

DECISION

Case number: ADL024-23

Applicant: Australian Muslim Advocacy Network

First Respondent: Twitter Australia Holdings Pty Limited

Second Respondent: X Corp

Before: Senior Member Fitzpatrick

Hearing Date: 19 September 2023

Decision Date: 21 May 2024

Proceeding Type: Tribunal hearing

IT IS THE DECISION OF THE TRIBUNAL THAT:

1. Twitter Australia Holdings Pty Limited and X Corp are subject to the jurisdiction of the Queensland Civil and Administrative Tribunal as respondents to a complaint of contravention of the *Anti-Discrimination Act 1991* (Qld).
2. The Tribunal issue Directions in relation to the future conduct of the matter.

Signed

A handwritten signature in dark ink, appearing to read 'A. Fitzpatrick', is written over a faint, circular official seal of the Queensland Civil and Administrative Tribunal.

Senior Member Fitzpatrick
Queensland Civil and Administrative Tribunal

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Australian Muslim Advocacy Network Ltd v Twitter Australia Holdings Pty Limited & Anor* [2024] QCAT

PARTIES: **AUSTRALIAN MUSLIM ADVOCACY NETWORK LTD**
(applicant)
v
TWITTER AUSTRALIA HOLDINGS PTY LIMITED
(first respondent)

And
X CORP
(second respondent)

APPLICATION NO/S: ADL024-23

MATTER TYPE: Anti-discrimination matters

DELIVERED ON: 21 May 2024

HEARING DATE: 19 September 2023

HEARD AT: Brisbane

DECISION OF: Senior Member Fitzpatrick

ORDERS: **1. Twitter Australia Holdings Pty Limited and X Corp are subject to the jurisdiction of the Queensland Civil and Administrative Tribunal as respondents to a complaint of contravention of the Anti-Discrimination Act 1991 (Qld).**
2. The Tribunal issue Directions in relation to the future conduct of the matter.

CATCHWORDS: HUMAN RIGHTS – JURISDICTION AND PROCEDURE – QUEENSLAND

PROCEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – JURISDICTION – TERRITORIAL JURISDICTION

STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – PARTICULAR CLASSES OF ACT – REMEDIAL OR BENEFICIAL ACTS OR PROVISIONS

PRIVATE INTERNATIONAL LAW – JURISDICTION – PRESENCE OR RESIDENCE WITHIN JURISDICTION – CORPORATIONS – PLACE WHERE OPERATIONS CARRIED ON

STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – PRESUMPTIONS AS TO LEGISLATIVE INTENTION – NOT TO GIVE EXTRATERRITORIAL EFFECT – GENERAL PRINCIPLES – where applicant sought referral of a discrimination and vilification complaint to the tribunal – where alleged discrimination occurred on a micro-blogging website – where the foreign corporation controlling the micro-blogging website is not a registered foreign corporation – where tribunal jurisdiction to be determined as a preliminary issue – whether state anti-discrimination legislation has extraterritorial effect – whether foreign corporations publishing vilifying or discriminatory material in the state jurisdiction can be bound under subject matter jurisdiction – whether an entity controlling a website can be deemed to be carrying on business in the state

Acts Interpretation Act 1954 (Qld) s32D(1), s35

Anti-Discrimination Act 1991 (Qld) s3A, s4A, s5, s7(i), s10, s11, s46, s124A, s134(3), s134(5), s174A, s174C, s175, s235(i)

Human Rights Act 2019 (Qld) s48

Queensland Civil and Administrative Tribunal Act 2009 (Qld) s5, s35(2), s36, s37(2), s37(3)(a), s39(b), s61(c)

Queensland Civil and Administrative Tribunal Rules 2009 (Qld) rule 20(1)(b), rule 20(2), 36(3), rule 39, rule 40(4), rule 41

Service and Execution of Process Act 1992 (Cth)

Agar v Hyde (2000) 201 CLR 552

BHP Group Ltd v Impiombato (2022) 96 ALJR 956

Brannigan v Commonwealth (2000) 110 FCR 566

Bray v F Hoffman-La Roche Ltd (2002) 118 FCR 1

Carter v Sercombe and Others [1998] QADT 17

Dow Jones & Company Inc v Gutnick (2002) 210 CLR 575

DRJ v Commissioner of Victims Rights [No 2] (2020) 103 NSWLR 692

Fairfax Media Publications Pty Ltd v Voller (2021) 95 ALJR 767

Gebo Investments (Labuan) Ltd v Signatory Investments Pty Ltd (2005) 54 ACSR 11

Google LLC v Defteros [2022] HCA 27

Hartley v Bennette [2014] QCAT 9

Humane Society International Inc v Kyodo Senpaku Kaisha Limited [2006] FCAFC 116

Jumbunna Coal Mine NL v Victoria Coal Miners' Association (1908) 6 CLR 309

Laurie v Carroll (1958) 98 CLR 310

Murphy v State of Victoria [2014] VSCA 236

National Australia Bank Ltd v Dessau [1988] VR 521

National Commercial Bank v Wimborne (1979) 11 NSWLR 156

Valve Corporation v Australian Competition and Consumer Commission [2017] FCAFC 224

Vijayakumar v Qantas Airways Ltd [2009] FCA 1121

Voth v Manildra Flour Mills Pty Ltd (1990) 171 CLR 538

X v Twitter Inc [2017] 95 NSWLR 301

APPEARANCES & REPRESENTATION:

Applicant: R Merkel SC, with R Taylor, instructed by Birchgrove Legal

Respondents: N Owens SC, with C Winnett, instructed by White & Case LLP

REASONS FOR DECISION

Background

- [1] On 23 March 2023 the Queensland Human Rights Commissioner referred a Complaint to this Tribunal made by Australian Muslim Advocacy Network Ltd (AMAN) against Twitter Inc and Twitter Australia Holdings Pty Limited.
- [2] AMAN is a company limited by guarantee. It is a law-based advocacy service and civil society organisation working to secure Australian Muslims' psychological and physical safety.¹ The Queensland Human Rights Commissioner was satisfied that AMAN is a relevant entity under s 134(3) and s 134(5) of the *Anti-Discrimination Act 1991 (Qld)* (AD Act)² so that it has standing to make a Complaint and that the Complaint should be accepted.³
- [3] Twitter Inc was, at the time the Complaint was lodged, an entity incorporated under the laws of the State of Delaware (USA). On 15 March 2023 Twitter Inc merged with X Corp, an entity incorporated under the laws of the State of Nevada (USA). X Corp acknowledges that it is the successor to all rights and liabilities of Twitter Inc. The Tribunal has amended its record to reflect X Corp as a respondent. References to X Corp in this decision are intended to be read as references to Twitter Inc where the conduct of Twitter Inc is involved.
- [4] X Corp says that it operates, manages and provides access to a social media platform accessible through its website and mobile and online applications. That operation was previously conducted under the name Twitter Inc. X Corp describes itself as a public, real-time, open, micro-blogging platform. X Corp manages its service for users living in many countries around the world, including in Queensland from its head office in San Francisco, California (USA).⁴ X Corp is a foreign corporation. It is not a registered foreign corporation in Australia.
- [5] Twitter Australia Holdings Pty Limited is a company with its registered office in the State of Victoria. It is asserted that it did not at the relevant time host, operate or control the Twitter service, including not for users living in Australia. Prior to 1 July

¹ Affidavit of Dr Mustafa Ally, affirmed 14 July 2023.

