



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S39/2024

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

OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND

Part I: Internet publication

1. This outline of oral submissions is in a form suitable for publication on the Internet.

Part II: Propositions to be advanced in oral argument

2. The *Burns* implication is confined to ‘matters’: *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216, [1] (**JBA vol 3, tab 28, 1147**).
3. The focus on ‘matter’ in *Citta* suggests that that concept is essential to the implication: see, eg, *Citta* at [2]-[3], [29]-[31] (**JBA vol 3, tab 28, 1148, 1155-6**). That is especially so given that the broader test now proposed by the Commonwealth was the subject of argument in *Citta*: (2022) 276 CLR 216, 221 (**JBA vol 3, tab 28, 1144**). Cf CS [19].

4. The Commonwealth raises the prospect of State non-courts exercising a judicial power to give ‘advisory opinions’ with respect to matters arising under the Constitution: **CS [12]**. That prospect is illusory. An ‘advisory opinion’ does not resolve a question about rights, duties and liabilities of parties. It does not correspond to general descriptions about judicial power: *R v Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 361, 374 (**JBA vol 5, tab 46, 2104**); *Attorney-General (Cth) v Alinta* (2008) 233 CLR 542, [158] (**JBA vol 3, tab 23, 896**); *AZC20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2023) 97 ALJR 674, [124] (**JBA vol 8, tab 65, 3215**). The conferral of that function on an arm of the executive could not be characterised as judicial.
5. The Court in *In Re Judiciary and Navigation Acts* (1921) 29 CLR 257 (**JBA, vol 5, tab 48, 2172**) rejected the contention that the law in that case simply provided for an advisory opinion: (1921) 29 CLR 257, 264 (**JBA 2179**), 270 (**JBA 2185**).
6. The Commonwealth’s reliance on *Commonwealth v Queensland* (1975) 134 CLR 298 (**JBA vol 3, tab 29**) is also misplaced. That case involved a law with highly unusual features that could not be replicated in relation to State tribunals. It involved the purported conferral of jurisdiction on the Privy Council, ‘the highest in the hierarchy of Australian courts, the supreme tribunal by whose decisions, speaking generally ... all Australian courts are bound’. That jurisdiction was to determine questions about the constitutional validity of Commonwealth and State laws: (1975) 134 CLR 298, 310 (Gibbs J) (**JBA vol 3, tab 29, 1187**).
7. In any event, this Court should not decide the large question of whether the *Burns* implication should be expanded unless necessary to decide the case: **Reply [16]**.

Dated: 5 February 2025



Gim Del Villar KC SG

Felicity Nagorcka

Kent Blore