SHORT PARTICULARS OF CASES
APPEALS

MAY 2026

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FARM TRANSPARENCY INTERNATIONAL LIMITED v THE GAME MEATS COMPANY OF AUSTRALIA PTY LTD (M105/2025)

Court appealed from:	Full Court of the Federal Court of Australia [2025] FCAFC 104; [2025] FCAFC 134
Dates of judgment:	13 August 2025; 25 September 2025
Special leave granted:	4 December 2025

Factual background

On seven occasions from January to April 2024, a director and an employee of the appellant, which conducts animal protection advocacy, trespassed on a halal abattoir operated by the respondent. The abattoir slaughters and processes goats for export. The trespassers secretly installed and retrieved covert video cameras, the presence of which constituted a trespass in addition to that committed by their unauthorised entry. From recordings made using the cameras, the appellant created a 14-minute video ('the footage') which included images of the activity within the abattoir.

The appellant provided the footage by way of complaint to the Commonwealth Department of Agriculture, Fisheries and Forestry, which in turn provided the footage to the respondent. The appellant also provided the footage to a television news network. On 17 May 2024, the appellant uploaded the footage to its website, and a story about the matters depicted in the footage was televised in regional news. On the same date, the respondent commenced Federal Court proceedings and obtained ex parte orders restraining the appellant from publishing the footage, whereupon the appellant removed the footage from its website.

Procedural background

On 19 December 2024, Snaden J upheld the respondent's claim in trespass (and dismissed other claims), ordering the appellant to pay the respondent general damages of $30,000 and exemplary damages of $100,000. His Honour found that the appellant intended to subject the respondent to a public shaming campaign and to harm it commercially, and that the appellant would likely trespass on other commercial premises in future. Snaden J however declined to order injunctive relief, finding no ongoing or extreme prejudice to the respondent arising from the completed trespass, and declined to impose a constructive trust on the copyright in the images captured by the appellant (such that the appellant would hold such copyright on trust for the respondent).

The respondent appealed, contending that injunctive relief was warranted to prevent ongoing damage by the appellant's continued possession and use of the images it had obtained, which were consequences of the trespass. The respondent also contended that a constructive trust was justified, and that injunctive relief could separately be granted to enforce such a trust.

The Full Court (Burley, Jackman and Horan JJ) unanimously allowed the respondent's appeal and declared that the appellant held copyright in the images on trust for the respondent. Their Honours found that, although the parties had no pre-existing relationship and the appellant had created no expectation that it would confer a benefit on the respondent, the wrongdoing was in a similar moral plane to cases where a constructive trust was imposed on a fraudster or a thief. The Full Court considered that this was a clear case for the imposition of a constructive trust over copyright created as a result of unlawful conduct where it was against good conscience for the creator to assert copyright, being an approach contemplated by four Justices of the High Court (in obiter dicta) in *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* [2001] HCA 63; (2001) 208 CLR 199.

The Full Court consequently granted an injunction, ordering that the appellant be permanently restrained from publishing any of the images captured as a result of its trespass. The appellant was also ordered to assign its copyright in writing to the respondent and to permanently delete all the images in the appellant's possession or control. Their Honours found it unnecessary to decide whether injunctive relief could otherwise have been granted directly as a result of the appellant's trespass.

This appeal

The grounds of appeal are:

1. The Full Court erred in failing to identify a principled basis to justify the imposition of a constructive trust with respect to the appellant's copyright in cinematograph films (or 'video recordings'), where the making of those video recordings itself constitutes no legal, equitable or statutory wrong.

2. The Full Court erred in failing properly to identify facts and circumstances which, on a principled basis, justified the imposition of a constructive trust with respect to the appellant's copyright in video recordings made between 9 January and 13 April 2024 of scenes in premises occupied by the respondent.

3. Further or alternatively to grounds 1 and 2, the Full Court erred in imposing a constructive trust with respect to the video recordings without first deciding that no lesser form of relief would be adequate to quell the controversy.

By notice of contention, the respondent seeks to raise the following ground:

1. The Full Court should have granted injunctive relief against publication of the images obtained or captured by the appellant at the respondent's premises, in equity's auxiliary jurisdiction to remedy the trespasses (and their continuing effects) committed by the appellant against the respondent.

The Human Rights Law Centre and the Alliance for Journalists' Freedom have been granted leave to be heard jointly as amici curiae in this appeal.

