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
HOBART REGISTRY

BETWEEN: **CITTA HOBART PTY LTD**
First Appellant

PARLIAMENT SQUARE HOBART LANDOWNER PTY LTD
Second Appellant

and

DAVID CAWTHORN
Respondent

PROPOSED SUBMISSIONS OF THE AUSTRALIAN HUMAN RIGHTS COMMISSION

PART I: CERTIFICIATION

1. It is certified that these submissions are in a form suitable for publication on the internet.

PART II: BASIS OF INTERVENTION

2. The Australian Human Rights Commission (**AHRC**) seeks leave to intervene or to appear as amicus curiae pursuant to the implied powers of the High Court.

PART III: WHY LEAVE SHOULD BE GRANTED

3. The AHRC should be heard by the High Court, either as intervener or as amicus.

4. The express statutory functions of the AHRC include where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that "involve issues of discrimination on the ground of disability" (*Disability Discrimination Act 1992* (Cth) s 67(1)(l)) or "involve human rights issues" (*Australian Human Rights Commission Act 1986* (Cth) s 11(1)(o)). This appeal involves issues concerning the manner in which rights

given by the *Disability Discrimination Act 1992* (Cth) and international human rights instruments such as the *Convention on the Rights of Persons with Disabilities* are protected in Australia.

5. The AHRC wishes to make submissions which challenge a proposition of law which underpins the appellants' case and which the respondent has not so far disputed. This is a case which falls within the circumstances identified by Brennan CJ in *Levy v Victoria* (1997) 189 CLR 579 at 603 (applied in *Roadshow Films Pty Ltd v iiNet Limited* (2011) 248 CLR 37 at 39-40 [3], [7] (French CJ, Gummow, Hayne, Crennan and Kiefel JJ)), namely, "the parties to the particular proceeding may not present fully the submissions on a particular issue, being submissions which the Court should have to assist it to reach a correct determination".

6. If the AHRC's contentions are not heard, an essential, but constitutionally suspect, premise of the appellants' case will not be tested. That would be contrary to the basic principle that "[t]he validity and scope of a law cannot be made to depend on the course of private litigation" and "[t]he legislative will is not surrendered into the hands of the litigants": *Gerhardy v Brown* (1985) 159 CLR 70 at 142 (Brennan J). Nor can parties "concede" into invalidity (or validity) that which in truth bears the opposite character: *Coleman v Power* (2004) 220 CLR 1 at 89 [231] (Kirby J), 112-113 [298] (Callinan J); *International Finance Trust Co Ltd v New South Wales Crime Commission* (2009) 240 CLR 319 at 387 [162] (Heydon J).

7. Further, the AHRC also addresses a discrete issue raised by paragraph [47] of the submissions of the Commonwealth Attorney-General (**CS**). There, the Commonwealth contends that the Tasmanian Act "purports to enter a field intended exclusively to be covered by the Federal Access Standard and the Federal Act", that field being "the provision of access to buildings covered by the Federal Access Standard". The AHRC's position is that it is unnecessary and therefore inappropriate to decide whether the Federal Access Standard and the Federal Act (as defined in the CS) cover the field of "provision of access to buildings covered by the Federal Access Standard". It is unnecessary because the only question that may need to be addressed is whether there is a "non-colourable" claim of inconsistency between the Commonwealth scheme and the State scheme without needing to resort to allegories of a field of the breadth suggested. If the Court does reach the issue, it should conclude that there is no intention in the Commonwealth laws to say, exhaustively

or exclusively, what shall be the law governing "provision of access to buildings covered by the Federal Access Standard".

PART IV: SUBMISSIONS

Introduction

8. The AHRC's case starts from the uncontroversial proposition that the negative implication articulated in ***Burns*** *v Corbett* (2018) 265 CLR 304 is a limitation on the conferral of the *judicial power* of the Commonwealth (particularly that part of the judicial power of the Commonwealth involved in the conclusive quelling of a controversy comprising a federal matter) on a body which is not a "court of a State": *Burns* at 325-326 [1]-[4], 336-339 [45]-[50] (Keifel CJ, Bell and Keane JJ), 345-346 [67]-[69], 355-360 [94]-[106] (Gageler J). That negative implication does not prevent the conferral of non-judicial power.

9. The apparent assumption of the parties in these proceedings (noted by the Attorney-General for the State of New South Wales in paragraph 27 of his submissions, and by the Attorney-General of the Commonwealth at paragraph 5.2 of her submissions) is that, in hearing and determining the Respondent's complaint, the Tasmanian Anti-Discrimination **Tribunal**, would necessarily be exercising judicial power. A similar assumption was made in *Burns* itself (note *Burns v Corbett* (2017) 96 NSWLR 247 at [30]), albeit in circumstances where, in respect of one of the appellants, NCAT's orders had been registered in the Supreme Court and were in the process of being enforced.

10. The AHRC contends that that assumption is unsound. That is so for reasons which these submissions will develop, but in short are these. The hearing and determination of a dispute is not exclusively judicial. Nor is the issuing of rulings declaring and creating rights. Whether powers of that kind are judicial in character turns on the circumstances. That the Tribunal is *not* a court tells in favour of its powers being characterised as non-judicial. If the Tribunal's powers are judicial in any respect, it is its power to make orders which attract to themselves the capacity (under s 90 of the ***Anti-Discrimination Act*** *1998* (Tas)) to be filed in the Supreme Court of Tasmania and enforced as if they were orders of the Supreme Court. Ch III of the Constitution denies to the Tribunal the power to make orders in federal matters which attract to themselves that attribute. But it does not deny to the Tribunal the power to hear and determine matters, and make orders, which do not attract that capacity: put another way, it does not deny to the Tribunal the power to exercise *non-judicial* power.

Consistently with legislative mandate,[1] which in turn reflects general principle,[2] the *Anti-Discrimination Act* can and must be given an operation which is subject to Ch III of the Constitution. The appeal should be dismissed because the Tribunal has power to inquire into and determine the Respondent's complaint. It is premature – and constitutionally unnecessary and inappropriate – to speculate as to whether there will ultimately be any attempt to rely on s 90 of the *Anti-Discrimination Act* in circumstances where a relevant order of the Tribunal did not attract to itself the attribute of being enforceable under s 90.

