

# HIGH COURT OF AUSTRALIA

STEWARD J

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IN THE MATTER OF AN APPLICATION BY  
MARTIN OTTO WATERHOUSE FOR LEAVE TO  
ISSUE OR FILE

[2025] HCASJ 25  
*Date of Judgment: 14 August 2025*  
S86 of 2025

## ORDER

- The application of 20 June 2025 for leave to issue or file a proposed writ of summons is dismissed.*

## Representation

The applicant is unrepresented



1 STEWARD J. By an ex parte application filed on 20 June 2025, the applicant  
(Mr Waterhouse) seeks leave, pursuant to r 6.07.3 of the *High Court Rules 2004*  
(Cth) (the "*Rules*"), to issue or file a proposed writ of summons.

2 The applicant is self-represented.

## **Background**

### *Previous proceedings*

3 The applicant has previously brought several unsuccessful claims in this  
Court. To the extent that those previous claims are relevant to the present  
application, they may be summarised as follows.

4 The applicant previously lodged in this Court a proposed application for a  
constitutional or other writ dated 21 December 2023 (the "Previous Proposed  
Application"). On 4 January 2024, Beech-Jones J directed the Registrar, pursuant  
to r 6.07.2 of the *Rules*, to refuse to issue or file the Previous Proposed Application  
without the leave of a justice of this Court first had and obtained.

5 The applicant applied (in proceeding S21/2024) for the leave of the Court  
to issue or file the Previous Proposed Application. On 22 February 2024, Jagot J  
dismissed that ex parte application.<sup>1</sup>

6 The applicant applied (in proceeding S36/2024) for leave to appeal from the  
whole of the judgment of Jagot J. On 9 May 2024, Gordon J and I jointly refused  
leave to appeal.<sup>2</sup>

### *The present application and proposed writ*

7 The plaintiff subsequently lodged in this Court the proposed writ of  
summons, dated 26 May 2025, with which I am now concerned (the "Proposed  
Writ"). On 28 May 2025, Gleeson J directed the Registrar pursuant to r 6.07.2 of  
the *Rules*, to refuse to issue or file the Proposed Writ without the leave of a justice  
of this Court first had and obtained.

8 On 20 June 2025, the applicant filed the present application for leave to  
issue or file the Proposed Writ. He relies, in support of that application, on an  
affidavit which he also affirmed and filed on 20 June 2025 (the "Supporting  
Affidavit").

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1 *Re Waterhouse* [2024] HCASJ 12.

2 *Re Waterhouse* [2024] HCASL 125.

## Consideration

9           The discretion to grant or refuse leave (pursuant to r 6.07.3 of the *Rules*) to issue or file a document falls to be exercised with regard to the same criteria which inform the action of the Registrar under r 6.07.1. Put another way, leave to issue or file a document will ordinarily be refused where the document appears "on its face" to be an abuse of the process of the Court, to be frivolous or vexatious, or to fall outside the jurisdiction of the Court.<sup>3</sup> It is open to this Court to determine such applications without an oral hearing.<sup>4</sup>

### *The Proposed Writ is an abuse of process*

10           The applicant's Proposed Writ purports to name as defendants the "Federal Attorney General" (who is described therein as the "Nominee for the High Court of Australia"), along with Gageler CJ, Gordon, Jagot, Beech-Jones JJ and myself. The Proposed Writ seeks 18 orders – which, in effect, primarily seek to relitigate this Court's determinations against the applicant (in the previous proceedings summarised at [3]-[6] above). In short, that relief sought is premised on various vague, scandalous and unsubstantiated allegations of "fraud, illegality and bad faith" levied against the judicial officers of this Court.

11           Neither the present application nor the Supporting Affidavit identify any arguable basis for the relief sought. If filed, the Proposed Writ would plainly be an abuse of process on its face, in that it would seek to invoke this Court's jurisdiction on a basis that is "confused or manifestly untenable"<sup>5</sup> – having regard in particular to the following observations regarding the nature of the relief sought by the applicant's 18 proposed orders.

### *Observations regarding the proposed orders*

12           The gravamen of proposed orders 1-4 is that all current justices of this Court are said to be biased against the applicant and that orders providing for "special arrangements" (involving appointment of other, unbiased, justices to this Court) should therefore be made to facilitate the determination of the applicant's claims. In that respect, the relief sought in the Proposed Writ (and the basis asserted for that relief) is substantially duplicative of that which was the subject of the Previous

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3     *Re Lal* [2025] HCASJ 8 at [8]; *Re Praljak* [2025] HCASJ 1 at [23]; *Re Young* (2020) 94 ALJR 448 at 451 [10]-[11]; 376 ALR 567 at 570.