MINISTER FOR PLANNING v IGA RETAIL SERVICES PTY LTD (ACN 002 454 686) & ORS (M103/2025)

Court appealed from: Supreme Court of Victoria Court of Appeal [2025] VSCA 180

Date of judgment: 7 August 2025

Special leave granted: 4 December 2025

Factual background

The first and second respondents ('the IGA parties') have interests in 177-193 Numurkah Road, Shepparton North ('the Site'). On 27 October 2023, a delegate of the appellant ('the Minister') authorised the third respondent ('the Council') to prepare and exhibit a proposed amendment to the Greater Shepparton Planning Scheme ('the Amendment'), an area which includes the Site. The Amendment was placed on public exhibition and the Council received submissions, including from the IGA parties, which were referred to a planning panel ('the Panel'). The Panel conducted public hearings and provided a report to the Council ('the Panel Report') of its findings and recommendation. The recommendation was to adopt the Amendment, subject to a number of changes.

On 23 April 2024, the Council resolved to adopt the Amendment as recommended by the Panel ('the April Resolution'). The Council subsequently viewed that the April Resolution was invalid because the changes to the Amendment recommended by the Panel were not before the Council in the meeting. On 23 July 2024, the Council again resolved to adopt the Amendment ('the July Resolution'). On 16 August 2024, the Council submitted the Amendment as adopted by the July Resolution to the Minister for approval. The Minister has not yet approved the Amendment.

Procedural background

On 11 June 2024, the IGA parties commenced Supreme Court proceedings for judicial review, seeking orders to quash the Panel Report and the April Resolution and declarations that they were invalid on account of non-compliance with certain provisions of Part 3 Divs 1-3 and Part 8 of the *Planning and Environment Act 1987* (Vic) ('the PE Act'). The IGA parties contended that the Panel Report was legally unreasonable, that the Panel failed to consider submissions made by the IGA Parties and that the Panel gave inadequate reasons for its findings and recommendations. The IGA parties also sought an injunction restraining the Minister from approving the Amendment, on the basis that if the Panel Report was invalid, the April Resolution was invalid, and the Minister consequently would have no power to approve the Amendment.

Quigley J reserved two questions for the Court of Appeal to determine. This appeal concerns the Court of Appeal's answer to the first reserved question, which was essentially: '*Does s 39 of the PE Act prevent the IGA Parties from seeking the relief sought in the originating motion filed in this proceeding?*' (The Court of Appeal found the second question unnecessary to answer, and in this appeal the Minister seeks no different answer.)

Section 39 of the PE Act addresses defects in procedure. Section 39(1) provides that a person affected by non-compliance with Part 8 or Part 3 Divs 1-3 in relation to a proposed amendment may, within one month of becoming aware of the failure, refer the matter to the Victorian Civil and Administrative Tribunal ('VCAT'). The second respondent has commenced such VCAT proceedings, for review of the April Resolution and the July Resolution. Section 39(7) provides that an approved amendment is not made invalid by any failure to comply with Part 8 or Part 3 Divs 1-3, while s 39(8) provides that, apart from an application to VCAT, '*a person cannot bring an action in respect of a failure to comply with [Divs 1-3] or Part 8 in relation to an amendment which has not been approved.*'

The Court of Appeal (Niall CJ, Emerton P and Richards JA) unanimously answered the first reserved question 'No'. Their Honours considered that the two key issues to be resolved were: first, whether the 'originating motion' was an 'action' for the purposes of s 39(8); and second, the extent that the jurisdiction of the Supreme Court could be ousted by a provision such as s 39. Answering the question in light of constitutional imperatives and conventions, the Court of Appeal found that given the clear legislative intent in s 39(8) to restrict the jurisdiction of the Supreme Court in planning matters, none of the grounds advanced by the IGA parties in the originating motion could be competent. Under the PE Act, the IGA parties could instead only make a claim to VCAT under s 39(1). Nonetheless, the Court of Appeal held that the supervisory jurisdiction of the Supreme Court to grant relief in respect of jurisdictional error could not be removed or limited by statute and was beyond State legislative power, as held by this Court in *Kirk v Industrial Relations Commission of New South Wales* [2010] HCA 1; (2010) 239 CLR 531 ('*Kirk*'). Their Honours held that the grounds relied on by the IGA parties were jurisdictional in nature and therefore engaged the decision of *Kirk*. In accordance with *Kirk*, s 39 would either be invalid or be required to be read down or disapplied in respect of a proceeding that alleges jurisdictional error.

This appeal

The appellant submits that non-compliance with procedural requirements of the PE Act preceding a decision by the Minister on a planning scheme amendment does not amount to jurisdictional error and s 39(8) is effective in precluding Supreme Court action for non-compliance. The IGA parties submit that the Court of Appeal correctly applied the decision of *Kirk*.

