

**IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY**

No S186 of 2017

B E T W E E N:

**ATTORNEY GENERAL FOR NEW SOUTH
WALES**

Appellant

and

GARRY BURNS

First Respondent

TESS CORBETT

Second Respondent

**ATTORNEY-GENERAL OF THE
COMMONWEALTH**

Third Respondent



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FIRST RESPONDENT'S SUBMISSIONS

Part I: Publication of Submissions

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

Part II: Issues

2 The issues in this appeal are:

20 a. whether the Civil and Administrative Tribunal of New South Wales (**NCAT**), which is not a court of the State, has jurisdiction to hear and determine proceedings under the *Anti Discrimination Act 1977* (NSW)

Date of document: 16 August 2017

Filed on behalf of: The first respondent

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(AD Act) where one of the parties to the proceedings is resident in another State.

- b. further, and in particular, whether the exercise of State diversity jurisdiction by NCAT in relation to claims arising under the AD Act creates an inconsistency with s 39(2) of the *Judiciary Act 1903* (Cth) (**Judiciary Act**) and therefore, by the operation of s 109 of the Constitution, the AD Act is inoperative to that extent; and
- c. whether there is an implied limitation on the legislative power of the State of New South Wales that prevents the conferral of judicial power on NCAT to deal with matter identified in s 75(iv) of the Constitution.

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Part III:

- 3 Notices in compliance with section 78B of the Judiciary Act 1903 have been given by the Appellant.

Part IV:

- 4 There are no contested material facts.

Part V:

- 5 In addition to the appellant's statement of applicable constitutional provisions, statutes and regulations, the first respondent relies on his submissions in Matter No S183 of 2017 as to other constitutional provisions, statutes and regulations.

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Part VI:

- 6 The first respondent endorses the submissions of the appellant.
- 7 Further, if it needs to be said, even though the AD Act provides a qualified right to appeal, being only on a question of law (see s 83 of the *Civil and Administrative Tribunal Act, 2013 (NSW)*), that does not alter, impair or detract from the conditional and universal operation of federal law. It is but another example of the appellate structure that exists in various state and federal legislation that confine rights of appeal but remain compliant with the
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conditions in s. 39B of the Judiciary Act; see for example s 39 of the *Local Court Act 1979* (NSW); s 44 of the *Administrative Appeal Tribunal Act 1975* (Cth); s 57 of the *Land and Environment Court Act 1979* (NSW); and s 179B of the *Industrial Relations Act 1996* (NSW); and s 127 of the *District Court Act 1973* (NSW).

Part VII:

8 Not applicable.

Part VIII:

9 The first respondent estimates that oral submissions in reply, if any, would
10 require no more than 15 minutes.

Dated: 16 August 2017



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