HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S39/2024

BETWEEN:

STATE OF NEW SOUTH WALES
Appellant

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and

PAULINA WOJCIECHOWSKA
First Respondent

REGISTRAR OF NSW CIVIL AND ADMINISTRATIVE TRIBUNAL
Second Respondent

COMMISSIONER OF POLICE NSW POLICE FORCE
Third Respondent

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SECRETARY OF NSW DEPARTMENT OF COMMUNITIES AND JUSTICE
Fourth Respondent

REGISTRAR OF DISTRICT COURT OF NEW SOUTH WALES
Fifth Respondent

SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE STATE OF VICTORIA (INTERVENING)

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PARTS I, II & III: CERTIFICATION AND INTERVENTION

1. These submissions are in a form suitable for publication on the internet.

2. The Attorney-General for the State of Victoria intervenes pursuant to s 78A of the *Judiciary Act 1903* (Cth) in support of the State of New South Wales, in respect of its appeal[1] and, if special leave is granted, in respect of the cross-appeal.[2]

[1] Notice of Appeal, filed 21 March 2024. References in these submissions to the decision under appeal (J) are to the judgment of Kirk JA with whom Mitchelmore JA and Griffiths AJA concurred at [1] and [152], respectively.

[2] Notice of Cross-Appeal, filed 10 April 2024.

PART IV: ARGUMENT

A. INTRODUCTION AND SUMMARY

3. Victoria's submissions are confined to the application of the limitation on State legislative power identified in ***Burns*** *v Corbett*.[3] Victoria adopts the position of New South Wales on special leave to cross-appeal[4] and directs its submissions primarily to the appeal.

4. It is not in dispute that the limitation identified in *Burns* only constrains State legislatures from conferring, in respect of "matters" of the kind referred to in ss 75 and 76 of the *Constitution*, judicial power. In summary, Victoria submits as follows.

   (1) *First*, in an administrative review of conduct under the *Privacy and Personal Information Protection Act 1998* (NSW) (**PPIP Act**) and the *Administrative Decisions Review Act 1997* (NSW) (**ADR Act**), there is no "matter" in the requisite sense. The NSW Civil and Administrative Tribunal (**NCAT**) is not determining a controversy as to the existence of any "immediate right, duty or liability".[5]

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   (2) *Secondly*, and relatedly, the relevant functions performed by NCAT do not involve an exercise of judicial power. NCAT does not determine the existence of any legal right, duty or liability, its functions are to be exercised by reference to questions of policy, and its procedures are substantially consistent with administrative decision-making.

   (3) *Thirdly*, whether a State tribunal decision is enforceable as if it were a court order is not conclusive of whether it involves judicial power. ***Brandy*** *v Human Rights and Equal Opportunity Commission*[6] does not compel the contrary conclusion.

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[3] (2018) 265 CLR 304 at 325-6 [2]-[3] (Kiefel CJ, Bell and Keane JJ), 345-6 [67]-[69] (Gageler J). Victoria does not address all of the issues on the appeal, in particular the questions of construction anterior to those of constitutional principle: Notice of Appeal, ground 2(a); Appellant's submissions, filed 24 April 2024 (**AS**) at [67]-[72].

[4] AS [79].

[5] See *In Re Judiciary and Navigation Acts* (1921) 29 CLR 257 at 265 (Knox CJ, Gavan Duffy, Powers, Rich and Starke JJ).

[6] (1995) 183 CLR 245.

B. OVERVIEW OF RELEVANT LEGISLATIVE PROVISIONS

B.1 PPIP Act

5. Victoria adopts the summary of the PPIP Act[7] at AS [15]-[30] and adds the following.

6. The scope and nature of the "information protection principles" (**IPPs**) are to be understood by reference to the internal qualifications to those principles specified in ss 8-19,[8] the potential for modification by privacy codes of practice,[9] and the exemptions prescribed by Pt 2 Div 3. The prescribed exemptions relevantly include an exemption from the disclosure limit in s 18 for disclosures that are "reasonably necessary … for the protection of public revenue".[10]

10 7. Although s 21(1) provides that a public sector agency must not contravene an IPP applying to the agency, both the scope and application of the IPPs are to a significant extent within the control of the Executive. A privacy code of practice — made by the Minister on the initiative of, and prepared by, the Privacy Commissioner or any public sector agency — may specify a different standard to that imposed by an IPP and exempt any activity, conduct or public sector agency from compliance with an IPP.[11] Similarly, the Privacy Commissioner, with the approval of the Minister, may direct that a public sector agency is not required to comply with an IPP or modify the application of an IPP to a public sector agency.[12]

8. Section 21(2) provides that "contravention by a public sector agency of an [IPP] … that
20 applies to the agency is conduct to which Part 5 applies". The terms of Pt 5 are therefore critical to understanding the nature of that provision (and its interaction with s 69: AS [20]-[21]). In this respect, the following features of Pt 5 are significant.

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7 References in these submissions to the PPIP Act, *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**), ADR Act and *Civil and Administrative Tribunal Act 2013* (NSW) (**CAT Act**) are to the versions in force at the date of the hearing before the Court of Appeal, to which that Court referred: J [49]; CAB 88.

8 Such as, for example: the exception for "lawful purpose" in s 8(1); the qualification to the requirements in ss 10, 11, 13 and 16 that the steps to be taken are only those that are "reasonable in the circumstances" (see similarly s 15(2)); the exceptions for certain threats to life or health in ss 17(c), 18(1)(c) and 19(1) and (2)(f); the exceptions for related purpose in ss 17(b) and 18(1)(a); and the exceptions for consent in ss 17(a) and 19(2)(b).