² *Anti-Discrimination Act 1991 (Qld)* ss 134(3), 134(5) ('AD Act').

³ Decision of the delegate for the Queensland Human Rights Commissioner dated 8 February 2023.

⁴ Affidavit of James Patrick Doherty sworn 27 July 2023.

2023 its operations involved providing business development, marketing, and related support services for marketing and promoting the Twitter website in Australia.⁵ Since 1 July 2023 it no longer has operations, employees, or an operating office in Australia. I will deal separately with Twitter Australia Holdings Pty Limited at the end of this decision. Until that point, I will deal principally with X Corp.

- [6] X Corp and Twitter Australia Holdings Pty Limited, by their appearance in the Tribunal do not concede jurisdiction. They appeared merely to contest jurisdiction.
- [7] The Complaint lodged on 22 June 2022 alleges religious belief discrimination in the area of goods and services – under sections 7(i), 10, 11 and 46 of the AD Act; and religious vilification under s124A of the AD Act.⁶ The Queensland Human Rights Commissioner accepted that good cause was shown to accept out of time allegations in the Complaint.⁷ The Tribunal may itself consider whether to accept out of time allegations, but that is not a matter currently under consideration.
- [8] The Complaint was accepted because the Commissioner was satisfied that the Complaint indicates religious vilification and that it is not misconceived or lacking in substance.⁸
- [9] The Complaint details material which can be accessed through a link posted to the X Corp website by what is asserted to be a far-right anti-Muslim conspiracy blog,⁹ authored by an American citizen. That material is then commented upon, copied and further repeated or “re-tweeted”. In all there are 29 items of Complaint together with comments from those who have accessed the material. The material includes video, photographs, and written content.
- [10] The allegation is that the material denigrates, dehumanizes, and demonises the Muslim community, portraying Muslims as an existential threat.
- [11] As a result, it is said that s 124A of the AD Act has been contravened because the material incites hatred towards, serious contempt for and/or severe ridicule of Muslim people in Queensland on the ground of their religion.
- [12] It is alleged that enabling the public, including in Queensland, to access the material involves X Corp in publishing the material. That is said to involve public acts which were not done reasonably and in good faith. X Corp has refused to take the material off its website.
- [13] The outcomes sought by AMAN are that X Corp and Twitter Australia Holdings Pty Limited must:

⁵ Affidavit of Winston Foo, affirmed 24 July 2023.

⁶ AD Act (n 2) ss 7(i), 10, 11, 46, 124A.

⁷ Letter Queensland Human Rights Commission to Australian Muslim Advocacy Network Ltd, dated 15 February 2023.

⁸ Letter Queensland Human Rights Commission to White & Case, copied to AMAN, dated 1 February 2023.

⁹ The Tribunal notes the request of AMAN made to the Queensland Human Rights Commission not to name the blog or its principal author, to avoid feared adverse consequences for staff of AMAN and members of the Muslim community as a result of the proceeding. That request is acceded to for the purpose of this decision but may be the subject of future Directions from the Tribunal.

- (a) resource a compliance unit that commits to applying Australian standards of vilification, to displace the burden from the shoulders of the community;
- (b) exclude the blog and its principal author from its platform;
- (c) immediately exclude accounts that serially or substantially “tweet” material that has the effect of inciting hatred against Muslims, including those that propagate great replacement, eurasian, and ‘counter jihad’ theories;
- (d) publicly acknowledge that dehumanization can be effected over time through disinformation by an X Corp account. In particular, X Corp must remove accounts which are running campaigns or information operations that portray a class of persons based on a protected characteristic as:
 - (i) polluting, despoiling or debilitating society;
 - (ii) having a diminished capacity for human warmth and feeling or independent thought;
 - (iii) acting in concert to cause mortal harm; or
 - (iv) responsible for and deserving of collective punishment for the specific crimes, or alleged crimes of some of their “members” (Dehumanizing discourse).
- (e) compensate AMAN for the work involved in preparing the Complaint and for the hardship and trauma their failure to act caused to AMAN’s staff and volunteers.

Jurisdiction of the Tribunal

- [14] Following referral of the Complaint to the Tribunal on 21 March 2023 the Tribunal required the parties to address:
 - (a) the standing of the Australian Muslim Advocacy Network to make the Complaint the subject of referral;
 - (b) the jurisdiction of the Tribunal to hear and determine the complaint, and
 - (c) whether the respondents are subject to the *Anti-Discrimination Act* 1991 (Qld) and the *Human Rights Act* 2019 (Qld), including whether the respondents carry on business in the State of Queensland.
- [15] An oral hearing was conducted on the jurisdiction question, which focused on the application of s 124A of the AD Act. At the hearing it was indicated that the only Complaint that is made is under s 124A of the AD Act.
- [16] No point was taken as to the standing of AMAN with respect to a Complaint of contravention of s 124A of the AD Act. I find that AMAN has standing under s 134 of the AD Act with respect to such a Complaint.

Legislation

- [17] Section 5 of the Preamble to the AD Act provides that the Parliament is satisfied there is a need to apply anti-discrimination law consistently throughout the State and

to ensure that determinations of unlawful conduct are enforceable in the courts of law.¹⁰

[18] Section 124A of the AD Act provides:¹¹

(1) A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, religion, sexuality or gender identity of the person or members of the group.

(2) Subsection (1) does not make unlawful –

...

(c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.

[19] Section 4A of the AD Act gives the meaning of public act:¹²

(1) A public act includes –

(a) any form of communication to the public, including by speaking, writing, printing, displaying notices, broadcasting, telecasting, screening or playing of tapes or other recorded material, or by electronic means; and

(b) any conduct that is observable by the public, including actions, gestures and the wearing or display of clothing, signs, flags, emblems or insignia.

