HIGH COURT OF AUSTRALIA

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Details of Filing

File Number:	A22/2022
File Title:	Disorganized Developments Pty Ltd & Ors v. State of South A
Registry:	Adelaide
Document filed:	Form 27D - Respondent's submissions
Filing party:	Respondent
Date filed:	25 Nov 2022

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IN THE HIGH COURT OF AUSTRALIA
ADELAIDE REGISTRY

ON APPEAL FROM THE COURT OF APPEAL OF THE SUPREME COURT OF SOUTH AUSTRALIA

BETWEEN: **DISORGANIZED DEVELOPMENTS PTY LTD**
First Appellant

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PETER KEITH STACY
Second Appellant

STEPHEN JOHN TAYLOR
Third Appellant

and

THE STATE OF SOUTH AUSTRALIA
20 Respondent

RESPONDENT'S SUBMISSIONS

RESPONDENT'S SUBMISSIONS

PART I: CERTIFICATION

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

PART II: ISSUES

2. The following questions arise for determination by this Court:
   a. Whether the *Criminal Law Consolidation (Criminal Organisations) (Prescribed Place – Cowirra) Variation Regulations 2020* (**Cowirra No 1 Regulations**) and *Criminal Law Consolidation (Criminal Organisations) (Prescribed Place – Cowirra) Variation (No 2) Regulations 2020* (**Cowirra No 2 Regulations**) (together, the **Cowirra Regulations**) effect a declaration that the places identified therein (the **Cowirra Land**) are prescribed places for the purpose of s 83GA(1) of the *Criminal Law Consolidation Act 1935* (SA) (**CLCA**)?
   b. Whether the Cowirra Regulations are invalid by reason that the Governor, acting on the advice and with the consent of the Executive Council, did not afford the Appellants an opportunity to be heard before making them?
3. The Respondent submits that these issues should be resolved by answering the questions identified above as follows:
   a. Yes. The Cowirra Regulations when construed in light of their context and manifest purpose, should be interpreted as impliedly declaring the Cowirra Land, identified by title reference and address in the body of the Regulations themselves, to be prescribed places.
   b. No. Having regard to the width of the statutory discretion conferred to make regulations for the purposes of s 83GA(1) of the CLCA, the diffuse nature of the interests affected by the exercise of that statutory power and the reposing of the power in the Governor in Executive Council, the CLCA should not be construed as impliedly requiring that procedural fairness must be afforded to owners and occupiers of prescribed places prior to the making of such regulations.

PART III: SECTION 78B OF THE JUDICIARY ACT

4. No notice under s 78B of the *Judiciary Act 1903* (Cth) is required.

PART IV: FACTS

5. The Respondent does not contest any of the material facts set out in the Appellants' Written Submissions or the Appellants' Chronology.

PART V: ARGUMENT

The legislative scheme

6. Part 3B of the CLCA proscribes a range of conduct directed toward "disrupting the activities of criminal organisations".[1] Section 83GD(1), located in Part 3B of the CLCA, makes it an offence for a participant in a criminal organisation to enter a prescribed place:

> Any person who is a participant in a criminal organisation and enters, or attempts to enter, a prescribed place commits an offence.
>
> Maximum penalty: Imprisonment for 3 years.

7. A "criminal organisation" is defined by s 83GA(1) of the CLCA as follows:

> ***criminal organisation*** means—
>
> (a) an organisation of 3 or more persons—
>
> (i) who have as their purpose, or 1 of their purposes, engaging in, organising, planning, facilitating, supporting, or otherwise conspiring to engage in, serious criminal activity; and
>
> (ii) who, by their association, represent an unacceptable risk to the safety, welfare or order of the community; or
>
> (b) a declared organisation within the meaning of the *Serious and Organised Crime (Control) Act 2008*; or
>
> (c) an entity declared by regulation to be a criminal organisation;

8. A "participant" in a criminal organisation is defined by s 83GA(1) as follows:

> ***participant***, in a criminal organisation, means—
>
> (a) if the organisation is a body corporate—a director or officer of the body corporate; or
>
> (b) a person who (whether by words or conduct, or in any other way) asserts, declares or advertises his or her membership of, or association with, the organisation; or
>
> (c) a person who (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the organisation; or
>
> (d) a person who attends more than 1 meeting or gathering of persons who participate in the affairs of the organisation in any way; or
>
> (e) a person who takes part in the affairs of the organisation in any other way,
>
> but does not include a lawyer acting in a professional capacity;

9. A "prescribed place" is defined by s 83GA(1) to mean "a place declared by regulation to be a prescribed place".

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[1] *Disorganized Developments Pty Ltd & Ors v The State of South Australia* [2022] SASCA 6 (**Court of Appeal**), [59] and [111]. This is not disputed: Appellants' Written Submissions, [59].

10. Section 370 of the CLCA confers a general regulation making power upon the Governor to "make such regulations as are contemplated by, or as are necessary or expedient for the purposes of" the CLCA. Section 21 of the *Legislation Interpretation Act 2021* (SA) provides that:

> If … the Governor is authorised or required to do any act, matter or thing, it will be taken to mean that the act, matter or thing may or must be done by the Governor with the advice and consent of the Executive Council.

11. Section 83GA(2) imposes the following procedural requirement on the making of regulations of the kind contemplated by s 83GA(1) of the CLCA:[2]

> Each regulation made under subsection (1) for the purposes of the definitions of ***criminal organisation***, ***prescribed event*** or ***prescribed place*** and required to be laid before each House of Parliament in accordance with the *Subordinate Legislation Act 1978*[3] may only relate to 1 entity, 1 event or 1 place (as the case may require).

12. Section 10A of the *Legislative Instruments Act 1978* (SA) provides that regulations that are required to be laid before Parliament are referred to the Legislative Review Committee and must be inquired into and considered by that Committee. Regulations that declare a place to be a prescribed place may be disallowed.[4]

13. The making of regulations pursuant to s 83GA also fall within the scope of the review functions conferred on the Crime and Public Integrity Policy Committee established by s 15M of the *Parliamentary Committees Act 1991* (SA). Pursuant to s 15O(1)(b) of the *Parliamentary Committees Act 1991* (SA) the functions of the Crime and Public Integrity Policy Committee include:

> to inquire into and consider the operation of— …
>
> (iii) insofar as they are concerned with serious crime, criminal organisations or proceedings under an Act referred to in a preceding subparagraph … the *Criminal Law Consolidation Act 1935* …,
>
> and, in particular—
>
> (iv) how effective those Acts have been in disrupting and restricting the activities of organisations involved in serious crime and protecting members of the public from violence associated with such organisations; and
>
> (v) whether the operation of those Acts has adversely affected persons not involved in serious crime to an unreasonable extent; and
>
> (vi) whether the operation of those Acts has made an appreciable difference to the prevention or minimisation of the activities of organisations involved in serious crime…

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2 Further procedural requirements to be followed in the making of a regulation declaring that an entity is a "criminal organisation" are provided for in subs 83GA(3)-(5), read together with s 83GB, of the CLCA. For clarity, it is noted that the title of the *Subordinate Legislation Act 1978* (SA) has now changed to the *Legislative Instruments Act 1978* (SA).

