HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M103/2025

BETWEEN: **MINISTER FOR PLANNING**
Appellant
and
IGA RETAIL SERVICES PTY LTD (ACN 002 454 686)
First Respondent
and
SHEPPARTON PTY LTD (ACN 620 846 184)
Second Respondent
and
GREATER SHEPPARTON CITY COUNCIL
Third Respondent
and
KATHY MITCHELL AM AND PETER MARSHALL (AS MEMBERS OF A PANEL APPOINTED BY THE MINISTER FOR PLANNING UNDER SECTION 153 OF THE PLANNING AND ENVIRONMENT ACT 1987)
Fourth Respondent
and
LASCORP INVESTMENT GROUP PTY LTD
Fifth Respondent

SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA (INTERVENING)

Part I: PUBLICATION OF SUBMISSIONS

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

Part II: INTERVENTION

2. The Attorney-General for the State of South Australia (**South Australia**) intervenes in the proceeding numbered M103/2025 pursuant to s 78A of the *Judiciary Act 1903* (Cth) (**the *Judiciary Act***) to advance submissions that are generally in support of the Appellant.

Part III: LEAVE TO INTERVENE

3. Not applicable.

Part IV: SUBMISSIONS

4. This appeal concerns whether s 39(8) of the *Planning and Environment Act 1987* (Vic) (**PE Act**) must be read down, by reason of the constitutional implication recognised in *Kirk v Industrial Court (NSW)*,[1] so as not to extend to a judicial review proceeding in the Supreme Court of Victoria seeking relief for jurisdictional error.[2]

5. South Australia agrees with the contention advanced by the Appellant that s 39(8) of the PE Act does not infringe the *Kirk* implication because the errors that are precluded from review by it are, upon proper construction of the PE Act, non-jurisdictional. In support of that construction, the Appellant submits that:

   5.1. The jurisdiction conferred on the Victorian Civil and Administrative Tribunal's (**VCAT**), to review errors precluded from review by the Supreme Court by s 39(8), is broad and is subject to oversight by the Supreme Court.[3]

   5.2. The decision of the Victorian Court of Appeal in *East Melbourne Group Inc v Minister for Planning*,[4] which held that s 39(8) only precluded review for "defects in procedure", should be disapproved.[5]

6. Building upon those submissions, South Australia contends that, even if the Court does not accept the Appellant's submission, that the errors that are precluded from review by the Supreme Court by s 39(8) are non-jurisdictional, the principle in *Kirk* is nonetheless

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1 (2010) 239 CLR 531 (***Kirk***).
2 Notice of a Constitutional Matter, [3].
3 AS, [34], [38].
4 (2008) 23 VR 605 (***East Melbourne***).
5 AS, [50].

not infringed in circumstances where an alternative jurisdiction is conferred upon a body with authority to correct jurisdictional error that is materially equivalent to that traditionally exercised by the Supreme Court.

7. The notion of material equivalence must satisfy two conditions:

   7.1. First, the jurisdiction must not be narrower (either by reference to the scope of the grounds of review or the relief available) than that which would have been available by the grant of prerogative relief for jurisdictional error by the Supreme Court.

   7.2. Second, the exercise of that alternative jurisdiction must itself be subject to supervision by the Supreme Court.

8. For the reasons advanced below, the jurisdiction conferred on the VCAT by s 39(1) is sufficiently broad to review for jurisdictional error, and its exercise is subject to supervision by the Supreme Court, such that s 39(8) does not infringe the *Kirk* implication.

The *Kirk* implication

9. Mr Graeme Kirk and Kirk Group Holdings Pty Ltd were convicted and sentenced by the Industrial Court of New South Wales for contraventions of ss 15 and 16 of the *Occupational Health and Safety Act 1983* (NSW).