(2) Despite anything in subsection (1), a public act does not include the distribution or dissemination of any matter by a person to the public if the person does not know, and could not reasonably be expected to know, the content of the matter.

[20] By s 174A and s 174C of the AD Act this Tribunal is given jurisdiction to hear and decide Complaints referred to it by the Queensland Human Rights Commissioner.¹³

Issues

[21] Is there subject matter jurisdiction, that is does the intended sphere of operation of s 124A of the AD Act extend to the conduct of X Corp in Australia or in the USA?

[22] Is there personal jurisdiction, that is can X Corp be brought before the Tribunal and made subject to its Orders?

What conduct is attributable to X Corp?

[23] X Corp acknowledges that by operation of its website in the USA it has facilitated publication of material by means of downloads in Queensland. It is acknowledged that its conduct in the USA has an effect in Queensland. However, it maintains that it engages in no conduct in Queensland.

¹⁰ AD Act (n 2) s 5.

¹¹ Ibid s 124A.

¹² Ibid s 4A.

¹³ Ibid ss 174A, 174C.

- [24] Whether there has been a public act by any conduct of X Corp in Queensland is at issue.

Subject matter jurisdiction

- [25] AMAN alleges that the objectionable material the subject of the Complaint is accessed by means of downloads in Queensland.¹⁴ I do not understand that bare fact to be in contention.

Are mere allegations of a contravention of s 124A of the AD Act sufficient at this stage?

- [26] The question is whether X Corp has engaged in conduct in Queensland which may be found to be public acts in contravention of s 124A of the AD Act. AMAN submits that X Corp has engaged in conduct in Queensland which amounts to public acts for the purpose of s 124A and s 4A of the AD Act. However, AMAN is at pains to stress that all which need be found by me in respect of publication is that the Complaint alleges publication of offending material through X Corp, and for the reasons outlined in *Agar and Ors v Hyde*,¹⁵ the role of this Tribunal is to determine whether those allegations are within the jurisdiction of the Tribunal to determine. In short, it is not for me to determine at this stage whether there is a public act in Queensland, amounting to a jurisdictional fact as a precondition to jurisdiction.
- [27] I accept that is the proper approach to determining the question of jurisdiction and that it is a matter for an ultimate hearing as to whether a public act of impugned conduct under s 124A is established.
- [28] There was argument at the hearing on the admissibility of the affidavit of Mr Doherty which contains confidential information, going to the issue raised by X Corp that the operation of the Twitter service in the USA does not amount to a public act in Queensland for the purpose of s 124A of the AD Act.
- [29] I ruled that the affidavit was admissible, noting that it addressed the means of transmission of a “tweet” and those facts had a degree of relevance but were not determinative. I did not determine as part of the ruling that X Corp’s conduct in the USA is or is not a public act in Queensland for the purpose of s 124A.
- [30] In the end I have not relied on Mr Doherty’s affidavit in coming to a conclusion in relation to the jurisdiction of this Tribunal.
- [31] I conclude that whilst this Tribunal is determining its jurisdiction in the matter, it is sufficient that mere allegations of a contravention of s 124A of the AD Act are made. There is no need to make a finding that there has been a public act in contravention of s 124A of the AD Act. I do however need to find that there has been conduct in Queensland which may fall within s 4A and s 124A of the AD Act.

Is the conduct which has occurred in Queensland a basis for finding there is subject jurisdiction?

- [32] *Valve Corporation v Australian Competition and Consumer Commission*¹⁶ offers good guidance in this matter. Valve Corporation, was a company based in the United

¹⁴ Affidavit of Rita Jabri Markwell, made 15 September 2023.

¹⁵ [2000] HCA 41.

¹⁶ [2017] FCAFC 224 (*Valve Corporation*).

States, which operated and controlled a website and online video game delivery platform. It was alleged to have made misrepresentations in material downloaded in Australia as to consumer guarantees in the Australian Consumer Law in contravention of sections 29(1)(m) and 18 of the Law.¹⁷ Edelman J at first instance found that Valve Corporation had contravened Australian law, that its conduct fell within the scope of the Australian Consumer Law and that it was amenable to Orders made by the Federal Court of Australia. That was affirmed on appeal to the Full Federal Court.

- [33] Valve Corporation asserted that it was based in the USA, it operated a website hosted and fully supported by servers located in Washington State, and its website provided a worldwide subscription service enabling customers throughout the world to access content that Valve uploaded to its website. Subscriptions were processed by Valve Corporation in the USA. Valve was not registered in Australia as a foreign corporation and had no registered office or other place of business in Australia. Valve had no subsidiaries or employees in Australia.
- [34] There are marked similarities to this matter in terms of the host of a website being based entirely overseas and asserting that it only acts overseas, out of reach of Queensland law.
- [35] Unlike the AD Act, extraterritorial reach is expressly addressed by s 5(1) of the Australian Consumer Law so that the Law applied to conduct outside Australia by bodies corporate carrying on business within Australia.¹⁸
- [36] Relevant to my consideration is the approach taken to jurisdiction by the Full Federal Court. The analysis was conducted on the basis that it was necessary for the ACCC to establish either:
 - (a) that Valve Corporation engaged in the relevant conduct in Australia for the purposes of ss 18 and 29(1)(m) of the Australian Consumer Law; or
 - (b) that Valve Corporation carried on business in Australia and was thus subject to the extended operation of the Australian Consumer Law.
- [37] The first alternative goes to the question of whether Valve Corporation (or in this case X Corp) entered into the jurisdiction by its conduct so that it is subject to the relevant law. If that can be answered in the affirmative there should be no need to go further.
- [38] Valve Corporation argued, as X Corp has argued, that the Court must focus on Valve Corporation's acts of uploading material in the United States, not the consequences of these acts in Australia or any other jurisdiction.
- [39] The Full Federal Court said that the question to be determined is where, for the purposes of ss 18 and 29(1)(m) of the Australian Consumer Law the relevant conduct took place. This Tribunal asks where for the purposes of s 124A of the AD Act did the relevant conduct take place.

¹⁷ *Competition and Consumer Law Act 2010 (Cth)* sch 2 ('Australian Consumer Law').

¹⁸ *Ibid* s 5(1).

