HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
HOBART REGISTRY

BETWEEN:

CITTA HOBART PTY LTD
First Appellant

PARLIAMENT SQUARE HOBART LANDOWNER PTY LTD
Second Appellant

and

DAVID CAWTHORN
Respondent

RESPONDENT'S SUBMISSIONS

PART I FORM OF SUBMISSIONS

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

PART II CONCISE STATEMENT OF ISSUES

2. The respondent advances the following contentions. ***First***, the Full Court correctly concluded that the Anti-Discrimination Tribunal (**Tribunal**) erred in law in dismissing the complaint on the sole ground that the s 109 defence was not colourable. ***Second***, the Tribunal erred in dismissing the complaint, rather than adjourning its inquiry, to enable a Ch III court to determine the s 109 defence. ***Third***, the complaint and the s 109 defence were separate "matters", and the adjudication of the complaint by the Tribunal would not involve the exercise of federal jurisdiction. ***Fourth***, the Full Court was correct in finding that the s 109 defence was misconceived as the provisions of the *Anti-Discrimination Act 1998* (Tas) (**AD Act**) that prohibit discriminatory access to premises on the grounds of disability are not inconsistent with the *Disability Discrimination Act 1992* (Cth) (**DD Act**) and the *Disability (Access to Premises – Buildings) Standards 2010* (**Standards**).

PART III SECTION 78B NOTICE

3. The appellants have issued a notice under s 78B of the *Judiciary Act 1903* (Cth).

PART IV MATERIAL FACTS IN DISPUTE

4. There are no material facts in dispute.

PART V ARGUMENT

A. GROUND ONE

A.1 Overview

5. The Tribunal dismissed the complaint of the respondent and the Paraquad Association of Tasmania Inc on the basis that the appellants had "raised a federal matter by way of defence to the complaint that relies on s 109 of the *Constitution* and allegations of inconsistency between certain provisions of the [DD Act] and the [AD] Act" [**CAB 15 [40]**]. Because the Tribunal concluded that the defence was not "colourable" in the sense of being made "to fabricate jurisdiction" [**CAB 15 [43]**] it eschewed "[a]ny attempt to assess" the merits of the claim at all [**CAB 15 [43]**]. Federal jurisdiction was invoked, it said, "regardless of the merits of the arguments raised by the [appellants]" [**CAB 15 [43]**].

6. On appeal, the Full Court set aside the Tribunal's orders and remitted the proceeding to it for its determination [**CAB 27**]. Their Honours accepted that the Tribunal had jurisdiction to determine the complaint despite the appellants having raised the s 109 defence, which Blow CJ said was made in good faith and not colourable but was nonetheless "misconceived", [**CAB 29 [5], fifth bullet point**].

7. The Full Court did not err in its reasoning. The respondent contends that a claim does not attract federal jurisdiction if it is (a) colourable in the sense of being made merely to fabricate jurisdiction; or (b) misconceived such that it can be summarily dismissed. The respondent agrees with the submissions and reasoning advanced by the Commonwealth on ground one [**Cth [13]-[22]**] but he contends that the appropriate criterion is that there be a reasonable prospect of success on the federal issue, which must be both real and substantial: see [22] below. Point (b) required the Tribunal to determine the arguability of the s 109 defence, and it failed to discharge its duty to properly determine its own jurisdiction by not doing so. The Full Court was thus correct to find error in the Tribunal's approach, and the Commonwealth is wrong to regard the Tribunal's decision as exemplifying the proper application of the legal principles which it propounds [**Cth [11]**]. And while the Commonwealth then criticises the Full Court for

going too far in actually determining the appellants' constitutional argument, the respondent submits that it properly did so in application of point (b).[1]

8. The respondent also submits that even if the s 109 defence was sufficiently arguable as to attract federal jurisdiction in its determination, that did not transform the authority of the Tribunal to adjudicate the complaint itself into federal jurisdiction. There were two matters, being the s 109 defence and the complaint: see [51]-[61] below.

A.2 Colourability is not the only limit on claims that fail to engage federal jurisdiction

9. The respondent accepts that a claim will not attract federal jurisdiction if it is "colourable" in the sense that the claim is made merely to fabricate jurisdiction. Part of the explanation
10 for this qualification is as stated by the Commonwealth: "the federal claim is not truly part of the controversy between the parties": **Cth [15]**. But the rest of the explanation is that "[t]his is best seen as an aspect of all courts' implied authority to protect themselves against abuses of process".[2]

10. Where a claim is made for such an improper purpose, it is correct in principle that the strength or weakness of the claim does not matter, because it is the (improper) purpose for which the claim is made that renders it an abuse. The position in this regard is no different to how a court assesses whether to stay a proceeding permanently on the basis that it was brought for an improper purpose. In such a case, a stay can be appropriate even when the moving party has a prima facie case.[3]

20 11. It does not follow from the fact that the strength or weakness of the case is irrelevant where an improper purpose to fabricate jurisdiction is found that the palpable weakness of the case is irrelevant in all other cases. To the contrary, it has long been recognised that a claim can be characterised as an abuse of process where it is sufficiently weak as to warrant that description.[4] Characterisation as an abuse will be appropriate if the claim (or the defence to it) is frivolous, hopeless, untenable, misconceived or lacking in

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1 See [27] below.

2 See Mark Leeming, *Authority to Decide: The Law of Jurisdiction in Australia* (2nd ed, 2020) at 43; Justice Allsop, "Federal Jurisdiction and the Jurisdiction of the Federal Court of Australia in 2002" (2002) 23 *Australian Bar Review* 29 at 45.

3 *Williams v Spautz* (1992) 174 CLR 509 at 522 (Mason CJ, Dawson, Toohey and McHugh JJ).

4 See, eg, *Cox v Journeaux [No 2]* (1935) 52 CLR 713 at 720; *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125 at 129-130; *Walton v Gardiner* (1993) 177 CLR 378 at 393 (Mason CJ, Deane and Dawson JJ); *Rickard Constructions Pty Ltd v Rickard Hails Moretti Pty Ltd* [2008] NSWCA 283 at [91]-[92] (appeal dismissed: *Jeffery & Katauskas Pty Ltd v SST Consulting Pty Ltd* (2009) 239 CLR 75).

substance,[5] because it would abuse the processes of a court to require an opponent to answer such a claim (or defence) and a court to determine it in circumstances where it can otherwise be summarily dismissed or struck out. In this dimension of abuse of process, the strength of the claim is critically important.