10. Section 179 of the *Industrial Relations Act 1996* (NSW) provided, *inter alia*, that:[6]

> **179 Finality of decisions**
>
> (1) A decision of the Commission (however constituted) is final and may not be appealed against, reviewed, quashed or called into question by any court or tribunal.
>
> …
>
> (5) This section extends to proceedings brought in a court or tribunal for any relief or remedy, whether by order in the nature of prohibition, certiorari or mandamus, by injunction or declaration or otherwise.
>
> …
>
> (7) In this section:
> **decision** includes any award or order.

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[6] The Industrial Court of New South Wales was previously named the Industrial Relations Commission in Court Session in 2005: *Industrial Relations Amendment Act 2005* (NSW), s 151A as inserted by the *Industrial Relations Amendment Act 2005* (NSW), s 3 and Sch 1, cl 4. For convenience, the Court adopted the abbreviation "Industrial Court" throughout the reasons in *Kirk*: see footnote 102.

11. Drawing on the principle articulated in *Forge v Australian Securities and Investments Commissions*, that it is beyond the legislative power of a State to alter the constitution or character of its Supreme Court such that it ceases to meet the constitutional description of 'the Supreme Court of a State',[7] the Court in *Kirk* held that it is a defining characteristic of a State Supreme Court that it supervises the exercise of State executive and judicial power.[8] That supervisory role is exercised by the granting of prohibition, certiorari and mandamus (and habeas corpus).[9]

12. The Court explained that, when taken together with s 73 of the *Constitution*, this defining characteristic ensures the ultimate superintendence by this Court, consistent with the principled development of the single common law of Australia.[10] The Court articulated the functional purpose of the *Kirk* implication in the following oft-quoted terms:[11]

> To deprive a State Supreme Court of its supervisory jurisdiction enforcing the limits on the exercise of State executive and judicial power by persons and bodies other than that Court would be to create islands of power immune from supervision and restraint.

13. Then, noting the continued utility in the distinction between jurisdictional and non-jurisdictional error, the Court held that legislation which would take from a State Supreme Court the power to grant relief on account of jurisdictional error is beyond State legislative power.[12] The Court held that s 179(7) could be read down such that "decision" did not include a decision of the Industrial Court that was attended by jurisdictional error.

14. In contrast to s 39(1) of the PE Act, s 179 did not confer any alternative jurisdiction to supervise decisions of the Industrial Court for error. Accordingly, no occasion arose for the Court to consider whether the supervisory role of a State Supreme Court might be exercised by the conferral of review jurisdiction upon another authority with oversight by the Supreme Court.

The supervisory jurisdiction of the Victorian Supreme Court

15. The authority of the Supreme Court of Victoria to exercise supervisory jurisdiction is now provided for in two ways:

    15.1. By way of judicial review under O 56 of the *Supreme Court (General Civil*

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7 (2006) 228 CLR 45, 76 [63] (Gummow, Hayne and Crennan JJ).
8 *Kirk*, 580-581 [98] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ), 585 [113] (Heydon J agreeing).
9 *Kirk*, 580-581 [98] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ), 585 [113] (Heydon J agreeing).
10 *Kirk*, 581 [99] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ), 585 [113] (Heydon J agreeing).
11 *Kirk*, 581 [99] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ), 585 [113] (Heydon J agreeing).
12 *Kirk*, 581 [100] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ), 585 [113] (Heydon J agreeing).

Procedure) Rules 2025[13] and s 85(1) of the *Constitution Act 1975* (Vic);[14] or,

15.2. By way of review under the *Administrative Law Act 1978* (Vic).

16. In a strict sense, by virtue of the reforms to the form of relief in judicial review proceedings, the Supreme Court of Victoria does not exercise its inherent supervisory jurisdiction in a manner that is identical to that exercise as at the time of federation; prerogative writs are no longer issued by the Court. However, whilst s 7 of the *Administrative Law Act* and O 56 of the Rules represent a modernisation of the *form* by which the Supreme Court grants such relief, the *substance* of the supervisory jurisdiction of the Supreme Court is maintained.[15] Of course, it could not plausibly be contended that formal changes of these kinds offend the *Kirk* implication.