3 The *Subordinate Legislation Act 1978* (SA) was re-named the *Legislative Instruments Act 1978* (SA) with effect from 1 January 2022 however, the reference contained in s 83GA(2) of the CLCA has not been amended.

4 *Legislative Instruments Act 1978* (SA), s 10(5a). Section 83GA(6) of the CLCA provides that s 10A of the *Subordinate Legislation Act 1978* (SA) does not apply in relation to regulations that declare entities to be criminal organisations for the purposes of s 83GA(1)(c) of the CLCA.

The regulations

14. It is important to distinguish three kinds of regulations that have been promulgated for the purposes of Part 3B, Division 2 of the CLCA: (i) the *Criminal Law Consolidation (Criminal Organisations) Regulations 2015* (**Consolidated Regulations**), in the form in which they were enacted by the *Statutes Amendment (Serious and Organised Crime) Act 2015* (**Amending Act**);[5] (ii) the Cowirra Regulations; and, (iii) the Consolidated Regulations as subsequently amended by, amongst other regulations, the Cowirra Regulations (**Amended Consolidated Regulations**).[6]

15. The Consolidated Regulations were made by the Amending Act and commenced on 6 August 2015. Although the Consolidated Regulations related to more than one entity and one place the rule found in s 83GA(2) did not apply to the making of the Consolidated Regulations because the Amending Act effected both the insertion of s 83GA(2) *and* the making of the Consolidated Regulations.[7] Section 83GA(2) must be understood, therefore, as having been intended to apply only to new regulations made for the purposes of s 83GA(1).[8]

16. The Cowirra Regulations were subsequently made by the Governor on 17 December 2020. The Cowirra Regulations complied with the rule in s 83GA(2) in that each of them was laid before each House of Parliament and related to only one place.[9] For the reasons advanced below in relation to Ground 1, the Respondent contends, and the Appellants dispute, that the effect of the Cowirra Regulations was twofold:

    a. first, the Cowirra Regulations, impliedly, *declared* the two relevant parcels of land to be prescribed places; and,

    b. second, having declared the Cowirra Land to be prescribed places, the Cowirra Regulations *varied* the Consolidated Regulations to reflect the declarations made.

17. The Amended Consolidated Regulations were, as noted immediately above, varied on 17 December 2020 to reflect the declarations of the Cowirra Land that had been effected by the Cowirra Regulations. The Amended Consolidated Regulations, as varied, do relate to more than one place. However, the Amended Consolidated

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5 Amending Act, s 13 and Sch 1.

6 The other amending regulations were: the *Criminal Law Consolidation (Criminal Organisations) (Premises in Para Hills) Variation Regulations 2017*; the *Criminal Law Consolidation (Criminal Organisations) (Premises in Salisbury South) Variation Regulations 2017*; the *Criminal Law Consolidation (Criminal Organisations) (Premises in Para Hills West) Variation Regulations 2020*; and, the *Criminal Law Consolidation (Criminal Organisations) (Premises in Burton) Variation Regulations 2020*.

7 Amending Act, s 13 and Sch 1.

8 The Appellants do not appear to contend otherwise: Appellants' Written Submissions, [13]-[14].

9 South Australia, *Parliamentary Procedure*, Legislative Council, 2 February 2021, 2486; South Australia, *Parliamentary Procedure*, House Assembly, 2 February 2021, 3873.

Regulations were not subject to the rule found in s 83GA(2) because, as the Court of Appeal observed, they merely provide a "convenient consolidated list" of declared places.[10] The Amended Consolidated Regulations were not laid before each House of Parliament. They were published pursuant to s 8 of the *Legislation Revision and Publication Act 2002* (SA).[11]

Ground 1: The Cowirra Regulations impliedly declared the Cowirra Land to be prescribed places

18. Whether the Cowirra Regulations impliedly declared the Cowirra Land to be prescribed places is, as the Court of Appeal observed, a question of construction.[12] The relevant principles are well established.[13] The primary objective of the construction exercise is to give effect to the legislative intent as expressed by the text of the enactment as a whole.[14] In doing so, the text must not be considered in isolation. The meaning of the words used must be derived from the context in which those words appear, including the purpose of the enactment.[15] The construction that best achieves the purpose of the enactment is to be preferred.[16]

19. It may be accepted that the drafting of the Cowirra Regulations was suboptimal.[17] The Cowirra Regulations do not expressly declare the Cowirra Land to be prescribed

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10 Court of Appeal, [31] and [41].

11 The Appellants contend at [22] of the Appellants' Written Submissions that the effect of the Cowirra Regulations is only to *vary* the Consolidated Regulations and accordingly, the "operative activity" of declaring must be found in regulation 3 of the Consolidated Regulation. The Appellants submit at [11] that there "is no question" that a breach of the rule contained in s 83GA(2) of the CLCA would invalidate a non-compliant regulation. As explained by the Court of Appeal at paragraphs [25]-[30], this conclusion may be doubted. The Respondent did not, and does not, contend that the Amended Consolidated Regulation declares the Cowirra Land to be prescribed places. As such, the implications of non-compliance with the rule in s83GA(2) was not the subject of submissions before the Court of Appeal. The Respondent does not accept the Court of Appeal's characterisation at paragraph [30], that its submissions amounted to a "concession" that compliance with s 83GA(2) is necessary for a valid declaration. Rather, the Respondent submitted before the Court of Appeal, and submits now, that the declaration is effected by the Cowirra Regulations which do not offend the '1 place' requirement. It was unnecessary for the Court of Appeal to determine this issue, and it is unnecessary for this Court to do so.

12 Court of Appeal, [32].

13 See, for example, *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Moorcroft* (2021) 391 ALR 270, 274 [15] (the Court); *SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362, 368 [14] (Kiefel CJ, Nettle and Gordon JJ), 374-375 [37]-[39] (Gageler J); *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384, 408 (Brennan CJ, Dawson, Toohey and Gummow JJ).