12. There is no good reason to take guidance from only that part of abuse of process which is concerned with improper purposes. Indeed, there is good reason not to confine the inquiry in that way. ***First***, a Tribunal must form an opinion about its jurisdiction, which includes any matter relevant to the existence or otherwise of jurisdiction. That includes constitutional limitations,[6] and should include the determination of any matter relevant to whether, in fact, its processes are being abused or otherwise misused.

13. ***Second***, if, as the respondent contends, abuse of process informs the occasions when the making of a claim is insufficient to attract federal jurisdiction, then there is no reason why some abuses should attract federal jurisdiction (improper purposes) but not others (palpably weak claims). All such claims abuse or misuse the processes of the Court (or Tribunal), and there is no principled basis to distinguish one abuse or misuse from another. A subjective intention to engage federal jurisdiction is not enough to transform an abusively weak case into a claim that can engage such jurisdiction.

14. ***Third***, it is important to recall that Ch III of the Constitution operates by necessary implication to deny the States power to confer adjudicative authority upon any entity other than a court of a State in so far as matters within ss 75 and 76 of the *Constitution* are concerned.[7] Before the States are denied that authority, there ought to be a principled demonstration that federal jurisdiction has been engaged. That is achieved not only by examining whether there is an improper purpose but also by scrutinising whether the claim has a degree of merit such that it can properly be said that federal jurisdiction is engaged and State power curtailed. There is no reason why any applicable test should be "necessarily narrow", as **AS [36]** implicitly suggests.

15. ***Fourth***, "[w]hether federal jurisdiction with respect to one or more of the matters listed in ss 75 and 76 of the *Constitution* has been engaged in a legal proceeding is a question

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5 See generally *Chopra v Department of Education and Training* [2019] VSCA 298 at [134] (Tate, Whelan and Kyrou JJA); *Kimberley Diamonds Ltd v Arnautovic* (2017) 252 FCR 244 at [104] (Foster, Wigney and Markovic JJ).

6 See also *Wilson v Chan* (2020) 103 NSWLR 140 at 114 [14] (Leeming JA), 156 [73]-[74] (White JA).

7 See *Burns v Corbett* (2018) 265 CLR 304.

of objective assessment".[8] Federal jurisdiction and the limits of State authority should not depend only upon questions of a litigant's purpose. That would slide inevitably into a situation where federal jurisdiction is engaged merely because a party asserts and believes that it is. As the Commonwealth contends, this cannot be right [**Cth [13]**], **contra NSW [10], [16]**].

16. ***Fifth***, the Commonwealth's contention that the authorities contemplate that unarguability is a separate basis to conclude that a claim does not engage federal jurisdiction should be accepted [**Cth [16], [19]**].[9] The appellants in **AS [18]-[25]** do not grapple with these cases, and overlook what the Commonwealth points out about *Burgundy Royale Investments Pty Ltd v Westpac Banking Corporation Ltd*.[10]

17. ***Sixth***, it is entirely anomalous that a claim that would be struck out or not permitted to proceed to trial as not reasonably arguable can still be regarded as a claim in the matter to be adjudicated.

18. ***Seventh***, the Commonwealth's contention that the Court should take guidance from the cases on s 78B of the *Judiciary Act 1903* (Cth) should be accepted [**Cth [20]-[22]**]. In that context, it is well established that where "the asserted constitutional point is frivolous or vexatious or an abuse of process, it will not disclose the existence of a matter in the sense of any real controversy which can attract the operation of s 78B".[11] In such a case, the claim "will not attach to the matter in which it is raised the character of a matter arising under the Constitution or involving its interpretation".[12] Section 78B "does not impose a duty on the court not to proceed pending the issue of the notice no matter how trivial, unarguable or concluded the constitutional point might be".[13] The appellants' treatment of Federal Court authorities on colourability fails to appreciate that these need to be harmonised with the body of authority on s 78B: see **AS [26]-[38]**.

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8 *Agtrack (NT) Pty Ltd v Hatfield* (2005) 223 CLR 251 at 262 [32] (Gleeson CJ, McHugh, Gummow, Hayne and Heydon JJ).

9 See *Hopper v Egg and Egg Pulp Marketing Board (Vic)* (1939) 61 CLR 665 at 673 (Latham CJ; McTiernan J agreeing), 677 (Starke J); *R v Cook; Ex parte Twigg* (1980) 147 CLR 15 at 26 (Gibbs J; Stephen, Mason and Wilson JJ agreeing).

10 (1987) 18 FCR 212.

11 *Nikolic v MGICA Ltd* [1999] FCA 849 at [9] (French J).

12 *Australian Competition and Consumer Commission v CG Berbatis Holdings Pty Ltd* (1999) 95 FCR 292 at 297 [14] (French J).

13 *Sagacious Legal Pty Ltd v Wesfarmers General Insurance Ltd [No 3]* (2010) 184 FCR 516 at [14].

19. ***Eighth***, it is generally accepted that the unarguability of a claim may be relevant to proof of colourability.[14] But if that is so, it is not apparent why this factor cannot be given direct application as a basis to conclude that federal jurisdiction is not engaged.

20. ***Ninth***, it may also be noted that, in the United States, there is a "doctrine of substantiality" which prevents a federal court from determining claims apparently within their jurisdiction if they are so attenuated and insubstantial as to be devoid of merit.[15]

A.3 The requisite degree of untenability

21. At a minimum, a claim which is "so *clearly* untenable that it cannot *possibly* succeed"[16] should not engage federal jurisdiction [see **Cth [14], [18]**]. Of course, "[a]rgument, perhaps even of an extensive kind, may be necessary to demonstrate that the case of the plaintiff is so clearly untenable that it cannot possibly succeed".[17]

22. The Court should not, however, confine the category of claims that will not attract federal jurisdiction on account of a lack of merit to this verbal formula: **contra Cth [14], [18], [23], [30]**. "What amounts to abuse of court process is insusceptible of a formulation comprising closed categories. Development continues."[18] While abuse of process is always concerned ultimately with the protection of the court's processes,[19] how it is to be applied will vary over time including in accordance with statutory modification. If, pursuant to statute, the Parliament has decided not to tolerate the courts and opponents having to decide and oppose claims of greater (but still insubstantial) merit than was the case in the past, such as through a statutory test for summary dismissal based on there being no reasonable prospect of success, such modern conceptions of abuse of process

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14 See, eg, *Johnson Tiles Pty Ltd v Esso Australia* (2000) 104 FCR 564 at 598-599 [88] (French J; Beaumont and Finkelstein JJ agreeing); *Qantas Airways Ltd v Lustig* (2015) 228 FCR 148 at 169 [88] (Perry J); *Athavle v New South Wales* [2021] FCA 1075 at [9] (Griffiths J); Geoffrey Lindell, *Cowen and Zines's Federal Jurisdiction in Australia* (4h ed, 2016) at 199.