- [40] Their Honours noted that the question whether a cause of action is to be classified as local or foreign is to be answered by ascertaining the place of the defendant's act which gives the plaintiff his cause of complaint.¹⁹
- [41] Their Honours relied on principles from authorities which dealt with an act which passes across space to be completed in a place different from the place where it was initiated.²⁰ In particular they noted the observations of Mason CJ, Deane, Dawson and Gaudron JJ in *Voth v Manildra Flour Mills Pty Ltd*²¹ that in some cases an act passes across space or time before it is completed; and communicating by letter, telephone, telex and the like provided examples of this. *Dow Jones & Company Inc v Gutnick*²² was relied upon. In *Dow Jones* it was found that defamation occurs at the place and point of download of material previously uploaded onto a website elsewhere in the world. Further, until download occurs the information is not in a comprehensible form.
- [42] Their Honours concluded that an act initiated in the United States, which passes across space, and is completed by means of a download in Australia, can in the case of misrepresentations be taken to have been made in Australia where a customer accesses and reads the representations on their computer.²³
- [43] In light of that conclusion their Honours did not think it necessary to address the second issue. However, they did so. I will refer later in this decision to their discussion of the meaning of "carrying on business".
- [44] X Corp says that reference to cases decided on other pieces of legislation is not helpful, other than for statements of principle. Defamation cases are distinguished on the basis that the tort of defamation is concerned with the place where reputation suffers as a result of comprehension of a particular defamatory publication. The point of comprehension of a publication is said to be important. By contrast it is said the purpose of s 124A is to prohibit conduct in a place. It is not concerned with the effect of conduct which is the significance of defamation.
- [45] I reject that submission. Section 4A of the AD Act defines public act to include "any form of communication", whereby under s 124A "hatred, serious contempt or severe ridicule" is incited. There is a point of comprehension at the point of download of a tweet where that incitement occurs. I consider defamation to be analogous to vilification in this regard.
- [46] I conclude, relying on the analysis in *Valve Corporation* that X Corp has engaged in conduct in Queensland by acting in the USA to enable a download in Queensland. The cause of complaint arises in Queensland upon the download becoming comprehensible. The result is that conduct has occurred in Queensland which may amount to a contravention of s 124A of the AD Act. Whether there has been a contravention of s 124A is a matter for final determination.

¹⁹ *Valve Corporation* (n 17) [129].

²⁰ *Ibid.*

²¹ (1990) 171 CLR 538, 566-568.

²² (2002) 210 CLR 575.

²³ *Valve Corporation* (n 17) [134]-[135].

- [47] On the basis of that finding, I am able to conclude, as was concluded in *Valve Corporation's* case, that there is subject jurisdiction which grounds this Tribunal's jurisdiction over the conduct in Queensland of a foreign corporation such as X Corp.
- [48] For the purpose of determining jurisdiction, it does not matter that X Corp is a foreign corporation. In *X v Twitter Inc*,²⁴ His Honour Justice Prembroke said that the jurisdiction of a Court over a foreign defendant, includes where the claim is for an injunction to compel or restrain the performance of an act in Australia, or when the claim is founded on a cause of action arising in Australia. Whether defendants submit or not is beside the point at least as far as jurisdiction is concerned.
- [49] Jurisdiction is grounded not in the exercise of judicial power overseas, but in the defendant being amenable to the Court's jurisdiction to be personally directed to act or not act even if compliance cannot be ensured.²⁵

Apart from the finding as to the cause of complaint arising in Queensland – does X Corp have a presence in Queensland which might enable extraterritorial reach by the AD Act?

- [50] X Corp has consistently argued that it has not engaged in any conduct in Queensland. X Corp says its only conduct occurs in the USA where it uploads material to its website, and that a user's internet service provider enables download in Queensland. I have found that is not the case. However, I will deal with X Corp's submission that the AD Act has no extraterritorial reach with respect to its actions in the USA, and that it has no physical presence in Queensland necessary to carry on business here, which might enable the AD Act to reach it in the USA.
- [51] On AMAN's submissions the AD Act has extraterritorial reach to impugn conduct occurring in the USA which has an effect in Queensland and results in a contravention of s 124A of the AD Act.
- [52] AMAN deals with s 35 of the *Acts Interpretation Act* 1954 (Qld) which implies the words "in and for Queensland" in any reference to an entity in an Act by pointing to s 4 of that Act which it says operates to displace any limited operation of the AD Act or the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) (QCAT Act). Section 4 provides that the application of the *Acts Interpretation Act* may be displaced, wholly or partly by a contrary intention appearing in any Act.
- [53] As to how a contrary intention is determined, AMAN submit that the reasoning in *BHP Group Limited v Impiombato*²⁶ is apposite. Their Honours Gordon, Edelman and Steward JJ say that to determine whether a statute has extraterritorial reach, the hinge or central focus of the subject matter of the legislation must be determined first by a process of statutory construction. Their Honours cited Leeming JA in *DRJ v Commissioner of Victims Rights [No 2]*:²⁷

... the hinge or central focus is identified "as a matter of construction, based on subject matter and scope, and with a regard to internal indications and to avoiding improbable and absurd outcomes. It will be relevant to have regard to the purpose of the statute, the likelihood that the statutory purpose will be evaded if made to depend upon something readily altered at the instance of the

²⁴ [2017] NSWSC 1300, [20]-[23].

²⁵ *National Australia Bank Ltd v Dessau* [1988] VR 521, 522.

²⁶ [2022] HCA 33, [60].

²⁷ (2020) 103 NSWLR 692, [157].

parties, and the need to avoid an unduly restrictive approach whereby more than one factum is required to bear a connection.”

- [54] Their Honours discussed that after the hinge or central focus of the legislation is discerned, attention can then be given to whether the common law presumption of territoriality applies. That presumption is described by their Honours as - an enactment describing acts, events, matters or things in general words, so that, if constrained by no consideration lying outside its expressed meaning, its application would be universal, should not be understood as extending extraterritorially.²⁸ Their Honours went on to say that the Court has not taken a uniform approach to applying the presumption and that where the subject matter is identified and it does not have a clear territorial connection (that is, it appears to be at large), the presumption will generally require that the hinge be construed as territorially limited, subject to a contrary intention.²⁹
- [55] AMAN submits that a contrary intention can be found to rebut the presumption of territoriality, because:
- (a) X Corp’s conduct in the USA and resultantly in Queensland falls within the central focus of the subject matter of the legislation in s 124A of the AD Act to protect persons from religious vilification in Queensland.
 - (b) The AD Act should be construed in such a way that persons cannot evade the statutory purpose.
 - (c) Further to the central focus of s 124A, the AD Act does not expressly protect foreign entities from engaging in religious vilification as opposed to State or local entities; the AD Act is intended to have wide and beneficial scope to protect persons in Qld from vilification, the Act should be interpreted in a way that best achieves its purpose³⁰ and should be interpreted in a way compatible with human rights.³¹
 - (d) Section 5 of the QCAT Act provides that the Act binds all “persons” which by schedule 1 of the *Acts Interpretation Act* includes corporations and therefore foreign corporations.
 - (e) Consistent with this Tribunal being able to apply the AD Act to a foreign corporation, QCAT Rule 40(4) provides for substituted service on an entity not in Queensland or not in Queensland when the proceeding started.³²
- [56] AMAN submits that X Corp provides a service in Queensland, and the alleged unlawful conduct involved public acts in Queensland in relation to that service. The relevant connection with Queensland is made out by reliance on *Dow Jones & Co Inc v Gutnick*³³ such that the harm caused by vilification at the point of download of vilifying material from a website is analogous to the harm caused by defamatory material downloaded from a website, noting that the majority in the *Dow Jones*’ case

²⁸ *BHP Group Limited v Impiombato & Anor* [2022] HCA 33, [60]–[62].