14 See, for example, *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 381 [69] (McHugh, Gummow, Kirby and Hayne JJ); *Federal Commission of Taxation v Munro* (1926) 38 CLR 153, 180 (Isaacs J).

15 See, for example, *Plaintiff M70/2011 v The Minister for Immigration and Citizenship* (2011) 244 CLR 144, 194 [109] (Gummow, Hayne, Crennan and Bell JJ); *Minister for Immigration and Multicultural Affairs v Khawar* (2002) 210 CLR 1, 36 [109] (Kirby J); *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389, 396–397 (Brennan CJ, Dawson, Toohey, Gaudron and McHugh JJ).

16 *Legislation Interpretation Act 2021* (SA), s 14.

17 Court of Appeal, [32].

places. However, as the Court of Appeal held, and as the Appellants' appear to concede, that does not mean that the Regulations failed to give effect to a relevant declaration: "the word 'declare' is not indispensable".[18]

20. As recounted above, the CLCA imposes three procedural requirements upon the declaration of a prescribed place: first, it must take the form of a regulation; second, that regulation must be laid before each House of Parliament; and, third, that regulation may only relate to 1 entity, 1 event or 1 place.[19] The Cowirra Regulations complied with each of these three procedural requirements. Beyond these constraints, the CLCA does not prescribe the form that a declaration must take. As the Court of Appeal correctly held, the need for a declaration requires a formal statement of intent that a place identified by regulation is to be prescribed.[20]

21. The following textual features of the Cowirra Regulations support the conclusion that they constitute formal statements that the Cowirra Land was to be prescribed:

    a. the long and short titles of the Cowirra Regulations, which include in parentheses "Prescribed Place – Cowirra";[21]

    b. the headings to reg 4, which include the phrase "Places declared to be prescribed places" and refer to "section 83GA";[22] and,

    c. the inclusion of specific certificates of title references and addresses in each of the Cowirra Regulations.[23]

The very existence of the Cowirra Regulations, taking the form of regulations, identifying the source of power to declare prescribed places, and respectively identifying particular places, in themselves constitute sufficiently formal statements of intent such as to constitute declarations. The Appellants' submission that there is an "absence of any text" in the Cowirra Regulations from which a declaration might be implied cannot be sustained.[24]

22. Turning to context, as noted above, the Amended Consolidated Regulations, published pursuant to s 8 of the *Legislation Revision and Publication Act 2002* (SA), merely provided a "convenient consolidated list" of declared places. It follows that acceptance of the Appellant's construction, that the Cowirra Regulations intended only to vary the Amended Consolidated Regulation without first giving effect to a declaration, would

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18 Court of Appeal, [33]; Appellants' Written Submissions, [20].
19 CLCA, s 83GA(2).
20 Court of Appeal, [33].
21 Court of Appeal, [45].
22 Court of Appeal, [43]-[44]. Such headings form part of an Act: *Legislation Interpretation Act 2021* (SA), s 19(1).
23 Court of Appeal, [45].
24 Appellants' Written Submissions, [2(a)] and [20].

fail to give the Cowirra Regulations any substantive work to do.[25] Indeed, if the Cowirra Regulations did not effect a declaration, then the only operation of the Regulations would be to vary the Amended Consolidated Regulations so as to *erroneously* include the Cowirra Land in the list of prescribed places. Such a construction can, and should, be avoided.[26]

23. Finally, turning to purpose, the "manifest, and indeed obvious, purpose" of the Cowirra Regulations was to prescribe the Cowirra Land as prescribed places for the purposes of s 83GA(1).[27] This is not disputed by the Appellants.[28] This concession is correctly made in light of, amongst other indicia, the reference on the face of the Cowirra Regulations to s 83GA, the identification of particular parcels of land and compliance with the rule contained in s 83GA(2) of the CLCA.[29] However, in endeavoring to discount the weight that must be attributed to the "manifest purpose"[30] of the Cowirra Regulations, the Appellants attempt to erect a negative implication which they then seek to deploy "in precise opposition"[31] to what is acknowledged to be the "ultimate objective".[32] The Appellants contend that the means adopted by the Cowirra Regulations "manifestly set out not to declare"[33] and that this reveals "a manifest purpose of not declaring".[34] Yet, the Appellants' contention proceeds from the same misapprehension about the "operative activity" of the Amended Consolidated Regulations discussed above.

24. If upon variation the Amended Consolidated Regulations were capable of effecting a declaration without breaching the rule provided for in s 83GA(2), then there may be a foothold for the Appellants' argument that the Cowirra Regulations positively intended not to declare the Cowirra Land (leaving that task to the Amended Consolidated Regulations). However, once it is appreciated that the Amended Consolidated Regulations merely provided a "convenient consolidated list",[35] the Cowirra Regulations cannot be construed as positively refuting an implied declaratory operation. An enquiry as to the subjective intent of the drafter and whether the drafter

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25 Court of Appeal, [47].
26 *R v Independent Broad-based Anti-corruption Commissioner* (2016) 256 CLR 459, 480-481 [76]-[77] (Gageler J); *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 382 [71] (McHugh, Gummow, Kirby and Hayne JJ).
27 Court of Appeal, [47].
28 Appellants' Written Submissions, [27].
29 Court of Appeal, [42].
30 Court of Appeal, [47].
31 Appellants' Written Submissions, [29].
32 Appellants' Written Submissions, [27].
33 Appellants' Written Submissions, [21].
34 Appellants' Written Submissions, [29].
35 Court of Appeal, [31]; *Legislation Revision and Publication Act 2002* (SA), s 8.

proceeded on an erroneous view of the operation of the Amended Consolidated Regulations, or not, is a distraction.[36] It is true that the Cowirra Regulations assume that the Cowirra Land is declared, but there is no support for a negative implication that the declaration was necessarily to occur "elsewhere".[37]

25. Whilst the utilisation of a purposive approach to construction must be tempered where a provision seeks to strike a balance between an ultimate purpose and competing interests,[38] the textual, contextual and purposive aspects of the Cowirra Regulations discussed above, demonstrate that the "ultimate objective" and the "means" in the present case are complimentary, not inconsistent.