11. These submissions are made by the AHRC and are not made on behalf of the Commonwealth. We turn now to elaborating this argument.

10 **The *Anti-Discrimination Act***

12. It is convenient to start by outlining the scheme established by the *Anti-Discrimination Act* at all times relevant to this appeal.[3]

13. Section 12(1) of the *Anti-Discrimination Act* conferred power on the responsible Minister to establish a Tribunal. The Minister exercised that power to establish the Tribunal.[4]

14. The *Anti-Discrimination Act* did not describe the Tribunal as a "court". Its members must have included one lawyer, but need not have wholly or even primarily been comprised of

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1 *Acts Interpretation Act 1931* (Tas) s 3.

2 *Clubb v Edwards* (2019) 267 CLR 171 at 218-222 [140]-[149] (Gageler J), 313-318 [415]-[425] (Edelman J); *Graham v Minister for Immigration and Border Protection* (2017) 263 CLR 1 at 32-33 [66] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ); *Knight v Victoria* (2017) 261 CLR 306 at 324-325 [32]-[34] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ).

3 The applicable law is the law as it stood no later than the date of the Full Court's decision, 23 December 2020: *Fox v Percy* (2003) 214 CLR 118 at 129 [32] (Gleeson CJ, Gummow and Kirby JJ); *State of NSW v Kable* (2013) 252 CLR 118 at 145 [71] (Gageler J); *Al-Kateb v Godwin* (2004) 219 CLR 562 at 606 [115] (Gummow J). On 5 November 2021, amendments were made to the *Anti-Discrimination Act* by the *Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021* (Tas). Pursuant to those amendments, the "Tribunal" with jurisdiction to inquire into complaints is the Tasmanian Civil and Administrative Tribunal (s 3(1)). Following the commencement on 5 November 2021 of the *Tasmanian Civil and Administrative Tribunal Amendment Act 2021* (Tas), the Tasmanian Civil and Administrative Tribunal has power to order that proceedings be transferred to the Tasmanian Magistrates Court in circumstances where the Tribunal considers that it does not have, or there is some doubt that it has, jurisdiction by reason that the determination of the complaint may involve the exercise of federal jurisdiction (*Tasmanian Civil and Administrative Tribunal Act 2020* (Tas) s 131). Several provisions in Div 4 of Pt 6 were also repealed on and from 5 November 2021. As a result of the amendments made on and from 5 November 2021, the Anti-Discrimination Tribunal was abolished (*Tasmanian Civil and Administrative Tribunal Act 2020* (Tas) s 148) and pending proceedings before the Anti-Discrimination Tribunal are deemed to have been commenced before the Tasmanian Civil and Administrative Tribunal (s 152).

4 Note *Commonwealth of Australia v Anti-Discrimination Tribunal (Tasmania)* (2008) 169 FCR 85 at 98 [51] (Goldberg J), 103 [82] (Weinberg J) and 148 [257] (Kenny J).

lawyers: ss 12(2), (3). There is no reason to think the Tribunal is a "court of a State" for the purposes of Ch III of the Constitution.

15. The Tribunal's functions included conducting "an inquiry into a complaint" (s 13(a)).

16. Div 1A of Pt 6 of the Act provided for the making of complaints to the Anti-Discrimination Commissioner. The complaint was to be "about discrimination or prohibited conduct".

17. "Discrimination" was "conduct referred to in sections 14 and 15" of the Act: s 3. "Discrimination" encompassed direct discrimination (s 14) and indirect discrimination (s 15). Sections 14 and 15 did not themselves *proscribe* discrimination; they did no more than define discrimination. However, s 16 did proscribe some forms of discrimination.

18. "Prohibited conduct" was "any conduct referred to in Division 2 of Part 4": s 3. Div 2 of Pt 4 created a series of statutory duties. Section 17 proscribed certain kinds of offensive, humiliating, intimidating, insulting, ridiculing or harassing conduct. Section 18 proscribed certain kinds of victimising conduct. Section 19 proscribed forms of incitement of hatred, contempt or severe ridicule. Section 20 proscribed publication or display of signs (etc) which expressed or depicted discrimination or prohibited conduct. Section 21 was an accessorial liability provision. Notably, ss 17-21 imposed duties, but did not stipulate any sanction for non-compliance.

19. Div 2 of Pt 6 provided for the Commissioner (or authorised persons) to investigate and determine complaints. One possible outcome of an investigation was a determination that the complaint "is to proceed to an inquiry" (s 71(1)(c)). There was a duty to refer a complaint for inquiry if the Commissioner (or authorised person) believed the complaint could not be resolved by conciliation, or had attempted to resolve the complaint by conciliation but had not been successful, or believed that the nature of the complaint was such that it should be referred for inquiry, or if a period of time (6 months, subject to extensions) had elapsed since the complaint had been accepted for consideration (ss 78(1), (2)).

20. The Act implicitly contemplated, but did not expressly state, that the referral for inquiry was a referral to the Tribunal: as to the implication, see ss 13(a), 78A, 79(1). If a complaint was referred to the Tribunal, the Commissioner (or authorised person) was to provide the Tribunal with a report relating to the complaint addressing various matters set out in ss 79(1), (3).

21. Another possible outcome of an investigation by the Commissioner was the reaching of an "agreement" by the parties to the complaint: s 76(1). Section 76(4) stated that "[a]n agreement is enforceable as if it were an order made by the Tribunal under section 89(1)" (and, as will be seen, could be filed in the Supreme Court of Tasmania and enforced as an order of the Court).

