



HIGH COURT OF AUSTRALIA

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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-SA) Outline of oral argument
Filing party: Interveners
Date filed: 14 Oct 2026

Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

AGRINOVA PTY LTD ACN 629 285 589

Applicant

and

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CHIEF COMMISSIONER OF STATE REVENUE (NSW)

First Respondent

and

NEW SOUTH WALES CIVIL AND ADMINISTRATIVE TRIBUNAL

Second Respondent

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**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE
STATE OF SOUTH AUSTRALIA**

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Part I: CERTIFICATION

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

Part II: OUTLINE OF ORAL SUBMISSION

2. The written submissions filed by South Australia focus on a question about the application of the doctrine of precedent by the Civil and Administrative Tribunal of New South Wales. It is not necessary for the Court to address this issue. Nonetheless, it is open to the Court to do so in the superintendence and development of systematic institutional rules: *Lendlease Corporation Ltd v Pallas* (2025) 99 ALJR 834 (V8, T63), [112]-[113].
- 10 3. The Tribunal, both at first instance and on appeal, cited the decision of the Federal Court of Australia in *Federal Commissioner of Taxation v Indoороopilly Children Services (Qld) Pty Ltd* (2007) 158 FCR 325 (*Indooroopilly*) (V8, T61) in support of the conclusion that it was bound as a matter of precedent to apply *Gazzo v Comptroller of Stamps (Vic)* (1981) 149 CLR 227 (V4, T40): SCB, 217-218 [62]-[65]; SCB 270-271 [207].
4. South Australia submits that whilst the executive (including the Tribunal), in exercising its duty to ascertain and apply the law, will usually be firmly guided by judicial authority, it is not bound by the doctrine of precedent. In instances where the executive has formed the view, based on carefully considered legal advice, that existing authority is wrong then it is entitled depart from it and should do so consistently with its model litigant obligations.
- 20 5. Properly understood, Justice Allsop's criticism of the Commissioner of Taxation in *Indooroopilly* concerned failures to discharge the obligations of a model litigant. Subsequent restatements of the principles drawn on in *Indooroopilly* are apt to cause confusion: Administrative Review Council, *Statement of Position: Agency implementation of court and tribunal decisions* (19 June 2026), [6], [27]-[32]; *LKQD v Minister for Immigration and Citizenship* [2026] FCA 1270 (31 August 2026), [88].
- 30 6. To interpret *Indooroopilly* as holding that the executive branch is subject to the doctrine of precedent would: (i) stultify the development of the law; (ii) impose unnecessary cost and inconvenience; (iii) absolve the executive from its solemn responsibility to ascertain and apply the law; (iv) be inconsistent with Dicey's principle of legal equality; and, (v) be in tension with *Abdel-Hady v Commonwealth* (2026) 100 ALJR 742 (V8, T57), [1]-[2], [37], [147]-[148].

7. The Tribunal, an executive body, is also not bound by the doctrine of precedent when forming opinions about the “correct and preferable” decision to be made. It may, on rare occasions, depart from precedent. However, the object articulated in s 3 of the *Civil and Administrative Tribunal Act 2013* (NSW), “to ensure that decisions of the Tribunal are ... consistent”, may impose on the Tribunal an even more deferential stance to existing judicial authority than that generally appropriate to an officer of the executive.

Dated: 14 October 2026




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