10 26. If, contrary to the Respondent's submission, the Cowirra Regulations are considered not to contain sufficient language that by implication amounts to a declaration, this is a case where the contextual and purposive features are capable of identifying a legislative intention with sufficient certainty that it would be appropriate to read words into the Regulations. Here, the three preconditions for the implication of additional words articulated by Lord Diplock in *Wentworth Securities Ltd v Jones*[39] are clearly met. In all cases where words are "read in" to a statute, there will have been a degree of "inadvertence" by the legislature (this is acknowledged by Lord Diplock at stage 2 of the 3-stage test and does not preclude a finding that words may be "read in"). Whilst it is accepted that words may not be implied into statute to "fill gaps disclosed
20 in legislation"; that is different from supplying words omitted in the sense that the words so included reflect in express, and therefore more readily observable form, the true construction of the words actually used.[40] Whether a Court is justified in reading additional words into a statute does not require adherence to "rigid rules"[41] and involves "a judgment of matters of degree"[42]. Here, there is no unidentifiable or unclear "gap" in the legislation, rather the insertion is entirely consistent with the

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36 *Mills v Meeking* (1990) 169 CLR 214, 234 (Dawson J); *Mitchell v Bailey* (2008) 168 FCR 370, 378-379 [31] (Tracey J); *Zheng v Cai* (2009) 239 CLR 446, 455 [28] (French CJ, Gummow, Crennan, Kiefel and Bell JJ); *Wilson v State Rail Authority (NSW)* (2010) 78 NSWLR 704, 707-708 [12] (Allsop P, Giles, Hodgson, Tobias and Macfarlan JJA agreeing at 747-748 [196]-[197], [202]-[203]); *Australian Education Union v Department of Education and Children's Services* (2012) 248 CLR 1, 14 [28] (French CJ, Hayne, Kiefel and Bell JJ); *Certain Lloyd's Underwriters v Cross* (2012) 248 CLR 378, 389 [25] (French CJ and Hayne J); cf Appellants' Written Submissions, [22]; The Hon Robert French AC, 'The Principle of Legality and Legislative Intention' (2018) 40(1) *Statute Law Review* 40, 40

37 Appellants' Written Submissions, [29].

38 *Carr v Western Australia* (2007) 232 CLR 138, 142–143, [5] and [6] (Gleeson CJ)

39 [1980] AC 74

40 *R v Young* [1999] NSWCCA 166 (Spigelman CJ).

41 *Taylor v The Owners — Strata Plan No 11564* (2014) 253 CLR 531, [37] (French CJ, Crennan and Bell JJ)

42 *Taylor v The Owners — Strata Plan No 11564* (2014) 253 CLR 531, [38] (French CJ, Crennan and Bell JJ); *H Lundbeck A/S and Another v Sandoz Pty Ltd* (2022) 399 ALR 184, [113]–[114] (Edelman J)

language in fact used and the very assumption underlying the task of a consequential variation that was expressly provided for. Accordingly, the present case does not give rise to any concerns about overstepping judicial function.[43] The construction is text based and carries into effect the legislative intention.

27. For the above reasons, the effect of the Cowirra Regulations should be construed as impliedly declaring the Cowirra Land to be prescribed places for the purpose of s 83GA(1) of CLCA. Question 1, identified above, should be answered "Yes".

Ground 2: The Cowirra Regulations are not invalid for failure to afford the Appellants procedural fairness[44]

28. Determining whether the conferral of a statutory power is conditioned by an implied obligation to afford procedural fairness is to be answered, in accordance with the general canons of statutory construction.[45] Categorical approaches should be eschewed. The question is not to be answered by characterising the power as legislative rather than administrative.[46] Equally, the answer does not follow from an analysis of whether the exercise of power establishes a norm of conduct or a factum.[47] It is accepted that there is no relevant "bright line" distinction to be drawn in this context.[48]

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43 *Marshall v Watson* (1972) 124 CLR 640, 649 (Stephen J). See also: *Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 297, 319, 321 (Mason & Wilson JJ); *R v Young* (1999) 46 NSWLR 681, 686-687 [9] (Spigelman CJ) citing *Wentworth Securities v Jones* [1980] AC 74, 105-107 (Lord Diplock); *Taylor v Owners — Strata Plan 11564* (2014) 253 CLR 531, 549 [40] (French CJ, Crennan and Bell JJ).

44 At paragraph [32] of the Appellants' Written Submissions, the Appellant urges the Court to proceed to decide Ground 2 of the appeal, irrespective of the manner in which it disposes of Ground 1. The Respondent considers that this is a matter for the Court and makes no submission on this issue.

45 *MZAPC v Minister for Immigration and Border Protection* (2021) 95 ALJR 441, 452 [30] (Kiefel CJ, Gageler, Keane and Gleeson JJ), 473 [136] (Gordon and Steward JJ); *Minister for Immigration and Border Protection v SZSSJ* (2016) 259 CLR 180, 205 [75] (the Court); *SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362, 368 [14] (Kiefel CJ, Nettle and Gordon JJ), 374-375 [37]-[39] (Gageler J).

46 Court of Appeal, [71]-[77]. *Bread Manufacturers (NSW) v Evans* (1981) 180 CLR 404, 415-416 (Gibbs CJ), 432-433 (Mason and Wilson JJ), cited with approval in *Harvey v Minister Administering Water Management Act 2000* (2008) 160 LGERA 50, 80 [102] (Jagot J); *Transport Action Group Against Motorways Inc v Roads and Traffic Authority* (1999) 46 NSWLR 598, 622 [90] (Mason P)

47 Court of Appeal, [78]. It is curious that the Appellants seek to attribute significance to this distinction in circumstances where the authorities that discuss the distinction between norms and factums generally do so in the context of disputes about whether a power is properly characterised as administrative or legislative (this is the very distinction that the Appellants, correctly, doubt the significance of at common law), and therefore whether the decision in question is of an administrative character for the purposes of the *Administrative Decisions (Judicial Review) Act 1977*.

48 *McWilliam v Civil Aviation Safety Authority* (2004) 142 FCR 74, 84 [41] (Selway J); *Civil Aviation Authority v Boatman* (2004) 138 FCR 384, 409–410 [75] (Selway J).

29. Similarly, the fact that the power in question is a regulation making power conferred formally on the Governor in Executive Council (and, substantively on the Cabinet)[49] is not decisive. As Chief Justice Mason said in *O'Shea* when considering whether procedural fairness conditioned an administrative discretion conferred on the South Australian Governor in Council:[50]

> [I]t is said, Cabinet is a political institution primarily concerned with the 'political, economic and social concerns of the moment.' So it is, but in some instances Cabinet is called upon to decide questions which are much more closely related to justice to the individual than with political, social and economic concerns. The fact that Cabinet ordinarily directs its attention to concerns of this kind is not a reason for denying the existence of a duty to act fairly in a matter which turns not on such concerns, but on considerations peculiar to the individual.

