



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 13 Nov 2025 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: S122/2025
File Title: Mayfield Development Corporation Pty Ltd ACN 154 495 048
Registry: Sydney
Document filed: Appellant's Reply
Filing party: Appellant
Date filed: 13 Nov 2025

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S122 of 2025

BETWEEN:

MAYFIELD DEVELOPMENT CORPORATION PTY LTD ACN 154 495 048

Appellant

and

NSW PORT OPERATIONS HOLD CO PTY LTD ACN 163 262 351

First Respondent

PORT BOTANY OPERATIONS PTY LTD ACN 161 204 342

Second Respondent

PORT KEMBLA OPERATIONS PTY LTD ACN 161 246 582

Third Respondent

**STATE OF NEW SOUTH WALES, DEPARTMENT OF ATTORNEY GENERAL
AND JUSTICE (CORRECTIVE SERVICES NSW)**

Fourth Respondent

APPELLANT'S REPLY SUBMISSIONS

PART I: CERTIFICATION

These submissions are in a form suitable for publication on the internet.

PART II REPLY TO ARGUMENTS OF RESPONDENTS

Derivative Crown Immunity

The doctrine of Crown immunity

1. The doctrine of Crown immunity as described by NSW Ports at **PS [38]** starts from an overbroad reading of *Bropho*. The problem with the overbroad premise is it leads into an even broader statement of *derivative* Crown immunity that cannot withstand *Baxter*. The doctrine adopted by the Court in *Bropho* is one which this Court has now repeatedly described as having only “weak operation”;¹ it is only a “starting point of the ascertainment of the relevant legislative intent”;² and its application is an ordinary exercise in statutory construction.³ It is thus the wrong starting point to suggest that the “*Bropho* presumption is displaced by the CCA only to a limited extent” by reason of s 2B (**PS [39]**), because that is to ignore the import of the line of authorities which have made clear that following *Bropho*, “it must be the legislative intention which ultimately prevails”.⁴ That requires looking to the CCA as a whole in context and having regard to its purpose, not focusing myopically on one provision (i.e. s 2B).
2. This wrong starting point leads the respondents to an overbroad articulation of *derivative* Crown immunity, namely, that the immunity afforded to NSW Ports is “a matter of implementing the immunity which s 2B affords the State” (**PS [44]**, see also **SS [61]**), and ultimately to the statement of principle NSW Ports encourages the Court to adopt at **PS [45]** that s 2B means the CCA “does not apply in any way, including to the conduct of private corporations, if that would be in legal effect *an incidence upon the State* otherwise than in carrying on a business”. That statement of principle will feel familiar,

¹ *Re Residential Tenancies Tribunal (NSW); Ex parte Defence Housing Authority* (1997) 190 CLR 410 at 445 (Dawson, Toohey and Gaudron JJ); *Chief Executive Officer, Aboriginal Areas Protection Authority v Director of National Parks* [2024] HCA 16; 98 ALJR 655 at [11] (Gageler CJ and Beech-Jones J).

² *Bropho* (1990) 171 CLR 1 at 23 (Mason CJ, Deane, Dawson, Toohey, Gaudron and McHugh JJ).

³ *Bropho* (1990) 171 CLR 1 at 28 (Brennan J). See also *Bass v Permanent Trustee Co Ltd* (1999) 198 CLR 334 at [16]-[17] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ); *Federal Commissioner of Taxation v Tomaras* (2018) 265 CLR 434 at [2] (Kiefel CJ and Keane J).

⁴ *Jacobsen v Rogers* (1995) 182 CLR 572 at 585 (Mason CJ, Deane, Dawson, Toohey and Gaudron JJ).

because it is in substance no different from that adopted by the majority in *Bradken*,⁵ decisively overturned in *Baxter*. The Court in *Baxter* made it clear that even where the State is not bound by a statute, there is no “prima facie approach to construction” of the statute that would operate to preclude its application to conduct by a non-governmental counterparty⁶ (cf **PS [45]**).