9 PPIP Act, s 20(2)(a).

10 PPIP Act, s 23(5)(d).

11 PPIP Act, ss 29-31.

12 PPIP Act, s 41.

(1) ***Internal review by public sector agency:*** Section 53(1) provides that a person aggrieved by a public sector agency's contravention, or alleged contravention,[13] of an IPP is "*entitled* to a review of that conduct" (emphasis added). Such review is to be undertaken by the public sector agency concerned.[14] On completion of internal review, a public sector agency may do any one or more of the things set out in s 53(7), namely: take no action; apologise; "take such remedial action as it thinks appropriate (eg the payment of monetary compensation to the applicant)";[15] undertake that the conduct will not occur again; and implement administrative measures to ensure that the conduct will not occur again.[16] Further, the public sector agency is required to notify the applicant of, relevantly, "the right of the person to have … [the agency's] findings, and the agency's proposed action, administratively reviewed by [NCAT]".[17]

(2) ***Administrative review by NCAT***: Section 55(1) provides that a person who has made an application for internal review and is not satisfied with the findings or action taken by the public sector agency may apply to NCAT for "an administrative review under the [ADR Act]". Section 55(2) provides that, on reviewing the relevant conduct, NCAT may decide not to take any action or make any one or more of the orders set out in that subsection, including an order "requiring the public sector agency to pay to the applicant damages not exceeding $40,000 by way of compensation for any loss or damage suffered because of the conduct"[18] and a range of other orders as NCAT thinks appropriate. However, s 55 does not limit any other power that NCAT has under Div 3 of Pt 3 of Ch 3 of the ADR Act.[19]

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[13] PPIP Act, s 52(1)(a), (2).

[14] PPIP Act, s 53(2). On request, an internal review may also be conducted, on the relevant public sector agency's behalf, by the Privacy Commissioner: s 54(3). Where the Privacy Commissioner conducts an internal review on behalf of a relevant public sector agency, it has the same powers as the agency would have if it were conducting the internal review: s 54(5).

[15] Subject to the limits prescribed by s 53(7A).

[16] PPIP Act, s 53(7).

[17] PPIP Act, s 53(8)(c).

[18] Such an order may only be made if, relevantly, NCAT is satisfied that the applicant has suffered certain loss or harm because of the relevant conduct: PPIP Act, s 55(4)(b).

[19] PPIP Act, s 55(3).

(3) ***Limited disapplication of the ADR Act:*** Part 5 expressly modifies the operation of the ADR Act by disapplying the provisions in that Act concerning internal review to conduct to which Pt 5 of the PPIP Act applies.[20]

9. Although the PPIP Act prescribes offences for certain conduct, no offence or penalty is prescribed in connection with contravention of the IPPs.[21] Further, although the PPIP Act confers monitoring functions on the Privacy Commissioner with respect to compliance with the IPPs and functions enabling it to investigate complaints concerning alleged contraventions, the regulator's powers with respect to resolution of such complaints are limited to conciliation and reporting (including making recommendations).[22]

10 **B.2 ADR Act**

10. The ADR Act enables an "interested person"[23] to apply for "administrative review" of "administratively reviewable decisions".[24] An "administratively reviewable decision" is a decision of an "administrator"[25] over which NCAT has "administrative review jurisdiction", including conduct in respect of which enabling legislation (here, s 55(1) of the PPIP Act) provides that an application may be made to NCAT for "an administrative review under [the ADR Act]".[26]

11. Chapter 3, Pt 3, Div 3 prescribes the powers of NCAT on administrative review, including on review under s 55 of the PPIP Act.[27] It includes that: NCAT is to make the "correct and preferable decision";[28] NCAT is required to give effect to any relevant "[g]overnment
20 policy"[29] in force at the time of the relevant administratively reviewable decision (except to the extent that the policy is contrary to law or produces an unjust decision in the circumstances);[30] and NCAT may exercise all of the functions conferred or imposed by any relevant legislation on the relevant administrator and may affirm, vary or set aside a

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20 PPIP Act, s 52(4).
21 PPIP Act, ss 62(1), 63(1), 67(1), 68(1) and (2).
22 PPIP Act, ss 36(1), (2)(a), (k), 49, 50.
23 Defined in s 4.
24 ADR Act, s 55(1).
25 Being the person or body that makes, or is taken to have made, an administratively reviewable decision under enabling legislation: ss 4(1) (definition of "administrator"), 8(1).
26 See also GIPA Act, s 100(1); ADR Act, ss 4(1) (definitions of "administratively reviewable decision" and "administrative review jurisdiction"), 7, 9(1).
27 See PPIP Act, s 55(3).
28 ADR Act, s 63(1).
29 As defined in s 64(5) of the ADR Act.
30 ADR Act, s 64(1). NCAT is permitted to have regard to other policies applied by the administrator in certain circumstances: s 64(4).

decision (and, if setting aside, may substitute a new decision or remit the matter back to the relevant administrator).[31] A decision that varies or substitutes that of an administrator is taken to be the decision of that administrator with effect from the date of the administrator's actual decision.[32]

B.3 CAT Act

12. Victoria adopts the summary of the CAT Act set out at AS [36]-[38], in addition to which it notes the powers of NCAT to award costs[33] and compel the giving of evidence, including on oath or affirmation.[34]

C. DETERMINATION BY NCAT WOULD NOT TRANSGRESS THE *BURNS* LIMITATION

10 13. The *Burns* limitation only constrains State legislative power in circumstances involving: (1) a "matter"; (2) of a kind referred to in ss 75 and 76 of the *Constitution*; and (3) a purported conferral of adjudicative authority — being the authority to exercise judicial power; (4) on a decision-maker which is not a "court of a State" within the meaning of Ch III of the *Constitution*.[35] In Victoria's submission, there is, in the circumstances of the appeal, neither a "matter" nor a purported conferral of authority to exercise judicial power.

C.2 There is no "matter" within the meaning of Ch III of the *Constitution*

14. The federal jurisdiction arising from ss 75 and 76 of the *Constitution* is confined to determining "matters". The requirement that there be a "matter" has two elements: the 20 subject matter defined by reference to ss 75 and 76; and "the concrete or adequate adversarial nature of the dispute sufficient to give rise to a justiciable controversy".[36] A "justiciable controversy" is, exceptional categories aside,[37] one in which there is an

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31 ADR Act, ss 63(2), (3), 65.

32 Other than for the purposes of an administrative review: ADR Act, s 66(2)(a), (b).

33 In special circumstances only: CAT Act, s 60.

34 CAT Act, ss 46, 48.

35 (2018) 265 CLR 304 at 325-6 [2]-[3], 330 [21] (Kiefel CJ, Bell and Keane JJ), 345-6 [67]-[70], 360 [106], 364 [119] (Gageler J); ***Rizeq*** *v Western Australia* (2017) 262 CLR 1 at 23 [52] (Bell, Gageler, Keane, Nettle and Gordon JJ).

36 ***CGU*** *Insurance Limited v Blakely* (2016) 259 CLR 339 at 351 [27] (French CJ, Kiefel, Bell and Keane JJ); *AZC20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2023) 411 ALR 615 at 624 [31] (Kiefel CJ, Gordon and Steward JJ), [61] (Edelman J), [111]-[112] (Gleeson J).