Alternative avenues of review for error

17. There appears to be little authority that has considered whether the availability of an alternative jurisdiction, conferred upon a body with authority to correct jurisdictional error and subject to the supervision of a State supreme court, may satisfy the functional requirements demanded by the *Kirk* implication.However, support may be found for this proposition in a range of extra-curial and academic writings.[16] For instance, Chief Justice Spigelman writing extra-curially said:[17]

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13 Order 56 is identical to O 56 of the *Supreme Court (General Civil Procedure) Rules 2015*. Order 56.01(1) provides that "the jurisdiction of the Court to grant any relief or remedy in the nature of certiorari, mandamus, prohibition or quo warranto shall be exercised only by way of judgment or order (including interlocutory order) and in a proceeding commenced in accordance with these Rules".

14 Section 85(3) of the *Constitution Act 1975* (Vic) declares that the Supreme Court has "such jurisdiction (whether original or appellate) and such powers and authorities as it had immediately before the commencement of the *Supreme Court Act 1986*." When established in 1852, the Supreme Court's jurisdiction was conferred by reference to the jurisdiction of the Courts of Queen's Bench, Common Pleas, and Exchequer. That basic formula was employed in legislation enacted in 1874 and various consolidation Acts in 1890, 1915, 1928, and 1958. As originally enacted, s 85(2) of the *Constitution Act 1975* re-enacted those earlier provisions conferring jurisdiction on the Supreme Court of Victoria by reference to the jurisdiction of the superior courts at Westminster (and of the Lord Chancellor) as at 4 January 1875 (the commencement of the 1874 Act). Section 132(d) and (e) of the *Supreme Court Act 1986* removed this express link by repealing s 85(2) and introducing the current s 85(3).

15 In England, the prerogative writs of certiorari, prohibition, and mandamus were statutorily replaced with court orders of the same name in 1938, which "reflected only a simplification of procedure; the substantive law remains the same": SA de Smith, "The Prerogative Writs" (1951) 11 *Cambridge LJ* 40. In South Australia, the same change was introduced by rules of court in 1947. The equivalent amendment occurred in Victoria pursuant to s 3(6) of the *Supreme Court Act 1986* (Vic) and rules of court.

16 L McDonald, 'The Entrenched Minimum Provision' (2010) 21 PLR 14, 29-31; M Aronson, 'Commentary on 'The entrenched minimum provision of judicial review and the rule of law' by Leighton McDonald (2010) 21 *Public Law Review* 35, 38; A Robertson, 'Commentary on 'The entrenched minimum provision of judicial review and the rule of law' by Leighton McDonald (2010) 21 *Public Law Review* 40, 42; J Basten, 'The supervisory jurisdiction of the Supreme Courts' (2011) 85 ALJ 273, 298; M Aronson, M Groves and G Weeks, *Judicial Review of Administrative Action and Government Liability* (7th ed, 2022) 1160-1161 [20.260]; JJ Spigelman, "The Centrality of Jurisdictional Error" (2010) 21 *Public Law Review* 77, 91.

17 JJ Spigelman, "The Centrality of Jurisdictional Error" (2010) 21 *Public Law Review* 77, 91.

> Where, as was the case in *Futuris*, the structure of the legislative scheme is such that there is a clear right of appeal capable of correcting error, indeed not just jurisdictional error, it can hardly be suggested that a restriction on judicial review is, as a matter of practical reality, such as to infringe the constitutional protection of a minimum requirement of judicial review for jurisdictional error. This must apply at both a Commonwealth and State level.

18. The only authority that South Australia is aware of that has directly addressed this issue is the recent decision of *Marmota Ltd v Commissioner of State Taxation*,[18] which concerned the operation of Pt 10 of the *Taxation Administration Act 1996* (SA) (**TA Act**). Section 82 of the TA Act confers a right on a person who is dissatisfied with an assessment of tax liability made by the Commissioner for State Taxation to lodge an objection with the Minister. Section 92 confers a right on a person who is dissatisfied with the Minister's determination of the objection to appeal to the Supreme Court. Section 98 confers powers on the Supreme Court on an appeal to, *inter alia*, "confirm or revoke the assessment", "make an assessment … in place of the assessment", "make any further orders … as it thinks fit".