15 *Arbaugh v Y & H Corporation*, 546 US 500 at 513 (2006) (Ginsburg J); *Hagans v Lavine*, 415 U.S. 528 at 538-539 (1974) (White J); *Ex parte Poresky*, 290 US 70 at 80 (1909); *Goosby v Osser*, 409 US 512 at 518 (1973) (Brennan J).

16 *Spencer v Commonwealth* (2010) 241 CLR 118 at 140 [55] (Hayne, Crennan, Kiefel and Bell JJ), quoting *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125 at 130 (Barwick CJ).

17 *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125 at 130 (Barwick CJ).

18 *Batistatos v Roads & Traffic Authority of New South Wales* (2006) 226 CLR 256 at 265 [9] (Gleeson CJ, Gummow, Hayne and Crennan JJ). See also See, eg, *Moti v The Queen* (2011) 245 CLR 456 at [10] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

19 See generally *Victoria International Container Terminal Ltd v Lunt* (2021) 93 ALJR 363.

can and should be given effect. Further, the claim or defence should be both "real and substantial" (**(Cth) [21]**).

23. But it ultimately does not matter which standard in respect of the merits is applied in this case as the Tribunal erred in failing altogether to consider the merits of the s 109 defence.

A.4 The decisions below

24. The Tribunal's reasoning is neither "impeccable" [**AS [39]**] nor a model exemplar of the above principles **contra Cth [29]-[31]**. The Tribunal considered only whether the appellants' s 109 defence was colourable without any consideration at all as to its arguability. There is no dispute between the parties and interveners that the Tribunal had to form its own opinion as to whether it lacked jurisdiction to determine the s 109 defence. The Full Court was right to discern error in the Tribunal's decision based solely on the application of the colourability criterion.

25. Blow CJ (Wood J agreeing), after finding that the reasoning of the Tribunal was wrong,[20] described the constitutional defence as "misconceived" [**CAB 29[5], fifth bullet point**]. This can be understood as his Honour concluding that the Tribunal was required to consider the arguability of the s 109 defence, and that had it done so, it should have found that the defence, being misconceived, was susceptible of summary dismissal before trial (rather than following a full trial). The choice of that word appears to be informed by the standard for summary dismissal of complaints (acknowledging, of course, this was a defence and not a complaint) in s 99(2)(a) of the AD Act. That provision permitted the Tribunal to dismiss a complaint summarily if "the complaint is trivial, vexatious, misconceived or lacking in substance".

26. For the above reasons, ground one should be dismissed.

B. GROUND TWO

B.1 Overview

27. The Full Court correctly determined that any allegation of direct or indirect inconsistency between the relevant provisions of the DD Act and the AD Act was misconceived: **CAB 32-33 [16]-[18], [22]-[23]** (Blow CJ), **CAB 35-36 [29], [33], [37]-[38]** (Wood J), **CAB**

[20] The reasoning that his Honour said was wrong was set out in his reasons at **CAB 29 [5]** and included that, as the asserted constitutional defence was not colourable the Tribunal not having federal adjudicative authority, could not make a determination, and was obliged to dismiss the complaint.

53-54 [102] (Estcourt J). Compliance with the Standards operates to render inapplicable federal provisions that would otherwise make certain conduct unlawful, but neither the Standards nor s 34 of the DD Act provide a defence to the complaint, nor do they disapply the AD Act. Nor do the Standards cover the field, as the Minister did not provide for the Standards to state they affect or displace State laws. There is no "implicit negative proposition" that nothing other than the Standards is to be the subject of the relevant regulation.[21] In the circumstances, a person is required to comply with both the applicable federal and State provisions in the DD Act and the AD Act respectively.

28. The appellants rely solely on direct inconsistency in support of the first appeal ground: **AS [49], fn 51**. The Commonwealth's additional reliance on indirect inconsistency [**Cth [38], [39], [47]]** is equally misconceived.

29. The relevant principles are well established.[22] There will be a direct inconsistency if a State law alters, impairs or detracts from a Commonwealth law, and there will be an indirect inconsistency if the Commonwealth law is intended to cover the subject matter with which it deals. Inconsistency "is to be determined as a matter of construction",[23] and "a provision which expressly or impliedly, allows for the operation of other laws may be a strong indication that it is not so intended."[24]

B.2 The Commonwealth and State regime

(a) The Disability Discrimination Act 1992 (Cth)

30. The DD Act provides for how it is to interact with State and Territory laws. Section 13(3) provides for the concurrent operation of State and Territory law by expressly stating it "is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act". Then, s 13(4) provides that a person may not make a claim of discrimination under the DD Act if the person has already made a complaint or initiated a proceeding in relation to the same act or omission under State or Territory provisions. This provides for a model of election. It avoids double jeopardy by requiring a complainant to elect between pursuing complaints under one or other

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21 *Work Health Authority v Outback Ballooning Pty Ltd* (2019) 266 CLR 428 (***Outback Ballooning***) at 447-448 [35] (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ).

22 *Outback Ballooning* at 447-448 [32]-[35] (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ)..

23 *Outback Ballooning* at 447 [34] (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ).

24 *Outback Ballooning* at 447-448 [35] (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ); *R v Credit Tribunal; Ex parte General Motors Acceptance Corporation* (1977) 137 CLR 545; 51 ALJR 612; *New South Wales v Commonwealth ("the Hospital Benefits Case")* (1983) 151 CLR 302; 57 ALJR 268.

regime.[25] On its face, the DD Act plainly does not intend to exclusively or exhaustively cover the field.