37 *Unions NSW v New South Wales* (2023) 97 ALJR 150 at 156-7 [15] (Kiefel CJ, Gageler, Gordon, Gleeson and Jagot JJ) and the cases there cited. None of the recognised exceptional categories are relevant to this appeal.

"immediate right, duty or liability to be established by the determination" of the relevant decision-maker.[38] For that to be the case, the relevant right, duty or liability must have an existence in law that is not dependent on the commencement of a proceeding in a forum in which a controversy about that right, duty or liability might come to be adjudicated.[39]

15. In Victoria's submission, there is no "immediate right, duty or liability" to be established by the determination of NCAT in the context of the relevant administrative review proceedings under the PPIP Act, and thus no "matter" within the meaning of Ch III.[40] The only relevant "right" created by the PPIP Act is a procedural one — that is, the right to access the two forms of review provided for in Pt 5. That follows from the relevant operation of ss 21, 53, 55 and 69.

16. Section 69(1) relevantly operates to deny the creation, by Pt 2, of any right not in existence before the enactment of the PPIP Act. Section 69(2) then modifies that position in the limited circumstances provided for by, relevantly, s 21.

17. In turn, s 21 provides for the limited circumstances in which a public sector agency's compliance with the IPPs may be examined, by immediately directing attention to the procedures in Pt 5. In Pt 5, the only consequence to which an alleged contravention gives rise is the "entitlement" in s 53(1) to internal review, following which the agency "may do" one of the things referred to in s 53(7), and thereafter to the "right" referred to in s 53(8)(c), being the right in s 55(1) to administrative review by NCAT. That is, ss 21(2), 53(1) and 55(1) create a procedural right to review, rather than a right or entitlement to a particular kind of relief or remedy upon an established contravention,[41] and the relevant operation of s 69(2) is to preserve that procedural right from being excluded by s 69(1).

18. The proposition that these mechanisms do not give rise to the determination of any existing right, duty or liability is reinforced by the nature of s 21(1) and the IPPs themselves. Although s 21(1) uses the language of "contravention", it also uses the language of "principle" to describe that which may be contravened. Those principles are,

[38] *In re Judiciary and Navigation Acts* (1921) 29 CLR 257 at 265 (Knox CJ, Gavan Duffy, Powers, Rich and Starke JJ); *CGU* (2016) 259 CLR 339 at 350 [26] (French CJ, Kiefel, Bell and Keane JJ).

[39] ***Citta*** *Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 at 232 [31] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ).

[40] See similarly *Attorney General (NSW) v FJG* (2023) 111 NSWLR 105 at 127 [93] (Beech-Jones JA, Bell CJ agreeing at 108 [1], Ward P agreeing at 108 [2]); and AS [49].

[41] Cf *McLean v Racing Victoria Ltd* [2020] VSCA 234 at [143] (Tate, McLeish and Niall JJA), in relation to the *Privacy and Data Protection Act 2014* (Vic).

as the Court of Appeal accepted, "to a significant extent, rather amorphous"[42] and subject to modification and disapplication by the Executive.[43] They may be contrasted with a fixed norm of conduct characteristic of legal duties or obligations.[44] Relevantly, certain of the IPPs are qualified by reference to matters of government policy or administration. For example, several of the IPPs are subject to internal qualifications turning on notions of "practicability" of the kind that invoke consideration of the business arrangements and demands of the relevant agency.[45] Similarly, the exemption concerning public revenue[46] suggests that the protection of personal information may in some cases yield to the demands of government policy concerning public revenue.

10 19. By the time a public sector agency is making a decision on internal review — or that NCAT, standing in the shoes of the relevant public sector agency (as addressed below), is making a decision on administrative review — any right that exists in connection with the IPPs has been exercised. The purpose of both forms of review is to enable the Executive to determine how best the IPPs should be applied in the circumstances and to determine what action should be taken. To the extent that that involves the agency and, thereafter, NCAT, determining whether an IPP has been contravened, the adjudication of such a question does not involve the determination of the existence of a legal right or obligation in the requisite sense.[47]

20. The limited scope of the decision-making authority contemplated by the PPIP Act is also
20 reinforced by other aspects of the legislative scheme. The IPPs apply only to the NSW public sector.[48] The scope and application of the IPPs is substantially within the control of the Executive.[49] The Act provides that no action at all may be taken on review and, insofar as the compensatory powers in ss 53(7) and 55(2) are concerned, that there is no obligation to exercise either power even when a contravention of an IPP and requisite loss

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42 J [123]; CAB 111.

43 See [7] above.

44 By analogy, in a different context, see *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 391 [95] (McHugh, Gummow, Kirby and Hayne JJ), contrasting obligations that have a "rule-like quality which can be easily identified and applied" with those that involve considerations of policy and that are subject to Ministerial direction.

45 PPIP Act, ss 10, 15(3), 19(2)(e), 27B(b) and (c)(i), 27D(1)(c).

46 See [6] above.

47 Cf *Attorney-General (Cth) v **Alinta** Limited* (2008) 233 CLR 542 at 595 [161] (Crennan and Kiefel JJ); *R v Hegarty; ex parte City of Salisbury* (1981) 147 CLR 617 at 631-632 (Murphy J).

48 PPIP Act, s 20(1); J [122]; CAB 111.

49 See [7] above.

or harm[50] is found to have occurred. Finally, the Act does not prescribe any penalty or offence in respect of the IPPs and the regulator's powers in respect of alleged contraventions of the IPPs are limited.[51]

21. Further, on an application for administrative review under the PPIP Act, NCAT stands in the shoes of the relevant agency.[52] So much is clear from the PPIP Act providing that an application may be made to NCAT for an "administrative review under [the ADR Act]" and from the meaning of the term "administrative review" as defined in the ADR Act.[53] Although the PPIP Act modifies the operation of Ch 3 of the ADR Act to a limited extent,[54] it does not alter the fundamental function of NCAT on administrative review. Accordingly, in conducting an administrative review of conduct under the PPIP Act, the function of NCAT is to make "the correct and preferable decision" and any decision it makes substituting or varying that of an agency is taken to be a decision of that agency.[55]