The sole ground of appeal is:

1. The Court of Appeal erred in answering 'no' to the first question stated for decision.

The Minister has filed a notice of a constitutional matter. The Attorneys-General of the Commonwealth, New South Wales, Queensland and South Australia are intervening in the appeal.

O'CONNELL v DIRECTOR OF PUBLIC PROSECUTIONS (C2/2026); DIRECTOR OF PUBLIC PROSECUTIONS v O'CONNELL (C3/2026)

Court appealed from: Court of Appeal of the Supreme Court of the Australian Capital Territory
[2025] ACTCA 20 and [2025] ACTCA 41

Date of judgment: 27 June 2025 and 29 September 2025

Special leave granted: 6 February 2026

Factual background

On 15 April 2022, Mr O'Connell ('O'Connell'), Ms Jordan ('Jordan') and a 14-year-old witness, Ms X, were at Jordan's house. Following an argument between O'Connell and Jordan, O'Connell left the house and Jordan followed him. According to Ms X, Jordan jumped on the bonnet of O'Connell's car, and Jordan fell to the road as the car drove off. Jordan was found 200 metres further down the road from her house, having sustained severe head injuries, and died.

Procedural background

O'Connell was charged and tried by jury on an indictment containing a single count of murder. The trial however was also conducted on the basis that an alternative verdict of manslaughter was available to the jury, if the jury found him not guilty of murder but guilty of manslaughter. The central issue in dispute at trial was whether the prosecution could prove beyond reasonable doubt that O'Connell drove the car while Jordan was on the bonnet. The jury returned the verdict of guilty of murder and O'Connell was sentenced by Baker J to 15 years' imprisonment with a non-parole period of 10 years. O'Connell appealed his conviction on numerous grounds, including that the jury's verdict on murder was unreasonable and could not be supported having regard to the evidence.

On 27 June 2025 the Court of Appeal by majority (McCallum CJ dissenting, Taylor J and Loukas-Karlsson J agreeing) allowed the appeal, set aside the verdict and sentence imposed by Baker J and reserved the question of whether another verdict should be entered ('the First COA Judgment'). McCallum CJ would have dismissed the appeal, having found that the evidence of Ms X did not demonstrate inconsistencies or discrepancies, to the extent that a rational jury ought to have entertained a reasonable doubt as to proof of guilt of murder. The majority held that based on the evidence accepted by the jury, it was not open to the jury to be satisfied beyond reasonable doubt of O'Connell's guilt with respect to the offence of murder. This was because the prosecution had not excluded the reasonable inference that when O'Connell drove the vehicle with Jordan on the bonnet, he did not know or realise her death was probable.

Following further submissions on the question of whether another verdict should be entered, on 29 September 2025 the Court of Appeal by majority (McCallum CJ dissenting, Taylor J and Loukas-Karlsson J agreeing) ordered that a verdict of guilty be entered on the alternative offence of manslaughter and remitted the proceedings to Baker J for resentence ('the Second COA Judgment').

Their Honours agreed unanimously that s 37O(1)(d) of the *Supreme Court Act 1993* (ACT) allowed the Court to enter a verdict of guilty for 'another' alternative. Their Honours further unanimously agreed that s 297 of the *Crimes Act 1900* (ACT) did not preclude the Court from entering a verdict of guilty to manslaughter or from ordering a new trial for the offence of manslaughter.

McCallum CJ in dissent would have ordered for a new trial for the offence of manslaughter. Her Honour held that a new trial should be held pursuant to s 37O(1)(e) of the *Supreme Court Act 1993* (ACT) in circumstances where the conviction for the offence on the indictment has been set aside on appeal and the alternative offence has never been determined at trial, and to avoid making a factual finding of an issue that had not been determined by the jury.

The majority held that while the mental element of murder and manslaughter is different, 'the circumstances of this case dictated that satisfaction with respect to reckless indifference encompassed the unlawful intention necessary for proof of manslaughter'. The majority held that their conclusions in the First COA Judgment, that the verdict for murder was unreasonable or could not be supported, was only with respect to proof of O'Connell's knowledge that his actions would lead to Jordan's death being probable – but that proof of an intention to dislodge Jordan from the vehicle would have been satisfied. The majority held that the jury's verdict of murder necessarily meant that it was open for the jury to be satisfied that O'Connell possessed the intention necessary for manslaughter.

These appeals

O'Connell v Director of Public Prosecutions ('the **First Appeal**') and *Director of Public Prosecutions v O'Connell* ('the **Second Appeal**') each appeal a different judgment of the Court of Appeal.