3. It is not therefore necessary (cf **PS [46]**) to “displace” some *prima facie* assumption that the CCA does not apply to NSW Ports’ conduct because the Crown is not bound by reason of s 2B (cf also **SS [51]**). The suggestion that there can be no “recourse” to s 2 to “discern an intention contrary to, or displacing the presumption raised by, s 2B” (**PS [52]**) is an exemplar of the error in the respondents’ approach; one cannot discern the extent to which the statute should be construed so as not to apply to a non-governmental counterparty without considering the statute as a whole. That must, at the very least, include consideration of its objects (indeed, it was where the Court started its analysis in *Baxter* at [15]). Similar errors are made in attempting to sideline the express terms of ss 45 and 45DA (**PS [53]**–**[54]**), and in the bold suggestion at **PS [53]** that derivative Crown immunity operates to “enjoin[]” the application of the CCA to the State’s counterparty “save where the legislature has specified otherwise” (again a return to *Bradken*, if not the pre-*Bropho* position derived from the *Bombay Case*⁷).
4. Commencing with the proper starting point (the statute) leads to the conclusion that the CCA applies to the conduct of NSW Ports notwithstanding that it does not apply to the State, confirmed in this case by the express provision in s 51(1) for the State to provide otherwise and the absence of any relevant divestment (as to which see [8]–[13] below).

⁵ (1979) 145 CLR 107 at 124 (Gibbs ACJ): “[t]o hold that the *Trade Practices Act* applies to transactions which the respondent companies have made with the Commissioner, so as to frustrate those transactions, would be to give that Act an operation which would affect prejudicially the interests of the Crown. Since the *Trade Practices Act* does not bind the Crown, it does not have that effect”; at 129 (Stephen J): “Once this be concluded [that the Act does not bind the Commissioner] it follows that the Act will not only not apply directly to the Commissioner but will also not apply so as to prejudice its interests when in contractual relationship with parties to whom the Act clearly applies or when otherwise interested in transactions affecting those parties”; at 137–8 (Mason and Jacobs JJ): “To strike down the contracts[,] arrangements or understandings alleged would affect the exercise by the Commissioner for Railways, representing the Crown, of a right to enter into such contracts[,] arrangements or understandings and to obtain finance in the manner alleged ... the absence of an intention to bind the Crown in right of Queensland will not only exonerate it from the direct application of the statutory provisions but will also exonerate from the application of those provisions the contracts[,] arrangements or understandings made by that Crown and the other parties thereto as well”.

⁶ *Baxter* (2007) 232 CLR 1 at [70] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ).

⁷ *Province of Bombay v Municipal Corporation of Bombay* [1947] AC 58 at 61; see *Wynyard Investments* (1955) 93 CLR 376 at 389 (Williams, Webb and Taylor JJ).

The extrinsic materials

5. NSW Ports' submission that the Court should read into s 2B some implied limitation or intention not to apply to privatisation transactions is not supported by the Hilmer Report, the Harper Review, or the three intergovernmental agreements on which it relies (**PS [49]-[51]**). The statements relied on from the Hilmer Report at **PS [50]** are in terms directed to the conduct of governments which were themselves engaged in statutory monopolies, not private parties who buy assets which were formerly monopolies. Indeed, NSW Ports' reliance on these statements is rather odd, being the part of the report concerned with applying the CCA to government-owned businesses which operated in competitive markets.⁸ It was not concerned at all with the conduct of private corporations which operated in such markets, the *prima facie* position being that such corporations were and would remain regulated by the CCA.
6. As for the Competition Principles Agreement (see **PS [51]**), the overarching purpose of that document (as reflected in the preamble) was to subject government business to competition laws and policies.⁹ So much is confirmed by the "Competitive Neutrality Policy and Principles" set out in cl 3, being the context in which cl 4 ("Structural Reform of Public Monopolies") must be read. That is, this was an Agreement by which the States, Territories and the Commonwealth were committing to subject government business to competitive principles and reform public monopolies. To read the qualification in cl 4(1) (which makes clear it remained for each State to determine the method of such reform of public monopolies) as indicating a legislative intention implicit in s 2B that former public monopolies should continue to be protected from competition by operation of derivative Crown immunity is to read the Agreement as doing the exact opposite of what it is expressly intended to achieve.
7. As for the State's submissions, the non-implementation of a recommendation of the Harper Review to extend s 2B to where the Crown undertakes activity in "trade or commerce" does not support the submission that the Parliament has "deliberately circumscribed" the CCA so as not to apply to the "Crown's activities in privatising

⁸ Australia, Independent Committee of Inquiry, *National Competition Policy: Report by the Independent Committee of Inquiry* (1993) (**Hilmer Report**) at 128.