4     *Re Lal* [2025] HCASJ 8 at [8]; *Re Young* (2020) 94 ALJR 448 at 451 [12]; 376 ALR 567 at 570.

5     *Re Lal* [2025] HCASJ 8 at [9]; *Re Praljak* [2025] HCASJ 1 at [23]; *Re Young* (2020) 94 ALJR 448 at 451 [13]; 376 ALR 567 at 570.

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Proposed Application for which Jagot J earlier refused leave to issue or file.<sup>6</sup> Her Honour relevantly said the following of the Previous Proposed Application (and no arguable basis has been identified to now revisit this conclusion):<sup>7</sup>

"Apart from the applicant's sweeping allegations of corruption and conspiracies, and the applicant's manifest long-held sense of profound grievance, the material in support of the application does not disclose any legally intelligible claim or any meaningful legal or factual foundation for any claim. The application, on its face, exposes that it is both frivolous and vexatious and, accordingly, an abuse of process."

13 By proposed orders 5-6, the applicant seeks to challenge the r 6.07.2 direction given by Beech-Jones J on 4 January 2024 (in respect of the Previous Proposed Application). To the extent that a r 6.07.2 direction is made in error, the appropriate recourse is for the litigant to seek leave to issue or file the document pursuant to r 6.07.3 of the *Rules*. Here, the applicant already sought and was refused leave to issue or file the Previous Proposed Application (as explained above at [5]). Proposed orders 5-6 are not an alternative remedy available to the applicant.

14 By proposed orders 7-10, the applicant seeks to challenge Jagot J's dismissal of his application for leave to issue or file the Previous Proposed Application. To the extent that the dismissal of such an application (pursuant to r 6.07.3 of the *Rules*) is infected by error, the appropriate remedy is to be sought by applying for leave to appeal to this Court.<sup>8</sup> Here, the applicant has already sought and was refused leave to appeal from Jagot J's judgment (as explained above at [6]). Proposed orders 7-10 are not an alternative remedy available to the applicant.

15 By proposed orders 11-14, the applicant seeks to challenge Gordon J and my joint decision to refuse the applicant leave to appeal from Jagot J's judgment. That decision comprises this Court's final judgment in respect of the applicant's efforts to file the Previous Proposed Application, with which the applicant exhausted his rights of appeal. The absence of any rights of appeal from this decision is a complete answer to the present proposed challenge, subject to one caveat.

16 For completeness, I note that this Court does have the power to set aside its own orders (including final determinative orders from which there lies no appeal,

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6 *Re Waterhouse* [2024] HCASJ 12 at [2]-[3].

7 *Re Waterhouse* [2024] HCASJ 12 at [5].

8 *Judiciary Act 1903* (Cth), s 34(2).

of the kind the applicant here seeks to challenge), but only in "exceptional circumstances, to repair its own mistakes and oversights that would otherwise occasion a serious and irreparable injustice, despite the fact that its orders have been formalised".<sup>9</sup> Neither the present application nor the Supporting Affidavit disclose any such "exceptional circumstances" which would warrant exercising that power. The basis on which the applicant seeks to advance his latest challenge(s) in the Proposed Writ – being sweeping and unsubstantiated allegations of corruption and conspiracy levied against the justices of this Court – are substantially duplicative of those allegations which the applicant has unsuccessfully ventilated previously, save only that a larger number of the justices of this Court (including myself) are now named in the Proposed Writ. That minor departure in the scope of the allegations now advanced does not warrant this Court revisiting its previous (and final) determinations, particularly given that, in any event, the applicant already maintained in the previous proceedings that *all* justices of this Court are biased against him. This Court's previous orders were final.