19. Section 100(1) of the TA Act provides that:

> The validity or correctness of an assessment or any other decision in respect of which rights of objection and appeal are conferred under this Part is not open to challenge in any proceedings other than proceedings by way of objection or appeal under this Part.

20. The taxpayer, Marmota Pty Ltd, contended that s 100 of the TA Act was an invalid privative clause. The Court of Appeal held this argument to be "untenable",[19] reasoning as follows:[20]

> The Court pressed counsel [for Marmota] as to what meaningful constraint, that effectively deprived the Court of some aspect of its supervisory jurisdiction was imposed by limiting the jurisdiction of the Court to appeals under Part 10, if ineed that was the effect of the section. Counsel's first answer was that 'the remedies were different' and seemed to suggest, without elaboration, that there was a difference between quashing the decision and setting it aside (or revoking it, as is provided for by s 98 of the TAA)…
>
> Marmota was not able to articulate how there was any meaningful curtailement of the Supreme Court's power to grant relief for jurisdictional error on an appeal under s 100, when compared with the relief that would be available on an application for judicial review. None is apparent.

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18 [2025] SASCA 11 (***Marmota***).

19 *Marmota*, [95].

20 *Marmota*, [90]-[92]. The trial judge, Justice McIntyre, reasoned to similar effect: *Commissioner of State Taxation v Marmota Ltd* [2023] SASC 134, [92].

21. In further support of South Australia's contention concerning alternative relief, it may be noted, by way of analogy, that it has been accepted that in other constitutional contexts the provision of "some other remedy" by statute that supplants a cause of action "given by the common law" will be valid, even where that common law cause of action enjoys constitutional protection. In *Antill Ranger & Co Pty Ltd v Commissioner for Motor Transport*, Justice Fullagar said that:[21]

> If the Act did no more than limit remedy, while leaving practically effective redress open to the plaintiff, I am disposed to think that it would not be inconsistent with the Constitution. If might, for example, provide that … all questions of liability should be determined by a special tribunal.

22. For these reasons, South Australia submits that the *Kirk* implication is not infringed where the modification of prerogative supervision by the Supreme Court is substituted for by an alternative review jurisdiction that meets the following conditions:

    22.1. First, the jurisdiction must not be substantively narrower (either by reference to the scope of the grounds of review or the relief available) than that which would have been available by the grant of prerogative relief for jurisdictional error by the Supreme Court.

    22.2. Second, the exercise of that alternative jurisdiction must itself be subject to supervision by the Supreme Court.

Condition 1: Jurisdiction conferred on the VCAT to review for error

23. The VCAT is conferred jurisdiction to review the relevant decisions under challenge by the Respondents in this matter under s 39 of the PE Act. A person has standing to refer a matter to the VCAT under s 39(1) if they are "substantially or materially affected by a failure of the Minister, a planning authority or a panel to comply with Division 1 or 2 or this Division or Part 8" in relation to an "amendment which has not been approved" and proceedings are commenced "not later than one month after becoming aware of the failure".[22]

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21 (1955) 93 CLR 83, 103; see also, 99-100 (Dixon CJ, McTiernan, Williams, Webb, Kitto and Taylor JJ).

22 The VCAT has a broad discretion to extend the time limit to commence proceedings under s 39(1) of the PE Act: s 126 of the VCAT Act. See also, *Steller 250 Pty Ltd v Frankston CC* [2019] VCAT 1715, [80] (Bisucci DP). Accordingly, it cannot be said that s 39(1), directly or as a matter of practical effect, curtails or limits the right or ability of applicants to seek relief so as to be inconsistent with the place of that provision in the constitutional structure: *Bodruddaza v Minister for Immigration and Multicultural Affairs* (2007) 228 CLR 651, 671 [53] (Gleeson CJ, Gummow, Kirby, Hayne, Callinan, Heydon and Crennan JJ).