⁹ As reflected in the preamble: "WHEREAS the Parties intend to achieve and maintain consistent and complementary competition laws and policies which *will apply to all businesses in Australia regardless of ownership*" (emphasis added).

assets” (cf **SS [55]**) — but that would not in any event answer the question at issue in this appeal, which is whether it applies to NSW Ports.

The PAAT Act

8. NSW Ports are incorrect to submit at **PS [61]** that Mayfield did not raise below that the executive government would have had power (absent the legislative restrictions imposed by the *State Owned Corporations Act 1989* (NSW)) to make contracts for the privatisation of the Port Assets. Mayfield made that express submission to the Full Court below, relying (again expressly) on *New South Wales v Bardolph* (1934) 52 CLR 455.¹⁰ Those submissions were the subject of the refusal by the Full Court at **FC [44] CAB 91-92** to engage with Mayfield’s contentions as to the proper characterisation of the PAAT Act, and part of the error about which Mayfield complained at **AS [55]**. In fact, no suggestion was made by NSW Ports or the State to the Full Court that there is some hitherto unarticulated limitation on the power of State governments to contract. Contrary to what is suggested at **PS [61]**, the power of State executive governments to do so is presently settled. There is nothing in the comments made in *Williams v Commonwealth (No 1)* (2012) 248 CLR 156 which NSW Ports points to at **fn 35** that establishes otherwise, nor is it now open to NSW Ports to advance any (very large) submission to the contrary.
9. In any event, NSW Ports at **PS [61]** points to the agreed fact that the Treasurer “required” NSW Ports to agree to the Compensation Provisions. That agreed fact does not solve NSW Ports’ problem (that the “right” supposedly divested was no more than the executive freedom to contract). It has always been common ground between the parties that the PAAT Act was not the source of any power to oblige or compel NSW Ports to contract with the State, or contract with it contrary to the CCA, or on any particular terms at all.¹¹ The agreed fact, in its proper context, means nothing more than that the Compensation Provisions were proposed by the Treasurer in the PCDs as part of the contractual regime which the State was willing to enter into.¹² That one party “requires” another to enter into particular terms as a condition of its willingness to contract does not

¹⁰ Mayfield’s Submissions in Reply to the Full Court dated 21 February 2025 at [7]-[9].

¹¹ The position of both NSW Ports, and the State, has been that the Treasurer could *not* “require” NSW Ports to engage in conduct in the sense of ordering or obliging it to do so: see *ACCC v NSW Ports (Appeal)* (2023) 296 FCR 364 at [588] and [554] respectively (Beach J). See also **SS [69]**.

¹² So much is clear from the paragraph of Jagot J’s judgment which the agreed fact footnotes and from which the statement is drawn: see *ACCC v NSW Ports (Trial)* [2021] FCA 720 at [404].

mean it has the power or right to compel completion or compliance by the counterparty.¹³ Nor does it follow, as NSW Ports submits, that this was a “practical requirement imposed in the exercise of the statutory powers” (cf **PS [61]**), because NSW Ports does not (and cannot) point to any provision of the PAAT Act which gave the Treasurer the power to “require” it to do anything. Indeed, at **PS [64]**, it disavows such a construction of the PAAT Act.

10. The transposition of the executive freedom to contract into a statute conferring power on one Minister to contract on behalf of the State does not transform what is in substance a freedom to contract into a right that can be divested. NSW Ports attempts to treat the particular exercise by the Treasurer of a general statutory power to contract (to contract on the terms contained in the PCDs) as if the method of execution determines the nature of the power (see **PS [59]-[60]**). That is the tail wagging the dog: the scope of the power conferred by the PAAT Act is to be construed by reference to the terms of the statute, not how it was exercised. One is left with the distinction without a difference posited between “plenary power to conclude an authorised transaction” (**PS [62]**) or “right to effect the privatisation of the ports as the Treasurer saw fit” (**SS [67]**), and “freedom to make any kind of contract it wished” (**PS [63]**). Nor is it significant that the freedom to contract was conferred on one member of the executive instead of the executive at large (cf **SS [71]**). No cogent explanation is provided for why that feature of the legislation turns the freedom into a right.