31. Section 31(1) of the DD Act provides that the Minister may, by legislative instrument, make disability standards "in relation to any area in which it is unlawful under [Part 2]" of the DD Act for a person to discriminate against another person on the ground of a disability of the other person. Before making a standard the Minister must take into account the views of the State or Territory Minister responsible for disability discrimination.[26]

32. Section 13(3A) states that s 13(3) does not apply to the provisions concerning disability standards in Div 2 of Part 2 of the DD Act. This might seem to set disability standards apart from the general scheme of concurrency that permeates the DD Act. But that is not so. Rather, s 13(3) is disapplied because s 31(2)(b) permits a disability standard itself to specify the extent to which State and Territory laws are to have concurrent operation. Disability standards are not necessarily exclusive in their operation. Thus, s 13(4)(a) contemplates that "a matter dealt with by a disability standard" also falls within the election model created by the concurrent federal, State and Territory schemes:[27] see **CAB 52 [94]**. Section 13(2) and (4) maintain the concurrent scheme, notwithstanding s 13(3A), save and except where there is an intention stated in a Standard to affect the operation of State and Territory laws.

33. Section 13(3A) has a specific and informative history. The Productivity Commission, in its review of the DD Act, had recommended[28] that to avoid uncertainty the DD Act should be amended so that where disability standards and State and Territory legislation address the same specific matter, the disability standard "should prevail". The response of the federal government to the recommendation was that "it would be desirable for State and Territories to incorporate disability standards directly into their own anti-discrimination legislation".[29] However, instead of specifying that disability standards would prevail over

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25 See Explanatory Memorandum, Disability Discrimination Bill and Other Human Rights Legislation Amendment Bill 2008 (Cth) at 12 [64]; Explanatory Memorandum, Disability Discrimination Bill 1992 (Cth) at 8. See also AD Act, s 64(1)(f); DD Act, s 13(5).

26 DD Act, s 31(3).

27 See also Explanatory Memorandum Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008 (Cth) at 12 [63] and [65].

28 Australian Government, *Review of the Disability Discrimination Act 1992*, Productivity Commission Inquiry Report No. 30, 30 April 2004, recommendation 14.2.

29 Government Response to the Productivity Commission's Review of the *Disability Discrimination Act 1992* (January 2005), 16.

State or Territory law, the DD Act was amended to "partly implement"[30] the recommendation by allowing "the Standards themselves [to] provide how they are to operate in relation to State and Territory laws".[31]

34. Section 32 provides that it is "unlawful" for a person to contravene a disability standard. This operates in a similar way to other provisions in Part 2 of the DD Act,[32] which render conduct "unlawful" for the purposes of the DD Act. As with the other provisions of that Part, contravention of s 32 is "unlawful discrimination"[33] capable of founding a complaint to the Australian Human Rights Commission (**AHRC**).[34] The provision does not of itself confer on a person a right of action in a court because of, inter alia, the operation of s 125.

35. Section 125(1) provides that the DD Act "does not confer on a person a right of action in respect of the doing of an act that is unlawful under the provision of Part 2, unless a provision of this Act expressly provides otherwise".[35] As a result, the DD Act does not provide for a freestanding right, duty or for liability; it exists within the exclusive regime for redressing unlawful discrimination under Pt 2 of the DD Act that is provided for in Pt IIB of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**).[36] In this way the DD Act and the Standards, in conjunction with Pt IIB of the AHRC Act, operate separately from any relevant State or Territory law.

36. Where a person complies with a disability standard, s 34 provides that Part 2 of the DD Act (other than Division 2A) does not apply. Section 34 is only a defence to a claim of unlawful discrimination in reliance upon Part 2 of the DD Act in an application under s 46PO of the AHRC Act. It does not provide a defence to a claim under State legislation such as the complaint the subject of this proceeding under the AD Act. Accordingly, the appellants' reliance on a defence under s 34 before the Tribunal was misconceived.

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30 Explanatory Memorandum to the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008 at [92].

31 Explanatory Memorandum, Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008 (Cth) at [92].

32 DD Act, ss 15-30, 35-37, 39.

33 Part IIB of the AHRC Act provides for redress for "unlawful discrimination". Section 3 relevantly provides that "*unlawful discrimination* means any acts, omissions or practices that are unlawful under …(a) Part 2 of the *Disability Discrimination Act 1992*…".

34 AHRC Act, s 46P.

35 See also Explanatory Memorandum, Disability Discrimination Bill 1992 (Cth) at 39. See also s 41 of the DD Act.

36 See, in the context of comparable provisions of the *Racial Discrimination Act 1975* (Cth), *Re East, ex parte Nguyen* (1998) 196 CLR 354 at 362 [18], 391 [32], 366 [34] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ), 387-389 [76]-[81], 391 [84] (Kirby J).

(b) The Standards

37. The objects of the Standards are set out in cl 1.3: (a) to ensure dignified, equitable, cost-effective and reasonably achievable access to buildings for people with a disability; and (b) to give certainty to building certifiers, developers and managers that if access is provided in accordance with the Standards then such access "will not be unlawful under the Act". The "Act" is the DD Act: see definition at cl 1.4(1).

38. Clause 2.1 indicates that the Standards apply to the limited class of new buildings set out in the clause. Clause 2.3 indicates that the "Standards apply to the extent that provision of access is a matter in relation to which, under Part 2 of the [DD Act], it is unlawful to discriminate and a matter covered by the Access Code". Clauses 4.1, 4.2 and the note to cl 5.3 also refer to the "unlawful" discrimination provided for in Pt 2 of the DD Act.

39. The objects set out in cl 1.3(a) are given effect to by the Standards being incorporated into the Building Code of Australia (**BCA**) which forms part of the National Construction Code (**NCC**). The NCC is an initiative of the Council of Australian Governments to incorporate all on-site construction requirements into a uniform single code. The Standards, made in 2010, were adopted into the BCA by those governments on 1 May 2011[37] and have been enacted by those governments.[38]

(c) The Anti-Discrimination Act 1998 (Tas)

40. The relevant provisions of the AD Act said to alter, impair or detract from the DD Act and Standards are ss 14 (direct discrimination), 15 (indirect discrimination), 16(k) (disability) and 22(1)(c) (access to goods, services and facilities). There is a degree of similarity between those provisions and the counterpart provisions of the DD Act: s 5 (direct discrimination), s 6 (indirect discrimination), s 23 (access to premises), s 24 (access to goods, services and facilities).

