

**IN THE HIGH COURT OF AUSTRALIA
ADELAIDE REGISTRY**

No A7 of 2011

BETWEEN:

**PUBLIC SERVICE ASSOCIATION OF SOUTH
AUSTRALIA INCORPORATED**

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Applicant

and

**INDUSTRIAL RELATIONS COMMISSION OF
SOUTH AUSTRALIA**

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First Respondent

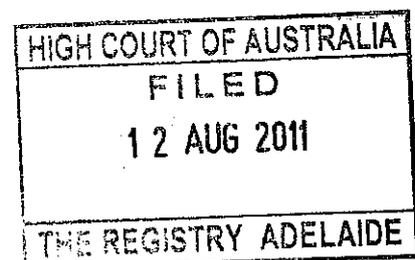
and

**CHIEF EXECUTIVE, DEPARTMENT FOR
PREMIER AND CABINET**

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Second Respondent

**APPLICANT'S REPLY TO WRITTEN SUBMISSIONS OF THE SECOND RESPONDENT
AND THE ATTORNEY- GENERAL FOR SOUTH AUSTRALIA (INTERVENING)**



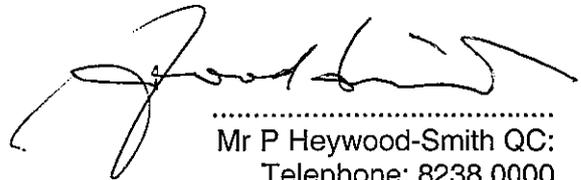
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1. The Applicant questions the analysis set out in paragraphs 27-37 inclusive of South Australia's Submission. The Applicant asserts that there is nothing in *Willan* that renders a "*manifest defect of jurisdiction*" the equivalent of an "*excess or want of jurisdiction*".¹
2. *Bolton* and *St Olave's* (paras. 29 to 35 of South Australia's Submission) simply stand for the proposition that the writ of certiorari was not available in cases of an error made within jurisdiction.
3. It is submitted that this Court in *Kirk* at [60] was doing no more than noting "*some matters of history*".² When at [97] the Court referred to *Willan* it did so not in any delimiting way, but as the basis for the "*accepted doctrine*" recorded in the last sentence.³
4. The 19th century English cases do not determine that a wrongful failure or refusal to exercise jurisdiction is not jurisdictional error.

Dated the 12th day of August 2011

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¹ See para 36 and para 37 (at lines 11-13)

² *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531 at 569

³ *Kirk* at 580