22. Insofar as the Court of Appeal considered that the terms of s 55(2) of the PPIP Act denied that NCAT was conducting merits review, on the basis that NCAT was speaking *to* the agency,[56] the powers conferred on NCAT by that provision are consistent with the powers that may be exercised by the relevant public sector agency on an internal review,[57] and are expressly stated to be supplementary to the operation of Ch 3 of the ADR Act.[58] On that basis, the point of view of the orders in s 55(2) simply reflects that the decision-maker is, at least formally,[59] NCAT, not the relevant public sector agency who would be required to give effect to any remedial action required by NCAT's orders.[60]

23. For completeness, Victoria submits that, in the context of the GIPA Act, it is even clearer that NCAT would not be determining the existence of any right, duty or liability. The

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50 As required by s 55(4)(b) of the PPIP Act in the context of administrative review.
51 See [9] above.
52 Cf J [119]-[120], [136] (in the context of the PPIP Act); CAB 110, 115-116.
53 See [8(2)] and [10] above.
54 See [8(3)] above.
55 See [11] above.
56 J [120], [136]; CAB 110, 115-116.
57 Both ss 53(7) and 55(2) authorise no further action to be taken. The compensatory power in s 55(2)(a) is, in substance, analogous to that in s 53(7)(c). The orders in s 55(2)(b) and (f) can broadly be characterised as "administrative measures to ensure that … conduct will not occur again" within the terms of s 53(7)(e). Each of the orders in s 55(2)(c)-(e) would fall within the scope of "remedial action" as contemplated by s 53(7)(c). Ancillary orders made under s 55(2)(g) could include an apology of the kind provided for in s 53(7)(b) or the undertakings in s 53(7)(d).
58 PPIP Act, s 55(3). See [8(2)] above.
59 Subject to certain of its decisions taking effect as decisions of the relevant public sector agency.
60 Cf J [136]; CAB 115-116.

terms of ss 9(1) and 77(1) of that Act reflect that any "legally enforceable" "access right" only arises *after* an agency has "decide[d] to provide access", by a determination involving application of the public interest test, having regard to the prescribed considerations.[61] On administrative review, that determination is made by NCAT.[62] Administrative review proceedings may, therefore, *create* a right of access, but the right does not exist before the proceedings are commenced and NCAT's decision does not determine the existence of the right based on the application of the law to past facts.

24. The argument addressed above should be distinguished from that rejected by the Court of Appeal of the Supreme Court of Victoria in *Meringnage v Interstate Enterprises Pty*
10 *Ltd*.[63] The position Victoria advances here is not that the NSW Parliament's choice of the forum on which to confer the review powers in the PPIP Act is determinative of whether there is a "matter" in the circumstances of the appeal,[64] but that the question relevantly turns on the nature of the function conferred on NCAT and specifically whether NCAT is determining a controversy as to the existence of rights and liabilities (consistently with *Citta*[65]).

C.3 There would be no exercise of judicial power by NCAT

25. Judicial power defies exhaustive definition and abstract analysis.[66] One common starting point is the definition of Griffith CJ in ***Huddart, Parker** & Co Pty Ltd v Moorehead*,[67] which requires determination of a "controversy", between parties, as to "rights", by a
20 decision that is "binding and authoritative" and in respect of which the decision-maker is "called upon to take action"[68] (the latter indicium having been understood to advert to questions of enforcement[69]). Another common starting point is the definition of Kitto J in *Tasmanian Breweries*, which requires: a decision between parties; as to the existence

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[61] As to the public interest test and prescribed considerations, see GIPA Act, ss 12-15.

[62] The Court of Appeal correctly found, at J [98] (CAB 102-103), that NCAT undertakes merits review in administrative review proceedings in respect of decisions under the GIPA Act.

[63] (2020) 60 VR 361 at 397-408 [110]-[147], rejecting an argument based on Basten JA's judgment in *Attorney-General (NSW) v **Gatsby*** (2018) 99 NSWLR 1.

[64] Cf *Gatsby* (2018) 99 NSWLR 1 at 47-59 [229]-[273] (Basten JA).

[65] (2022) 276 CLR 216 at 232 [31] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ).

[66] *R v Trade Practices Tribunal; Ex parte **Tasmanian Breweries** Pty Ltd* (1970) 123 CLR 361 at 373 (Kitto J), 394 (Windeyer J); ***Precision Data** Holdings Ltd v Wills* (1991) 173 CLR 167 at 188-9 (the Court); ***Luton** v Lessels* (2002) 210 CLR 333 at 373 [124] (Kirby J).

[67] (1909) 8 CLR 330.

[68] (1909) 8 CLR 330 at 357.

[69] ***Rola Co** (Australia) Pty Ltd v Commonwealth* (1944) 69 CLR 185 at 198-9 (Latham CJ), McTiernan J agreeing at 213.

of a right or obligation; by an inquiry concerning the law as it is and the facts as they are; followed by an application of the law as determined to the facts as determined; to produce a decision that entitles and obliges observance of the rights and obligations shown to exist.[70] More recently, a majority of the Court described the "essential character" of judicial power as stemming from the "unique and essential function that judicial power performs by quelling controversies about legal rights and legal obligations through ascertainment of facts, application of law and exercise, where appropriate, of judicial discretion".[71] The Court has also drawn attention to the non-consensual nature of decisions made in the exercise of judicial power.[72]

10 26. However, "no single combination of necessary or sufficient factors identifies what is judicial power"[73] and one attribute of the decision of a court is not to be made its touchstone.[74] Many positive features of judicial power, although essential to its exercise, are not by themselves conclusive of it.[75]

27. The Court of Appeal wrongly treated the question of whether orders made by NCAT under s 55(2)(a) of the PPIP Act were enforceable as conclusive of whether it would be exercising judicial power.[76] Considered in light of all relevant indicia (which overlap with the "matter" analysis addressed in Pt C.2 above), the functions of NCAT the subject of the appeal would not involve the exercise of judicial power. Enforceability is not conclusive of the character of State tribunal decisions.

20 *The relevant indicia are consistent with an exercise of non-judicial power by NCAT*

28. A determination of pre-existing rights or obligations has widely been considered to be the "hallmark" of judicial power.[77] For the reasons given in Pt C.2 above, administrative

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70 (1970) 123 CLR 361 at 374 (Kitto J).

71 *Rizeq* (2017) 262 CLR 1 at 23 [52] (Bell, Gageler, Keane, Nettle and Gordon JJ).

72 ***TCL Airconditioner** (Zhongshan) Co Ltd v Judges of the Federal Court of Australia* (2013) 251 CLR 533 at 553 [28] (French CJ and Gageler J), 575 [109] (Hayne, Crennan, Kiefel and Bell JJ).