30. Drawing upon the distinction identified by Chief Justice Mason, the Respondent submits that resolving whether or not the making of regulations for the purposes of s 83GA(1) of the CLCA is conditioned by an obligation to afford procedural fairness turns in large measure on whether the exercise of power should be understood to be focused upon the circumstances of individuals (whether they be participants in criminal organisations or owners and occupiers of prescribed places) or, alternatively, upon the social mischief of disrupting criminal organisations. In seeking to answer that question, South Australia proposes to draw upon "the chief matters for consideration", identified by Justice Brennan in *FAI Insurances Limited v Winneke* (another case concerning whether or not a power conferred on the Governor in Council was conditioned by the exercise of procedural fairness), namely "the statutory text, the interests affected by the statute and the repository of the power."[51]

The statutory text (and context)

31. There are three textual, and contextual, features of the conferral of power to make regulations prescribing places for the purposes of s 83GA(1) of the CLCA that support the conclusion that the power is not impliedly conditioned by a requirement to afford procedural fairness.

32. First, as is common in the conferral of regulation making powers, the power conferred by s 370 of the CLCA, read together with s 83GA(1), is not constrained by any express limitations. Accordingly, the power may be exercised by reference to general policy considerations. The fact that a power is conferred in such terms is a factor weighing against construing the power as one that attracts a duty to afford procedural

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49 *South Australian v O'Shea* (1987) 163 CLR 378, 387.
50 *South Australian v O'Shea* (1987) 163 CLR 378, 387.
51 *FAI Insurances Limited v Winneke* (1982) 151 CLR 342, 410. To similar effect, Justice Mason said at page 366 that relevant considerations include "the nature, width and subject matter of the discretion and the peculiar character of the Governor in Council as the chosen repository of it".

fairness.[52] By contrast, the express constraint of a power by reference to a specific statutory procedure or standard may be a factor that supports the drawing of an implication that procedural fairness does attach. For instance, the fact that the power conferred on the Governor that was considered in *FAI Insurances Limited v Winneke* turned upon a test of financial standing of particular insurance providers was important to the conclusion that procedural fairness was required.[53] And, the absence of such a constraint was regarded to be an important distinguishing feature of the power considered in *South Australia v O'Shea*.[54]

33. Second, contextually, the history by which the Consolidated Regulations were made is relevant. As set out above, the Consolidated Regulations were made by s 13 of the Amending Act. Regulation 3 of the Consolidated Regulations, provided for by Sch 1 of the Amending Act, declared 16 places to be prescribed places for the purposes of s 83GA. Having been made by Parliament, no duty to afford procedural fairness attached to the making of these regulations.[55] That result followed despite the fact that the Amending Act declared that, on the commencement of Sch 1, the Consolidated Regulations were to "stop being a provision of this Act and become regulations made under the [CLCA]."[56] Section 8 of the Amending Act inserted, amongst other provisions, ss 83GA and 83GD into the CLCA. In doing so, s 83GA contemplated the making of "regulations" by the Governor to prescribe places additional to those provided for by the Consolidated Regulations.[57] The Respondent submits that there is nothing to suggest that the delegated legislative power conferred on the Governor was intended to be constrained by a duty to afford procedural fairness that did not constrain the Parliament itself in the making of the Consolidated Regulations.

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52 *Salemi v MacKellar [No 2]* (1977) 137 CLR 396, 420 (Gibbs J), quoted with approval in *FAI Insurances Limited v Winneke* (1982) 151 CLR 342, 398 (Wilson J).

53 (1982) 151 CLR 342, 370 (Mason J), 355 (Stephen J agreeing).

54 (1987) 163 CLR 378, 404 (Wilson and Toohey JJ). See also, *Watson v South Australia* (2010) 208 A Crim R 1, [65], [89]-[94] (Doyle CJ, Anderson J agreeing, [127]).

55 Legislative power, when exercised by the Parliament, is, of course, not conditioned by any requirement to afford procedural fairness. This may be understood to be a corollary of the foundational principle that it is not open to the court to go behind what has been enacted by the legislature and to inquire how the enactment came to be made: *Hoani Te Heuheu Tukino v Aotea District Maori Land Board* [1941] AC 308, 322-323, [1941] 2 All ER 93; *Pickin v British Railways Board* [1974] AC 765, 787, 790-791, [1974] 1 All ER 609; *Kioa v West* (1985) 159 CLR 550, 620 (Brennan J); *The Queen v Toohey; Ex parte Northern Land Council* (1981) 151 CLR 170, 225 (Mason J). This conclusion is also consistent with the proposition that procedural fairness is to be discerned as a matter of statutory construction: to condition Parliament's own powers to a requirement to afford procedural fairness would be to elevate the stream above its source. The Second Reading Speech for the Amending Act reveals that the advice on which the Consolidated Regulations were made was that of the police: South Australia, *Parliamentary Debates*, House of Assembly, 3 June 2015, 1476 and 1482 (Hon JR Rau).

56 Amending Act, s 13(2).

57 CLCA, s 370.

34. Third, delegated legislation is commonly subject to parliamentary oversight. Whilst the fact of such oversight is in itself generally insufficient to exclude any implied statutory conditions on the exercise of such authority, the bespoke scheme of parliamentary supervision that attends the exercise of the regulation making power contemplated by s 83GA(1) is consistent with the absence of an implied condition to afford procedural fairness. The "1 entity, 1 event or 1 place" rule provided for by s 83GA(2) designedly exposes each regulation made to case-by-case scrutiny by the Statutory Review Committee and potential disallowance,[58] thereby enhancing Parliament's oversight role.[59] A further layer of parliamentary oversight is then provided for by the Crime and Public Integrity Policy Committee, the functions of which are provided for by s 15O of the *Parliamentary Committees Act 1991* (set out above). The establishment of parliamentary committees commits the oversight of contentious policy decisions to members of Parliament who may acquire expertise in a designated field.[60] This scheme of parliamentary oversight is consistent with a legislative intention that the propriety of regulations made under s 83GA may be more appropriately assessed through a legislative policy lens than by the imposition of legal preconditions to the exercise of power, including an implied requirement to afford procedural fairness.[61] This is confirmed by the polycentric considerations by reference to which the Crime and Public Integrity Policy Committee is to consider the operation of the provisions of the CLCA that are concerned with criminal organisation, which include how effective the scheme has been and whether it has adversely affected persons not involved in serious crime.