Grounds of review

24. A proceeding under s 39(1) is commenced in the VCAT's original jurisdiction rather than its review jurisdiction.[23] In those circumstances, the jurisdiction of the VCAT is governed by the enabling legislation.

25. Since the decision in *East Melbourne* the VCAT has applied the Court of Appeal's interpretation of s 39(7) to the jurisdiction conferred upon it by s 39(1), such that it has restricted its jurisdiction to review for "procedural defects". For the reasons advanced by the Appellant, *East Melbourne* should be disapproved.[24] Properly construed, s 39(1) is sufficiently broad so as to allow the VCAT to review for jurisdictional error.

Remedies

26. Section 39(4) of the PE Act confers jurisdiction on the VCAT to do any one or more of the following in determining a matter referred to it under s 39:[25]

    26.1. make any declaration it considers appropriate;[26]

    26.2. direct that the planning authority or the Minister not to adopt or approve an amendment unless they take the action specified by the VCAT.

    However, by operation of s 39(5), the VCAT "cannot vary a decision made in relation to a matter referred to it or set aside that decision and make a decision in substitution for the decision so set aside". It follows that the powers conferred are "in the nature of judicial review powers".[27] The VCAT is "not … undertaking a merits-based review of a decision

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23 Coastal Estates Pty Ltd v Bass Coast Shire Council & Minister for Planning Bass Coast Amendment C93 Panel [2010] VCAT 1807, [26] (Dwyer DP); 309A Queens Pde Pty Ltd v Yarra CC [2020] VCAT 518, [75] (Djohan M). In the exercise of its original jurisdiction, the VCAT is not bound by the rules of evidence: s 98(1)(b) of the VCAT Act. The VCAT must nonetheless act fairly and according to the substantial merits of the case: Christian Youth Camps Ltd v Cobaw Community Health Services Ltd (2014) 50 VR 256, 320 [258] (Maxwell P). Conversely, in judicial review proceedings, the Supreme Court of Victoria is bound by the rules of evidence: Evidence Act 2008 (Vic) s 4(1). See also, Lower Our Tracks Inc v Minister for Planning (2016) 219 LGERA 352, 375 (Ginnane J); East Melbourne Group v Minister for Planning (2008) 23 VR 605, 676-678 (Ashley and Redlich JJA).

24 AS, [50].

25 The VCAT is conferred power to issue injunctions: s 123(1) of the VCAT Act. It is the normal practice of the Minister not to approve or gazette an amendment until the VCAT has dealt with an application, so the power to issue interim injunctions does not seem to be utilised in matters referred under s 39(1) of the PE Act: *Kreglinger (Australia) Pty Ltd v Maribyrnong City Council* [2016] VCAT 1365, [2]-[3] (Gibson DP). Similarly, the power conferred by s 39(4) of the PE Act seems sufficient to supplant final injunctions, so s 123(1) appears to have little utility in these matters.

26 The VCAT is also conferred power to issue declaratory relief pursuant to s 124(1) of the VCAT Act. See also, *Buttigreg v Melton Shire Council* (2004) 17 VPR 136, 147-148 [32]-[33] (Morris P).

27 Australian Conservation Foundation v Minister for Planning [2004] VCAT 2029, [22] (Morris P).

by a decision-maker", rather the VCAT is concerned with the "lawfulness of the conduct of the Minister, a planning authority or panel".[28]

27. ***Certiorari***. While the VCAT does not have the power to set aside a decision, it may consider the validity of a decision in order to provide declaratory relief.[29] In practical terms, declaratory relief in relation to a failure of the Minister or of a council or the panel together with an order precluding approval of amendment, has the same substantive effect as a quashing order, because the VCAT can direct the Minister not to approve an amendment until the errors have been resolved.[30] Given the limited operation that anterior steps play within the tightly prescribed statutory scheme, the VCAT can preclude an anterior step that is affected by jurisdictional error from having legal effect.

