



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

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Details of Filing

File Number: D15/2025
File Title: North Australian Aboriginal Justice Agency Limited & Anor v
Registry: Darwin
Document filed: Form 27F - (A-G of VIC) Outline of oral submissions
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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

First Plaintiff

XAVIER MARDINGA

Second Plaintiff

and

NORTHERN TERRITORY OF AUSTRALIA

Defendant

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

PART I: INTERNET PUBLICATION

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

PART II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

2. Victoria relies on its written submissions as to the distinction between the *Lim* principle and the *Kable* principle: **Vic [8]-[19]**.
3. Insofar as the determination of the *Kable* question may be informed by the test stated in *Lim* and developed in subsequent cases, the starting point must be that the power to remand an accused person in custody pending trial is properly characterised as incidental to the judicial power to adjudge and punish criminal guilt, and is not seen by the law as punitive: **Vic [25], [37]**.
4. Even where s 7A(2AB) applies, the fundamental purpose of remanding an accused person pending trial remains that of ensuring their attendance at trial. The purpose of protecting the safety of the community has long been regarded as relevant to the grant or refusal of bail. A law which conditions the power of a court to grant or refuse bail according to criteria designed to protect the safety of the community pursues a constitutionally legitimate purpose and does not undermine the institutional integrity of a Territory or State court as a repository of federal jurisdiction.

Vic [26]-[28], [38]-[40], [44]-[48]; *R v Light* [1954] VLR 152 (**JBA 11/108**) at 155-158 (Sholl J); *R v Morales* [1992] 3 SCR 711 (**JBA 11/111**) at 738-739 (Lamer CJ, La Forest, Sopinka, McLachlin and Iacobucci JJ agreeing).

5. The argument raised by the Commonwealth's s 78B notice does not arise. Alternatively, if it arises, it should be rejected for the reasons given in **Supp Vic [3]-[10]**. Victoria also adopts the submissions in **Supp DS [13]-[20]**; **ACT [14]-[16]**; **Supp NSW [7]-[16]**.

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