22. Divisions 4 and 5 of Pt 6 set out the procedures for an inquiry by the Tribunal. Parties to a complaint before the Tribunal could, with the Tribunal's permission, be represented or accompanied by another person: s 79A. The Tribunal "may refer a matter for conciliation or other means of resolution either before an inquiry is commenced or during an inquiry": s 80A. Tribunal hearings were to be in public unless the Tribunal directed that it be held in private (s 85(1)). The Tribunal was obliged "to conduct an inquiry with as little formality and as expeditiously as the requirements of th[e] Act and a proper consideration of the matters before the Tribunal permit": s 86(1). The Tribunal could take evidence on oath or affirmation (s 87(1)), but was not bound by the rules of evidence and may inform itself on any matter as it thinks fit (s 87(4)). The Tribunal was not obliged to give reasons, but was obliged to do so if requested (s 93). The Tribunal was also empowered to make interim orders effectively to ensure the integrity of its processes (s 98).

23. Section 89(1) identified the Tribunal's powers. It stated:

> If the Tribunal finds after an inquiry that a complaint is substantiated, it may make one or more of the following orders:
>
> (a) an order that the respondent must not repeat or continue the discrimination or prohibited conduct;
>
> (b) an order that the respondent must redress any loss, injury or humiliation suffered by the complainant and caused by the respondent's discrimination or prohibited conduct;
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> (c) an order that the respondent must re-employ the complainant;
>
> (d) an order that the respondent must pay to the complainant, within a specified period, an amount the Tribunal thinks appropriate as compensation for any loss or injury suffered by the complainant and caused by the respondent's discrimination or prohibited conduct;
>
> (e) an order that the respondent must pay a specified fine not exceeding 20 penalty units;
>
> (f) an order that a contract or arrangement is to be varied or declared in whole or in part;
>
> (g) an order that it is inappropriate for any further action to be taken in the matter;
>
> (h) any other order it thinks appropriate.

24. Sections 89(2) and (3) conferred powers where there was a complaint against a member of the public service. Section 89(4) conferred powers where persons entitled to benefit from an order had not been personally identified at the inquiry.

25. Section 90 was the enforcement provision, to which we have already referred. It stated:

> (1) A person, or the Commissioner at the request of a person, may enforce an order made under section 89(1) or an agreement to resolve a complaint by filing the following documents, free of charge, in the Supreme Court:
>
> (a) in the case of an order, a copy of the order certified by –
>
> (i) the member who presided over the inquiry, if the Tribunal consisted of more than one person; or
>
> (ii) the member who constituted the Tribunal, if the Tribunal only consisted of one person;
>
> (b) in the case of an agreement, a copy of the record made under section 76 and certified by the Commissioner or an authorised person;
>
> (c) an affidavit stating the extent to which the order or agreement has not been complied with.
>
> (2) If the documents are filed in accordance with this section, the order made by the Tribunal or agreement is enforceable as if it were an order of the Supreme Court.

26. The making of orders under s 89 was not the only way a complaint could be resolved by the Tribunal.

27. Where the Tribunal found that a complaint relating to an award, enterprise or industrial agreement was substantiated, it was to refer the award or agreement to the Industrial Commission or the Enterprise Commissioner, as appropriate, together with a report on its findings (s 91(1)). The Industrial Commission or Enterprise Commissioner was then obliged to set aside or vary the terms of the award or agreement unless it was in the public interest not to do so (s 91(2)).

28. Further, under s 92, the Tribunal could require a respondent to apologise to the complainant and make appropriate retractions. Further, under s 94, the Tribunal could refer a complaint to conciliation (s 94(1)). If the conciliation yielded an agreement between the parties, that agreement was enforceable as if it were an order of the Tribunal under s 89(1) (s 94(4)). The Tribunal was also empowered to dismiss a complaint (s 99).

29. Parties to an inquiry were to bear their own costs, subject to contrary order (ss 95, 99A).

30. Section 100(1) conferred a right of appeal against the making of orders under ss 89(1) or (2). It stated:

> A person may appeal to the Supreme Court on a question of law or fact against an order made under section 89(1) or (2) or section 95 within 28 days after the order was made.

31. In addition to the express right of appeal given by s 100(1), exercises of power by the Tribunal were (subject to discretionary considerations arising from the express right of appeal given by s 100(1)) amenable to review in the supervisory jurisdiction of the Supreme Court of Tasmania and amenable to collateral attack for jurisdictional error.

Judicial power: general principles

32. Axiomatically, there is no exhaustive definition of the concept of judicial power: *Precision Data Holdings Ltd v Wills* (1991) 173 CLR 167 at 188-189 (Mason CJ, Brennan, Deane, Dawson, Toohey, Gaudron and McHugh JJ); ***Brandy*** *v Human Rights and Equal Opportunity Commission* (1995) 183 CLR 245 at 267 (Deane, Dawson, Gaudron and McHugh JJ); *Luton v Lessels* (2002) 210 CLR 333 at 373 [124] (Kirby J); *Attorney-General (Cth) v Alinta Ltd* (2008) 233 CLR 542 at 577 [93]-[94] (Hayne J). Thus "no single combination of necessary or sufficient factors identifies what is judicial power": *Attorney-General (Cth) v Alinta* (2008) 233 CLR 542 at 577 [93] (Hayne J) (Gleeson CJ agreeing at 550 [1]) (Gummow J agreeing at 552 [9]).

33. Guidance as to some important features of judicial power was given by Kitto J in an oft-quoted passage in *R v Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 361 at 374. There, his Honour said:

> [J]udicial power involves, as a general rule, a decision settling for the future, as between defined persons or classes of persons, a question as to the existence of a right or obligation, so that an exercise of the power creates a new charter by reference to which that question is in future to be decided as between those persons or classes of persons.

34. The reference to the decision "settling for the future" the relevant question identifies an important feature of judicial power. Judicial power typically involves the *final* and *conclusive* quelling of a controversy,[5] such that the rights and obligations the subject of the controversy merge in the judgment.[6] So, it has been said that judicial power involves "the

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[5] *New South Wales v Kable* (2013) 252 CLR 118 at 134 [34] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ); *Abebe v Commonwealth* (1999) 197 CLR 510 at 555 [118] (Gaudron J) (and cases there cited).

