Significant principles and laws now apply, especially in the European Community. If protection in this jurisdiction is not reciprocated, the data flow will dry up and enormous consequences will flow. We would no longer be a part of the international financial network, the governmental network, the heart and soul of international trading, commodities or any network.”: New South Wales, *Parliamentary Debates*, Legislative Assembly, 18 November 1998, 10224 (Mr Tink).

69. In summary, the importance of the obligations and rights created *PIIP Act* raises expectations of an independent review. The exercise of the power in s 55 requires independence and tenure traditionally enjoyed by judges. This is essential to the proper administration of the scheme.

VI.A.2.B: REQUIRES FINDINGS ON DISPUTED FACTS AND APPLICATION OF LAW

70. The review under s 55 of *PIIP Act* requires making of findings of facts and decisions on questions of law, eg, determination whether information meets the test for personal information: *PIIP Act*, s 4. Relevantly, NCAT has discretion to refer questions of law to the Supreme Court: *CAT Act*, s 54. Implicit in this discretion is that the questions of law can be otherwise decided by NCAT.

V.A.2.C: NOT BY REFERENCE TO FAIRLY STANDARD SET OF CRITERIA

71. The review under s 55 of *PIIP Act* involves assessing if the information is personal information, construction of ss 8-19 and any exemptions, identification of the relevant conduct, deciding if the Contravention occurred, deciding on the nexus between

breach and damage and on an appropriate remedy (if any): *PPIP Act*, s 55. Relevantly, assessment if information is personal information requires the assessment of the nature of the information, the context in which it “can reasonably be said” to be about an individual and should not be approached in an overly technical manner: *EG v Commissioner of Police, NSW Police Service* [2003] NSWADT 150, [24]; *JD v New South Wales Medical Board* [2008] NSWADT 67, [24].

72. Furthermore, as executive functions of agencies vary and breaches can occur in various circumstances, the conduct under review can be highly variable. This highlights that the review under *PPIP Act* is a non-standard activity and, thus, requires advanced analytical skills. Accordingly, the review under s 55 is complex, requires advanced analytical legal skills, and is not made by reference to a formula or fairly standard set of criteria: *Luton* [193].

VI.A.2.D: DECISIONS LIKELY TO SERVE AS PRECEDENTS

73. As NCAT’s decisions under *PPIP Act* serve as precedents: eg *CRP v Department of Family and Community Services* [2017] NSWCATAD 164 refers to *D v New South Wales Medical Board* [2008] NSWADT as authority that NCAT should not adopt an overly technical approach to the question if information is personal information. NCAT’s decisions at first instance represent the Appeal Panel’s decisions as binding: eg *Wojciechowska v Commissioner of Police* [2021] NSWCATAD 328, [12].

VI.A.2.E: LEGISLATURE’S VIEW

74. The view of legislature that the power in s 55 is judicial can also be gleaned from the gradation of reviews. There is an initial internal review by the agency responsible for primary decision-making resulting in an internal review decision: *PPIP Act*, s 53. Then, there is a review by NCAT on application by a person with a standing: *PPIP Act*, s 55. This results in a decision that is binding regardless of the agency’s consent: *Burns v Corbett* (2017) 96 NSWLR 247, [31]. It is also significant that the review was given to NCAT rather than some other body, eg the NSW Privacy Commissioner. It is not only that NCAT mimics the court process and the structure of appeals in the court system: *CAT Act*, pt 4 div 1–div 5, sch 3 cls 3, 9; *Civil and Administrative Tribunal Rules 2014* (NSW), pt 4, r 39; *PPIP Act*, ss 55(6)–(7). NCAT actually exercises the State’s judicial power in a variety of proceedings – hence, it is operating not in parallel to but in lieu of Ch III courts: *CAT Act*, Pt 3A; eg, *Choi v NSW Ombudsman* [2021] NSWCA 68, [32]; cf *Burns*.

VI.A.2.F: TRADITIONALLY UNDERTAKEN BY COURTS

75. The determination of whether a provision was breached and making of binding compensation orders are tasks commonly undertaken by courts. The courts do so, eg, when assessing claims of copyright infringement under the *Copyright Act 1968* (Cth), claims of breach of s 18 of *Australian Consumer Law*, or conditions implied by *Sales of Goods Act 1923* (NSW).

VI.A.2.G: OTHER HISTORICALLY JUDICIAL FEATURES

76. Also other features of the review under s 55 of *PPIP Act* give it the “stamp” of judicial power. NCAT cannot conduct the review on its own initiative: *PPIP Act*, s 55; *ADR Act*, s 9. It can impose relief in the nature of prohibitory and mandatory injunctions: *PPIP Act*, s 55(2)(b)–(f). Lastly, it has power to make enforceable costs orders: *CAT Act*, ss 60, 78; *PPIP Act*, s 55(2)(g); *BVV v Commissioner of Police, NSW Police Force* [2023] NSWCATAD 134.

