HIGH COURT OF AUSTRALIA

GLEESON J

AIX20 PLAINTIFF

AND

DIRECTOR GENERAL OF SECURITY & ORS DEFENDANTS

[2025] HCASJ 26
Date of Judgment: 27 August 2025
M43 of 2025

ORDERS

1. *The application for a constitutional or other writ filed on 28 May 2025 be dismissed.*

2. *The plaintiff is to pay the first and second defendants' costs of and incidental to the application.*

Representation

E M Nekvapil SC and E A Brumby with J R G Blaker for the plaintiff (instructed by Victoria Legal Aid)

P D Herzfeld SC with C M R Ernst for the first and second defendants (instructed by Australian Government Solicitor)

Submitting appearance for the third defendant

GLEESON J.

Introduction

1 The plaintiff was detained in immigration detention for 973 days, from 19 December 2019 until 18 August 2022, after his temporary protection visa was cancelled as a consequence of an adverse security assessment purportedly made under the *Australian Security Intelligence Organisation Act 1979* (Cth) ("the ASIO Act") on the basis that the plaintiff was directly or indirectly a risk to security. The plaintiff is now pursuing proceedings against the first and second defendants, in the Federal Court of Australia ("the main proceedings"), seeking relief including damages for negligence in the exercise of statutory powers and for false imprisonment. In those proceedings, orders were made for standard discovery of documents by the parties. The first defendant, the Director-General of Security, resisted production of certain discoverable documents ("the confidential documents"), on the ground they were protected by public interest immunity ("PII").

2 By application for a constitutional or other writ filed 28 May 2025, the plaintiff now invokes this Court's original jurisdiction conferred by s 75(v) of the Constitution. The plaintiff seeks a writ of certiorari directed to the third defendant, the Federal Court of Australia, to quash the decision of a Full Court (Murphy, Bromwich and Shariff JJ),[1] which refused the plaintiff leave to appeal from orders of a single judge of the Federal Court (Dowling J),[2] upholding the first defendant's PII claims and dismissing the plaintiff's application for production of the confidential documents under a "restricted counsel procedure".[3] The plaintiff also seeks a writ of mandamus directed to the Federal Court requiring a differently constituted Full Court to hear and determine his application for leave to appeal from the primary judge's orders.

3 The plaintiff invokes this Court's original jurisdiction because, by the combined operation of ss 25(2)(a) and 33(4B)(a) of the *Federal Court of Australia Act 1976* (Cth) ("the FCA Act"), an appeal must not be brought to the High Court from a judgment of the Federal Court in the exercise of its appellate jurisdiction refusing leave to appeal. Since relief is sought against the Federal Court, remittal would be inappropriate.

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1 *AIX20 v Director-General of Security* [2025] FCAFC 38.

2 *AIX20 v Director-General of Security (No 2)* [2024] FCA 1130.

3 A procedure described by the Full Court at [1] as "bear[ing] some resemblance to that proposed by the defendants in *Al Rawi v Security Service* [2011] UKSC 34; [2012] 1 AC 531".

4 The plaintiff identified three grounds in support of his application for relief in this Court, which may be summarised as follows: (1) the Full Court exceeded its jurisdiction to decide the question of leave to appeal by addressing the merits of the proposed appeal and, in so doing, made errors of law that appear on the face of the record; (2) the Full Court erred in failing to find a prima facie case for the grant of leave because of the significant impact of the primary judge's decision upon the scope and outcome of the main proceeding; and (3) the Full Court erred in failing to give adequate reasons for upholding the PII claims. The application is supported by an affidavit of the plaintiff's solicitor, Walid Babakarkhil, affirmed on 28 May 2025 and a reply filed on 16 July 2025.

5 The first and second defendants opposed the application, arguing that the application does not fairly reflect the Full Court's reasoning and is inconsistent with how the case was run by the plaintiff before the courts below. In addition to their response filed on 10 July 2025, those defendants rely upon an affidavit of Anthony Giugni, an AGS lawyer, affirmed on 4 July 2025. The third defendant filed a submitting appearance.

6 The plaintiff informed the Court that he wished to be "heard orally only if and to the extent that the Court considers that oral argument might assist the Court in considering the issues and deciding the application". The first and second defendants were content for the matter to be determined on the papers. Having considered the material filed by the parties, I do not consider that oral argument would assist the Court. For the following reasons, the application must be dismissed. I have also concluded that it is appropriate to publish these reasons other than in open court.[4]

Background

7 The plaintiff is from Iraq and arrived in Australia in October 2012. After a period spent in immigration detention, the plaintiff was granted a bridging visa on 13 December 2012. From then he lived in the Australian community on bridging visas and, from 16 August 2017, on a temporary protection visa.

8 On 21 October 2019, the first defendant purported to make an adverse security assessment concerning the plaintiff ("the first ASA") on the basis that the plaintiff was directly or indirectly a risk to security within the meaning of s 4 of the ASIO Act. The first defendant recommended that the Minister for Home Affairs cancel the plaintiff's temporary protection visa, which duly occurred on 5 December 2019 pursuant to s 501(3) of the *Migration Act 1958* (Cth). The cancellation of that visa led to the plaintiff's detention, purportedly under s 189(1) and s 196(1) of the *Migration Act*, in immigration detention for 973 days.

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4 *High Court Rules 2004* (Cth), r 25.09.2.