In the **Second Appeal**, the Director of Public Prosecutions ('the DPP') appeals from the First COA Judgment and submits that the hypothesis that O'Connell did not satisfy the mental element of murder was not one which was put to the jury at trial and therefore should not have been considered by the Court of Appeal. Further, the DPP submits that the majority erred in considering the circumstantial evidence at trial in a selective manner and by disregarding the advantages of the jury, who at trial carefully considered all of the evidence in reaching a verdict. O'Connell submits that the majority did not err and had considered the entirety of the evidence at trial in arriving at the conclusion that the verdict was unreasonable.

The sole ground of appeal in the **Second Appeal** is:

1. The appellant appeals on the ground that the Court of Appeal (by majority) erred in its approach to the ground asserting that the verdict of guilty of murder was unreasonable and could not be supported having regard to the evidence ('ground (a)') by:

    i. Allowing the respondent's appeal on a basis not raised at trial nor on appeal, and in relation to a hypothesis which was not open on the evidence; and

ii. In determining ground (a), approaching the question of reckless indifference in a manner contrary both to the role of the appellate court identified in *M v The Queen* (1994) 181 CLR 487 and the proper approach to a circumstantial case identified in *R v Hiller* (2007) 228 CLR 618.

In the **First Appeal**, O'Connell appeals from the Second COA Judgment, submitting that the Court of Appeal erred in its interpretation of s 37O(1)(d) and that it does not have power to enter a verdict for 'another offence'. Furthermore, O'Connell disagrees with the Court of Appeal's approach that the mental element of murder necessarily implied the jury's satisfaction with the mental element of manslaughter. The DPP makes submissions in response only in the event that the Court dismisses the DPP's appeal in the **Second Appeal**, and submits that the Court of Appeal did not err and that s 37O(1)(d) permits the court to enter a verdict of manslaughter, because the single indictment of murder included the alternative offence joined on that indictment. The DPP agrees with the majority's reasoning in finding that the mental elements of manslaughter were satisfied.

The sole ground of appeal in the **First Appeal** is:

1. The Court of Appeal of the Supreme Court of the Australian Capital Territory (by majority) erred in:

    a. entering a verdict of guilty by manslaughter in place of the jury's verdict of murder, which was found to be unreasonable in *O'Connell v R* [2025] ACTCA 40; and

    b. finding that s 297 of the *Crimes Act 1900* (ACT) does not preclude the entry of a verdict of guilty of manslaughter or a retrial for manslaughter.

The Director of Public Prosecutions (SA) has been granted leave to intervene in the appeals.

MACH ENERGY AUSTRALIA PTY LTD ABN 34608495441 v DENMAN ABERDEEN MUSWELLBROOK SCONE HEALTHY ENVIRONMENT GROUP INC & ANOR (S174/2025)

Court appealed from: Supreme Court of New South Wales
Court of Appeal
[2025] NSWCA 163

Date of judgment: 24 July 2025

Special leave granted: 4 December 2025

Factual background

This appeal concerns the Mount Pleasant Coal Mine in the Upper Hunter Valley, an established open cut coal mine owned and operated by the appellant who commenced mining operations in 2018. The Mount Pleasant Optimisation Project ('the Project') involves the extension of the life of the mine. Development consent was originally granted in 1999 and has been the subject of five modifications. In January 2021, the appellant lodged a State significant development ('SSD') seeking to extend the life of the mine by 22 years to December 2048. The Independent Planning Commission of New South Wales ('the IPC'), being the second respondent, is the consent authority for the SSD. The appellant also lodged an environmental impact statement ('EIS') with the Department of Planning and Environment. Both the SSD and the EIS were publicly exhibited.

The Minister for Planning and Public Spaces requested a public hearing under s 2.9(1)(d) of the *Environmental Planning and Assessment Act 1979* (NSW) ('the EPA Act'). On 7 and 8 July 2022, the IPC heard from various community members and parties and received extensive and detailed submissions regarding the impact on Scope 3 greenhouse gas emissions and the presence of a differentiated species of the Legless Lizard being recorded at the site of the mine. The first respondent, being a community environmental organisation, provided written submissions noting that the appellant had not identified any measures or conditions directed to minimising Scope 3 emissions.

On 6 September 2022, the IPC granted development consent subject to conditions to the appellant for the Project and published a 'Statement of Reasons for Decision' ('the IPC Decision'), which has the effect of extending the existing development consent in respect of the Project for a period of 22 years.