35. The above textual, and contextual, considerations support the contention that the power to make regulations prescribing places as contemplated by s 83GA(1), consistent with the usual position pertaining to regulation making powers, is not accompanied by an implied duty to afford procedural fairness.[62]

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58 *Subordinate Legislation Act 1978*, ss 10 and 10A.

59 It is open to draw an analogy with the prohibition against 'tacking' applicable to money bills which serve the purpose of enhancing the oversight role of houses of review: *Osbourne v Commonwealth* (1911) 12 CLR 321, 353 (Barton J); *Buchanan v Commonwealth* (1913) 16 CLR 315, 328-329 (Barton ACJ). See also *Air Caledonie International v Commonwealth* (1988) 165 CLR 462, 471 (the Court).

60 South Australia, *Parliamentary Debates*, Legislative Council, 11 April 1991, 4341-4342 (Hon CJ Sumner).

61 *Wasantha v Minister for Immigration and Multicultural Affairs* [1999] FCA 1158, [5] (Finn J); *Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507, 584 [246] (Hayne J); *Plaintiff S10/2011 v Minister for Immigration and Citizenship* (2012) 246 CLR 636, 648 [30] (French CJ and Kiefel J), 656 [55] (Gummow, Hayne, Crennan and Bell JJ).

62 *Dighton v South Australia* (2000) 78 SASR 1; *Wasantha v Minister for Immigration and Multicultural Affairs* [1999] FCA 1158.

Interests affected

36. The focus of the Appellants' submissions about the relevance of effect on interests to the question of whether procedural fairness attaches to the regulation making power in question has shifted significantly. Before the Court of Appeal, the primary argument pursued by the Appellants was that procedural fairness was owed to *all participants* in criminal organisations before a prescribed place could be declared by regulation for the purposes of s 83GA(1) of the CLCA.[63] The Appellants now concede, correctly with respect, that procedural fairness is not owed to participants generally prior to the making of a regulation. Instead, the Appellants have substantially narrowed their position to the contention that the Governor must afford procedural fairness to *all owners and occupiers* of land that may be declared prior to making a regulation for the purposes of s 83GA(1). Despite repackaging their argument in this manner, the Appellants' submissions fail to grapple with the interlocking strands of reasoning that underpinned the Court of Appeal's conclusion.

The test for standing is not determinative

37. The first step in the Court of Appeal's reasoning, after correctly putting categorical approaches to one side,[64] was to reject the Appellants' conflation of the test for standing and that of procedural fairness. The Court of Appeal accepted that the Appellants rights are *directly affected* in a manner sufficient to give them standing to challenge the Cowirra Regulations, but did not consider that this was determinative of the question about whether procedural fairness was required.[65]

38. In this Court, the Appellants persist with their submission that the obligation to afford procedural fairness is subsumed by the test for standing.[66] However, with respect, this submission is plainly incorrect. Questions of standing and procedural fairness are related because a failure by a plaintiff to identify an effect on rights or interests sufficient to ground standing will ordinarily also be fatal to any claim that procedural fairness was owed. However, the converse is not true. There are cases, including a number of those considered by the Court of Appeal, where the exercise of a statutory

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63 In light of the manner in which the Appellants ran their case before the Court of Appeal, the criticism of the reasoning of the Court at [2(b)] and [51] of the Appellants' Written Submissions is entirely unfounded.

64 Court of Appeal, [71]-[83] (addressing the distinctions drawn by the Appellants between legislative and administrative, factums and norms, and subordinate legislation). The reasoning of the Court of Appeal is consistent with the approach urged by the Respondent above.

65 Court of Appeal, [85]; *Griffith University v Tang* (2005) 221 CLR 99, 118 (Gummow, Callinan and Heydon JJ); *R v Bromfield; Ex parte West Australia Newspapers Ltd* (1991) 6 WAR 153; *Idonz Pty Ltd v National Capital Development Commission* (1986) 13 FCR 70.

66 Appellants' Written Submissions, [46].

power had a direct (and significant) impact on the rights or interests of an individual and yet it has been held that the exercise of power in question is not conditioned by a duty to afford procedural fairness.[67]

39. In a passage endorsed by Justices Gummow, Callinan and Heydon in *Griffith University v Tang*,[68] Justice Lehane said of the relationship between standing and the right to be heard:[69]

> Where, of course, a decision affects an individual interest, it is highly likely that a conclusion on one matter will dictate a conclusion on the other: it is of course inconceivable that someone entitled to a hearing in relation to a proposed deportation order would not, if denied a hearing, be entitled to challenge the order once made. *It is, however, different I think in what may be described loosely as a public interest case, such as the present. In such a case it would not be at all unusual, I think, to find that a person with standing to challenge a decision once made had, nevertheless, no right to be heard in relation to its making*[.]

As this passage indicates, the distinction between standing and procedural fairness has particular significance in the context of a challenge to a decision, such as the present case, where public interest considerations are prevalent.[70]

Nature of interests affected

40. Another significant strand in the reasoning of the Court of Appeal was based on the large number and diffuse nature of interests that may be affected by the making of a regulation for the purposes of s 83GA(1). Before the Court of Appeal this argument proceeded by reference to the large, and to an extent unknown, class of participants in criminal organisations. The shift in the Appellants' submission seeks to sidestep this chain of reasoning. However, for the following reasons this attempt is unpersuasive.

41. First, the class of potential owners and occupiers of places whose interests may be affected by declaring a place to be a prescribed place is, in its own right, broad. A "place" might include a shopping precinct, an airport or a sporting venue. Although it may not be impossible to identify the owners of all of the real property interests that make up such places, occupiers will frequently be harder to identify. The provision of procedural fairness to all owners and occupiers whose interests may be affected by the making of a regulation for the purposes of s 83GA(1) cannot be assumed to be a straight-forward exercise.

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67 *Wasathana v Minister for Immigration and Multicultural Affairs* [1999] FCA 1158; *Comptroller-General of Customs v Kawasaki* (1991) 32 FCR 219; *Griffith University v Tang* (2005) 221 CLR 99 (Gummow, Callinan and Heydon JJ); *Botany Bay City Council v Minister of State for Transport and Regional Development* (1996) 66 FCR 537; affd (1996) 45 ALD 125.

68 *Griffith University v Tang* (2005) 221 CLR 99 at 118 (per Gummow, Callinan and Heydon JJ).

69 *Botany Bay City Council v Minister of State for Transport and Regional Development* (1996) 66 FCR 537, 568 (emphasis added); affirmed *City of Botany Bay Council v Minister of State for Transport and Regional Development* (1996) 45 ALD 125 (Black CJ, von Doussa and Sundberg JJ).