73 *Alinta* (2008) 233 CLR 542 at 577 [93] (Hayne J), Kirby J agreeing at 552 [9].

74 *Tasmanian Breweries* (1970) 123 CLR 361 at 402-403 (Windeyer J).

75 *Labour Relations Board of Saskatchewan v John East Iron Works Ltd* [1949] AC 134 at 149; *Precision Data* (1991) 173 CLR 167 at 188-9 (the Court).

76 J [141], [143]; CAB 117, 118.

77 *Alinta* (2008) 233 CLR 542 at 592 [153] (Crennan and Kiefel JJ), citing *Huddart, Parker* (1909) 8 CLR 330 at 357 (Griffith CJ) and *R v **Davison*** (1954) 90 CLR 353 at 369 (Dixon CJ and McTiernan). See also ***Re Cram**; Ex parte Newcastle Wallsend Coal Pty Ltd* (1987) 163 CLR 140 at 148 (Mason CJ, Brennan, Deane, Dawson and Toohey JJ); *Precision Data* (1991) 173 CLR 167 at 188-9; *TCL Airconditioner* (2013) 251 CLR 533 at 566 [75] (Hayne, Crennan, Kiefel and Bell JJ).

review proceedings before NCAT in respect of conduct under the PPIP Act do not involve any such determination.

29. That NCAT stands in the shoes of the relevant agency[78] to make determinations "not merely by the application of legal principles to ascertained facts but by considerations of policy" also weighs heavily against its function being characterised as judicial.[79] Indeed, NCAT is required to have regard to relevant government policy in making its determination.[80] In the context of the PPIP Act, that may include policy directed to protection of public revenue,[81] an area of policy at the heart of the Executive function.

30. Further, for the purposes of characterising a particular function as judicial or non-judicial, it is at least relevant to take into account that the Legislature has conferred the relevant function on a tribunal[82] insofar as that fact affects the way in which the function may be exercised. In this respect it is relevant that NCAT is not required to be constituted by legally qualified members when determining review proceedings in respect of conduct under the PPIP Act,[83] is not bound by the rules of evidence, and must conduct its proceedings with as little formality as the circumstances permit.[84] Those considerations further reinforce that the power NCAT exercises was not intended to be, and is not, judicial.

31. Certain aspects of NCAT's functions and the way in which it is empowered to perform those functions in respect of the PPIP Act can also be indicative of either judicial or administrative power and therefore do not weigh against the conclusion (which follows from the aforementioned considerations) that NCAT would be exercising non-judicial power. These aspects include that: NCAT may be required to exercise discretion,[85]

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78 See, for example, ***Shell Co*** *Australia Ltd v Federal Commissioner of Taxation* (1930) 44 CLR 530 at 544-5.

79 J [80]; CAB 96-97; *Precision Data* (1991) 173 CLR 167 at 189 (the Court).

80 See [11] above.

81 See [6] above.

82 Cf [24] above.

83 See J [96], [135]; CAB 102, 115. See also *Tasmanian Breweries* (1970) 123 CLR 361 at 409 (Owen J); *Precision Data* (1991) 173 CLR 167 at 190 (the Court).

84 See J [67], [90]-[91]; CAB 93, 100. See also ***K-Generation*** *Pty Ltd v Liquor Licensing Court* (2009) 237 CLR 501 at 528 [82] (French CJ).

85 *Luton* (2002) 210 CLR 333 at 375-6 [130]-[131] (Kirby J); *Tasmanian Breweries* (1970) 123 CLR 361 at 417 (Walsh J).

consider questions of law[86] and make findings of fact and value judgments;[87] certain aspects of NCAT's processes mirror those of the judicial process,[88] including that it has powers to order costs,[89] compel evidence[90] and administer oaths;[91] the orders NCAT may make include requiring an agency to do or not do something;[92] and, in the case of the PPIP Act, its determinations are made by reference to past events and conduct.[93] A tribunal may make an order based on a finding of fact and law, without exercising judicial power, where that finding is a "factum" for the making of an administrative decision of broader compass.[94] Under the PPIP Act, any opinion formed by NCAT as to a public sector agency's compliance with the IPPs would only be a step in the process leading to

10 NCAT's discretionary decision to make the "correct and preferable" order under s 55(2). Finally, NCAT's enforcement functions under the CAT Act to deal with contempt or civil penalty applications are separate to its functions under the ADR Act and thus do not bear on the character of the latter.[95]

32. The relief that NCAT may grant in determining an application for administrative review of conduct under the PPIP Act is also consistent with the exercise of non-judicial power.[96] The compensatory power in s 55(2)(a) of the PPIP Act is but one form of relief that NCAT may, in its discretion, grant in determining an application. The PPIP Act gives a person a right to apply for review, but nothing in that Act, the ADR Act or the CAT Act requires a person seeking administrative review to specify the relief they seek at the outset of the

20 review application. In circumstances where there is no necessary connection in the

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86 *Luton* (2002) 210 CLR 333 at 345 [21] (Gleeson CJ), 357 [66] (Gaudron and Hayne JJ); *Tasmanian Breweries* (1970) 123 CLR 361 at 398 (Windeyer J), 411 (Walsh J). NCAT does not finally determine questions of law, as its decisions on such questions are appellable to a court: CAT Act, s 83.

87 J [75]-[79], [87]; CAB 95-96, 99; *Re Ranger Uranium Mines Pty Ltd; Ex parte Federated Miscellaneous Workers' Union of Australia* (1987) 163 CLR 656 at 665 (the Court); *Precision Data* (1991) 173 CLR 167 at 189 (the Court).

88 J [93]-[94]; CAB 101; *Shell Co* (1930) 44 CLR 530 at 544-5.

89 J [95]; CAB 101-102; citing, relevantly, *Cominos v Cominos* (1972) 127 CLR 588 at 591 (McTiernan and Menzies JJ), 606 (Stephen J), 609 (Mason J), and *Stack v Commissioner of Patents* [1999] FCA 148 at [32]-[33].

90 *Huddart, Parker* (1909) 8 CLR 330 at 354-7 (Griffith CJ), 366 (Barton J), 376-381 (O'Connor J), 384-5 (Isaacs J), 418 (Higgins J); *Precision Data* (1991) 173 CLR 167 at 183, 192 (the Court).

91 *Shell Co* (1930) 44 CLR 530 at 544; *Precision Data* (1991) 173 CLR 167 at 183, 192 (the Court).