No divestment of a legal right

11. NSW Ports advances three “legal consequences” for the State of the application of Part IV to NSW Ports at **PS [67]-[71]**. None withstands scrutiny. As for the first, NSW Ports implausibly submits that the PAAT Act conferred power on the Treasurer to contract on terms which contravened the CCA. There is simply nothing in the PAAT Act which supports that construction, and even if it purported to, it would run directly into a s 109 inconsistency problem. As for the second, (relying on severance) at worst it seems to suggest that if a State does not want the CCA to apply, and enters into a contract which has a provision that would be severed if the CCA did apply, then the CCA should be held

¹³ See also *ACCC v NSW Ports (Appeal)* (2023) 296 FCR 364 at [589] (Beach J): “[i]f the Treasurer had no power under the PAAT Act to compel or oblige counterparties to accept his preferred terms, the Treasurer never had a statutory right to contract on those terms. Instead, the Treasurer had a right or power to propose terms to third parties, and to effect an authorised transaction only if terms could be agreed with one of them”.

not to apply. No principled legal basis underpins that submission. At best it is an attempt to return to *Bradken*, and inconsistent with what the Court made clear in *Baxter*, that the CCA may have a differential effect on a non-governmental party.¹⁴ As to the third, the proposed characterisation of the divestment as one of proprietary rights is wrong. Once the Port Assets were privatised, the State had no proprietary interest in their “asset or capital value”, it had merely an apparent policy interest in “preserving” the monopoly status of the privatised utility in the hands of NSW Ports. The State has at its disposal the use of s 51 to implement policy interests of that kind, “provided, of course, [it was] willing to accept the political responsibility of exercising that power”.¹⁵

12. The State’s arguments rise no higher. First, it submits that the immunity in *Baxter* would have “harmed” State interests, not protected them, making it “less likely the Commonwealth Parliament intended the CCA to apply” (SS [72]). That submission erroneously asks the Court to engage in some assessment of the supposed practical application of the CCA in a particular case to govern its proper construction. The same issue attends its second argument, that the impugned transactions involved “significant assets” (SS [72]; see AS [68]-[69] as to why this is irrelevant). And the same issue attends its third argument, which is to attempt to silo the effect of the reasoning of the Full Court in this case to the fact this was a “particular, once-off transaction” (SS [73]). That does not answer the question of principle in the appeal, but in any event, all privatisations are transactions of this kind and it is inconsistent with both the statutory text and the extrinsic materials leading to the enactment of s 2B to suggest the Commonwealth Parliament intended (*sub silentio*) to exclude all former public monopolies from the scope of regulation by the CCA.
13. Contrary to SS [67], the incapacity of a correlative duty not to interfere with any so-called “right” under the PAAT Act to exist concurrently with the CCA does mean there is no relevant “legal right” being divested. And contrary to SS [68], there is no relevant “confine[ment]” of the statutory power (because this case is concerned with the conduct of NSW Ports, not the State) — but even if there was some “confinement”, that is not a relevant divestment; it is the necessary and logical consequence of the fact that the PAAT Act exists in a universe of other statutory provisions which it is to be construed alongside

¹⁴ (2007) 232 CLR 1 at [70] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ).

¹⁵ *Baxter* (2007) 232 CLR 1 at [48] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ).

(or in the case of the CCA, subject to). Taken to its logical conclusion, the State's submission must be that a broad and unstructured discretion conferred on a statutory decision maker would be divested by the concurrent operation of the criminal law precluding the commission of a crime in exercise of that power. That is both a wrong understanding of the principle of derivative Crown immunity, and an unlikely construction of the PAAT Act. It should be rejected.

