



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: S39/2024  
File Title: State of New South Wales v. Wojciechowska & Ors  
Registry: Sydney  
Document filed: Form 27F - R1 Outline of oral argument  
Filing party: Respondents  
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#### Important Information

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**Form 27F – Outline of oral submissions**

Note: see rule 44.08.2.

S39/2024

IN THE HIGH COURT OF AUSTRALIA  
SYDNEY REGISTRY

BETWEEN:

State of New South Wales  
Appellant

and

Paulina Wojciechowska  
First respondent

Registrar of NSW Civil and Administrative Tribunal  
Second respondent

Commissioner of Police NSW Police Force  
Third respondent

Secretary of NSW Department of Communities and Justice  
Fourth respondent

Registrar of District Court of New South Wales  
Fifth respondent

**FIRST RESPONDENT'S  
OUTLINE OF ORAL SUBMISSIONS**

**Part I:** *This outline is in a form suitable for publication on the internet.*

**Part II:**

1. First respondent thanks the Court for the appointment of the Amici, and the Amici for their submissions. However, the first respondent disagrees with some submissions of the Amici, including those regarding GIPA Act. A reference will be

- made to the *Freedom of Information Act 1989* (NSW) to show that the decision making “in substitution” is not exclusive to tribunals [SSS-JBA: 122-123].
2. The first respondent’s key document is the Explanatory Note to the Administrative Tribunal Bill 1997 (NSW). There is obscurity of the meaning of div 3 of pt 3 of ch 3 of the ADR Act – see the Day 1 transcript and various attempts to reconcile s 55 of the PPIP Act and the ADR Act (eg the existence of s 53 of the PPIP Act as compared with the inapplicability of s 53 of the ADR Act, the existence of s 66(2) of the ADR Act, s 55(1) of the PPIP Act and s 53(8) of the PPIP Act). Hence, it is permissible to use extrinsic materials such as the Explanatory Note [see First R Supplementary Book of Authorities]. The submissions in [10]-[17] of the first respondent’s written submissions will be repeated with the modification that she will discuss replacement of conduct with an actual decision in s 55 of the PPIP Act. Notably, “conduct” is not a series of decisions: cf s 5 with s 6 of the Administrative Decisions (Judicial Review) Act 1977 (Cth) (SuppSuppSuppJBA, vol. 1, pp. 15-18) and the definition of conduct in Supplement to Supplement to Supplementary Book of Authorities (SuppSuppSuppJBA, vol. 1, pp. 137-138).
  3. The first respondent will address some of the Court’s questions from Day 1. The answers to these questions will be intertwined with the argument below to the extent of the first respondent’s capabilities.
  4. It is undisputed that the NSW Police Force is an emanation of one State, the first respondent is a resident of another State, and NCAT is not a State court.
  5. It is further undisputed that the only judicial power that can be exercised in respect of a matter between the NSW Police Force and the first respondent is judicial power of the Commonwealth as well as that the merits review is an exercise of an executive power. It is assumed that by administrative power the appellant means executive power.
  6. The first respondent says:
    - proceedings commenced under s 55 of PPIP Act are a matter;
    - most if not all of div 3 of pt 3 of ch 3 of in ADR Act do not apply to the review provided for in s 55 of the PPIP Act;
    - the State Parliaments could not validly confer an executive power in respect of a matter listed in ss 75-76 of the Constitution;
    - the power created in s 55 of PPIP Act is judicial.

7. Section 7(2) of the ADR Act provides as follows:

(2) For the avoidance of doubt (and without limiting subsection (1) or section 6):

(a) the conduct of an administrator (or a refusal by an administrator to engage in conduct) is an administratively reviewable decision if enabling legislation identifies that conduct or refusal as conduct or refusal over which the Tribunal has administrative review jurisdiction, and

(b) in its application to any such conduct or refusal by an administrator, any reference in this Act (however expressed) to an administrator making an administratively reviewable decision includes a reference to an administrator engaging or refusing to engage in the conduct.

8. It is submitted that the Court will not easily reinterpret the plain language of ss 21, 37, 52 and 55 of the PPIP Act and s 7 of the ADR Act which defines the administratively reviewable decision as contraventions of ss 8-19 off PPIP Act – to do so would be to undermine the supremacy of the Parliament. It would also undermine the NSW Parliament’s attempt to ensure the flow of data from the overseas (see art. 45 of General Data Protection Regulation) in order not to hinder international trade and commerce (see Second Reading speeches in FRSBA: SuppJBA, vol.7, pp. 2329-2330).

Dated: 6 February 2025



.....(signed).....

Name: Paulina Wojciechowska

*First respondent*