92 *Alinta* (2008) 233 CLR 542 at 598 [173] (Crennan and Kiefel JJ).

93 *Re Cram* (1987) 163 CLR 140 at 149 (Mason CJ, Brennan, Deane, Dawson and Toohey JJ).

94 *Alinta* (2008) 233 CLR 542 at 578-9 [96] (Hayne J), 597-8 [170]-[171] (Crennan and Kiefel JJ), 550 [1], 552 [9] (Gleeson CJ and Gummow J agreeing).

95 See J [100]-[103]; CAB 103-104.

96 Cf J [129]-[134]; CAB 113-115.

legislation between the relief sought by an applicant for review and the powers to be exercised by NCAT upon review, characterisation of the power being exercised should not turn on the nature of the relief sought by the applicant. For example, it could not be the case that, up to the point that NCAT determines to grant relief, it has undertaken an exercise entirely consistent with non-judicial power (for the reasons given above), but the applicant's choice to seek a particular form of relief, or NCAT's discretionary decision to make an order under s 55(2)(a), then converts that exercise into a judicial one.[97]

33. In any event, once it is accepted that there is no entitlement to compensation for contravention of the IPPs, the character of the repository of the power assumes some significance.[98] There is nothing inherently judicial about the Executive being empowered to determine that an amount of money should be paid by it to a person in connection with loss suffered by that person.[99] No-fault transport accident and victims of crime compensation schemes are obvious examples.[100] Nor is there anything inherently judicial about such a power being exercisable in connection with some kind of fault or maladministration. Legislation in several Australian jurisdictions confers powers on Executive decision-makers to make "act of grace" payments "not based upon any legal entitlement but … in response to moral obligations" or policy considerations.[101] Such powers are "peculiarly suited" to be exercised by the Executive.[102] Similarly, there would be no exercise of judicial power involved in the Executive determining to compromise, by the payment of money, some pending legal claim.[103]

34. In each of the examples given, the Executive is determining that it should expend public funds for the benefit of a particular person, without conclusively determining that a legal wrong has occurred. To the extent that Deane, Dawson, Gaudron and McHugh JJ in

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97 Cf J [141], [144]; CAB 117, 118.

98 *Precision Data* (1991) 173 CLR 167 at 191 (the Court).

99 There is also nothing inherently judicial about any of the forms of relief provided for in s 55(2)(b)-(g) of the PPIP Act.

100 *Thomas v Mowbray* (2007) 233 CLR 307 at 326-7 [12] (Gleeson CJ).

101 ***Toomer** v Slipper* [2001] FCA 981 at [47], considering the now repealed s 33(1) of the *Financial Management and Accountability Act 1997* (Cth). See, eg: *Public Governance, Performance and Accountability Act 2013* (Cth), s 65; *Government Sector Finance Act 2018* (NSW), s 5.7. At least at State level, non-statutory executive power would supply another source of authority for some "act of grace" payments, such as those made "in the ordinary course of administering a recognised part of the government of the States": *New South Wales v Bardolph* (1934) 52 CLR 455 at 493 (Gavan Duffy CJ), 507-508 (Dixon J), see similarly 496 (Rich J), 503 (Starke J).

102 *Toomer* [2001] FCA 981 at [47].

103 For example, in reliance on the powers addressed in n 101 above.

Brandy[104] considered that the power of the Human Rights and Equal Opportunity Commission to award damages made its functions "closely analogous to those of a court in deciding criminal or civil cases", those observations should be understood in light of there having been a determination of pre-existing rights in that case and the conclusion that, were it not for the registration and enforcement provisions, "it would be plain that the Commission does not exercise judicial power" (as addressed further below).[105] In the absence of NCAT determining a controversy as to a pre-existing legal right, the compensatory orders authorised by s 55(2)(a) are properly understood as being of a different character.

10 35. For completeness, Victoria submits that the above considerations also lead to the conclusion that there is no exercise of judicial power involved in administrative review of decisions under the GIPA Act. A "decision to provide access" under the GIPA Act constitutes the "factum upon which the legislation operates to fix … rights",[106] but does not determine the existence of such rights. That considerations of policy are involved in such proceedings is even clearer, given the centrality of the public interest test to the operation of the Act. In *Tasmanian Breweries*, *Precision Data* and *Alinta*, the requirement to make a determination by reference to the public interest was considered to point towards the relevant function being non-judicial.[107] In *Tasmanian Breweries*, Kitto J described the public interest as a "description the content of which has no fixity"[108]
20 and observed that consideration of the public interest had been committed to the relevant tribunal in that case because it would have been impractical for Parliament to decide what the public interest required in every individual case.[109]

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[104] (1995) 183 CLR 245 at 269. See also Griffith CJ's observation in ***Waterside Workers' Federation of Australia v JW Alexander Ltd*** that "assessment of … damages by a jury … is clearly a judicial act": (1918) 25 CLR 434 at 446.

[105] *Brandy* (1995) 183 CLR 245 at 269.

[106] *Tasmanian Breweries* (1970) 123 CLR 361 at 378 (Kitto J); *Attorney-General (Cth) v* ***Breckler*** (1999) 197 CLR 83 at 111 [45] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ).

[107] *Tasmanian Breweries* (1970) 123 CLR 361 at 376-7 (Kitto J), 399-400 (Windeyer J), 409 (Owen J), 411 (Walsh J); *Precision Data* (1991) 173 CLR 167 at 190-191 (the Court); *Alinta* (2008) 233 CLR 542 at 550-552 [2]-[7] (Gleeson CJ), 553-4 [14] (Gummow J), 561 [40] (Kirby J), 599 [176] (Crennan and Kiefel JJ). Cf *K-Generation* (2009) 237 CLR 501 at 528 [82] (French CJ), 563-4 [223] (Kirby J).

[108] *Tasmanian Breweries* (1970) 123 CLR 361 at 376 (Kitto J).

[109] *Tasmanian Breweries* (1970) 123 CLR 361 at 377 (Kitto J).