VI.A.3: *Conclusions*

77. *Privacy Proceedings 1–2* fall within the original jurisdiction of the High Court of Australia. The only judicial power that can be exercised in their respect is the judicial power of the Commonwealth. Hence, NCAT has no jurisdiction to validly hear and determine *Privacy Proceedings 1–2*. Hence, the first respondent is entitled to leave under Pt 3A.

VI.B: ORDERS SOUGHT

78. The first respondent seeks the following orders:

1. The appeal be dismissed with costs.

PART VII: DURATION

6 hours

Dated 17 January 2025

25

P. Wojciechowska

first respondent

Name: Paulina Wojciechowska

Telephone: 03 62005532

30 Email: pauline.wojciechowska@gmail.com

ANNEXURE TO FIRST RESPONDENT'S SUBMISSIONS

No	Description	Provisions	Version	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
1	<i>Commonwealth Constitution</i>	Ch III, s 109	Current	In force at all material times	All materials dates
2	<i>Privacy and Personal Information Protection Act 1998 (NSW)</i>	All	Current	No material changes occurred between dates of commencement of <i>Privacy Proceedings 1–2</i> , judgments in NCAT, in Court of Appeal and now	All materials dates
3	<i>Judiciary Act 1903 (Cth)</i>	Pt VI, 78B	Current	No material changes occurred between dates of commencement of <i>Privacy Proceedings 1–2</i> , judgments in NCAT, in Court of Appeal and now	All materials dates
4	<i>Civil and Administrative Tribunal Act 2013 (NSW)</i>	All	Current	No material changes occurred	All materials dates

				between dates of commencement of <i>Privacy Proceedings 1–2</i> , judgments in NCAT, in Court of Appeal and now	
5	<i>Civil and Administrative Tribunal Regulation 2022 (NSW)</i>	All	Current	For illustrative purposes only	N/A
6	<i>Civil and Administrative Tribunal Rules 2014 (NSW)</i>	All	Current	No material changes occurred between dates of commencement of <i>Privacy Proceedings 1–2</i> , judgments in NCAT, in Court of Appeal and now	All materials dates
7	<i>Administrative Decisions Review Act 1997 (NSW)</i>	All	As assented to on 10 July 1997	For illustrative purposes only	N/A
8	<i>Administrative Decisions Review Regulation 2009 (NSW)</i>	All	Current	For illustrative purposes only	N/A
9	<i>Privacy and Personal Information Protection Regulation 2019 (NSW)</i>	All	Current	No material changes occurred between dates of commencement of <i>Privacy Proceedings 1–2</i> , judgments in NCAT, in Court of Appeal and now	All material dates
10	<i>Privacy Code of Practice</i>	All	Current	For illustrative purposes only	N/A

	<i>(General) 2003 (NSW)</i>			purposes only	
11	<i>Administrative Decisions Tribunal Act 1997 (NSW)</i>	All	Current	No material changes occurred between dates of commencement of <i>Privacy Proceedings 1–2</i> , judgments in NCAT, in Court of Appeal and now	
12	<i>Interpretation Act 1987 (NSW)</i>	ss 13A, 31-34, sch 4	Current	No material changes occurred between dates of commencement of <i>Privacy Proceedings 1–2</i> , judgments in NCAT, in Court of Appeal and now	N/A
13	<i>Administrative Decisions Tribunal Bill 1997 (NSW)</i>	All	Current	For illustrative purposes only	N/A
14	<i>Law Reform (Vicarious Liability) Act 1983 (NSW)</i>	All	Current	No material changes occurred between dates of commencement of <i>Privacy Proceedings 1–2</i> , judgments in NCAT, in Court of Appeal and now	All material dates
15	<i>Crown Proceedings Act 1988 (NSW)</i>	ss 3, 5, 8	Current	No material changes occurred between dates of	All material dates

				commencement of <i>Privacy Proceedings 1–2</i> , judgments in NCAT, in Court of Appeal and now	
16	<i>Police Act 1990</i> (NSW)	s 8	Current	No material changes occurred between dates of commencement of <i>Privacy Proceedings 1–2</i> , judgments in NCAT, in Court of Appeal and now	All material dates
17	<i>Uniform Civil Procedure Rules 2005</i> (NSW)	r 7.20	Current	For illustrative purposes only	N/A
18	<i>Agricultural Tenancies Act 1990</i> (NSW)	s 21	- Version for 1 July 2017 to 30 May 2024	In force on the date of judgment in <i>Mirvac</i>	Events in <i>Mirvac</i>
19	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (NSW)	All	Current	For illustrative purposes only	N/A
20	<i>Copyright Act 1968</i> (Cth)	All	Current	For illustrative purposes only	N/A
21	<i>Australian Consumer Law</i>	s 18	Current	For illustrative purposes only	N/A
22	<i>Sales of Goods Act 1923</i> (NSW)	All	Current	For illustrative purposes only	N/A