



HIGH COURT OF AUSTRALIA

6 August 2025

STATE OF NEW SOUTH WALES v PAULINA WOJCIECHOWSKA & ORS
[2025] HCA 27

Today, the High Court allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales ("the Court of Appeal"). The determinative question was whether, in making an order under s 55(2)(a) of the *Privacy and Personal Information Protection Act 1998* (NSW) ("the PPIP Act") that a public sector agency pay to an applicant damages by way of compensation for any loss or damage suffered as a result of conduct in contravention of an information protection principle specified in ss 8-19 of the PPIP Act, the New South Wales Civil and Administrative Tribunal ("the Tribunal") exercises judicial power.

Ms Wojciechowska, who is a resident of Tasmania, had sought administrative review by the Tribunal of several decisions, including decisions made on behalf of the Commissioner of the New South Wales Police Force under the PPIP Act in proceedings before the Tribunal in which she had claimed damages under s 55(2)(a) of the PPIP Act for conduct alleged to be in contravention of information protection principles. Ms Wojciechowska then filed proceedings in the Supreme Court of New South Wales alleging that the Tribunal, which is not a court of a State, had no jurisdiction to determine the administrative review applications. The jurisdictional issue was referred to the Court of Appeal for determination.

The Court of Appeal (Kirk JA, Mitchelmore JA and Griffiths A-JA agreeing) concluded that the High Court's decision in *Brandy v Human Rights and Equal Opportunity Commission* (1995) 183 CLR 245 could not be distinguished and that *Brandy* dictated an affirmative answer to the determinative question. Kirk JA correctly identified the relevant principle to be that stated in *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 citing *Burns v Corbett* (2018) 265 CLR 304 "that a State Parliament lacks legislative capacity to confer on a State tribunal that is not a court of the State within the meaning of s 77(ii) and s 77(iii) of the *Constitution* judicial power with respect to any matter of a description in s 75 or s 76 of the *Constitution*". By reason of s 75(iv) of the *Constitution*, those matters include "matters ... between a State and a resident of another State".

The High Court unanimously allowed the appeal. In respect of an application under s 55(1) of the PPIP Act for an administrative review of the conduct or alleged conduct of the public sector agency that was the subject of the application for internal review under s 53 of the PPIP Act, the review involves the Tribunal's "administrative review jurisdiction" of an "administratively reviewable decision" in accordance with ss 6, 7, 8 and 9 of the *Administrative Decisions Review Act 1997* (NSW) ("the ADR Act"). Each key aspect of the PPIP Act and the ADR Act indicates against any exercise of judicial power by the Tribunal. The statutory provisions alleged to have been contravened in this case are not comparable to those the subject of the complaint in *Brandy*. Accordingly, the High Court found that *Brandy* is distinguishable and that the determinative question must be answered in the negative.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.