Enforceability is not conclusive

36. Enforceability has been considered to be an indicium of judicial power, but it has not been treated as, of itself, sufficient to support that characterisation.[110] However, the Court of Appeal appears to have held that the operation of s 78 of the CAT Act was conclusive of the nature of NCAT's function on the basis that, in light of s 78, *Brandy* was "materially indistinguishable".[111] In *Brandy*, the Court unanimously held that provisions of the *Racial Discrimination Act 1975* (Cth) providing for registration of determinations of the Human Rights and Equal Opportunity Commission with the Federal Court and enforcement of such determinations as orders of that Court involved the purported
10 conferral of judicial power (a characterisation not avoided by the operation of provisions concerning review of such orders in the Federal Court).[112]

37. However, in Victoria's submission, *Brandy* does not compel the conclusion that the enforceability of NCAT's determinations produces an exercise of judicial power.[113]

38. *First*, neither judgment in *Brandy* considered, as the Court of Appeal did in this case, that enforceability — in the absence of other indicia — would be sufficient to give rise to an exercise of judicial power. Mason CJ, Brennan and Toohey JJ quoted with approval Griffith CJ's definition in *Huddart, Parker* and referred to enforceability as having been seen sometimes as "an essential element",[114] although they observed that it had "not been found possible to offer an exhaustive definition of judicial power"[115] and that
20 enforceability was "not an exclusive test".[116] Similarly, Deane, Dawson, Gaudron and

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110 *Waterside Workers'* (1918) 25 CLR 434 at 451-3 (Barton J). See also Isaacs and Rich JJ at 463-4; although their Honours found the enforcement provisions in that case to be invalid, the enforcement concerned rights created by an industrial award, on breach or threatened breach of the award: 465, 470. See also *Federal Commissioner of Taxation v Munro* (1926) 38 CLR 153 at 201-202 (Higgins J); *Rola Co* (1944) 69 CLR 185 at 197-201 (Latham CJ); *Davison* (1954) 90 CLR 353 at 373-4 (Webb J); *Tasmanian Breweries* (1970) 123 CLR 361 at 387-8 (Menzies J), 408-409 (Owen J), 412 (Walsh J); *Breckler* (1999) 197 CLR 83 at 110-111 [42]-[43] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ); *Luton* (2002) 210 CLR 333 at 345-6 [22]-[23] (Gleeson CJ), 357-8 [67] (Gaudron and Hayne JJ), 361 [79] (McHugh J), 375-6 [125]-[132] (Kirby J), 388-9 [189]-[201] (Callinan J); *Alinta* (2008) 233 CLR 542 at 562 [44]-[45] (Kirby J), 577 [93], 577-9 [93]-[98] (Hayne J), 592 [151], 599 [175] (Crennan and Kiefel JJ).

111 After having determined that s 78 applied to orders made under s 55(2) of the PPIP Act: J [137]-[140]; CAB 116-117.

112 *Brandy* (1995) 183 CLR 245 at 260, 264 (Mason CJ, Brennan and Toohey JJ), 269, 271 (Deane, Dawson, Gaudron and McHugh JJ).

113 Cf J [140]-[143]; CAB 117-118.

114 *Brandy* (1995) 183 CLR 245 at 256 (Mason CJ, Brennan and Toohey J).

115 *Brandy* (1995) 183 CLR 245 at 257 (Mason CJ, Brennan and Toohey J).

116 Ibid.

McHugh JJ observed that judicial power "consists of many factors" and "the combination is not always the same", and that "[i]t is hard to point to any essential or constant characteristic", before finding, in respect of enforceability, that it may serve to characterise judicial power "when it is otherwise equivocal".[117]

39. *Secondly*, and relatedly, the significance of the enforceability provision was, in both judgments, premised on there having been a relevant determination of pre-existing rights.[118] That is, there was already the presence of an indicium of judicial power other than enforceability. Both judgments considered the determination of pre-existing rights to be central to the characterisation of the relevant power as judicial. Deane, Dawson, Gaudron and McHugh JJ considered it to be "clearly indicative of the exercise of judicial power",[119] while Mason CJ, Brennan and Toohey JJ said that it "falls exclusively within judicial power".[120]

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40. Both judgments treated the quality of being *binding* as a feature the absence of which would be conclusive against judicial power,[121] rather than treating *enforceability* as a feature which, if present, was conclusive of judicial power. Both judgments considered that the holding of an inquiry and the making of a determination by the Commission was not *itself* an exercise of judicial power (even though it determined existing rights and duties based upon existing facts and the law), because the determination was not binding or conclusive between the parties.[122] However, that situation was "reversed" by the registration provision which made the determination binding and enforceable as if it were a court order.[123] The registration provision therefore assumed determinative importance because the otherwise non-binding nature of the Commission's determination was fatal to the argument that it exercised judicial power. Accordingly, neither judgment can be

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117 *Brandy* (1995) 183 CLR 245 at 267-8 (Deanne, Dawson, Gaudron and McHugh JJ).

118 *Brandy* (1995) 183 CLR 245 at 258-9 (Mason CJ, Brennan and Toohey JJ), 269 (Deane, Dawson, Gaudron and McHugh JJ).

119 *Brandy* (1995) 183 CLR 245 at 269 (Deane, Dawson, Gaudron and McHugh JJ).

120 *Brandy* (1995) 183 CLR 245 at 258 (Mason CJ, Brennan and Toohey JJ).

121 The binding nature of a decision (J [142]; CAB 117-118) is not conclusive *for* judicial power, as many administrative and legislative decisions may answer the description of being "binding and authoritative": *Rola Co* (1944) 69 CLR 185 at 212 (Starke J); *Tasmanian Breweries* (1970) 123 CLR 361 at 402-403 (Windeyer J); *Brandy* (1995) 183 CLR 245 at 268 (Deane, Dawson, Gaudron, McHugh JJ); *Luton* (2002) 210 CLR 333 at 356 [63] (Gaudron and Hayne JJ).

122 *Brandy* (1995) 183 CLR 245 at 257 (Mason CJ, Brennan and Toohey JJ), 269 (Deane, Dawson, Gaudron and McHugh JJ).