[6] *Tomlinson v Ramsey Food Processing Pty Ltd* (2015) 256 CLR 507 at 516 [20] (French CJ, Bell, Gageler and Keane JJ); *Attorney-General (Cth) v Alinta* (2008) 233 CLR 542 at 594 [158]-[159] (Crennan and Kiefel JJ).

binding and authoritative decision of controversies": *Brandy* at 267-268 (Deane, Dawson, Gaudron and McHugh JJ) (emphasis added).[7] Thus, "[o]f its nature, judicial power is a power that … results in a judgment or order that is binding of its own force": *Construction, Forestry, Mining and Energy Union v Australian Industrial Relations Commission* (2001) 203 CLR 645 at 658 [31] (Gleeson CJ, Gaudron, McHugh, Gummow, Kirby, Hayne and Callinan JJ); see also *Attorney-General (Cth) v Alinta Ltd* (2008) 233 CLR 542 at 562 [44] (Kirby J); *Harris v Caladine* (1991) 172 CLR 84 at 101-102 (Brennan J).

35. A feature which tells against a power being judicial is whether the repository of power is unable to enforce its own determinations: *Brandy* at 257 (Mason CJ, Brennan and Toohey JJ).

36. A further feature which tells against a power being characterised as judicial is whether the power "involves the creation of new rights and obligations for the future", which "constitute the *factum* upon which" the law operates to fix or alter rights and obligations: *Luton v Lessels* (2002) 210 CLR 333 at 345-346 [22] (Gleeson CJ) (emphasis added) (McHugh J agreeing at 361 [79]); see also at 357-358 [67], 361 [77] (Gaudron and Hayne JJ). Thus, a power to create new rights, rather than determine extant rights, is typically non-judicial: *Precision Data Holdings Ltd v Wills* (1991) 173 CLR 167 at 189 (Mason CJ, Brennan, Deane, Dawson, Toohey, Gaudron and McHugh JJ); *Re Dingjan; Ex parte Wagner* (1995) 183 CLR 323 at 360 (Gaudron J) (Mason CJ agreeing at 333, Brennan J agreeing at 341, Deane J agreeing at 342, Toohey J agreeing at 355); *South Australia v Totani* (2010) 242 CLR 1 at 86 [220] (Hayne J); *Attorney-General (Cth) v Alinta Ltd* (2008) 233 CLR 542 at 550 [2]-[3] (Gleeson CJ), 553 [14] (Gummow J), 561-562 [42]-[44] (Kirby J), 568-569 [69]-[71], 577-579 [94]-[97] (Hayne J), 592-593 [152]-[153], 594 [158], 599 [176] (Crennan and Kiefel JJ); *Visnic v Australian Securities and Investments Commission* (2007) 231 CLR 381 at 386 [14]-[15] (Gleeson CJ, Gummow, Hayne, Callinan, Heydon and Crennan JJ); *Luton v Lessels* (2002) 210 CLR 333 at 345-346 at [22] (Gleeson CJ) (McHugh J agreeing at 361 [79]), 357 [67], 360 [77] (Gaudron and Hayne JJ), 374 [126] (Kirby J). If, in order to give effect to an order of an executive body, an "independent exercise of judicial power" is needed, that tells in favour of the power being non-judicial: *Brandy* at

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[7] See also *Construction, Forestry, Mining and Energy Union v Australian Industrial Relations Commission* (2001) 203 CLR 645 at 656-657 [26] (Gleeson CJ, Gaudron, McHugh, Gummow, Kirby, Hayne and Callinan JJ); *R v Hegarty; Ex parte City of Salisbury* (1981) 147 CLR 617 at 627 (Mason J).

261 (Mason CJ, Brennan and Toohey JJ); *Attorney-General (Cth) v Breckler* (1999) 197 CLR 83 at 111 [45] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ).

37. Another feature which tells against a power being characterised as judicial is whether it involves consideration and application of factors of an evaluative, discretionary or policy character: *Albarran v Companies Auditors and Liquidators Disciplinary Board* (2007) 231 CLR 350 at 361-362 [29] (Gleeson CJ, Gummow, Hayne, Callinan, Heydon and Crennan JJ); *Luton v Lessels* (2002) 210 CLR 333 at 375-376 [130]-[132] (Kirby J); *K-Generation Pty Ltd v Liquor Licensing Court* (2009) 237 CLR 501 at 528 [82] (French CJ), 566 [230]-[231] (Kirby J); *Attorney-General (Cth) v Alinta Ltd* (2008) 233 CLR 542 at 553 [14] (Gummow J), 596-597 [165]-[169] (Crennan and Kiefel JJ); *Visnic v Australian Securities and Investments Commission* (2007) 231 CLR 381 at 390-391 [35]-[36] (Kirby J).

38. There is nothing inherently or exclusive judicial in a power to form an opinion that there has been a contravention of the law. So, in *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd* (2015) 255 CLR 352, there was no difficulty in the authority forming a view that Today FM's broadcasting service had been used in the commission of an offence. As the Court explained at 378-379 [57]-[59] (Gageler J), the formation of that view may be "the foundation for the Authority to institute civil penalty proceedings in the Federal Court of Australia or to take administrative enforcement measures", but that did not make it judicial. Similarly, in *Albarran v Companies Auditors and Liquidators Disciplinary Board* (2007) 231 CLR 350 at 360-361 [25]-[28] (Gleeson CJ, Gummow, Hayne, Callinan, Heydon and Crennan JJ) and *Precision Data Holdings Ltd v Wills* (1991) 173 CLR 167 at 188-189 (Mason CJ, Brennan, Deane, Dawson, Toohey, Gaudron and McHugh JJ), this Court explained that there was nothing inherently judicial in an executive body forming opinions as to the legal rights and obligations of parties as a consequential step in the exercise of administrative power.

39. Nor is there anything inherently or exclusively judicial in the exercise of an adjudicative function: eg *Attorney-General (Cth) v Alinta* (2008) 233 CLR 542 at 560 [37] (Kirby J), 595 [161] (Crennan and Kiefel JJ). For example, the Administrative Appeals Tribunal exercises what could properly described as "adjudicative" functions, but does not exercise the judicial power of the Commonwealth.

