



HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S122 of 2025

BETWEEN:

MAYFIELD DEVELOPMENT CORPORATION PTY LTD ACN 154 495 048

Appellant

and

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NSW PORTS 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

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

Fourth Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE APPELLANT

PART I INTERNET PUBLICATION

This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

Appeal

- 30 1. Derivative Crown immunity is not a free-standing “prerogative power of the Crown to override a statute, or dispense with compliance”: *Baxter* at [40] (JBA Vol 9, Tab 15, p 3225); AS [38]. It operates as a “general principle of statutory construction” that “save

to the extent to which a contrary intention appears, the [CCA] will not be read so as to divest the Crown of proprietary, contractual or other legal rights or interests”: **Baxter at [40], [58], [62] (JBA Vol 9, Tab 15, p 3225); AS [38], [47].**

2. The language of the CCA is decisive on the question of so-called derivative Crown immunity. Construing the CCA as a whole, including the mechanism available to the State in section 51(1), the object in s 2 and the terms of s 45 and s 45DA, leads to the conclusion that the CCA applies to the conduct of NSW Ports notwithstanding that it does not apply to the State. The Commonwealth Parliament plainly intended the CCA to regulate conduct of a corporation contracting with a State, subject to the State Parliament being willing to accept the political responsibility of exercising its power under s 51(1) of the CCA to authorise conduct in contravention of the CCA with the necessary specificity. Nothing in the PAAT Act engages s 51(1). The conduct of NSW Ports in entering into the Port Commitment Deeds and the alleged understanding is therefore regulated by the CCA: **Baxter at [21], [48], [60], [64] (JBA Vol 9, Tab 15, p 3225); AS [41], [43]-[48]; ARS [1], [4].**
3. As for s 2B of the CCA, 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 counterparty: **Baxter at [70] (JBA Vol 9, Tab 15, p 3225); AS [45], [48]; ARS [2]-[3].**
4. There is no distinction between the relevant interest in *Baxter* (freedom to contract), and the “right or interest” that both Full Courts found to have been divested in this case: **Baxter at [68] (JBA Vol 9, Tab 15, p 3225); cf *ACCC v NSW Ports (Appeal)* (JBA Vol 12, Tab 35, p 4392) per Beach J at [594]-[596], [611], [616]; AS [40]-[42], [51]-[57].** The Treasurer could not direct or require a private counterparty such as NSW Ports to accept the Compensation Provisions, or indeed any contractual provision: **AS [52]-[53]; ARS [9].** The PAAT Act permitted the Treasurer to dispose of the relevant Port assets, which was otherwise prohibited by s 20X and s 20Y of the *State Owned Corporations Act 1989* (NSW): **AS [54].**
5. There is nothing incongruous in a conclusion that the State enjoys immunity from statutory regulation binding a private counterparty. Nor does it matter that the State would not maximise the price of a valuable asset, or would otherwise be worse off in an economic sense, if the CCA applies to a counterparty. It is necessary to focus on legal consequences, in particular so as to protect existing legal rights and prevent divesting of

proprietary, contractual or other legal rights or interests: **Baxter** at [62], [64], [70], [73] (JBA Vol 9, Tab 15, p 3225); **NT Power** at [170], [172], [173] (JBA Vol 10, Tab 26, p 3731); AS [45], [65]-[67]; ARS [11]-[13].

Notices of contention

6. Neither issue estoppel nor abuse of process preclude Mayfield from pursuing its claims against NSW Ports. Mayfield's proceedings (which differs in material respects from the ACCC Proceedings) were stayed pending the resolution of the ACCC Proceedings. Mayfield applied to lift the stay so that its claims could be heard concurrently with the ACCC Proceedings, but NSW Ports and the State successfully opposed that application. Thus, Mayfield has not led any evidence in relation to its claims, and its intervention has been limited to the provision of 15 pages of written submissions on appeal. That NSW Ports are now are required to defend these proceedings after the ACCC Proceedings (rather than in parallel) is the consequence of their own conduct: **ARS [14]-[17]**.
7. Finally, Mayfield is not precluded from pursuing its claims against NSW Ports by reason of the release it granted in favour of the State. The Deed of Release does not, either expressly or by necessary implication, insulate the conduct of a third party with whom the State contracted from litigation. No claim is made against the State and the mere fact that the claim against NSW Ports might have some effect on the State (by reason of s 4L of the CCA or otherwise) does not bring the claim within the scope of the release: **ARS [18]-[23]**.

4 December 2025



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