123 *Brandy* (1995) 183 CLR 245 at 269 (Deane, Dawson, Gaudron and McHugh JJ), see also 254 (Mason CJ, Brennan and Toohey JJ). See also *Breckler* (1999) 197 CLR 83 at 100 [42] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ).

understood as suggesting that enforceability would be conclusive where, as in the circumstances of the appeal, there is no determination of existing rights or liabilities.[124]

41. *Thirdly*, underpinning the finding in each judgment that the registration provisions purported to confer judicial power on the Commission was the assumption that a decision could only take effect as an order of a court after an exercise of judicial power. That assumption is evident in the observations of Mason CJ, Brennan and Toohey JJ that, "[a]n exercise of executive power by the Commission and the performance of an administrative function by the Registrar of the Federal Court simply cannot create an order which takes effect as an exercise of judicial power; conversely, an order which takes effect as an
10 exercise of judicial power cannot be made except after the making of a judicial determination".[125] It is similarly evident in the restatement by Deane, Dawson, Gaudron and McHugh JJ of the Commonwealth's submission that "the registration of a determination is the commencement of proceedings in the Federal Court so that if a determination becomes enforceable it is by reason of the adjudication of the Federal Court, that being a court constituted in accordance with Ch III and capable of exercising judicial power".[126] The assumption that a decision could only take effect as an order of a court after an exercise of judicial power reflects the context in which the judicial power question arose in *Brandy*, namely, the application of the separation of powers derived from the *Constitution* to federal tribunals.[127]

20 42. However, the *Constitution* does not impose a separation of powers at the State level.[128] State legislatures may, subject to limited exceptions,[129] impose non-judicial powers on State courts and, outside the subject matters in ss 75 and 76 of the *Constitution*, impose judicial powers on State tribunals.[130] Further, State legislatures may confer concurrent

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124 That the Court only invalidated the registration and review provisions reflected how the plaintiff put the case: *Brandy* (1995) 183 CLR 245 at 258 (Mason CJ, Brennan and Toohey JJ).

125 *Brandy* (1995) 183 CLR 245 at 260 (Mason CJ, Brennan and Toohey JJ).

126 *Brandy* (1995) 183 CLR 245 at 270 (Deane, Dawson, Gaudron and McHugh JJ).

127 *Brandy* (1995) 183 CLR 245 at 256 (Mason CJ, Brennan and Toohey JJ), 267 (Deane, Dawson, Gaudron and McHugh JJ).

128 ***Kable*** *v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 at 78-80 (Dawson J), 92-94 (Toohey J), 109, 118 (McHugh J); *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531 at 573 [69] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

129 For example, the limitation identified in *Kable* (1996) 189 CLR 51.

130 *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575 at 600 [40] (McHugh J); *K-Generation* (2009) 237 CLR 501 at 544 [153] (Gummow, Hayne, Heydon, Crennan and Kiefel JJ). See also J [35], [36], [139].

jurisdiction on State tribunals and State courts.[131] And State legislatures may provide for administrative decisions to be deemed to be court orders in certain circumstances, so that the various enforcement mechanisms applicable to court orders are available in respect of those decisions. That position reflects the "constitutional authority of the State legislature in structuring the regulatory and judicial institutions of the State unconstrained by the doctrine of separation of executive and judicial powers".[132] Accordingly, to the extent that the federal separation of powers informed the question of characterisation in *Brandy*, it cannot be determinative of characterisation at the State level. For the same reason, the Court of Appeal's conclusion, drawn from *Brandy*, that "the character of the
10 order affects the characterisation of the power being exercised by the Tribunal" is of little relevance in the context of a State tribunal.[133] At the State level, an order of a tribunal made through the exercise of non-judicial power can be enforced as if it was a court order.

PART V: ESTIMATE OF TIME

43. It is estimated that up to 15 minutes will be required for presentation of Victoria's oral argument.

Dated: 22 May 2024

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[131] See, eg, *Tasty Chicks Pty Ltd v Chief Commissioner of State Revenue (NSW)* (2011) 245 CLR 446. For an example of substantially concurrent jurisdiction, see *Grand Ridge Plantations Pty Ltd v Valuer-General Victoria* [2024] VSC 129 at [112]-[115]. Accessibility, efficiency and cost-effectiveness are just some of the reasons why a State legislature may see fit to confer jurisdiction on a State tribunal with respect to a particular subject matter. See, eg, the second reading speech for the Victorian Civil and Administrative Tribunal Bill 1998 (Vic): Victoria, *Parliamentary Debates*, Legislative Assembly, 9 April 1998, 972 (Jan Wade, Attorney-General).

[132] *Public Service Association and Professional Officers' Association Amalgamated of NSW v Director (Public Employment)* (2012) 250 CLR 343 at 362 [35] (French CJ).

[133] J [140]; CAB 117.

IN THE HIGH COURT OF AUSTRALIA

SYDNEY REGISTRY

No. S39/2024

BETWEEN:

STATE OF NEW SOUTH WALES
Appellant

10 and

PAULINA WOJCIECHOWSKA
First Respondent

REGISTRAR OF NSW CIVIL AND ADMINISTRATIVE TRIBUNAL
Second Respondent

COMMISSIONER OF POLICE NSW POLICE FORCE
Third Respondent

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SECRETARY OF NSW DEPARTMENT OF COMMUNITIES AND JUSTICE
Fourth Respondent

REGISTRAR OF DISTRICT COURT OF NEW SOUTH WALES
Fifth Respondent

SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE STATE OF VICTORIA (INTERVENING)

Pursuant to Practice Direction No. 1 of 2019, Victoria sets out below a list of the constitutional
30 provisions, statutes and statutory instruments referred to in these submissions.

No.	Description	Version	Provisions
Constitutional provisions			
1	*Commonwealth Constitution*		ss 75, 76
Statutes			
2	*Administrative Decisions Review Act 1997* (NSW)	Current (1 January 2014 to date)	ss 4, 7-9, 53, 55(1), 63, 64(1), (4) and

			(5), 65, 66(2)(a) and (b)
3	*Civil and Administrative Tribunal Act 2013* (NSW)	Historical version (1 July 2022 to 13 July 2023)	ss 46, 48, 60(1) and (2), 73, 77, 78(1)-(3), 83
4	*Financial Management and Accountability Act 1997* (Cth)	Historical version (30 June 2000 to 23 May 2001)	s 33(1)
5	*Government Information (Public Access) Act 2009* (NSW)	Historical version (5 September 2022 to 30 June 2023)	ss 9, 12-15, 77(1), 100
6	*Government Sector Finance Act 2018* (NSW)	Current (30 October 2023 to date)	s 5.7
7	*Privacy and Personal Information Protection Act 1998* (NSW)	Historical version (5 September 2022 to 13 July 2023)	ss 8-19, 20(1), 21, Div 3 of Pt 2, 29-31, 36(1), (2)(a) and (k), 41, 49, 50, 52(1)(a), (2), (4), 53, 54(3) and (5), 55, 62(1), 63(1), 67(1), 68(1) and (2), 69
8	*Public Governance, Performance and Accountability Act 2013* (Cth)	Current (23 August 2017 to date [C2017C00269])	s 65