70 *Plaintiff S10/2011 v Minister for Immigration and Citizenship* (2012) 246 CLR 636.

42. Second, the shift in focus is presumably pursued because "owners and occupiers" are thought to be a narrower class than participants in criminal organisations. However, the reframing of the Appellants' submission in fact draws attention to the fact that *not only* does the making of regulations for the purposes of s 83GA(1) affect a very large class of participants in criminal organisations it *also* affects a large class of owners and occupiers.

43. Third, the diffuse nature of the interests affected, which was relevant to the reasoning of the Court of Appeal, remains even if the Appellants seek to narrow the focus to the interests of owners and occupiers. Owners and occupiers who are participants in criminal organisations (such as the Appellants) may be affected in the most immediate way. The interests of the owner of a hotel frequented by participants, that is declared to be a prescribed place, may be commercially (or possibly reputationally) impacted. Whether those impacts were substantial, minor or immaterial would turn on a range of factors. Another possibility is that a place may find that its security, value or reputation is enhanced by the making of a declaration. The diffuse nature of the interests that may be affected by the making of regulations for the purposes of s 83GA(1) supports the conclusion reached by the Court of Appeal that the impact upon such interests is "incidental" to the purpose underlying the conferral of the power; "owners and occupiers … may be directly affected (by reason of being participants), or indirectly affected in one of any number of ways, from the acute to the merely theoretical, for good or ill."[71]

Power not individually focused

44. Whether a person's interests are *relevantly* affected by an exercise of power can only ultimately be determined by reference to the *subject matter, scope and purpose* of the Act conferring the power. Only then can the relationship between the impugned decision and the interests adversely affected be properly identified. The question has sometimes been framed as whether the statute affects people "as individuals".[72]

45. In addressing this issue, the real gravamen of the Court of Appeal's reasoning (building on the factors referred to already) rested upon the conclusion that:[73]

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71 Court of Appeal, [105].

72 *Kioa v West* (1985) 159 CLR 550, 584 (Mason J), quoting *Salemi [No 2] v Minister for Immigration and Ethnic Affairs (Cth)* (1977) 137 CLR 396, 452 (Jacobs J), and 619-621 (Brennan J), quoting *Attorney General (Canada) v Inuit Tapirisat of Canada and the National Anti-Poverty Organization* (1980) 115 DLR (3d) 1, 17 (Estey J).

73 Court of Appeal, [118]-[119].

> [T]here will be some arenas of regulation where large social, political or economic considerations dominate. The wholesale disruption of a legislatively identified sphere of criminal activity invites such a description. The focus of regulation is not relevantly on the imputed 'wayward' actions of individuals, but rather on the identified social mischief that the legislature has determined that 'criminal organisations' pose.

Whether the Appellants seek to focus on the interests of participants of criminal organisations that may be affected by the making of a regulation for the purpose of s 83GA(1) of the CLCA, or on the interests of owners and occupiers of places so declared, or both, misses the point. The power in question in the present case is of a kind that is directed to public interest concerns.

46. In response, the Appellants' appeal to what they describe as the "missing middle".[74] It is submitted that information from owners and occupiers is pivotal to the Governor's exercise of power in declaring a particular place to be a prescribed place. However, this submission does not withstand scrutiny. If we first consider the circumstance where a participant is an owner or occupier then it may be considered inherently unlikely that Parliament intended for the exercise of a power designed to frustrate the activities of criminal organisations should be informed by information obtained from participants in those organisations. If we then turn to consider a non-participant owner or occupier, then we can see that whilst their interests may be affected in one of the ways identified above (for example, business or reputational), such effects are likely to be incidental to the public interest character of the power that is exercised for the purpose of disrupting criminal organisations. The reality is that information bearing on the Cabinet's decision to declare a particular place to be prescribed place is likely to come from police or criminal intelligence. A duty to afford procedural fairness to either participants or owners or occupiers of prescribed places would sit in tension with the confidential nature of the material upon which the Cabinet is likely to act.

47. In arriving at the conclusion that no duty to afford procedural fairness is to be implied, it was not necessary for the Court of Appeal to conclude that there could be nothing that participants of criminal organisations, or owners or occupiers, could conceivably say that could bear upon the Governor's decision. As the cases considered by the Court of Appeal illustrate,[75] it is not necessary to conclude that an interested person could have *nothing* to say that may be lawfully considered to be relevant in order to determine that the power in question is not impliedly conditioned by a requirement to afford procedural fairness.

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74 Appellants' Written Submissions, [47] and [61(b)].

75 *Wasathana v Minister for Immigration and Multicultural Affairs* [1999] FCA 1158; *Dighton v State of South Australia* (2000) 78 SASR 1; *Comptroller-General of Customs v Kawasaki* (1991) 32 FCR 219.

a. Justices Hill and Heerey did not conclude that Kawasaki Motors Pty Ltd could have had nothing at all to say that might lawfully have been taken into account by the Comptroller-General in revoking a commercial tariff concession in determining that no duty to afford procedural fairness arose under the *Customs Act 1901* (Cth).

b. Justice Finn did not conclude that Mr Wasanthana, as a representative of class of holders of a particular subclass of humanitarian visa, could have had nothing at all to say that might lawfully have been taken into account by the Governor-General before making regulations in determining that no duty to afford procedural fairness arose under the Migration Act 1958 (Cth).

c. Justice Williams did not conclude that Mr Dighton, a commercial fisher of long standing, could have had nothing at all to say that might lawfully have been taken into account by the Governor in Council in making regulations prohibiting particular fishing activity in determining that no duty to afford procedural fairness arose under the *Fisheries Act 1982* (SA).

This conclusion is reinforced in cases such as the present where, as noted above, the power in question is not subject to any to any express constraints.

Repository of the power

48. In addition to the above features of the power conferred for the purposes of s 83GD, it is notable that the power to make regulations is conferred on the Governor. The fact that the power is exercisable by the Governor, has the consequence that Cabinet is the substantive decision maker.[76] This feature of the power provides a further indicium that the Parliament did not intend procedural fairness obligations to attach to its exercise.[77] This is so for two reasons.

49. First, the conferral of the power to make regulations for the purposes of s 83GD on the Governor-in-Council confirms the polycentric nature of the decision making referred to above which speaks against an implied requirement to afford procedural fairness: "the supervisory power … is vested in members of the Cabinet in order to enable them

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[76] *Legislation Interpretation Act 2021* (SA), s 21, taken together with the convention that in South Australia recommendations to the Governor in council are based on a Cabinet decision, not a decision by the responsible Minister: *South Australia v O'Shea* (1987) 163 CLR 378, 387 (Mason CJ), 403 (Wilson and Toohey JJ), 414 (Deane J); *Watson v South Australia* (2010) 208 A Crim R 1, 7 [23] (Doyle CJ).

