



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
DARWIN REGISTRY

BETWEEN: **NORTH AUSTRALIAN ABORIGINAL JUSTICE AGENCY LIMITED**
Plaintiff

XAVIER MARDINGA
Second Plaintiff

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and

NORTHERN TERRITORY OF AUSTRALIA
Defendant

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**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE
STATE OF TASMANIA (INTERVENING)**

PART I: CERTIFICATION

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

**PART II: OUTLINE OF PROPOSITIONS TO BE ADVANCED IN ORAL
ARGUMENT**

The case should be decided by reference to *Kable*

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2. The proper question in assessing the validity of s 7A(2AB) is whether it interferes with the institutional integrity of the Supreme Court so as to infringe the principle expressed in *Kable v Director of Public Prosecutions* (NSW) (1996) 189 CLR 51 (**JBA 7 Tab 77**).

Lim is not directly relevant

3. In so far as the Plaintiffs' case proceeds as if the "Lim principle" or "Lim observation" in *Lim (Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs)* (1992) 176 CLR 1 **JBA 6 Tab 69**) informs the *Kable* principle (**SOC [19]-[23]**), it has no direct relevance here.

4. The “Lim principle” is “well accepted as a statement of a constitutional limit upon Commonwealth legislative power” (*Garlett v Western Australia* (2022) 277 CLR 1 **JBA 7 Tab 73** at 105 [292]). It concerns the separation of Commonwealth powers. It does not concern State or Territory legislative power (*Garlett* [40], [247]-[248]; [293]-[296]).

Is Lim indirectly relevant?

5. A law which seeks to co-opt the courts to impose unjust punishment might fall foul of the *Kable* principle and in that sense “[t]he reasoning in *Lim* about the nature and character of punishment” might inform the answer to the *Kable* question (*Garlett* [247]-[248]) – but only because such a law might be thought to undermine the court’s institutional integrity.
6. Although both principles derive from Ch III, the constitutional separation of powers (to which *Lim* is relevant) and institutional integrity of Ch III courts (to which *Kable* is relevant) should not be conflated.
7. It is therefore the impact upon the institutional integrity of the courts to which the question of validity should solely be addressed.
8. Institutional integrity depends upon the maintenance of the defining characteristics of those courts. It should therefore be a matter of identifying what it is about the challenged law which impairs that integrity rather than focusing upon whether the law is not necessary for a legitimate and non-punitive purpose.

20 Dated 8 October 2026



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