



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 06 May 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: M103/2025
File Title: Minister for Planning v. IGA Retail Services Pty Ltd (ACN 00)
Registry: Melbourne
Document filed: Form 27F - Outline of Oral Submissions A-G of Cth
Filing party: Interveners
Date filed: 06 May 2026

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

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

ON APPEAL FROM THE COURT OF APPEAL OF THE
SUPREME COURT OF VICTORIA

BETWEEN:

MINISTER FOR PLANNING (VIC)
Appellant

and

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

SHEPPARTON PTY LTD (ACN 620 846 184)
Second Respondent

GREATER SHEPPARTON CITY COUNCIL
Third Respondent

**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

LASCORP INVESTMENT GROUP PTY LTD
Fifth Respondent

**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL
OF THE COMMONWEALTH (INTERVENING)**

PART I INTERNET PUBLICATION

1. This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

A. Statutory construction and jurisdictional error – Commonwealth [8]-[12]

2. *Kirk* relevantly requires that, for a State Supreme Court to meet its constitutional description, it must retain supervisory jurisdiction over State executive and judicial power through the issue of relief in the nature of certiorari, mandamus or prohibition on account of jurisdictional error: *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531 at [98]-[100] (**JBA Vol 4, Tab 28**).

- 10
3. Whether non-compliance with a condition on statutory power goes to jurisdiction, and results in invalidity, is a matter of statutory construction. The central question is whether Parliament intended to deny legal force to an exercise of power in breach of that condition: *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321 at [2]-[4] (**JBA Vol 4, Tab 29**); *Miller v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 278 CLR 628 at [24]-[29] (**JBA Vol 4, Tab 30**).

- 20
4. The presence of a “no invalidity” clause may be very significant, if not decisive, in the process of statutory construction. This is illustrated by the approach to the construction of the “no invalidity” clause at issue in *Federal Commissioner of Taxation v Futuris Corporation Ltd* (2008) 237 CLR 146 (**JBA Vol 4, Tab 22**).

5. *Futuris* concerned s 175 of the *Income Tax Assessment Act 1936* (Cth), which provided that “[t]he validity of any assessment shall not be affected by reason that any of the provisions of this Act have not been complied with”: [22]. The plurality applied orthodox principles of statutory construction ([23], [62]) to conclude that:

(a) where s 175 applied, errors in the process of assessment did not go to jurisdiction and so did not attract the remedy of a constitutional writ ([24], [45]), provided always that there had been what answered the statutory description of an “assessment” ([25]); and

- 30
- (b) a “tentative” or “provisional” assessment would not meet that statutory description, and nor would one affected by “conscious maladministration” or a “deliberate failure[] to administer the law according to its terms” ([25], [49]-[52], [55]).

B. The content of the *Kirk* constitutional limit – Commonwealth [14]-[28]

6. If the constructional process identified above leads to the conclusion that an exercise of power in breach of a condition results in jurisdictional error, then *Kirk* demands that a State Supreme Court be able to exercise its supervisory jurisdiction through the grant of relief in the nature of prohibition, mandamus, and certiorari: *Kirk* at [55(f)] (**JBA Vol 4, Tab 28**). Conversely, legislation which on its proper construction denies the availability of relief for non-jurisdictional error is within State legislative power.
7. As *Kirk* protects the supervisory jurisdiction that was entrenched in the State Supreme Courts by reference to the grant of prohibition, mandamus and certiorari, where those remedies are otherwise incapable of issuing in the particular circumstances of a case, the *Kirk* limitation is not reached.
8. That is not to say that *Kirk* entrenches the precise form that a State Supreme Court's supervisory control must take. The question in any case will be whether, as a matter of substance, a State Supreme Court can supervise the limits of executive and judicial power through the issue of relief which would secure, in a substantive and practical way, redress in cases of jurisdictional error: *Graham v Minister for Immigration and Border Protection* (2017) 263 CLR 1 at [48] (**JBA Vol 4, Tab 24**). Where that type of supervision is capable of being discharged by an avenue such as an appeal, the *Kirk* limitation will be satisfied.

10

20 Dated: 6 May 2026



Tim Begbie

Sarah Zeleznikow

Priyanka Banerjee

30