28. ***Mandamus***. Section 39(4)(b) empowers the VCAT to preclude a planning authority or the Minister from adopting an amendment or part of an amendment unless the "[m]inister, planning authority or a panel takes action specified by the Tribunal". By virtue of this power, the VCAT can compel action to be taken, including compelling action to comply with a duty prescribed by law, in a manner is materially equivalent to the issue of mandamus.[31]

29. ***Prohibition***. Section 39(4)(b) empowers the VCAT to preclude a planning authority or the Minister from adopting an amendment or part of an amendment. This empowers the VCAT to preclude a decision-maker from proceeding towards, taking or implementing an unlawful decision, which is materially equivalent to the issue of prohibition.[32] Whilst s 39(4)(b) will only prohibit the specific action prescribed in ss 39(4)(b)(i) and (ii) (it cannot, for example, be used to prohibit an unlawful action of the panel), such an order will nonetheless, in practical terms, preclude the Minister from adopting the amendment.

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28 Australian Conservation Foundation v Minister for Planning [2004] VCAT 2029, [22] (Morris P).

29 *Canaan Holdings Pty Ltd v Whitehorse CC* [2015] VCAT 1608, [34] (Gibson DP).

30 See, eg, *Shiel FCP Pty Ltd v Melbourne CC* [2017] VCAT 744, [97] (Gibson DP).

31 See, eg, *Shiel FCP Pty Ltd v Melbourne CC* [2017] VCAT 744, [97] (Gibson DP).

32 The Appellants are not seeking a grant of prohibition in this matter so the Court is not directly seized of the issue as to whether s 39(8) ousts prohibition in all circumstances. A grant of prohibition in the original jurisdiction of the Supreme Court of Victoria may still be available before a "failure of the Minister a planning authority or a panel" (i.e. before the relevant decision-makers have determined their own jurisdiction), as s 39(1) of the P&E Act only empowers the VCAT to provide relief after a "failure": see, eg: *R v Federal Court of Australia; Ex p WA National Football League (Inc)* (1979) 143 CLR 190, 202 (Barwick CJ, Stephen J agreeing at 221), 216 (Gibbs J), 240 (Aicken J). However, of course, prohibition ordinarily will not issue before a decision-maker has determined its own jurisdiction: *Solution 6 Holdings Ltd* (2004) 137 IR 123 160 [157] (Spigelman CJ, Mason P agreeing at 160 [160]); *Re Gray; Ex parte Marsh* (1985) 157 CLR 351, 375 (Mason J).

Condition 2: Jurisdiction of the VCAT supervised by the Supreme Court of Victoria

30. Section 39(8) is a provision intended by Parliament to determine how a dispute regarding a failure of the Minister, a planning authority or panel to comply with Part 3 Div 1-2 and Pt 8 of the PE Act is to be determined at first instance. It does not protect the VCAT's decision from either appeal to, or judicial review by, the Supreme Court of Victoria.

Appellate jurisdiction

31. Appeals from the VCAT are made to the Supreme Court of Victoria pursuant to s 148(1) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) (**VCAT Act**).[33] If the VCAT is constituted by the President or Vice President, then appeals lie to the Court of Appeal. In all other cases, appeals lie to the Trial Division of the Supreme Court of Victoria.

32. A party may appeal "on a question of law from an order of the Tribunal". An appeals on a question of law encompasses review for jurisdictional errors. In *Roy Morgan Research Centre Pty Ltd v Commissioner of State Revenue (Vic),*[34] this Court described s 148 as concerned "with the invocation of judicial power to examine for legal error what has been done in an administrative tribunal".[35] While s 148 is expressed as an "appeal" provision, "it is clear that the Supreme Court is asked to exercise original, not appellate, jurisdiction and to do so in proceedings which are in the nature of judicial review."[36]

Judicial review jurisdiction

33. Judicial review of decisions of the VCAT is available under s 85(1) of the *Constitution Act* and O 56 of the *Supreme Court (General Civil Procedure) Rules 2025,* and pursuant to the *Administrative Law Act 1978* (Vic). Section 39(8) does not limit or seek to limit to jurisdiction of the Supreme Court to review a decision of the VCAT by way of any of these review provisions.