17 By proposed order 15, the applicant seeks a "declaration that [certain asserted rights] are each a common law and an international treaty right and a right that is further guaranteed by implication under Chapter III of the Constitution". The "rights" to which the applicant here refers are expressed to be:

- "i) To the Rule of Law.
- ii) To equality before the law.
- iii) To the benefit of and the equal protection of the law.
- iv) To the right to the protection of the law against unlawful attacks on his honour and reputation.
- v) To the right to have serious and indictable criminal offences, committed upon his person, properly investigated by competent and truly independent and impartial persons and, where the evidence warrants, the perpetrators prosecuted and punished.
- vi) To the right to due process, procedural fairness, and recognition as a person before the law and not to have his rights to the benefit and protection of the law systematically impeded, stifled, frustrated, or wrongly and unlawfully denied by the State (meaning

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9 *Burrell v The Queen* (2008) 238 CLR 218 at 244 [105] per Kirby J. See also *State Rail Authority of New South Wales v Codelfa Construction Pty Ltd* (1982) 150 CLR 29 at 38-39 per Mason and Wilson JJ.

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Commonwealth Government and constituent State Governments) and their public officials, courts, police, servants and agencies.

- vii) To have his rights and obligations in a suit at law determined in a fair and public hearing by a competent, truly independent and impartial court or tribunal established by law that is free of corruption.
- viii) To have his rights in a civil suit at law determined only upon the actual issues presented and the facts put into evidence by the parties.
- ix) To have written court judgements published that properly and truthfully explain the reasons for the decision and that any transcript of the proceeding be true and accurate record of the hearing.
- x) To initiate legal proceedings in tort against those responsible for the damages suffered by him because of their wrongful acts including acts of corruption by public officials. ...
- xi) To an effective and enforceable remedy including appropriate reparations and or damages where his rights under the law have been violated."

18 There is no arguable basis for this Court to make the proposed declaration. This Court does not have jurisdiction to determine hypothetical questions of law regarding the existence and/or nature of asserted rights, particularly if those questions are divorced from the administration of the law (by way of application to the facts in a particular matter).<sup>10</sup> There is no state of facts apparent on the applicant's Proposed Writ or Supporting Affidavit which would warrant this Court making any declaration regarding the asserted "rights" to which the applicant refers.

19 By proposed order 16, the applicant seeks an order that his Previous Proposed Application "be filed and issued for service after updating and modification by the Plaintiff, which is then to proceed and to be determined by way of 'special arrangements'". As explained above, the applicant has identified no arguable basis to revisit this Court's previous determinations that the Previous Proposed Application (in its original form) should not be filed. It is apparent (from the reference to "updating and modification" in the proposed order) that the applicant now seeks to file an amended version of the Previous Proposed

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10 *Luna Park Ltd v The Commonwealth* (1923) 32 CLR 596 at 600 (per Knox CJ); *Mineralogy Pty Ltd v Western Australia* (2021) 274 CLR 219 at 247-248 [56]-[57] per Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ.

Application, but the materials he has filed in this Court fail to articulate the nature of those amendments.

20 The substance of the relief sought by proposed order 17 appears to overlap substantially with that in proposed orders 1-4 (addressed above), save that it would also purport to compel the Attorney-General to both make certain "recommendations to Parliament" regarding legislative amendments and also take steps to "prosecute[] and punish[]" the alleged "perpetrators" behind the applicant's conspiracy allegations. The applicant has not identified any arguable basis for this Court to grant such relief, nor does this Court have the power to grant the relief proposed.

21 By proposed order 18, the applicant seeks an order for payment of his costs on an indemnity basis, including – on the basis that the applicant asserts that he is a solicitor of "49 years standing in the profession" – recovery of indemnity costs for his time "at a rate ... that he would have been able to charge if he had acted for a client". Even if the applicant's claim for the balance of the relief in the Proposed Writ were successful, this proposed order would nevertheless be fundamentally misguided. Following this Court's judgment in *Bell Lawyers Pty Ltd v Pentelow* (which abolished the "*Chorley* exception"), a self-represented solicitor is not entitled to recompense for legal work performed on his or her own behalf.<sup>11</sup> Even if successful, the applicant's costs recovery would be limited to his out-of-pocket expenses.

### Disposition

22 For the foregoing reasons, the application of 20 June 2025 is dismissed. Pursuant to r 13.03.1 of the *Rules*, I dismiss the application without an oral hearing.

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11 (2019) 269 CLR 333. A majority of this Court recently revisited (in *Birketu Pty Ltd v Atanaskovic* (2025) 421 ALR 256) the *Chorley* exception with respect to recovery of the value of work performed by an employee of a solicitor in favour of whom a costs order had been made, but that is of no application to the present matter.