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[37] "National Construction Code 2016, Volume 1 Building Code of Australia" p 760 cl 9.0, "National Construction Code Series, Building Code of Australia 2011: Class 2 to Class 9 Buildings: Guide" p 190.

[38] See *Building Act 2004* (ACT), s 49; *Environmental Planning and Assessment Act 1979* (NSW), Part 6, ss 6.3(1), 6.8(1)(a); *Environmental Planning and Assessment Regulation 2000* (NSW), cl 145(1)(b); *Building Act 1993* (NT), ss 49 and 52; *Building Regulations 1993* (NT), cl 4; *Building Act 1975* (Qld), s 14; *Planning, Development and Infrastructure Act 2016* (SA), s 102(1)(b); *Building Act 2016* (Tas), s 11; *Building Act 1993* (Vic), s 16(2); *Building Regulations 2018* (Vic), cl 10; *Building Act 2011* (WA), s 37.

B.3 No inconsistency

41. There is no inconsistency because the DD Act and the AD Act are part of a federal, State and Territory scheme of concurrent discrimination laws.[39] So much is clear as a matter of legislative history. In *Viskauskas v Niland*,[40] this Court held that the *Racial Discrimination Act 1975* (Cth) (**RD Act**) was indirectly inconsistent with the racial discrimination provisions of the *Anti-Discrimination Act 1977* (NSW). The Commonwealth Parliament remedied this in 1983 by inserting s 6A into the RD Act,[41] in terms that are substantively the same as s 13(2), (3) and (4) of the DD Act, which was intended to have the same effect.[42]

10 42. The DD Act reflects the constitutional limits placed on the Commonwealth which were acknowledged in s 12. The States are not so confined in determining the types and nature of discrimination to be prohibited and this has produced disparity between the provisions of the various States and Territories, reflecting different legislative history, policies and priorities. In that way the national scheme provides a uniform corpus of federal discrimination laws but permits each State and Territory to enact concurrent protections against additional forms of discrimination[43] and with machinery and defence provisions different from those in the federal statutes.[44]

43. This provides the context in which s 13(3A) must be considered. While s 13(3A) disapplies s 13(3), it was not intended to unmoor disability standards from the scheme of
20 concurrency entirely. The point was only to leave it to the Standards themselves to provide for the extent to which the Standards may, or may not, affect the operation of State and Territory laws. Where a Standard does not do so in clear terms, concurrency

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39 Federal: in addition to the DD Act, the RD Act, the *Sex Discrimination 1984* (**SD Act**), the *Age Discrimination Act 2004* (**Age D Act**); State/Territory: *Equal Opportunity Act 2010* (Vic), *Anti-Discrimination Act 1991* (Qld), *Anti-Discrimination Act* 1992 (NT), and *Discrimination Act 1991* (ACT), *Equal Opportunity Act 1984* (SA), *Equal Opportunity Act 1984* (WA).

40 (1983) 153 CLR 280.

41 *Racial Discrimination Amendment Act 1983* (Cth), s 3. See further *University of Wollongong v Metwally* (1985) 158 CLR 447 at 456 (Gibbs CJ), 459-460 (Mason J).

42 See similarly s 10 of the SD Act and s 12 of the Age D Act.

43 See, eg, the prohibition of discrimination in the AD Act on attributes such as industrial activity (s 16(l)), political belief or affiliation (s16(m)), political activity (s16(n)), religious belief or affiliation (s16(o)), irrelevant criminal record (s16(q)), irrelevant medical record (s16(r)).

44 Section 12 of the AD Act establishes the Tribunal with s 81 permitting it to hold an inquiry into a complaint and make findings and orders under s 89. Subject to certain qualifications, each party is to pay his her or its own costs: s 95. The exceptions and exemptions available under Div 5 of Pt 5 of the AD Act also differ in significant respects from those available under the DD Act, in particular s 29A of the DD Act.

should be inferred, because concurrency is provided for under and permeates the existing legislative regime. Further, had some exclusivity been intended, one would have expected the Minister to have said so in the Standards. After all, that was the very point of s 13(3A) – could very easily be done, and is the kind of drafting technique well known to drafters (even of delegated legislation). It is also relevant that, as set out at [39] above, the Standards were intended to form part of, and were incorporated into, the BCA and the NCC and, consistently with the object in cl 1.3(a), have been enacted into State and Territory law.

44. In this context, in the absence of a clear statement that the operation of State and Territory laws are intended to be affected, the Court should not construe the Standards as impliedly displacing such laws. That conclusion is supported by the Standards themselves. Not only is such an express statement lacking in the Standards, but the Standards express themselves by reference to the DD Act only. They refer to their effect in terms that apply to discrimination, the subject of Part 2 of the DD Act. The Full Court was correct in its conclusions in that regard: **CAB 32-33 [17]** and **35 [29]**.

45. Contrary to **AS [62]** the relevance of the objects of clause cl 1.3(a), is that it addresses the issue of compliance with the Standards as explained at [36] above. The object of the Standards in cl 1.3(b) is to give certainty as to unlawfulness under the DD Act but not under State law. The Full Court was correct to so hold: **CAB 33 [20]** (Blow CJ), **35 [31]** (Woods J). That approach is supported by cll 2.3, 2.4 4.1, 4.2 and 5.3.[45]

46. It follows from the proper construction of the DD Act and the Standards, that the AD Act does not alter, impair or detract from the Standards or the DD Act because the federal provisions operate concurrently with the State provisions. Blow CJ was correct to find that the Standards provide "minimum requirements" which may be enforced through the making of a complaint under the federal scheme to the AHRC: **CAB 33 [22]**. The effect of the concurrent regimes is that compliance with the Standards does not provide a defence to the relevant provisions of the AD Act. Compliance with the Standards may support a finding of reasonableness in response to a claim of indirect discrimination under State law, contribute towards a defence of unjustifiable hardship under s 48(1), or assist in demonstrating a defence founded on s 24 that conduct was reasonably necessary to

[45] See [38] above.

comply with State or federal law: see [62] – [67] below. But those defences arise under State law.