40. Nor still is there anything inherently or exclusively judicial in the issuing of orders directing a person to do or not do an act. The point was made by Owen J in *R v Trade Practices Tribunal; ex parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 361 at 408 in a passage

applied by Crennan and Kiefel JJ in *Attorney-General (Cth) v Alinta* (2008) 233 CLR 542 at 598 [173]:

> The Tribunal may, of course, under ss. 50 and 54, make orders restraining persons from giving effect to restrictions or practices which it thinks contrary to the public interest but I do not regard that as amounting to a power of enforcement. Such an order would, it seems to me, do no more than lay down a rule, which is to have the force of law, that some right or practice which has been found to exist is not, in the future, to be exercised or followed, but there is no power in the Tribunal to compel compliance with any restraining order which it sees fit to make.

41. Further, and critically, many powers are such that they may be either judicial or non-judicial depending on the character of the body in which they are vested: *Re Dingjan; Ex parte Wagner* (1995) 183 CLR 323 at 360 (Gaudron J) (Mason CJ agreeing at 333, Brennan J agreeing at 341, Deane J agreeing at 342, Toohey J agreeing at 355); *Wainohu v New South Wales* (2011) 243 CLR 181 at 201-202 [30] (French CJ and Kiefel J); *Brandy* at 258 (Mason CJ, Brennan and Toohey JJ); *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 at 106 (Gaudron J), 136 (Gummow J). Thus, a power vested in an executive body may "[c]losely … resemble" a power vested in a court, and be non-judicial when vested in the executive body but judicial when vested in the court: *Aston v Irvine* (1955) 92 CLR 353 at 366 (Dixon CJ, McTiernan, Williams, Webb, Fullagar, Kitto and Taylor JJ).

42. The application of these principles in *Brandy* is instructive.

43. *Brandy* concerned the validity of various provisions of the *Racial Discrimination Act 1975* (Cth). The Act provided for the making of complaints about breaches of the Act to the Human Rights and Equal Opportunity Commission (s 22), the holding of inquiries into the complaint by the Commission (s 25B) and the making of determinations by the Commission (s 25Z). The Commission's powers (set out in s 25Z(1) of the Act, and described at 253 of the CLR) were broadly similar to those of the Tribunal in the present case. Orders made by the Commission were deemed to be "not binding or conclusive between any of the parties to the determination": s 25Z(2).

44. Section 25ZAA of the Act stated:

> (1) This section applies to a determination made under section 25Y or 25Z, except where the respondent is a Commonwealth agency or the principal executive of a Commonwealth agency.
>
> (2) As soon as practicable after the determination is made, the Commission must lodge the determination in a Registry of the Federal Court.
>
> (3) Upon lodgment of the determination, a Registrar must register the determination. …

45. Section 25ZAB(1) stated:

> (1) Upon registration of a determination made under section 25ZAA, the determination has effect as if it were an order made by the Federal Court, but subject to the following provisions.

46. Sections 25ZAB and 25ZAC provided, inter alia, for the making of an application to the Federal Court for review of the determination within 28 days, and for enforcement to be suspended until the expiry of that 28 days or the determination of any such review. Section 25ZC provided for the granting of financial or legal assistance in review proceedings.

47. The High Court held that ss 25ZAB, 25ZAC and 25ZC were invalid.

48. The vice in the scheme was that it purported to confer power on the Commission which takes effect as an exercise of Commonwealth judicial power.

49. Deane, Dawson, Gaudron and McHugh JJ said (at 270):

> Under s 25ZAA registration of a determination is compulsory and under s 25ZAB the automatic effect of registration is, subject to review, to make the determination binding upon the parties and enforceable as an order of the Federal Court. Nothing that the Federal Court does gives a determination the effect of an order. That is done by the legislation operating upon registration. The result is that a determination of the Commission is enforceable by execution under s 53 of the *Federal Court Act*. It is the determination of the Commission which is enforceable and it is not significant that the mechanism for enforcement is provided by the Federal Court.

50. Mason CJ, Brennan and Toohey JJ said (at 259-260):

> But s 25ZAB goes beyond providing the machinery for the enforcement of a determination. It purports to give a registered determination effect "as if it were an order made by the Federal Court". A judicial order made by the Federal Court takes effect as an exercise of Commonwealth judicial power, but a determination by the Commission is neither made nor registered in the exercise of judicial power. An 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 exercise of judicial power cannot be made except after the making of a judicial determination. Thus, s 25ZAB purports to prescribe what the Constitution does not permit.

51. The High Court held that, but for ss 25ZAB and 25ZAC, the scheme would *not* have involved a vesting of judicial power.

52. Deane, Dawson, Gaudron and McHugh JJ said (at 269):

> However, if it were not for the provisions providing for the registration and enforcement of the Commission's determinations, it would be plain that the Commission does not exercise judicial power. That is because, under s 25Z(2), its determination would not be

> binding or conclusive between any of the parties and would be unenforceable. That situation is, we think, reversed by the registration provisions.

53. Mason CJ, Brennan and Toohey JJ explained (at 257):

> The plaintiff's challenge only impugned the registration and enforcement procedure of the Act. Section 25Z, which empowers the Commission to make determinations, was only put in issue to the extent that it supported the procedure overall. Because s 25Z(2) provides that a determination of the Commission is "not binding or conclusive between any of the parties to the determination", the holding of an inquiry and the making of a determination under the Act cannot of itself be seen as an exercise of judicial power. In that regard, where the Commission finds a complaint to have been substantiated, the Commission is confined to making a declaration (which is not binding or conclusive) qualified in terms of what the respondent "should" do rather than in terms of what the respondent "shall" or "must" do.

54. *Brandy* was distinguished in *Attorney-General (Cth) v* ***Breckler*** (1999) 197 CLR 83. *Breckler* concerned the validity of provisions conferring power on the Superannuation Complaints Tribunal to resolve and make orders in respect of complaints concerning the operation of superannuation funds. The power was non-judicial (inter alia) because determinations of the Tribunal depended on "an independent exercise of judicial power" to be given effect (at 111 [45] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ)), in contrast to the provisions in *Brandy* which "converted a non-binding administrative determination into … a binding, authoritative and curially enforceable determination" (at 110 [42] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ)). The High Court also referred to the fact that decisions of the Tribunal were not conclusive because they were amenable to "collateral challenge in proceedings to compel observance of those determinations" (at 111-112 [46] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ)).