Notices of Contention/ Cross-Appeal

Issue estoppel/ abuse of process

14. The respondents' contentions on preclusion amount to this proposition: that having been the subject of a limited grant of leave under r 36.32 of the *Federal Court Rules 2011* (Cth) to make written submissions of some 15 pages as an intervenor in the ACCC Appeal on four discrete matters of law, Mayfield is now estopped for all time from bringing this proceeding, or it otherwise amounts to an abuse of process. The Courts below were correct to reject these arguments, for the reasons they gave.
15. As for **issue estoppel**, it is common ground that Mayfield was not a "party" to the ACCC Appeal. The limited nature of the intervention that can be granted under r 36.32 (that is, involvement in the nature of an *amicus curiae*) and the even further limited nature of the actual intervention granted to Mayfield, does not engage the principle of issue estoppel. It did not have some ample "opportunity" to present "such evidence and arguments" as it saw fit (cf **PS [80]**), being granted leave to intervene on terms limited to 15-page written submissions. As a matter of substance, that is not participation in the proceedings; it is less than the right of oral address routinely afforded to *amicus curiae*. Thus, as Allsop CJ noted on submissions which Mayfield had sought to make going to an issue of fact in the ACCC Appeal: "[i]t was not part of the case run; and not for an intervenor to raise on appeal".¹⁶ Nor were those limits somehow "of [Mayfield's] own making" (**PS [82]**). It was necessary for Mayfield to obtain leave to intervene to persuade the Court that its intervention "would not unreasonably interfere with the ability of the parties to conduct the appeal as they wish" (r 36.32(2)(b)). Nothing at all flows from the fact that the limited intervention granted was the intervention which Mayfield sought; its conduct was consistent with the preconditions it had to meet under the rules. The respondents' submissions on this point otherwise tend towards an invitation to extend the principle of

¹⁶ *ACCC v NSW Ports (Appeal)* (2023) 296 FCR 364 at [421].

issue estoppel to some discretionary test of the kind which has been rejected by this Court.¹⁷

16. Nor is it correct that Mayfield “moved to bind NSW Ports” to the outcome of the Full Court’s determination by its intervention (PS [85]-[86], [93]). That submission assumes the correctness of the respondents’ arguments on issue estoppel; it is quintessential bootstrapping.¹⁸ And the vice in the argument is revealed at PS [84], NSW Ports’ ultimate submission apparently being that the appropriate thing for Mayfield to do was to sit by, considering it had a useful and different submission to advance to the Full Court on derivative Crown immunity, and do nothing. That may have been forensically advantageous as far as Mayfield is concerned (as it could have preserved the opportunity to say to a later Full Court that the ACCC Full Court did not have relevant arguments presented to it which Mayfield considered to be important). But it is conduct so far from the overarching purpose in s 37M, in particular, so contrary to “the efficient use of the judicial and administrative resources available for the purposes of the Court”, that it inevitably calls for rejection.
17. As for **abuse of process**, the submission that Mayfield somehow “chose” not to participate in the trial of the ACCC Proceedings (PS [88]) conveniently ignores that Mayfield made an application to lift the stay of its proceeding so that it could be heard concurrently with the ACCC Proceedings, which both NSW Ports and the State successfully opposed.¹⁹ That must be brought to account when considering the complaints made now that this proceeding is so vexing to the respondents as to amount to an abuse. As the primary judge observed, “when Mayfield applied to lift the stay of its proceeding in March 2020, NSW Ports and the State as interested party opposed that application because it contended that it would suffer unfairness in having to simultaneously conduct two proceedings with overlapping issues” and that they would be “unduly burdened” in defending each proceeding in parallel: J [148] CAB 57. That they now are required to defend the Mayfield proceedings after the ACCC Proceedings

¹⁷ *Tomlinson v Ramsey Food Processing Pty Ltd* (2015) 256 CLR 507 at [34] (French CJ, Bell, Gageler and Keane JJ), [97] (Nettle J).

¹⁸ As for the reliance on Mayfield’s solicitor’s statement that the ACCC Proceedings would have a “conclusive impact”, that is correct: by reason of the operation of the principle of *stare decisis*, the primary judge was bound to dismiss Mayfield’s claim by reason of the decision of the ACCC Full Court on derivative Crown immunity. It says nothing relevant about whether Mayfield or NSW Ports would be subject to an issue estoppel in separate proceedings.

¹⁹ *Mayfield Development Corporation Pty Ltd v NSW Ports Operations Hold Co Pty Ltd* [2020] FCA 260 at [1] (Jagot J).