[77] *FAI Insurances Limited v Winneke* (1982) CLR 342, 366 (Mason J), 410 (per Brennan J) ; *South Australian v O'Shea* (1987) 163 CLR 378, 411 (per Brennan J); *Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507, 533 [78] (Gleeson CJ and Gummow J) and 539 [78] and 561 [176] (Hayne J); *Watson v South Australia* (2010) 2018 A Crim R 1, 19 [91] (per Doyle CJ). To the extent that the Appellants submit otherwise, those submissions should be rejected: Appellants' Written Submissions, [39].

to respond to the political, economic and social concerns of the moment."[78] Justice Brennan adopted reasoning of this kind in *South Australia v O'Shea*:[79]

> The public interest in this context is a matter of political responsibility … and the Minister is not bound to hear an individual before formulating or applying a general policy or exercising a discretion in the particular case by reference to the interests of the general public, even when the decision affects the individual's interests. When we reach the area of ministerial policy giving effect to the public interest, we enter the political field. In that field a Minister or Cabinet may determine general policy or the interests of the general public free of procedural constrains; he is or they are confined only by the limits otherwise expressed or implied by statute.

50. Second, it may be doubted that Parliament intended to impose an implied requirement to afford procedural fairness in circumstances where it has conferred the power on a body that adopts a confidential decision-making procedure and which is not required to provide reasons for its decisions.[80] This would have the consequence that the imposition of a duty to afford procedural fairness would require a departure from Cabinet's usual processes.[81]

51. For these reasons, it is unsurprising that although there is limited authority for the proposition that powers conferred on the Governor may attract a duty to afford procedural fairness where the Governor acts upon the advice of a single minister,[82] or another body,[83] and although there are obiter statements that Cabinet may need to modify its procedures in order to afford procedural fairness if it was necessary to do so,[84] there is no authority which the Appellants have identified, or of which the Respondent is aware, in which an Australian court has held that a regulation made by the Governor, upon the advice of Cabinet, is invalid by virtue of a failure to afford procedural fairness.[85]

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78 *Attorney General (Canada) v Inuit Tapirisat of Canada and the National Anti-Poverty Organization* (1980) 115 DLR (3d) 1, 17 (Estey J).

79 (1987) 163 CLR 378, 411.

80 Upon appointment as a Minister and member of the Executive Council, a person is required to swear an oath of fidelity that includes a requirement to maintain the secrecy of matters debated in Council: see *Oaths Act 1936*, ss 6, 10. On the importance of Cabinet confidentiality see: *Commonwealth v Northern Land Council* (1993) 176 CLR 604, 614-616 (Mason CJ, Brennan, Deane, Dawson, Gaudron and McHugh JJ); *Whitlam v Australian Consolidated Press Ltd* (1985) 73 FLR 414, 422 (Blackburn CJ); *Egan v Chadwick* (1999) 46 NSWLR 563, 572 [42]-[43] (Spigelman CJ). See also, *Minister for Arts, Heritage and Environment v Peko-Wallsend Ltd* (1987) 15 FCR 274, 301-302 (Wilcox J).

81 *Minister for Arts, Heritage and Environment v Peko-Wallsend Ltd* (1987) 15 FCR 274, 279 (Bowen CJ), 281 (Sheppard J) and 306 (Wilcox J).

82 *FAI Insurances Limited v Winneke* (1982) CLR 342; *Stewart v Ronalds* (2009) 76 NSWLR 99; *Hemmes Trading Pty Ltd v New South Wales* [2009] NSWSC 1303 (Hoeben J).

83 *South Australian v O'Shea* (1987) 163 CLR 378.

84 *South Australian v O'Shea* (1987) 163 CLR 378.

85 Authority to the contrary includes *Dighton v South Australia* (2000) 78 SASR 1, 17 [69]-[70] (Williams J) and *Wasantha v Minister for Immigration and Multicultural Affairs* [1999] FCA 1158, [7] (Finn J).

Conclusion

52. For the above reasons, South Australia submits that there was no obligation to afford the Appellants procedural fairness prior to the making of the Cowirra Regulations. No single feature of the power to prescribe places for the purposes of s 83GD is determinative in arriving at this result. Rather, the various features identified above, including consideration of the text, interests affected and the repository of power, taken together, demonstrate that the obligation to afford procedural fairness must be taken to be excluded by necessary implication.

PART VI: ESTIMATED TIME

53. The Respondent estimates that up to 1.5 hours in total will be required for presentation of the Respondent's oral argument.

Dated: 25 November 2022

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ANNEXURE PURSUANT TO *PRACTICE DIRECTION NO 1 OF 2019*

LIST OF CONSTITUTIONAL PROVISIONS, STATUTES AND STATUTORY INSTURMENTS REFERRED TO IN SUBMISSIONS

1. *Criminal Law Consolidation Act 1935* (SA), as currently in force
2. *Legislation Interpretation Act 2021* (SA), as currently in force
3. *Legislative Instruments Act 1978* (SA), as currently in force
4. *Subordinate Legislation Act 1978* (SA), as in force until 31 December 2021
5. *Parliamentary Committees Act 1991* (SA), as currently in force
6. *Legislation Revision and Publication Act 2002* (SA), as currently in force
7. *Statutes Amendment (Serious and Organised Crime) Act 2015* (SA), as enacted
8. *Criminal Law Consolidation (Criminal Organisations) Regulations 2015* (SA), as currently in force
9. *Criminal Law Consolidation (Criminal Organisations) (Prescribed Place – Cowirra) Variation Regulations 2020* (SA), as currently in force
10. *Criminal Law Consolidation (Criminal Organisations) (Prescribed Place – Cowirra) Variation (No 2) Regulations 2020* (SA), as currently in force
11. *Criminal Law Consolidation (Criminal Organisations) (Premises in Para Hills) Variation Regulations 2017* (SA), as currently in force
12. *Criminal Law Consolidation (Criminal Organisations) (Premises in Salisbury South) Variation Regulations 2017* (SA), as currently in force
13. *Criminal Law Consolidation (Criminal Organisations) (Premises in Para Hills West) Variation Regulations 2020* (SA), as currently in force
14. *Criminal Law Consolidation (Criminal Organisations) (Premises in Burton) Variation Regulations 2020* (SA), as currently in force