Procedural background

The first respondent sought declaratory and consequential relief regarding the IPC Decision by way of judicial review to the Land and Environment Court ('the LEC') claiming that the IPC's reasoning was legally invalid on multiple grounds. The primary judge (Robson J) concluded that the IPC had considered relevant environmental factors, including greenhouse gas emissions and air quality impacts, and had imposed conditions requiring compliance with specified air quality criteria. The primary judge described the written reasons for the IPC Decision as 'extensive', extending over 50 pages, and rejected the submission that the IPC had misunderstood and failed to consider s 4.15(1)(b) of the EPA Act and dismissed the first respondent's application for judicial review.

The first respondent challenged the primary judge's decision to the Court of Appeal. The Court of Appeal emphasised that judicial review proceedings did not extend to a merits review of the IPC Decision and was not intended to become an assessment of the adequacy of the IPC's consideration of matters, but rather the purpose was to assess whether the IPC had complied with the statutory framework governing development approvals when making the IPC Decision.

The Court of Appeal (Ward P, Price AJA agreeing, Adamson JA agreeing as to orders but writing separately) found in favour of the first respondent and allowed the appeal, declaring the development consent invalid and remitting the matter to the LEC for consideration. The Court of Appeal, in overturning the primary judge's decision, held that the IPC failed to consider a mandatory statutory consideration by not addressing the environmental impacts of the development in the locality, particularly with regards to how the Project contributes to global climate change through greenhouse gas emissions and how climate change may affect the local environment and community during the life of the Project.

This appeal

Section 4.15(1) of the EPA Act sets out the matters that a consent authority is required to take into consideration. Specifically, s 4.15(1)(b) states that a consent authority is to take into consideration 'the significant likely impacts of that development, including environment impacts on both the natural and built environments, and social and economic impacts in the locality'. This Court will now be required to determine the proper construction of s 4.15(1)(b) of the EPA Act.

The appellant submits that the Court of Appeal's construction is inconsistent with legislative history, contrary to settled principles and works to undermine the statutory objects by limiting the relevant environmental impacts that must be considered to impacts that occur 'in the locality'. The first respondent contends that the Court of Appeal was correct to conclude that the IPC failed to act in accordance with the structured exercise of discretion provided for by s 4.15 of the EPA Act in respect of the Project's Scope 3 emissions.

The grounds of appeal are:

1. The Court of Appeal erred in construing s 4.15(1)(b) of the EPA Act as imposing a requirement to consider environmental impacts of a development on the built and natural environment 'in the locality'.

2. The Court of Appeal erred in concluding that the requirement to consider the likely impacts of a development, including environmental impacts on both the natural and built environments, in s 4.15(1)(b) of the EPA Act imposed a specific requirement to conduct a causal enquiry as to the impacts of climate change.

3. The Court of Appeal erred in concluding that the impact of climate change is capable of being an environmental impact in the locality of the development within the meaning of s 4.15(1)(b) of the EPA Act.

By notice of contention, the first respondent seeks to raise an additional issue as follows:

1. The Court of Appeal should have found (and erred in failing to find) that:

    a. the IPC failed to comply with s 4.15 of the EPA Act in approving, by the development consent dated 6 September 2022, the Project, because the IPC did not take into consideration, in the manner required by s 4.15(1)(a)(i) and cl 2.20 of the *State Environmental Planning Policy (Resources and Energy) 2021* (NSW), whether development consent should be issued subject to conditions aimed at ensuring that greenhouse gas emissions (including downstream emissions) of the development are minimised to the greatest extent practicable; and

    b. as a consequence of the failure to consider that matter, the IPC Decision was invalid.

The first respondent has filed an application seeking revocation of special leave to appeal on ground 3 of the notice of appeal, and leave to amend the notice of contention to include a second ground as follows:

2. If it is found that the New South Wales Court of Appeal erred in its construction of s 4.15(1)(b) of the EPA Act by either:

    a. treating the words ‘in the locality’ as limiting the whole of s 4.15(1)(b); or

    b. proceeding on the basis that s 4.15(1)(b) at least requires consideration of likely impacts on the environment in the locality of the development,

    then, if (contrary to the first respondent’s submissions in this Court) the Court of Appeal did not decide that consideration of likely impacts of climate change in NSW and the Hunter Valley was required in any event, the Court of Appeal should have found that the IPC was required to consider the likely impacts of climate change in NSW and the Hunter Valley because of evidence before the IPC including the material in the appellant’s EIS.

The Union of Concerned Scientists and Melbourne Climate Futures have been granted leave to appear as amici curiae on the basis of written and oral submissions. The Centre for Climate Engagement and the Sabin Centre for Climate Change Law have also been granted leave to appear as amici curiae, with their participation limited to the receipt of the joint written submissions already filed.