(rather than in parallel) is the consequence of their own conduct. NSW Ports' submissions on abuse are otherwise based on its contention that Mayfield's intervention in the ACCC Appeal was some kind of attempt to create an issue estoppel between it and NSW Ports (PS [93]). That submission falls away because Mayfield's intervention in the ACCC Appeal does not give rise to an issue estoppel at all. The State's submissions are based on the incorrect proposition that again, the appropriate thing for Mayfield to do was stand by and do nothing (see SS [44]). It is that conclusion which would bring the administration of justice into disrepute, not Mayfield's conduct.

The Deed of Release

18. The primary judge and the Full Court were correct to conclude that the Deed of Release does not preclude Mayfield from bringing these proceedings, for the reasons they gave.
19. *First*, Mayfield has never sought to sue the State; it was NSW Ports who contended that the State was a necessary party to the proceeding.²⁰ As a consequence, Mayfield wrote to the solicitors for the State, asking if the State wished to be joined as a party to the proceedings and noting that if the State "does not wish to be joined ... no further steps will be taken to join the State to the Proceeding".²¹ The State responded by stating "[w]e confirm that, in light of those comments, our client does not object to being joined by your client as a defendant to these proceedings pursuant to the Court order".²² At no time did the State object to being joined or sued: in fact, it consented to that course and that consent is the only reason it is here (and remains here) at all. The nature of this joinder is important; the State has been joined with its consent by operation of the rules of natural justice.²³ If the State chooses not to be heard on these matters, that does not mean that the Court would be precluded from deciding the case at all. The purpose of the rules around joinder are to ensure procedural fairness to the State, and that opportunity has been afforded. NSW Ports does not have any available argument that the claims against it are precluded by the absence of the State as a party.
20. *Second*, the effect of the Deed is not that the Proceeding must be dismissed. Rather, the releases in cl 4.1 can be "pleaded in bar and as a complete defence to any Claim to which

²⁰ ABFM 8 (T23.5-39).

²¹ ABFM 14.

²² ABFM 15.

²³ *Victoria v Sutton* (1998) 195 CLR 291 at [76]-[78] (McHugh J) (citations omitted); see also *Pegang Mining Co Ltd v Choong Sam* [1969] 2 MLJ 52 at 55-56 (Lord Diplock).

they apply” (cl 4.4): **State’s RBFM 11**. They can only apply to a claim against a “Releasee” as defined, and only the State is (relevantly) a “Releasee” pursuant to cl 1.1. If the State maintains its plea in bar, then no relief can be granted as against the State. But that does not mean that no relief can be granted in the proceedings at all.

21. *Third*, the respondents obtain no assistance from the operation of s 4L of the CCA. If the consequence of the Court’s consideration of the claim against NSW Ports is that s 4L requires the compensation provisions to be severed, then the duty of the Court is to comply with the law as enacted by Parliament, not to ignore that law by reference to a private arrangement between the State and Mayfield. That a mandatory statutory provision will be applied as a consequence of Mayfield’s success against NSW Ports does not transform Mayfield’s claim against NSW Ports into one “against” the State within the meaning of the Deed (cf **SS [29]**).
22. *Fourth*, the fact that the proceeding might involve findings about the conduct of the State (for example, in relation to entering the unlawful “understanding”) does not render the proceeding a “Claim” within the meaning of cl 4.1 (cf **SS [31]**). The fact that a person’s conduct might be impugned in a proceeding is not sufficient even to require the person to be made a party, let alone found a conclusion that claims are made *against* them.
23. *Finally*, the suggestion that the Deed precludes Mayfield from “attack[ing] the State’s contracts by suing its counterparty” (**SS [35]**) ignores the express definition of “Releasees”. The self-evident purpose of the Deed, as the State submits, was to resolve *its* disputes with Mayfield (**SS [29]**). That it has done: the State was not sued and the State can plead the Deed as a bar to relief against *it*. But what the Deed does not do, either expressly or by any necessary implication, is insulate the conduct of a third party with whom the State contracted from review (cf **SS [34]**). The notices of contention and cross-appeal should, accordingly, be dismissed.

Dated: 13 November 2025



Bret Walker
Fifth Floor St James’
Hall



Paul McQueen
3/9 The Esplanade
Elizabeth Quay



Conor Bannan
12 Wentworth
Selborne Chambers



Naomi Wootton
6th Floor
Selborne/Wentworth