



## HIGH COURT OF AUSTRALIA

6 May 2026

MAYFIELD DEVELOPMENT CORPORATION PTY LTD (ACN 154 495 048) v  
NSW PORT OPERATIONS HOLD CO PTY LTD (ACN 163 262 351) & ORS  
[2026] HCA 12

Today, the High Court unanimously allowed an appeal from the Full Court of the Federal Court of Australia.

The appellant ("Mayfield") contended that it lost the opportunity to develop land at the Port of Newcastle ("the Mayfield Site") for use as a container facility because, in 2013, the State of New South Wales ("the State"), the fourth respondent, in privatising Port Botany and Port Kembla, agreed to Port Commitment Deeds ("PCDs") with the first to third respondents ("NSW Ports"). Clause 3 of the PCDs included terms that would require the State to pay compensation to NSW Ports if, in two consecutive financial years, Port Botany or Port Kembla were not at full capacity for the import and export of containers, and container volumes beyond a defined threshold were diverted from Port Botany or Port Kembla to the Port of Newcastle. In 2013, Mayfield and the State executed a deed of release by which Mayfield released the State (but not NSW Ports) from all claims which Mayfield had, or may have had, "against" the State in respect of the Mayfield Site.

Mayfield commenced proceedings in the Federal Court of Australia against NSW Ports, alleging breaches of ss 45(2)(a)(ii), 45(2)(b)(ii) and 45DA(1) of the *Competition and Consumer Act 2010* (Cth) ("the CCA"). In an earlier proceeding before the Federal Court, the Australian Competition and Consumer Commission ("the ACCC") had brought a similar claim against NSW Ports ("the ACCC Proceeding"). That claim failed at first instance and on appeal for reasons that included a determination that, on the proper construction of the CCA, by reason of derivative Crown immunity, s 45 of the CCA did not apply to the conduct of NSW Ports in respect of its entry into the PCDs. Mayfield was granted leave to intervene in the appeal in the ACCC Proceeding, but this leave was limited to the filing of written submissions.

The primary judge held that Mayfield's claim was not precluded either by the deed of release or by its intervention in the appeal in the ACCC Proceeding. However, the primary judge considered himself bound to follow the decision of the Full Court in the ACCC Proceeding that derivative Crown immunity was a complete answer to Mayfield's claims. The Full Court dismissed Mayfield's appeal.

The High Court unanimously held that Mayfield was not barred by the deed of release or estopped by reason of its limited involvement in the ACCC Proceeding from bringing this proceeding, nor was the proceeding an abuse of process. In addition, the Court unanimously held that ss 45 and 45DA(1) of the CCA bound NSW Ports in its dealings with the State.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*