



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M103/2025

BETWEEN:

MINISTER FOR PLANNING
Appellant

and

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

and

SHEPPARTON PTY LTD (ACN 620 846 184)
Second Respondent

and

GREATER SHEPPARTON CITY COUNCIL
Third Respondent

and

KATHY MITCHELL AM AND PETER MARSHALL
(AS MEMBERS OF A PANEL APPOINTED BY THE MINISTER FOR PLANNING
UNDER SECTION 153 OF 20 THE PLANNING AND ENVIRONMENT ACT 1987)
Fourth Respondent

and

LASCORP INVESTMENT GROUP PTY LTD
Fifth Respondent

**OUTLINE OF ORAL SUBMISSIONS OF THE
ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**

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

2. Queensland adopts the submissions of the Appellant in relation to the proper

Filed on behalf of the Attorney-General for the State of Queensland

6 May 2026

construction of s 39 of the *Planning and Environment Act 1987* (Vic) (**PE Act**).

3. The balance of these submissions only arises if s 39(8) must be read down or disapplied to comply with the implication in *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531.
4. The principle in *Kirk* entrenches the power of State Supreme Courts to grant relief in the nature of the prerogative writs only.
 - *Kirk* (2010) 239 CLR 531, 566-7 [55], 580-1 [98]-[99] (**JBA, vol 4, tab 28, pp 1159-60, 1173-4**)
5. The choice of this Court to articulate the *Kirk* principle by reference to the prerogative writs is significant given that the privative clause in issue in that case expressly referred to injunctive and declaratory relief.
 - *Kirk* (2010) 239 CLR 531, 562 [42], 567 fn 161, 581 [101] (**JBA, vol 4, tab 28, pp 1155, 1160, 1174**)
6. There is no warrant for extending *Kirk* to declaratory relief.
7. The historical considerations that supported the *Kirk* principle do not support such an extension.
 - (a) The use of declarations against public authorities arose after federation: **QS [13]**.
 - (b) At federation, some State Supreme Courts could not issue bare declarations except in very limited circumstances. The NSW Supreme Court did not acquire a general power to issue declarations until 1965: **QS [14]**.
 - *Hobart International Airport Pty Ltd v Clarence City Council* (2022) 276 CLR 519, 548 [61] (**JBA vol 4, tab 25, p 1031**)
 - *Tooth & Co Ltd v Coombes* (1925) 42 WN (NSW) 93, 94-5 (**JBA vol 8, tab 64, pp 2794-5**)
 - *David Jones Ltd v Leventhal* (1927) 40 CLR 357, 368 (Knox CJ), 379-81 (Isaacs J), 381-3 (Gavan Duffy J) (**JBA vol 3, tab 16, pp 595, 606-610**)
 - JD Heydon, MJ Leeming and PG Turner, *Meagher, Gummow and Lehane's Equity: Doctrines and Remedies* (LexisNexis Butterworths, 5th ed, 2015) 612-4 [19-035]-[19-065] (**JBA vol 9, tab 68, pp 2932-4**)

- (c) Unlike prerogative relief, there was no rule of statutory construction that a privative clause was to be read down to preserve declaratory relief: **QS [15]**.
- Lord Woolf and Jeremy Woolf, *Zamir and Woolf's The Declaratory Judgment* (Sweet & Maxwell, 4th ed, 2011) 10 [2-03]-[2-04] (**JBA vol 9, tab 70, p 2976**)
 - *Barracrough v Brown* [1897] AC 615, 620, 622, 623-4 (**JBA vol 7, tab 48, pp 2190, 2192, 2193-4**)
 - Cf *Colonial Bank of Australasia v Willan* (1874) LR 5 PC 417, 442 (**JBA vol 7, tab 53, p 2307**)
8. Accordingly, the NSW Court of Appeal was correct to hold that *Kirk* does not extend to protect power to issue bare declarations.
- *Kaldas v Barbour* (2017) 107 NSWLR 341, 383 [177], 385-7 [187]-[196] (Bathurst CJ), 423-4 [354]-[355], 425 [361] (Basten JA, Macfarlan JA agreeing) (**JBA vol 7, tab 57, pp 2510, 2512-4, 2550-1, 2552**)
9. The same reasoning applies to declarations sought as ancillary relief given that such relief could not have been granted before the Judicature Act reforms: **QS [17]**.
10. Nor is there a structural basis for extending *Kirk*. The availability of the prerogative writs is sufficient to prevent 'islands of power immune from supervision and restraint': **QS [18]-[19]**; *Kirk* (2010) 239 CLR 531, [99] (**JBA, vol 4, tab 28, p 1174**).
11. *Kirk* does not extend to injunctive relief for the same reason: **QS [21]**.

Dated: 6 May 2026.



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G J D Del Villar

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Kent Blore