55. *Brandy* was also distinguished in *Luton v Lessels* (2002) 210 CLR 333. *Luton* concerned the validity of provisions of the *Child Support (Assessment) Act 1989* (Cth) and *Child Support (Registration and Collection) Act 1988* (Cth) which authorised the Child Support Registrar to make assessments and determinations and perform other acts to facilitate the collection and application of child support payments. The Court held that the powers were non-judicial (inter alia) because enforceability of the rights and obligations depended upon the intervention of a court and the independent exercise of judicial power (at 346 [23] (Gaudron and Hayne JJ), 361 [79] (McHugh J), 375 [129] (Kirby J)) and because the decisions were not conclusive (at 346 [24] (Gaudron and Hayne JJ), 361 [79] (Mc Hugh J)).

Characterisation of the Tribunal's powers

56. With these principles in mind, what is the proper characterisation of the Tribunal's powers of inquiry and determination?

57. It is convenient to address this question *first* on the assumption that s 90 was not part of the scheme – for, if it was s 90 which converted that which would otherwise have been non-judicial into that which was judicial, s 90 can and should presumptively be read subject to Ch III (for reasons developed below).

58. On that assumption, the Tribunal's powers were readily characterised as non-judicial.

59. The Tribunal was an executive body. Powers given to it presumptively took their character from the character of the Tribunal.

60. The Tribunal's decisions and orders were not inherently binding, authoritative and conclusive: cf *Commonwealth v Anti-Discrimination Tribunal (Tasmania)* (2008) 169 FCR 85 at 147 [253] (Kenny J). If infected by jurisdictional error, they are void ab initio, and amenable to the Supreme Court of Tasmania's supervisory jurisdiction. They are not valid until set aside.

61. The Tribunal was unable to enforce its own determinations.

62. Further, in many cases, the Tribunal's task was to *create* rights and obligations. Where the nub of a complaint was that there had been a contravention of s 16 or a provision of Div 2 of Pt 4 and the Tribunal made an "order" under s 89(1)(a), it was probably correct that that order is no more than declaratory of that which already obtains (viz, that the person must not engage in the proscribed conduct). However, where the Tribunal made orders under s 89(1)(b)-(h), those orders did involve the creation of rights and imposition of obligations which did not previously exist.

63. In deciding what (if any) orders should issue, the Tribunal's task was inherently evaluative and discretionary and influenced by matters of policy: note paragraph 37 above.

64. The fact that the Tribunal exercised adjudicative functions, formed opinions on matters of fact and law and issued orders is not determinative.

65. As in *Brandy*, the power to make determinations of itself is not judicial. It may be noted that a similar conclusion was reached by the NSW Court of Appeal in respect of the Appeal Panel of the NSW Administrative Decisions Tribunal in *Attorney-General (NSW) v 2UE*

Sydney Pty Ltd (2006) 226 FLR 62 at 76-77 [75] (Spigelman CJ), 83 [116] (Hodgson JA), 83 [118] (Ipp JA).

66. The question then is: does the insertion of s 90 into the scheme require a different conclusion?

67. The AHRC accepts that, consistently with *Brandy*, if there was a federal matter before the Tribunal and if the Tribunal were to make an order under s 89(1) which attracted to itself the attribute of being enforceable as an order of the Supreme Court, then the Tribunal's power to make that order would have been judicial in character. The AHRC also therefore accepts that to the extent that the *Anti-Discrimination Act* purported to provide for such an outcome it would have been invalid by reason of the implication in *Burns*.

68. That, however, is not the end of the matter.

69. The starting position is that the *Anti-Discrimination Act* must be read and applied subject to Ch III of the Constitution: *Industrial Relations Act Case* (1996) 187 CLR 416 at 502-503 (Brennan CJ, Toohey, Gaudron, McHugh and Gummow JJ); *Miller v TCN Channel Nine Pty Ltd* (1986) 161 CLR 556 at 613-614 (Brennan J); *Wilson v Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 189 CLR 1 at 20 (Brennan CJ, Dawson, Toohey, McHugh and Gummow JJ), 26 (Gaudron J); *Knight v Victoria* (2017) 261 CLR 306 at 325 [34] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ); ***Graham** v Minister for Immigration and Border Protection* (2017) 263 CLR 1 at 32-33 [66] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ); ***Tajjour** v New South Wales* (2014) 254 CLR 508 at 586 [171] (Gageler J); ***Clubb** v Edwards* (2019) 267 CLR 171 at 218-222 [140]-[149] (Gageler J), 313-318 [415]-[425] (Edelman J).

70. Here, this can be achieved at least by reading the discretionary privilege given by s 90(1) permitting a person to file an order as unavailable where the order was made consequential on the determination of a federal matter. So, the word "may" is read subject to Ch III. That involves the proposition that a generally worded provision may be severed or disapplied by reference to a "clear limitation",[8] here being that identified in *Burns*.

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[8] *Clubb* at 221 [148] (Gageler J), 290 [340] (Gordon J), quoting *Victoria v The Commonwealth (Industrial Relations Act Case)* (1996) 187 CLR 416 at 502-503 (Brennan CJ, Toohey, Gaudron, McHugh and Gummow JJ).

71. This can also be achieved by reading the word "order" in s 90(1) as excluding orders made following the determination of federal matters. That outcome would be similar to that reached in *Graham* at 32-33 [66] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ) where (in order to ensure conformity with Ch III), the word "court" was read as referring to any court *except* the High Court when exercising jurisdiction under s 75(v) (or the Federal Court when exercising jurisdiction given in the same terms).

72. The operation of s 90 on orders made following the determination of federal matters is not inseverable from the balance of the scheme. There is no reason to think Parliament would have wished either s 90 in its operation outside federal matters (eg in wholly State matters) or the balance of the scheme to fall if s 90 were denuded of operation on orders made following the determination of a federal matter. The scheme is a beneficial one. Nor should it be forgotten that there are a number of ways a Tribunal inquiry can end which do not involve the making of orders under s 89(1) eg referral to the Industrial Commission or Enterprise Commissioner (s 91), orders for apologies and retractions (s 92) or referral for conciliation and the making of an agreement (s 94).