Conclusion

34. For the above reasons, should the Court reject the Appellant's contention that the errors precluded from review by s 39(8) of the PE Act are non-jurisdictional, it would in any event

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33 An application to the Trial Division for leave must be made within 28 days, and to the Court of Appeal, in general, within 42 days. Both the Trial Division and the Court of Appeal have the power to extend the time to which an application for leave to appeal may be lodged.

34 (2001) 207 CLR 72.

35 (2001) 207 CLR 72, 79 [15] (Gaudron, Gummow, Hayne and Callinan JJ).

36 *Roy Morgan Research Centre Pty Ltd* (2001) 207 CLR 72, 79-80 [15] (Gaudron, Gummow, Hayne and Callinan JJ). See also, *Osland v Secretary to the Department of Justice* (2010) 241 CLR 320, 331-332 [18] (French CJ, Gummow and Bell JJ).

be unnecessary to read down s 39(8) in order to conform with the *Kirk* implication in circumstances where s 39(1) confers jurisdiction on the VCAT to correct jurisdictional error at the motion of the Respondents and, where that jurisdiction is itself subject to supervision by the Supreme Court.

Part V: TIME ESTIMATE

35. It is estimated that up to 15 minutes will be required for the presentation of South Australia's oral argument.

Dated: 5 March 2026

……..
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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M71/2025

BETWEEN: **MINISTER FOR PLANNING**
Appellant

and

IGA RETAIL SERVICES PTY LTD (ACN 002 454 686)
First Respondent

and

SHEPPARTON PTY LTD (ACN 620 846 184)
Second Respondent

and

GREATER SHEPPARTON CITY COUNCIL
Third Respondent

and

KATHY MITCHELL AM AND PETER MARSHALL (AS MEMBERS OF A PANEL APPOINTED BY THE MINISTER FOR PLANNING UNDER SECTION 153 OF THE PLANNING AND ENVIRONMENT ACT 1987)
Fourth Respondent

and

LASCORP INVESTMENT GROUP PTY LTD
Fifth Respondent

ANNEXURE
PROVISIONS REFERRED TO IN THE SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA (INTERVENING)

No.	Description	Version	Provisions	Reason for providing this version	Applicable date or dates
Constitutional provisions					
1.	*Constitution*	Current	s 73	No material difference	All relevant times
Commonwealth statutory provisions					
1.	*Judiciary Act 1903* (Cth)	Current	s 78A	No material difference	All relevant times
State statutory provisions					
1.	*Constitution Act 1975* (Vic)	Current	s 85	No material difference	All relevant times
2.	*Administrative Law Act 1978* (Vic)	Current	s 7	No material difference	All relevant times
3.	*Occupational Health and Safety Act 1983* (NSW)	As in force from 3 July 2000 to 31 August 2001	ss 15 and 16	No material difference	21 March 2001
4.	*Supreme Court Act 1986* (Vic)	Current	ss 3, 132	No material difference	All relevant times
5.	*Planning and Environment Act 1987* (Vic)	Current	s 39	No material difference	All relevant times
6.	*Industrial Relations Act 1996* (NSW)	As in force from 1 January 2010 to 18 May 2010	s 179	No material difference	All relevant times
7.	*Taxation Administration Act 1996* (SA)	Current	ss 82, 92, 98, 100, Pt 10	No material difference	All relevant times
8.	*Victorian Civil and Administrative Tribunal Act 1998* (Vic)	Current	ss 98, 123, 124, 126, 148	No material difference	All relevant times
9.	*Industrial Relations Amendment Act 2005* (NSW)	As in force from 1 December 2005 to 19 June 2006	ss 3, 151A, Sch 1, cl 4	Amendments to the *Industrial Relations Act 1996* (NSW)	All relevant times
10.	*Evidence Act 2008* (Vic)	Current	s 4	No material difference	All relevant times
11.	*Supreme Court (General Civil Procedure)*	Current	r 56	No material difference	All relevant times

	Rules 2025 (Vic)				