

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Australian Muslim Advocacy Network Ltd v Twitter Australia Holdings Pty Limited & Anor [2024] QCAT 201

Queensland Civil and Administrative Tribunal, Snr. Member Fitzpatrick, 21 May 2024

Was a USA-based social media platform subject to Queensland jurisdiction in relation to religious discrimination proceedings?

Key words: Discrimination, Queensland, Twitter, X Corp, Vilification, Foreign Corporation, Extraterritorial, Website, Carrying On Business

1. Australian Muslim Advocacy Network Ltd (AMAN) is a company limited by guarantee. It is a civil society organisation that operates a law-based advocacy service to secure Australian Muslims' psychological and physical safety.
2. AMAN filed a complaint to the Queensland Human Rights Commissioner (the Commissioner) in June 2022 alleging religious belief discrimination in the area of goods and services under sections 7(i), 10, 11 and 46 of the [Anti-Discrimination Act 1991](#) (Qld) (AD Act), and religious vilification under s124A of the AD Act.
3. The complaint details material that can be accessed through a link posted to the X Corp website (formerly Twitter) by what was asserted to be a far-right anti-Muslim conspiracy blog authored by an American citizen. That material was then commented upon, copied, and repeated or "re-tweeted". There were 29 items in the complaint, and comments from those who had accessed the material. The material included video, photographs, and written content.
4. At the time the complaint was lodged, Twitter Inc. was 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 acknowledged that it is the successor to all rights and liabilities of Twitter Inc.
5. X Corp operates, manages, and provides access to a social media platform accessible through its website and mobile and online applications. X Corp is a foreign corporation and is not a registered foreign corporation in Australia.
6. Twitter Australia Holdings Pty Limited was a company with its registered office in the State of Victoria at the time of the complaint. It provided business development, marketing, and related support services for marketing and promoting the Twitter website in Australia. Since 1 July 2023, it has no longer had operations, employees, or an operating office in Australia.
7. AMAN requested orders that X Corp and Twitter Australia Holdings Pty Limited must (at [13]):

- (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, eurabian, and ‘counter jihad’ theories;
- (d) publicly acknowledge that dehumanization can be effected over time through disinformation on 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.

8. By their appearance, X Corp and Twitter Australia Holdings Pty Limited did not concede jurisdiction, but merely appeared to contest jurisdiction.

9. The Tribunal identified the issues as:

- Did the intended sphere of operation of s 124A of the AD Act (religious vilification) extend to X Corp's conduct in Australia or the USA?
- Was there personal jurisdiction, that is, could X Corp be brought before the Tribunal and made subject to its orders?

Subject Jurisdiction

10. The Tribunal found that (at [46]):

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.

11. This meant there was subject jurisdiction over the conduct of a foreign corporation such as X Corp in Queensland. It did not matter that X Corp was a foreign corporation as (at [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.

12. The Tribunal found that the AD Act did not expressly apply to people and their conduct outside Queensland where there is no connection with Queensland. There was no sufficient contrary indication in the legislation to overcome the presumption against extraterritoriality.

13. The Tribunal found that X Corp, by entering contracts with subscribers, earning revenue from advertisers in Queensland, and enabling advertisers to target Queensland subscribers to X Corp fell within the ordinary

understanding of carrying on business. It concluded that X Corp earned revenue through acts within Queensland that were ancillary to transactions that made up or supported the business of X Corp.

Personal Jurisdiction

14. Personal jurisdiction concerns how the Tribunal could bring a foreign corporation such as X Corp before it and enforce any orders against X Corp.
15. The Tribunal concluded that it could exercise personal jurisdiction over X Corp. Part of the Tribunal's reasons were that the AD Act merely required notice rather than service, and common law principles of service did not apply. There was a difference between a referral of an anti-discrimination complaint and an originating process, such as a writ or an application, by which the Tribunal exercised its original jurisdiction.
16. The Tribunal noted that (at [94]):

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.

17. Further, the Tribunal found that Twitter Australia Holdings Pty Limited is properly a party because it had been given the requisite notice and copy of the referral to satisfy the legislative scheme for the commencement of an anti-discrimination matter in the Tribunal. There was sufficient connection with Queensland because of its links with X Corp.
18. The Tribunal found that Twitter Australia Holdings Pty Limited and X Corp were subject to the jurisdiction of the Queensland Civil and Administrative Tribunal as respondents to a complaint of contravention of the AD Act.

COMMENT



This matter may come back before the Tribunal for a decision on the substantive issues of the dispute.

X Corp argued that it had not engaged in any conduct in Queensland. Its only conduct occurred in the USA, where it uploads material to its website, and a user's internet service provider enables download in Queensland. The Tribunal relied on the authority of *Valve Corporation v Australian Competition and Consumer Commission* [2017] FCAFC 224, where Valve Corporation was a company based in the United States that operated and controlled a website and online video game delivery platform. It was alleged that there were misrepresentations in material downloaded in Australia regarding consumer guarantees in the [Australian Consumer Law](#). In that case, the Court of Appeal held that an act initiated in the United States, which passes across space and is completed using 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.

VIEW THE CASE



This case may be viewed at: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2024/201.html>

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