73. What is the practical effect of reading the scheme in this way? In a sense, this question is for another day, and may never arise by reason of the amendments made to the *Anti-Discrimination Act* and the *Tasmanian Civil and Administrative Tribunal Act 2020* (Tas) on and from 5 November 2021 addressed in fn 3 above. Nevertheless, the AHRC's submission is that the scheme at all relevant times operated in the following way.

74. Where the matter before the Tribunal is a wholly State matter, the Tribunal can make orders under s 89(1), and those orders may validly attract to themselves the attribute of enforceability under s 90(1).

75. Where the matter before the Tribunal is a federal matter, the Tribunal can make orders under s 89(1), but those orders do not attract to themselves the attribute of enforceability under s 90(1). That does not mean the orders are unenforceable. Rather, the orders involve the creation of new rights and obligations which (if validly created) can be enforced by the independent exercise of judicial power of the kind considered in *R v Trade Practices Tribunal; ex parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 361 at 408 (Owen J) and *Attorney-General (Cth) v Alinta* (2008) 233 CLR 542 at 598 [173] (Crennan and Kiefel JJ). If the respondent does not comply with the order, the complainant can apply to a Court for injunctive relief to compel compliance. The respondent would be at liberty in those proceedings collaterally to attack the order for jurisdictional error. In this respect, it may

be noted that the terms of s 90(1)(c) indicate that Parliament contemplated that orders made by the Tribunal would have a normative effect whether or not they were filed under s 90(1): note *Commonwealth v Anti-Discrimination Tribunal (Tasmania)* (2008) 169 FCR 85 at 133 [207] (Kenny J).

76. The decision in *Brandy* does not warrant a different analysis. As explained above, in *Brandy*, what was struck down was the enforcement provisions (ie ss 25ZAB, 25ZAC and 25ZC) and not the power to inquire into complaints and make orders under s 25Z(1). The power to inquire into complaints and make orders, if shorn of the enforcement provisions, *would* have been non-judicial: 257, 269. The High Court conspicuously did not strike down the power to make determinations under s 25Z(1).

77. Further, the scheme in *Brandy* was self-executing: upon the making of an order, the Commission was *obliged* to lodge the determination with the Federal Court (s 25ZAA(2)) and the Registrar was then obliged to register the determination (s 25ZAA(3)). The High Court emphasised the obligatory, self-executing nature of the scheme at 270. In contrast, s 90(1) operates by conferring a discretionary privilege on a person to file documents in the Supreme Court.

78. It can be accepted that the *Anti-Discrimination Act* does not have a provision akin to s 25Z(2), which expressly stated that determinations were not binding, conclusive or enforceable. That a determination of the Tribunal is not per se binding and conclusive follows necessarily from the Australian constitutional structure (confirmed in developments since *Brandy* in *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476 and *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531), which entails that non-judicial bodies lack power to make orders which are valid until set aside. And the "enforceability" of a determination cannot dictate the characterisation of the power to make a determination: there is no difficulty in the proposition that a decision made in the exercise of non-judicial power is enforceable in the sense of the decision operating as a factum creating judicially-enforceable rights and obligations.

79. Nor does the decision of Kenny J in *Commonwealth v Anti-Discrimination Tribunal (Tasmania)* (2008) 169 FCR 85, which was approved in the context of the Victorian Civil and Administrative Tribunal in *Meringnage v Interstate Enterprises Pty Ltd* (2020) 60 VR 361 at [102]-[103], [108] (Tate, Niall and Emerton JJA), warrant a different conclusion. Her Honour concluded that the Tribunal *does* exercise judicial power. However, the AHRC submits that that conclusion is wrong. Her Honour considered that a power "to determine

whether a provision of the *Anti-Discrimination Act* … has been contravened … is in the nature of an exercise of judicial power": at [205]. That reasoning was incorrect and contrary (inter alia) to *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd* (2015) 255 CLR 352 at 378-379 [57]-[59] (Gageler J); *Albarran v Companies Auditors and Liquidators Disciplinary Board* (2007) 231 CLR 350 at 360-361 [25]-[28] (Gleeson CJ, Gummow, Hayne, Callinan, Heydon and Crennan JJ) and *Precision Data Holdings Ltd v Wills* (1991) 173 CLR 167 at 188-189 (Mason CJ, Brennan, Deane, Dawson, Toohey, Gaudron and McHugh JJ). Her Honour also gave significant weight to the fact that the Tribunal makes "court-like orders": at [205]. There is nothing exclusively or inherently judicial in the making of a decision that a person must do (or not do) something: see, eg, *R v Trade Practices Tribunal; ex parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 361 at 408 (Owen J) and *Attorney-General (Cth) v Alinta* (2008) 233 CLR 542 at 598 [173] (Crennan and Kiefel JJ). It is commonplace for executive bodies to make decisions which have the effect of requiring a person to do (or not do) something eg the issuing of orders by police officers or the issuing of procedural directives by the AAT. At [206]-[207], her Honour concluded that the position was effectively governed by *Brandy*, but those paragraphs do not address the potential for s 90(1) to be read subject to Ch III. Her Honour did return to the issue of severance at [254] and concluded that the scheme was intended to operate fully and in accordance with its terms or not at all. Her Honour's reasons, self-evidently, did not account for more recent reading down and severance (or disapplication) jurisprudence including *Tajjour*, *Graham* and *Clubb*. Nor did her Honour refer to the jurisprudence recognising that provisions, particularly discretionary provisions, can be read subject to Ch III. In any event, it cannot be concluded that the intention was for the scheme to operate fully in accordance with its terms or not at all. As indicated, the scheme is a beneficial one, and Parliament's intention must presumptively have been that it operate in all circumstances it can validly operate in. And Kenny J's reasoning, if accepted, would prove too much: it would mean that the *whole* of the scheme established by Div 4 of Pt 6 would fall, whether or not the relevant power being exercised had a federal dimension.