47. The appellants' reliance on *Australian Mutual Provident Society v Goulden*[46] at **AS [55]** is misplaced. The State discrimination legislation was found to "undermine and, to a significant extent, negate the legislative assumption of the underlying ability of a registered life insurance company to classify risks and fix rates of premium".[47] It was not possible to comply with both the federal and State statutes without fundamentally undermining the former. Unlike here, the two statutes were not addressing the same subject matter[48] and were not part of a concurrent regime of statutes. The more relevant authority is *Viskauskas v Niland*[49] because the Court there held that it was possible, in relation to comparable legislation, to comply with both.

48. Contrary to **AS [62]** the Standards are not qualified, impaired or negated by the AD Act. The Full Court was correct to hold that the two operate concurrently and the effect is cumulative: **CAB 33 [22]** (Blow CJ), **35 [29] (**Wood J).

49. On the basis of the construction of the DD Act and the Standards set out above, the federal law was intended to be supplementary to or cumulative upon State law, so that no inconsistency can arise.[50] The submission at **Cth [38]-[39]** that a Productivity Commission recommendation has the effect that the Standards should prevail over State law should be rejected; as discussed at [33] above, the recommendation was not fully implemented by the amending legislation.

50. For these reasons, Ground 2 should fail.

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46 (1986) 160 CLR 330.

47 (1986) 160 CLR 330 at 337 (the Court).

48 As to which see *Viskauskas v Niland* (1983) 153 CLR 280 at 293 (the Court).

49 (1983) 153 CLR 280.

50 *Ex parte McLean* (1930) 43 CLR 472 at 483 (Dixon J); *Commercial Radio Coffs Harbour v Fuller* (1986) 161 CLR 47 at 57-58.

PART VI NOTICE OF CONTENTION

C.1 First ground

51. The first ground of the notice of contention is established if the respondent succeeds in the substance of what he has submitted in response to grounds one and/or two in the Notice of Appeal.

C.2 Second ground

52. The second ground of the notice of contention contends that the Tribunal was wrong to dismiss the complaints because it ought instead to have adjourned its inquiry while the appellants' s 109 defence was determined in a court that had the jurisdiction to determine it. That is so even assuming for the purposes of the notice of contention that the appellants have succeeded in their arguments on appeal that their s 109 defence was sufficient to attract federal jurisdiction.

53. At the outset it is necessary to identify the matter or matters before the Tribunal. It is well established that a "matter" is not necessarily co-extensive with a proceeding. The fact that the constitutional question was raised in a defence to a complaint is therefore not determinative. Ordinarily, claims will fall within a single matter if they arise out of "common transactions and facts" or "a common substratum of facts", or where claims are "so related" that "the determination of one will either render the other otiose or necessitate its determination".[51] These considerations would tend to suggest that the respondent's complaint and the appellants' s 109 defence can be regarded as one matter. That is not, however, the conclusion which the Court should reach.

54. It is significant that it is the AD Act which creates the relevant rights, defences and liabilities, and it is that Act that confers upon the Tribunal alone the power to make the orders sought by the respondent under that Act. While the s 109 defence was pleaded in the appellants' points of defence, it was not in dispute before the Tribunal that it could not be adjudicated upon by the Tribunal as opposed to a Ch III court. In that context it is properly to be regarded as "disparate" or "distinct"[52] or "completely severable"[53] from the adjudication of the respondent's complaint. ***First***, the defence did not engage with the substance of the complaint, and instead cut in at an anterior stage to deny the operation

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51 See *Re Wakim; Ex parte McNally* (1999) 198 CLR 511 at [140] (Gummow and Hayne JJ).
52 *Petrotimor Companhia de Petroleos SARL v Commonwealth* (2003) 128 FCR 507 at [24]-[28], [38]-[39]; *Re Wakim; Ex parte McNally* (1999) 198 CLR 511 at [140] (Gummow and Hayne JJ).
53 *Carter v Egg & Egg Pulp Marketing Board (Vic)* (1942) 66 CLR 557 at 580-581.

of the relevant aspects of the applicable State law altogether. ***Second***, it was a defence that only a Ch III court could determine and the Tribunal could not, whereas the complaint was a matter which only the Tribunal could determine and a Ch III court could not. The s 109 defence was thus properly to be regarded as anterior, and disparate, distinct and severable, from the AD Act claims.

55. The same legal controversy can give rise to separate matters because of the availability of different remedies.[54] The fact that there must be two matters is clear from the circumstance that a Ch III court could not determine the whole of the controversy constituted by the complaint; only the Tribunal had authority to make the orders sought by the respondent and only a Ch III Court could determine the s 109 defence. This is, in substance, what the respondent apprehends is submitted by the A-G of NSW **[39]-[45]**, albeit those submissions are to the effect that in the circumstances of the present case a Ch III court could have determined the s 109 issue leaving the Tribunal to determine the complaint if the s 109 issue was resolved in his favour even if there was only one matter.

56. Further, when the complaint was made on 19 December 2016, and when it was referred for inquiry by the Tribunal on 7 August 2017 pursuant to s 78 of the AD Act,[55] the complaint sought the exercise of State jurisdiction. The making of the complaint had the consequence that, by reason of s 13(4) of the DD Act, the complainants were not entitled to make a complaint or institute a proceeding under the AHRC Act, in respect of the subject matter of the complaint. It was only when the Points of Defence were filed on 6 November 2018 that the s 109 defence to the complaint arose as an issue before the Tribunal.[56]

57. At the hearing by the Tribunal of the appellant's application for dismissal of the complaint, the respondent contended that the Tribunal should adjourn the hearing to enable the s 109 defence to be determined on the application of the respondent by a Ch III court and for the matter to then be returned to the Tribunal.[57] **Cf. Cth [31].** The respondent submitted that a failure by the appellants to take that step would be relevant to colourability.[58] The appellants opposed that course submitting that the complaint should

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54 *Abebe v Commonwealth* (1999) 197 CLR 510 at 529-530 [36] (Gleeson CJ and McHugh J).

55 **RFM 5**.

