



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 14 Oct 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: S21/2026
File Title: Agrinova Pty Ltd ACN 629 285 589 v. Chief Commissioner of
Registry: Sydney
Document filed: Form 27F (AG-Qld) - Outline of oral argument
Filing party: Interveners
Date filed: 14 Oct 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

No. S21/2026

BETWEEN:

AGRINOVA PTY LTD ACN 629 285 589
Applicant

and

CHIEF COMMISSIONER OF STATE REVENUE (NSW)
First Respondent

and

NEW SOUTH WALES CIVIL AND ADMINISTRATIVE TRIBUNAL
Second 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. **Gazzo v Comptroller of Stamps (Vic)** (1981) 149 CLR 227 (**JBA vol 4, tab 40**) should not be reopened and overruled:

- 2.1 The overruling of previous authority must be exceptional. That is especially so in a case like this where what is sought to be relitigated—whether there is a sufficient connection between the subject matter of two legislative heads of power and a provision—is a question of degree, about which reasonable minds may differ: **QS [7]–[9]**. Cf **Reply [6]**. It is significant that even Mason J, in dissent, reasoned that s 90 of the *Family Law Act 1975* (Cth) fell within the incidental aspect of s 51(xxii) and (xxii), and acknowledged “[t]here will necessarily be differences of view as to what is incidental”: cf **AS [51]–[56]; CS [52]**.

- *Gazzo* (1981) 149 CLR 227, 238 (Gibbs CJ), 244 (Stephen J), 247–248 (Mason J), 264–265 (Aickin J) (**JBA vol 4, tab 40, 1203, 1209, 1212–1213, 1229–1230**)

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

14 October 2026

- Compare *In re Dalton* [2025] AC 235, 255–256 [47] (Lord Reed PSC)

2.2 The reasoning of the majority in *Gazzo* was orthodox. Identified at the appropriate level of generality, the ratio in *Gazzo* is that a “sufficient” connection to a head of power is required, not a “close” connection: **QS [12]–[23]**. Cf **Reply [7]**. Subsequent cases have treated *Gazzo* as authority that a “sufficient” connection is required.

- *MJZP v Director-General of Security* (2025) 99 ALJR 1108, 1117–8 [38]–[39] (Edelman J) (**JBA vol 8, tab 64, 2628–2629**)
- *Gazzo* (1981) 149 CLR 227, 234–235 (Gibbs CJ), 241, 244 (Stephen J), 264–265, 267 (Aickin J) (**JBA vol 4, tab 40, 1199–1200, 1206, 1209, 1229–1230, 1232**)
- *P v P* (1994) 181 CLR 583, 600 fn 51 (Mason CJ, Deane, Toohey and Gaudron JJ) (**JBA vol 4, tab 45, 1407**)

2.3 No reliance can be placed on the judgment of Murphy J in *Gazzo* because his Honour’s starting point was that a Commonwealth law is valid unless it is demonstrated “beyond reasonable doubt” that it is invalid. That view has not been accepted in later authority.

- *Gazzo* (1981) 149 CLR 227, 252–254 (**JBA vol 4, tab 40, 1217–1219**)

2.4 *Gazzo* forms part of a “definite stream of authority”. Among other things, it built upon the *Second Uniform Tax Case* and was in turn built upon by *Spence v Queensland*: **QS [15]–[16]**.

- *Victoria v Commonwealth (Second Uniform Tax Case)* (1957) 99 CLR 575, 614 (Dixon CJ), 658 (Kitto J, agreeing) (**JBA vol 7, tab 55, 2294, 2338**)
- *Gazzo* (1981) 149 CLR 227, 240 (Gibbs CJ), 244 (Stephen J) (**JBA vol 4, tab 40, 1205, 1209**)
- *Spence v Queensland* (2019) 268 CLR 355, 408–409 [66]–[69], 412–413 [80]–[82] (Kiefel CJ, Bell, Gageler and Keane JJ) (**JBA vol 5, tab 49, 1638–1639, 1642–1643**)

3. If this Court considers the validity of s 90 of the *Family Law Act 1975* (Cth) afresh, this Court should find that s 90(1)(a) is not a valid law of the Commonwealth. Alternatively, s 90 is not valid at least insofar as it purports to apply to transactions like those in this case, involving non-matrimonial property and third parties to the marriage: **QS [20]–[22]; RS [34]–[56]; VS [67]–[68]**.

Dated: 14 October 2026.



.....
G J D Del Villar



.....
Kent Blore