²⁹ *Ibid* [63].

³⁰ *Acts Interpretation Act* 1954 (Qld) s 14A

³¹ *Human Rights Act* 2019 (Qld) s 48.

³² *Queensland Civil and Administrative Tribunal Rules* 2009 (Qld) s 40(4) (‘QCAT Rules’).

³³ *Dow Jones & Co Inc v Gutnick* [2002] HCA 56, [44].

found that it is only when allegedly defamatory material is in comprehensible form upon download, that damage to reputation is done.

- [57] Also relied upon by AMAN is the discussion of online publication in *Google LLC v Defteros*³⁴ and *Fairfax Media Publications Pty Ltd v Voller*:³⁵

...any act of participation in the communication of defamatory matter to a third party is sufficient to make a defendant a publisher, regardless of their knowledge or intent. So understood, a person who has been instrumental in, or contributes to any extent to, the publication of defamatory matter is a publisher.

- [58] X Corp says that this Tribunal does not have subject matter jurisdiction or geographic reach in relation to its jurisdiction with respect to X Corp, because X Corp is not resident, or present in Queensland and the impugned conduct took place outside Queensland. I reject these submissions on two bases. First, as explained later in this decision I find that X Corp is present in Queensland, because it provides a service in Queensland and in my view carries on business in Queensland. Second, the impugned conduct took place in Queensland whether one terms the impugned conduct an “effect” or actual conduct within the meaning of s 4A of the AD Act.
- [59] Beyond those propositions I do not find that the AD Act has extraterritorial reach. I find as submitted by X Corp that the presumption against extraterritoriality³⁶ applies. There is no provision in the AD Act which expressly applies to people and their conduct external to Queensland where there is no connection with Queensland. I do not think there is a sufficient contrary indication in the legislation to overcome the presumption.
- [60] X Corp relies on the finding in *Carter v Sercombe and Others*³⁷ and says there is no scope for any argument to rebut the presumption that the AD Act has effect only within the territorial limits of the State. I accept that is the case.
- [61] I also agree that the only references to the territorial limits of the AD Act’s operation are s 5(b) of the Preamble expressing a need to apply anti-discrimination laws consistently throughout the State; s 235(i) which provides that one of the QHRC’s functions is to promote human rights “in Queensland”; and s 3A which extends the operation of the AD Act to ships “connected with Queensland”. Those references are insufficient to indicate an intention on the part of the legislature that the AD Act should apply to people or conduct external to Queensland.
- [62] X Corp says that the amendment which gave rise to s 3A was in response to *Carter*’s case, where alleged sexual harassment occurred on a ship outside Queensland’s territorial waters. X Corp says it can be inferred that the legislature had the opportunity to fully reverse *Carter* but chose not to, acting instead to a limited extent. I agree.

³⁴ [2022] HCA 27, [19]-[21].

³⁵ (2021) 95 ALJR 767, 775 [32].

³⁶ *Jumbunna Coal Mine NL v Victoria Coal Miners’ Association* (1908) 6 CLR 309, 363.

³⁷ [1998] QADT 17, 10.

- [63] I note that cognate federal legislation³⁸ and the Human Rights and Equal Opportunities Commission under the *Human Rights and Equal Opportunity Act* 1986 (Cth)³⁹ have been found not to have extraterritorial reach.
- [64] In relation to the wide and beneficial purpose of the AD Act, X Corp says that it begs the question to state the purpose to be achieved by the Act and to then assert that the purpose is to extend to people all over the world. That much is clear, however I reject the submission as put at the hearing by X Corp that if the argument is that there is an effect-based connection to the jurisdiction from anything happening anywhere in the world and the AD Act makes what is happening unlawful – that is a very large proposition. It is a large proposition. However, it is the nature of the internet which opens up that prospect.
- [65] It is not possible to put a rope around an “effect” and argue that it is not conduct caught by the law of Queensland, because it is merely an effect, as if that is not something tangible or real and that the real conduct occurs elsewhere. I have found in the earlier part of my consideration that there has been actual conduct in Queensland because of the nature of a download which starts in one place and ends in another. Even apart from that finding, if there has been an effect in Queensland from causative conduct outside Queensland, I consider the AD Act can apply to make what is happening in Queensland unlawful.
- [66] I return now to the factors isolated by AMAN as being consistent with extraterritorial reach. As to the ability to carry out substituted service on a person outside the jurisdiction, X Corp says that provision in the QCAT Rules does not expand the jurisdiction of the Tribunal, but merely gives a means of serving a person who one would otherwise be able to serve within the jurisdiction but cannot be contacted. In my view that is to add a requirement not present in the Act. I find that the Act contemplates service outside the jurisdiction, in circumstances where a person cannot be served wherever they may be, and that is consistent with some extraterritorial reach on the part of the Tribunal when applying the AD Act.
- [67] In relation to the argument that s 5 of the QCAT Act extends the operation of the AD Act to all people including a foreign corporation, X Corp says that the section is intended to ensure the State and in some circumstances the Commonwealth are bound by the QCAT Act. X Corp says that the section does not define the scope of the AD Act. I disagree. The section is not limited to binding the State and the Commonwealth. The section purports to bind “all persons”, “including” the State and Commonwealth. I think it is within the meaning of s 5 of the QCAT Act that foreign corporations can be bound by the AD Act.
- [68] X Corp points to s 35(1) of the *Acts Interpretation Act*. In summary by s 35(1) a reference to an entity is a reference to an entity in Queensland and a reference to a thing (such as conduct) is a reference to a thing (conduct) in Queensland. X Corp refers to the statements in *BHP’s* case that the provisions operate: “to ensure that a connection exists between the subject matter to which the statute refers, on the one hand, and” “...a geographically bounded polity”, in this case – Queensland.⁴⁰ X Corp concludes that consistent with the statements in *BHP’s* case s 35(1)(b) is

³⁸ Submissions of X Corp dated 31 August 2023, n 97; *Brannigan v Commonwealth* (2000) 110 FCR 566.