56 Points of Defence [21A] **RFM 26.**

57 Transcript of hearing before the Tribunal, T83.26-29 **RFM 145** and T88.38-40 **RFM 150**.

58 Transcript of hearing before the Tribunal, T89.15-24 **RFM 151**.

be dismissed for want of jurisdiction or, if the Tribunal was reluctant to do so, it could adjourn the inquiry *sine die* contending that would have the same practical effect.[59]

58. The Tribunal's dismissal of the complaint had the consequence that, even if the s 109 defence was misconceived or was otherwise determined in the respondent's favour, no tribunal or court could adjudicate upon it. The consequence of the dismissal was to avoid any adjudication of the complaint, or of the s 109 defence, rather than to enable the "complete adjudication" of those matters.[60]

59. In that context, the Ch III object of complete adjudication of both the s 109 defence and the complaint required they each be regarded as separate matters so that the defence could be adjudicated upon in a Ch III court, and the complaint could be adjudicated upon in the Tribunal with the outcome of that adjudication depending on whether the s 109 defence was resolved in the respondent's favour.

60. The Tribunal's exercise of its power of dismissal under s 99(2)(b) of the AD Act was conditional on it being "just and appropriate" to do so. For the reasons set out above, it was neither just nor appropriate for the Tribunal to dismiss the complaint solely on the basis that the s 109 defence was not colourable.

61. In the circumstances, the Tribunal ought to have adjourned its inquiry while a court with jurisdiction to do so determined the s 109 defence (which would then determine whether the provisions of the AD Act relied upon by the respondent were valid). As that defence was determined by the Full Court to be misconceived (in lieu of it remitting the proceeding to the Tribunal to form its own opinion on arguability), there was no error in it remitting the matter to the Tribunal on the basis that the adjudication of the complaint would not involve the exercise of federal jurisdiction as the s 109 defence was misconceived and the State legislation not inoperative. In that respect the present case is distinguishable from *Burns v Corbett*[61] where the tribunal had no jurisdiction at all to adjudicate the dispute between residents of different States.

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59 Respondent's Submissions in Reply to the Complainants' Supplementary Jurisdictional Submissions dated 5 June 2019 [32]: **RFM 199**.

60 *Ex Parte Walsh v Johnson; In re Yates* (1925) 37 CLR 36 at 130 (Starke J); *R v Bevan; Ex parte Elias and Gordon* (1942) 66 CLR 452 at 465-466 (Starke J); *Fencott v Muller* (1983) 152 CLR 570 at 608 (Mason, Murphy, Brennan and Deane JJ).

61 (2018) 265 CLR 304.

C.3 Third ground

62. Ground 3 is that ss 14, 15, 16(k) and 22(1)(c) of the AD Act do not alter, impair or detract from the Standards, and there is no inconsistency, because the Standards are "picked up" by Tasmanian law and compliance with those standards is, by operation of s 24 of the AD Act, a complete answer to a claim of discrimination under the State law.[62] The Full Court erred by finding that s 24 had no operation because the State law did not require the developer *not* to provide disabled access at the third entrance: **CAB 34-35 [25]** (Blow CJ), **CAB 35 [29]** (Wood J agreeing).[63]

63. Section 11 of the *Building Act 2016* (Tas) (**Building Act**) requires building work to comply with the NCC[64], volume 1 of which is the BCA. The BCA transposes the text of the Standards into the BCA at Part D3.[65] In addition, cll Tas DP10, Tas D3.0 and Tas D3.13 of the BCA , in terms, require compliance with the Standards in Tasmania thereby also picking up the Commonwealth provisions.[66] Relevantly, this means that the appellants are required by operation of State law to comply with cll D3.2(1) and (2) of the Standards, and the appellants plead compliance.[67]

64. Section 24(a) of the AD Act permits "discrimination against another person if it is reasonably necessary to comply with" a State law and s 11 of the Building Act requires compliance. The High Court in *Waters v Public Transport Commission*[68] construed a defence analogous to s 24 as "what it is necessary to do in order to comply with a specific requirement directly imposed by the relevant provision".[69] The word "reasonably" adds little more here, save that the test is objective.

65. In *Waters*, the statutory provision under which the direction was given did not, in fact, require the doing of any "specific thing".[70] It was against the scheme of the *Equal*

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62 As pleaded by the appellants at Amended Points of Defence at [28]: **AFM 38-39.**
63 Estcourt J, not deciding at **CAB 52 [93],** but see discussion at **CAB 52 [90]-[92].**
64 Section 11 of the Building Act applies to a person performing building work (s 11(1)), the owner of a building (s 11(2)), a person named on a permit (s 11(3)), and a building surveyor (s 11(4)).
65 BCA pp 197-210, cl D3.2**.**
66 Clause Tas DP10 requires a building to be "accessible in accordance with the requirements of a Standard made under the [DD Act]", cl Tas 3.0(a) requires that where a deemed to satisfy solution is proposed cl Tas DP 10 is satisfied by complying with cl Tas D3.13; and cl Tas D3.13 says that a building solution [a 'deemed to satisfy solution' or a 'performance solution' or a combination of both] must comply with the Standards": p 628. "Accessible" is defined in cl A1.1 as "having features to enable use by people with a disability": p 16.
67 Amended Points of Defence, [21A(a)(vi)-(viii), (b)] **AFM 37.**
68 *Waters v Public Transport Commission* (1991) 173 CLR 349 (***Waters***)
69 *Waters* at 368 (Mason CJ and Gaudron JJ), 382 (Deane J), 413 (McHugh J). See also *Cain v Australian Red Cross Society* [2009] TASADT 03.
70 *Waters* at 367, 370 (Mason CJ and Gaudron J, Deane J agreeing).

Opportunity Act 1984 (Vic) for it to give way to any subordinate direction to which compliance is required.[71] By contrast, s 11 of the Building Act requires direct compliance with the specific requirements of the Standards[72] which are wholly directed towards disability discrimination in access to premises. Section 11 may also be contrasted with those cases where a defence of compliance with a general statutory duty, such as in work health and safety laws, has been rejected.[73]

66. Here, the specific act which requires compliance is the provision of an accessway[74] to a building from the main points of the pedestrian entry at the boundary (cl D3.2(1)) or, in a building, the provision of an accessway through the principal pedestrian entrance and not less than 50% of pedestrian entrances (cl D3.2(2)). The compromise inherent in the Standards may, as a result, require the builder to provide an accessway that the AD Act would not have required, or permit the provision of less accessways that the AD Act would have required.[75] The Full Court erred by adopting a construction which disaggregated one point of entry from the others, when the Standards apply by aggregating multiple such access points. The imposition of the Standards by the Building Act would make little sense, and indeed it would introduce incoherence,[76] if each such entry could be examined separately for compliance with ss 14, 15, 16(k) and 22(1)(c) of the AD Act.