80. This approach to the case means that the contentions advanced by the appellants are premature. At all times material to this appeal, the Tribunal had power to inquire into and determine the respondent's complaint. If this appeal is dismissed, the proceedings will return to the newly-constituted Tasmanian Civil and Administrative Tribunal. That Tribunal may elect to transfer the proceedings to the Tasmanian Magistrates Court, a Ch III court, in which case the present constitutional issue would not arise. If the proceedings

stayed with the Tasmanian Civil and Administrative Tribunal, it may or may not make orders under s 89(1). If the Tribunal *does* make orders under s 89(1) *and* those orders are part and parcel of the determination of a federal matter, then those orders will not attract to themselves the attribute of enforceability under s 90. The appellants' complaint would arise if and when the respondent sought to invoke s 90. But the time for that complaint has not arisen, and may never arise.

Paragraph [47] of the CS

81. Finally, the AHRC addresses a discrete contention raised by [47] of the CS. There, the Commonwealth contends that the ***Disability Discrimination Act*** *1992* (Cth) and the *Disability (Access to Premises – Buildings) Standards 2010* (Cth) were intended to exclusively cover the field of "provision of access to buildings covered by the Federal Access Standard".

82. The AHRC submits that this contention need not be reached and, if it is reached, it is overbroad.

83. Why need the contention not be reached? Because there are cumulative contentions before the Court that the laws are *directly* inconsistent and that they are *indirectly* inconsistent. The Appellants argue for direct inconsistency (see Appellants' Submissions at [50] and fn 51), and the Commonwealth argues for indirect inconsistency (CS [47]). A finding of direct inconsistency is an inherently narrower constitutional finding, and if there is a direct inconsistency it is unnecessary and therefore inappropriate further to consider indirect inconsistency: eg *Knight v State of Victoria* (2017) 261 CLR 306 at 324-325 [32]-[33] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ); *Bell Group NV (in liq) v Western Australia* (2016) 260 CLR 500 at 528 [74]-[75] (French CJ, Kiefel, Bell, Keane, Nettle and Gordon JJ). In this case, if necessary, the Court can accept the Appellants' argument that there is a non-colourable claim of direct inconsistency, and that can be the end of the matter.

84. If the Court does proceed to consider the Commonwealth's inconsistency argument, it should be rejected as overbroad.

85. The question is of course one of construction: eg *Bell Group NV (in liq) v Western Australia* (2016) 260 CLR 500 at 521-522 [52] (French CJ, Kiefel, Bell, Keane, Nettle and Gordon JJ). And, in respect of indirect inconsistency, the essential notion "is that the Commonwealth law contains an implicit negative proposition that nothing other than what

it provides with respect to a particular subject matter is to be the subject of legislation": *Work Health Authority v Outback Ballooning Pty Ltd* (2019) 266 CLR 428 at 447-448 [34]-[35] (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ).

86. The *Disability Discrimination Act* (and the standards under it) do not manifest an intention exhaustively to regulate the subject matter of access to premises. Section 13(4) of the *Disability Discrimination Act* expressly contemplates concurrently operating Commonwealth, State and Territory laws "deal[ing]" with the same "matter[s]" and contemplates the making of complaints under those State or Territory laws despite the overlapping operation. It can be accepted that s 13(3) is an express concurrent operation clause and that it "does not apply in relation to Division 2A of Part 2 (Disability standards)" (s 13(3A)), but it does not follow from the combined operation of ss 13(3) and (3A) that there is an implicit "roll-back" clause, denying any operation of State laws in areas covered by disability standards. Any such implication could not stand with s 13(4). Further, the *Disability Discrimination Act* is clearly a beneficial Act, calling for caution before discerning any intention exhaustively regulate a particular subject matter: *Jemena Asset Management (3) Pty Ltd v Coinvest Limited* (2011) 244 CLR 508 at 528 [56]-[57] (French CJ, Gummow, Heydon, Crennan, Kiefel and Bell JJ).

PART V: ORAL ARGUMENT

87. If the AHRC is given leave to be heard orally, having regard to the fact that the arguments it is putting are not being advanced by any other party, it estimates it will require 15 minutes to put its arguments.

Dated 23 November 2021

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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

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and

DAVID CAWTHORN
Respondent

ANNEXURE TO THE SUBMISSIONS OF THE AUSTRALIAN HUMAN RIGHTS COMMISSION

20 Pursuant to paragraph 3 of the *Practice Direction No 1 of 2019*, the Australian Human Rights Commission sets out below a list of the particular constitutional provisions and statutes referred to in its submissions.

Commonwealth		Provision(s)	Version
1.	*Australian Human Rights Commission Act 1986*	s 11	Current (Compilation No. 51)
2.	Commonwealth Constitution	Ch III, s 75	Current
3.	*Disability Discrimination Act 1992*	ss 13, 67	Current (Compilation No. 33)
4.	*Disability (Access to Premises – Buildings) Standards 2010*		Compilation prepared on 1 May 2011
5.	*Racial Discrimination Act 1975*	ss 22, 25B, 25Z, 25ZAA, 25ZAB, 25ZAC, 25ZC	Version from 13 Jan 1994 to 17 Jan 1994

State		Provision(s)	Version
6.	*Acts Interpretation Act 1931* (Tas)	s 3	Current (version from 5 Nov 2021 to date)
7.	*Anti-Discrimination Act 1998* (Tas)	ss 3, 89, 90, 91, 92, 94	Current (version from 5 Nov 2021 to date)
8.	*Anti-Discrimination Act 1998* (Tas)	ss 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 71, 78, 78A, 76, 79, 79A, 80A, 85, 86, 87, 89, 90, 91, 92, 93, 94, 95, 98, 99, 99A, 100, Div 2 of Pt 4, Div 1A of Pt 6, Div 2 of Pt 6, Div 4 of Pt 6, Div 5 of Pt 6	Version from 8 May 2019 to 4 Nov 2021
9.	*Tasmanian Civil and Administrative Tribunal Act 2020* (Tas)	ss 131, 148, 152	Current (version from 5 Nov 2021 to date)
10.	*Tasmanian Civil and Administrative Tribunal Amendment Act 2021* (Tas)		No. 17 of 2021
11.	*Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021* (Tas)		No. 18 of 2021