³⁹ *Vijayakumar v Qantas Airways Ltd* [2009] FCA 1121.

⁴⁰ (2022) 96 ALJR 956, [36].

satisfied by treating a law of apparently universal application, as applying only to conduct in the territory of the legislature. I accept that submission, subject to the reference to conduct being broad enough to catch an effect caused in Queensland, as well as actual conduct.

- [69] X Corp goes on to say that the person referred to in s 124A of the AD Act must by s 35(1) of the *Acts Interpretation Act* be a person “in and of Queensland”, which X Corp is not, because it is a foreign corporation resident and present only in the USA. I accept that X Corp is a foreign corporation. I do not accept that it is not present in Queensland for the purpose of establishing subject jurisdiction. In my view the conduct or effect of conduct by X Corp in terms of causing a download of material, which occurs in Queensland is sufficient to connect X Corp to Queensland, that is to connect the subject matter of the AD Act to the geographically bounded polity of Queensland.
- [70] By way of further connection with Queensland, and evidence of a presence in Queensland, I accept AMAN’s submissions that X Corp provides a service in Queensland by making its website available to subscribers, and it enters into contracts with subscribers in Queensland to provide that service. I would go further and find that X Corp carries on business in Queensland.
- [71] It must be uncontentious that X Corp earns revenue. There is no evidence before me which gives details of what revenue is earned and how it is earned. I note the Complaint filed in the Queensland Human Rights Commission refers to revenue of Twitter Inc for the 2020, 2021 and 2022 years in the order of approximately \$3 billion each year.
- [72] A search of the X Corp site on the internet reveals a business page which encourages advertisers to use the platform to target its users and reveals a number of products to enhance the effectiveness of advertising on the platform. The site encourages advertisers to “monetize 535 million monthly active users”.⁴¹ The Twitter user agreement attached to the affidavit of Mr Doherty⁴² makes clear that information or data is garnered from users to make advertising and sponsored content services relevant to the user. I infer that part of the revenue derived from advertising comes from advertisers in Queensland directed to X Corp’s subscribers or active users in Queensland. Plainly that advertising is made more effective by the data collected by X Corp about its users, which I infer is sold to advertisers.
- [73] I do not go beyond these superficial facts, as there is obviously a need for evidence which will be relevant at a hearing. I think there is a sufficient basis to conclude that the business of X Corp does not operate in isolation in the USA. It is significantly more than a blogging platform. By the capabilities of the internet it is able to engage in activity anywhere in the world to earn revenue from advertising.
- [74] X Corp relies on factors established in *National Commercial Bank v Wimborne*⁴³ to argue that it does not carry on business in Queensland because it has no fixed and definite place of business within Queensland, and its business has not been carried on in the territory for a sufficiently substantial period of time. I observe that the

⁴¹ ‘Grow Your Business On X’, *X Business* (Web Page) <<https://business.x.com/>>; *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 28(3)(c).

⁴² Affidavit of James Patrick Doherty, sworn 27 July 2023, attachment JPD- privacy policy at 2.1.

⁴³ (1979) 11 NSWLR 156, 165.

analysis from earlier cases such as *Wimborne* does not take account of business conducted over the internet, which removes the need for a physical presence in a location.

- [75] I prefer the analysis undertaken in *Valve Corporation's* case because it is relevant to the internet and provision of access to a website as a business model. In considering the ordinary meaning of carrying on business, their Honours adopted from *Bray v F Hoffman-LaRoche Ltd*⁴⁴ a definition of “carrying on business” as:

...activities undertaken as a commercial enterprise in the nature of a going concern, that is, activities engaged in for the purpose of profit on a continuous and repetitive basis.⁴⁵

- [76] Their Honours agreed with Merkel J in *Bray's* case, addressing the term “carry on business” in s 5(1) of the Australian Consumer Law that:

there is no reason for importing the additional requirement that to carry on business in the jurisdiction the foreign company must also have a place of business in the jurisdiction; a place of business is not a requirement of comity; and importing such a requirement would impermissibly supplement the corporate requirement of carrying on business with the additional requirement of corporate presence or residence.⁴⁶

- [77] *Valve Corporation's* case also considered *Gebo Investments (Labuan) Ltd v Signatory Investments Pty Ltd*,⁴⁷ concluding, in contrast to the view of Barrett J in *Gebo*, that there is no need for some physical activity in Australia through human activity for business to be conducted in Australia. However, their Honours placed emphasis on Barrett J's view that the territorial concept of carrying on business involves acts within the relevant territory that amount to or are ancillary to, transactions that make up or support the business.⁴⁸

- [78] Of course, there is no equivalent to s 5(1) of the Australian Consumer Law in the AD Act, however I adopt the reasoning in *Valve Corporation* as an appropriate marker of whether by an ordinary understanding X Corp is carrying on business in Queensland, sufficient for it to have a presence in Queensland which requires it to comply with the law of Queensland in its operations.

- [79] I find that entering contracts with subscribers, earning revenue from advertisers in Queensland and enabling advertisers to target Queensland subscribers to X Corp, falls within the ordinary understanding of carrying on business as accepted in *Valve*. I conclude that the way in which X Corp earns revenue involves acts within Queensland that are ancillary to transactions that make up or support the business of X Corp.

Conclusion – subject jurisdiction

- [80] I conclude that there is subject jurisdiction sufficient to give this Tribunal jurisdiction to determine the Complaint referred to it. That jurisdiction is sufficient to catch a foreign corporation which is active in Queensland. First because the cause

⁴⁴ (2002) 118 FCR 1, [62].

⁴⁵ *Valve Corporation* (n 17) [144]-[142], citing *Bray v F Hoffman-La Roche Ltd* (2002) 118 FCR 1, [62].

⁴⁶ *Valve Corporation* (n 17) [145].

⁴⁷ (2005) 54 ACSR 11.

⁴⁸ *Valve Corporation* (n 17) [149].

of the complaint arose in Queensland. Further, if it is necessary to so find because X Corp has a sufficient presence in Queensland by virtue of its conduct in Queensland whereby it contracts with subscribers and provides a service to them. Finally, if it is necessary to so find because X Corp carries on business in Queensland.

- [81] I do not find that the AD Act has extraterritorial reach in relation to conduct by X Corp which occurs in the USA, which is disassociated from Queensland, and which has no effect in Queensland.