67. The Standards contrast with other general statutory obligations because they have been made under disability (federal) disability discrimination legislation and are in keeping with the purpose and scheme of the AD Act. Section 24 of the AD Act does not leave room for inconsistency. To interpret it to do so would undermine not just the text but also the context and purpose of the federal/State statutory scheme embodied in the DD Act, the adoption of the Standards in the BCA and the enactment of the requirements of the Standards into State law.

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71 *Waters* at 369 (Mason CJ and Gaudron J, Deane J agreeing).

72 In much the same way that the *Education (General Provisions) Act 1989* (Qld) required the otherwise discriminatory consideration of age in *Malaxetxebarria v Queensland (No 2)* [2007] QCA 132 at [7] (Williams J), [53] (Keane JA) and [121] (Lyons J); also *Hashish v Minister for Education of Queensland* [1997] QCA 13.

73 As to which see *State Transit Authority v Sloey & Anor* [1999] NSWSC 47 (Barr J) and consideration of s 15 of the *Occupational Health and Safety Act 1983* (NSW); see similarly, *David Jones (Australia) Pty Limited v P* [1997] NSWSC 347 (Abadee J).

74 An "accessway" is defined as an "accessible path of travel (as defined in AS1428.1) to, into or within a building": Standards, cl A1.1.

75 See, for example, cl D3.2(2)(a) contemplates less than 50% of all pedestrian entrances not having an accessible accessway.

76 *Commissioner of Police (NSW) v Eaton* (2013) 252 CLR 1 at 32 [92] (Crennan, Kiefel and Bell JJ).

C.4 Fourth ground

68. Even if the Standards are found to be inconsistent with ss 14, 15, 16(k) and 22(1)(c) of the AD Act, such inconsistency cannot rise above the "area of exclusive operation"[77] of the Standards: **CAB 36 [38]** (Woods J). The Standards apply to buildings[78] and "an action concerning the provision of access to relevant buildings (and facilities and services within them)".[79] However, the subject development includes an open public plaza or square where various facilities, goods and services are provided, such as bars, cafes and restaurants, and which are not in a building.[80] The respondent has pleaded that the access to those facilities, goods and services is discriminatory[81] and such matters would remain for determination by the Tribunal even if the relevant provisions of the AD Act do not operate to the extent of the inconsistency.

PART VII ESTIMATE OF TIME

69. It is estimated that 2.5 hours will be required for presentation of the oral arguments of the respondent.

Dated 12 November 2021

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77 *Outback Ballooning* at 455 [61]-[62], 464-465 [84] (Gageler J).
78 Standards, cl 2.1.
79 Standards, cl 2.3.
80 Amended Points of Claim [3(a) and (e)], [6]-[8] **AFM 22-23.**
81 Amended Points of Claim [8], [17]-[23] **AFM 24-35.**

IN THE HIGH COURT OF AUSTRALIA
HOBART REGISTRY

BETWEEN:

CITTA HOBART PTY LTD
First Appellant

PARLIAMENT SQUARE HOBART LANDOWNER PTY LTD
Second Appellant

and

DAVID CAWTHORN
Respondent

ANNEXURE TO THE RESPONDENT'S SUBMISSIONS

Pursuant to paragraph 3 of the *Practice Direction 1 of 2019*, the respondent sets out below a list of the particular constitutional provisions and statutes referred to in its submissions.

No.	Legislation	Provision(s)	Version
Commonwealth			
1.	*Age Discrimination Act 2004*	s 12	Current (Compilation No 45)
2.	*Australian Human Rights Commission Act 1986*	ss 3, 46P, 46PO, Pt IIB	Current (Compilation No 50)
3.	Commonwealth Constitution	ss 75, 76, 109 Ch III	Current
4.	*Disability Discrimination Act 1992*	ss 5, 6, 12, 13, 15-32, 34-37, 39, 41, 125, Div 2 Pt 2	Current (Compilation No 33)

5.	*Disability (Access to Premises – Buildings) Standards 2010*	cll 1.3, 1.4, 2.1, 2.3, 2.4, 4.1, 4.2, note to 5.3, A1.1, D3.2	Compilation prepared on 1 May 2011
6.	*Racial Discrimination Act 1975*	s 6A	Current (Compilation No 17)
7.	*Racial Discrimination Amendment Act 1983*	s 3	As made
8.	*Sex Discrimination Act 1984*	s 10	Current (Compilation No 42)
9.	*Judiciary Act 1903*	s 78B	Current (Compilation No 48)
State			
10.	*Anti-Discrimination Act 1998* (Tas)	ss 12, 14, 15, 16, 22, 24, 48, 64, 78, 81, 89, 95, 99, Div 5, Part 5	Version current from 8 May 2019 to 4 November 2021
11.	*Building Act 2004* (ACT)	s 49	Current (Republication No 42) Effective: 1 July 2020
12.	*Building Act 1993* (NT)	ss 49 and 52	Current (Reprint: REPB002) As in force at 1 May 2016
13.	*Building Regulations 1993* (NT)	cl 4	Current (Reprint: REPB002R1) As in force at 27 May 2021
14.	*Building Act 1993* (Vic)	s 16	Current (Version 133) 20 October 2021

15.	*Building Regulations 2018* (Vic)	cl 10	Current (Version 013) S.R. No. 38/2018 As at 30 September 2020
16.	*Building Act 1975* (Qld)	s 14	Current Reprint current from 1 October 2020
17.	*Building Act 2011* (WA)	s 37	Current 30 June 2021
18.	*Building Act 2016* (Tas)	s 11	Current Version current from 5 November 2021
19.	*Planning, Development and Infrastructure Act 2016* (SA)	s 102	Version 20 September 2021
20.	*Environmental Planning and Assessment Act 1979* (NSW)	Part 6, ss 6.3(1), 6.8(1)(a);	Current version as at 4 June 2021
21.	*Environmental Planning and Assessment Regulation 2000* (NSW)	cl 145	Current version [2000-557] as at 1 November 2021