

Kirk v Industrial Relations Commission (2010) 239 CLR 531

<https://lawcasesummaries.com/knowledge-base/kirk-v-industrial-relations-commission-2010-239-clr-531/>

Facts

- On 28 March 2001, Graham Palmer, an employee of Kirk Group Holdings Pty Ltd was killed while working as a farm manager on a farm owned by Graeme Kirk (**Kirk**).
- Mr Kirk and the company were convicted in the Industrial Court of NSW under the *Occupational Health and Safety Act 1983* (NSW) (**the Act**).
- Kirk was not told what he was charged with.
- The Act contained a privative clause providing that a decision of the Industrial Court is "final and may not be appealed against, reviewed, quashed or called into question by any court or tribunal".

Issue

- Was the Industrial Court's decision was affected by jurisdictional error?
- If so, did the privative clause operate to prevent the Court of Appeal from issuing relief by way of certiorari?

Held

- The High Court held that a prosecutor prosecuting offences under the Act to identify within the charge laid the measures which the employer did not take, despite the privative clause of the Act.
- Privative clauses can be beneficial where they promote finality, but not where they clash with the *Constitution*.
- Section 71 of the *Constitution* is part of an appellate structure, of which the High Court sits at the top, the Australian legal system is whole and it must be internally coherent.
- The State Supreme Courts must fit in to the Commonwealth Constitutional model.
- If they do not, this will create islands of power which are not subject to judicial supervision.
- Only where privative clauses exclude jurisdictional error will they be ineffective.

Full Text

The full text is available here: <https://www.jade.world/cases/2010HCA1>