Personal jurisdiction

- [82] The issue of personal jurisdiction is concerned with how the Tribunal may bring a foreign corporation such as X Corp before it and enforce any orders against X Corp.
- [83] AMAN argue that it is not necessary for service on X Corp to be effected to bring it before the Tribunal. Its submissions are:
- (a) Section 5 the QCAT Act binds all persons. By s 32D(1) of the *Acts Interpretation Act* a person includes a corporation, which includes all foreign corporations.
 - (b) The respondents have been made parties to the Complaint and are parties in the proceeding in QCAT resulting from the referral of the Complaint to QCAT under the AD Act and the QCAT Act.
 - (c) The process for acceptance of a Complaint under the AD Act and referral to the Tribunal is sui generis, or a one of a kind process by which a proceeding is commenced in QCAT for determination of an anti-discrimination complaint, and respondents to a complaint become parties to the proceeding in the Tribunal.
 - (d) The Complaint was accepted by the Qld Human Rights Commissioner. The respondents were notified and they participated in a conciliation conference, although making plain they were not waiving their objections to jurisdiction over Twitter Inc in relation to the Complaint.
 - (e) The Complaint was referred to QCAT. By s 175 of the AD Act the Tribunal must accept a complaint that is referred to it by the Commissioner, unless the complaint was made to the Commissioner more than 1 year after the alleged contravention of the Act (which the Tribunal may deal with if it is reasonable to do so). By s 35(2) of the QCAT Act the referred Complaint was accepted by the Principal Registrar. By s 36 of the QCAT Act the proceeding commenced upon acceptance.
 - (f) By s 37(2) and (3)(a) of the QCAT Act and Rule 20(1)(b) and (2) of the QCAT Rules, the Principal Registrar must give, and has given, a copy of the referral to each party to the proceeding.⁴⁹
 - (g) Section 39(b) of the QCAT Act provides that each of the respondents is a party to the proceeding because they are persons in relation to whom a decision of the tribunal is sought by the applicant.

⁴⁹ Email QCAT to applicant and respondents enclosing an electronic copy of the referral dated 17 March 2023 and stamped 21 March 2023.

- (h) Service may be effected by email under Rule 39 of the QCAT Rules to an electronic service address stated in an entity's statement of address for service filed in the registry, or in this case, by Rule 36(3) to the contact details noted in the referral. There is no requirement in the service provisions for an electronic service address to be in Queensland or elsewhere in Australia.
- (i) All statutory notices have been given to the respondents. It is in this context that the objection to jurisdiction by the respondents is to be tested and in this case the respondents have notwithstanding their objection become parties to the QCAT proceeding pursuant to the statutory scheme which only requires that they be given notice of the Complaint and a copy of the referral documents.
- (j) The common law principle that a foreign corporation is excluded from the jurisdiction of a Court or Tribunal where there is no specific authority to grant leave to serve out of the jurisdiction⁵⁰ has been overtaken by the statutory regime in the AD Act and the QCAT Act.⁵¹
- (k) If a party is served in accordance with the court's exorbitant jurisdiction, that person (so far as the jurisdiction of the court is concerned) is in the same position as a person who is within its territorial jurisdiction.⁵² That is equally referable to this Tribunal.

[84] It is submitted that if the Tribunal is not satisfied that notice has been given, the Tribunal may dispense with the procedural requirement for notice under s 61(c) of the QCAT Act consistent with:

- (a) the substituted service Rule 40 (4) which provides that the Tribunal may make an order even though the entity to be given a document is not in Queensland or was not when the proceeding started; and
- (b) Rule 41 that the Tribunal may by order decide that an entity is taken to have been given the document on a day it came into the entity's possession, noting that the respondents are on notice as to all relevant details of the proceeding and have actively participated in them, albeit under objection; and
- (c) service having been validly effected in accordance with the terms of the Hague Service Convention (albeit not applying to a QCAT proceeding).

[85] As to the remedy sought by AMAN, it is submitted that:

- (a) the Tribunal does not need to be satisfied of the means of ensuring compliance in foreign jurisdictions as a pre-requisite to the grant of the injunctions which does not affect the utility of proposed orders.⁵³
- (b) There is a public interest in making orders which may remedy wrongful conduct to the extent it is possible to do so.⁵⁴

[86] On the basis of these submissions AMAN says that the preliminary issue should be answered in its favour.

⁵⁰ *Laurie v Carrol* (1958) 98 CLR 310, 322-323.

⁵¹ *Agar v Hyde* (2000) 201 CLR 552, [42]-[47].

⁵² *Humane Society International Inc v Kyodo Senpaku Kaisha Limited* [2006] FCAFC 116, [16].

⁵³ *X v Twitter Inc* [2017] 95 NSWLR 301, [38].

⁵⁴ *Ibid* [42].

X Corp's submissions

[87] X Corp says that the Tribunal has no jurisdiction over the companies because:

- (a) there is no intention for the AD Act to have extra territorial operation.
- (b) the jurisdiction of the Tribunal does not extend to a foreign corporation without a presence in Australia.
- (c) there is no conduct on the part of either company which occurred in Queensland relating to the downloading of tweets which could amount to a public act under s 124A of the AD Act. The definition of public act is focused on conduct and excepts distribution or dissemination of any matter to the public if the content of the matter is unknown, which is asserted to be the case.

[88] I have dealt with the effect of these submissions in relation to my earlier findings that the AD Act and the QCAT Act do have limited extraterritorial jurisdiction to capture the activity of a foreign corporation in Queensland and that X Corp does have a presence in Queensland by its activities in the State and by carrying on business in the State.

[89] X Corp goes on to make strong points in relation to the inability of this Tribunal to serve X Corp. That is:

- (a) without service on X Corp or Twitter Australia Holdings Pty Ltd, they cannot be made subject to the Tribunal's jurisdiction.⁵⁵
- (b) The Tribunal has no power to serve its process on a foreign corporation. X Corp is not physically present in Queensland. No law authorises the Tribunal to serve X Corp in the USA for the purpose of s 37(2) of the QCAT Act.
- (c) It is a serious thing to claim power over a person. There are good historical reasons why the power of courts have been limited by the geographical scope of their sovereign's power. In relation to the projection outside of Australia of Australian judicial power there are specific regimes provided in, for example, the State Uniform Civil Procedure Rules and the Federal Court Act and rules. No specific regime is present in the QCAT Act or Rules. The common law position set out in *Laurie v Carroll*,⁵⁶ has not been overridden by the QCAT Act.
- (d) No attempt at service on Twitter Australia Holdings Pty Ltd has been made under the *Service and Execution of Process Act 1992* (Cth) ('SEPA Act'). Further, that company has nothing to do with the operation of the website.
- (e) At no stage have X Corp and Twitter Australia Holdings Pty Ltd waived their objection to jurisdiction. They have appeared only to contest jurisdiction.⁵⁷ Although it is not disputed that the companies have notice of the proceeding.
- (f) In answer to AMAN's argument about the effect of s 37(2) of the QCAT Act, it is said that the general terms of s 37(2) do not provide that a party may give a

⁵⁵ *Laurie v Carroll* (1958) 98 CLR 310.

⁵⁶ *Ibid.*

⁵⁷ *Ibid* 335-36; *National Commercial Bank v Wimborne* (1979) 11 NSWLR 156, 181.

copy of the originating document to the respondent anywhere in the world, and thereby validly serve that respondent.

- (g) It does not matter if QCAT has an application or a referral before it. It must have a process for lawful service to found its jurisdiction. The fact that the matter had its origin in the Human Rights Commission is irrelevant. If the submission put by AMAN were accepted then QCAT could exercise power over anyone anywhere in the world, and on no view can that be given as a sensible construction of the Act.
- (h) In any event QCAT's email dissemination of the Referral on 18 April 2023 was not effective service. This is because that email did not contain the requisite SEPA Act notices, X Corp's solicitors did not accept service on X Corp's behalf and X Corp's solicitors expressly stated that X Corp objected to QCAT's jurisdiction.

[90] At the hearing AMAN made a reply which addresses these arguments. I accept AMAN's submissions.

[91] AMAN put that we are here concerned with a scheme which operates against all persons anywhere who incite racial and religious vilification in Queensland and that the Queensland Parliament has a legitimate interest in producing that result irrespective of where the cause of it comes from because it is the effect of conduct, and the harm caused that the AD Act is designed to prevent.

[92] AMAN says that *Laurie v Carroll* sets out a purely common law principle. It has been overridden by the statutory scheme in the AD Act, which merely requires notice, not service. That is why contact details were given by the parties and why notice was given. It is said that the statutory scheme requires notice to be given and participation in each step. The conciliation process, referral and then a hearing are a continual process which results in a respondent being liable under orders made pursuant to the QCAT Act. The purpose of service is embodied in the statutory scheme – notice is required at every point and is given at every point. AMAN says that nothing in the scheme denies a person procedural fairness. A fair process is given by statute in a way that does not conform to the common law, but that is not a basis for objection.

[93] Importantly it is submitted, and I accept that upon referral of a Complaint there is no originating process like a writ, or indeed the applications by which this Tribunal exercises its original jurisdiction. That is the difference between a referral of an anti-discrimination complaint and the nature of the proceeding in *Hartley v Bennette*,⁵⁸ where this Tribunal concluded that service under SEPA is necessary where a party is outside Queensland, and that the principle in *Laurie v Carroll* applies to Tribunal proceedings.

[94] It is this conclusion which gives force to AMAN's submissions that a sui generis statutory scheme exists for the determination of anti-discrimination complaints in Queensland. Relying on AMAN's arguments I find that the scheme is its own peculiar species of proceeding with its own rules for ensuring that certain unlawful conduct in Queensland is dealt with no matter where in the world the conduct began. If it is otherwise, the internet can be used to violate the purpose and intent of the

legislation in Queensland and offer protection to those who thumb their nose at the laws of other jurisdictions from whence they nevertheless earn their revenue.

- [95] Finally, I raised with the parties whether there was any utility in the injunctive relief sought from the Tribunal, given the difficulty of enforcement in the USA. X Corp said that any injunction which offended the right to free speech in the USA would never be enforced. AMAN said that enforcement of injunctions is possible subject to court order, however whether orders will be enforced is not a matter going to jurisdiction. I accept that submission.
- [96] I conclude that this Tribunal may exercise personal jurisdiction over X Corp. I find that X Corp has been given notice of the proceeding in accordance with the AD Act and the QCAT Act.
- [97] Given this conclusion it is not necessary for me to consider the alternative proposal put by AMAN that the Tribunal waive the need for compliance with any notice requirement.

Twitter Australia Holdings Pty Limited

- [98] Twitter Australia Holdings Pty Limited asserts it has nothing to do with the operation of the website and that it was not involved in any public act in Queensland. It says there is no subject jurisdiction and that service under SEPA has not been effected upon it.
- [99] AMAN submits that Twitter Australia Holdings Pty Limited were involved in the factual matrix and that it would be wrong to shut off the prospect of relief against it when evidence and facts are yet to emerge in the course of a hearing.⁵⁹
- [100] It will be a matter for evidence as to the significance of the role of Twitter Australia Holdings Pty Limited in Queensland at the relevant time. However, it is submitted that when AMAN became aware of the allegedly offending posts downloaded in Queensland it communicated with Twitter Holdings Australia Pty Limited. That company responded to AMAN and communicated with Twitter Inc in the USA. Prior to 1 July 2023 the company provided business development, marketing, and related support services for marketing and promoting www.twitter.com in Australia.⁶⁰ AMAN submits that the company was the vehicle through which Twitter Inc carried on a business in Australia, until it ceased to do so, but during the relevant complaint period it did so. I conclude that Twitter Australia Holdings Pty Limited is sufficiently a part of the factual background to the matter to justify its presence as a party to the proceeding.
- [101] Because of this background I consider there is sufficient connection with Queensland to reject the submission that the Tribunal does not have subject matter jurisdiction to decide the Complaint against Twitter Australia Holdings Pty Limited.
- [102] I accept the submission of AMAN that Twitter Australia Holdings Pty Limited is properly a party because it has been given the requisite notice and copy of the referral so as to satisfy the legislative scheme for the commencement of an anti-

⁵⁹ *Murphy v State of Victoria* [2014] VSCA 236, [10].

⁶⁰ Affidavit of Winston Foo affirmed on 24 July 2023.

discrimination matter in the Tribunal.⁶¹ I do not consider that SEPA notices were required to be given to Twitter Australia Holdings Pty Limited.

Orders

[103] I order that:

- (a) Twitter Australia Holdings Pty Limited and X Corp are subject to the jurisdiction of the Queensland Civil and Administrative Tribunal as respondents to a complaint of contravention of the *Anti-Discrimination Act* 1991 (Qld).
- (b) The Tribunal issue Directions in relation to the future conduct of the matter.

⁶¹ Affidavit of Bradley James Strahorn sworn 31 August 2023, attachment BJS-1.