9 On 15 July 2020 the first defendant furnished a second adverse security assessment in respect of the plaintiff ("the second ASA"), in materially similar terms to the first ASA. On 15 March 2021, the Independent Reviewer of Adverse Security Assessments concluded that the plaintiff was not directly or indirectly a risk to security; and the second ASA was "not a proportionate response to the material relied upon by the Australian Security Intelligence Organisation" ("ASIO") and was "not an appropriate outcome" ("the Independent Review").[5] The first defendant initially decided not to take any action in response to the Independent Review.[6] However, on 5 August 2022, he made a "non-prejudicial security assessment", which led to the Minister for Home Affairs revoking the visa cancellation decision and granting the plaintiff a bridging visa, and releasing him from detention on 18 August 2022. Since that time, the plaintiff has been living in the Australian community.[7]

10 The plaintiff commenced the main proceedings on 15 August 2022, seeking: (1) declarations that the first and second ASAs and the decision not to take action in response to the Independent Review were invalid; (2) damages, including aggravated damages, for breach of a duty to take reasonable care in the exercise of the first defendant's powers and functions under the ASIO Act as well as for false imprisonment; and (3) an apology from the first defendant. The first and second defendants unsuccessfully sought summary dismissal of the main proceedings,[8] and their consequent application for leave to appeal was dismissed.[9] As Mortimer CJ put it in dismissing the latter application:[10]

> "What is at stake [in the main proceedings] is scrutiny of exercises of public power that resulted in the [plaintiff] being deprived of his liberty for two and a half years, in circumstances where ultimately the asserted justification for that deprivation of liberty was not maintained."

The primary judge's decision to uphold the PII claims

11 The first defendant provided discovery to the plaintiff by serving a list of documents and an affidavit, accompanied by a bundle of documents. The Director-

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5 *AIX20 v Director-General of Security* [2023] FCA 1344 at [3(g)].

6 *AIX20 v Director-General of Security* [2023] FCA 1344 at [3(h)].

7 *AIX20 v Director-General of Security* [2023] FCA 1344 at [3(j)]-[3(l)]; *AIX20 v Director-General of Security* [2025] FCAFC 38 at [3(c)]-[3(e)].

8 *AIX20 v Director-General of Security* [2023] FCA 1344.

9 *Director-General of Security v AIX20* [2024] FCA 88.

10 *Director-General of Security v AIX20* [2024] FCA 88 at [36].

General withheld from production the confidential documents, comprising 1,614 pages. The claims for PII were supported by two affidavits of the Deputy Director-General of Security, Michael Keith Noyes. One of those affidavits was an "open" affidavit filed in the main proceedings, the other was a "confidential affidavit" which was provided only to the Court on a "read and return basis".[11]

12 In consent orders made on 6 June 2024, the primary judge noted the plaintiff's intention to contest the PII claims in their entirety on the basis that the restricted counsel procedure, as defined in the notation to the consent orders, "would have the result that there is no countervailing public interest against the disclosure and use of the [c]onfidential [i]nformation" in the main proceedings. In the affidavit in support of the plaintiff's application to this Court, the restricted counsel procedure is summarised as follows:

> "[I]n addition to the plaintiff's existing legal team, security-cleared counsel, Dr James Renwick SC and Ms Sarah Zeleznikow, would be briefed by the plaintiff on an undertaking to represent the interests of the plaintiff in those parts of his case requiring the use of material over which the Director-General has claimed [PII]. The undertaking would prohibit Dr Renwick SC and Ms Zeleznikow from disclosing that material to any person other than in closed court and subject to suppression or confidentiality orders made pursuant to [the FCA Act] or other relevant legislation."

13 At a hearing before the primary judge on 2 August 2024, the claims were contested on the foreshadowed basis. There was no dispute between the parties about the principles to be applied in determining the claims.[12]

14 The primary judge's reasons record that he examined each of the confidential documents.[13] In assessing their evidentiary value, the primary judge noted that his assessment was "necessarily broad" since the opposition to the PII claims was not made by reference to particular documents, and that the restricted counsel procedure had the potential to undermine the value of the documents where there were limits on the use to which the documents may be put.[14] The primary judge noted the plaintiff's concession that he was able to maintain the main

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11 *AIX20 v Director-General of Security (No 2)* [2024] FCA 1130 at [8].

12 *AIX20 v Director-General of Security (No 2)* [2024] FCA 1130 at [15].

13 *AIX20 v Director-General of Security (No 2)* [2024] FCA 1130 at [32].

14 *AIX20 v Director-General of Security (No 2)* [2024] FCA 1130 at [33].

proceedings without disclosure of the confidential documents, and that the documents were "not essential" to the continuance of the main proceedings.[15]

15 Applying *Leghaei v Director-General of Security*,[16] the primary judge reasoned that the first defendant's affidavit evidence ought to be given "very considerable weight" because courts are "ill-equipped ... to evaluate pieces of evidence obtained by ASIO".[17] The primary judge accepted the first defendant's evidence that the confidential documents would reveal or would tend to reveal ASIO's intelligence holdings and sources of information; ASIO's investigative and operational methodology; the identity of ASIO employees; and ASIO administrative and system identifiers.[18] His Honour also accepted the first defendant's evidence that:[19]

> "[I]t is fundamental to the effective operation of ASIO that the following matters be kept in the strictest possible secrecy: the specific details of ASIO's areas of interests; the identity of the subjects of security interest; the degree of ASIO's ability to obtain intelligence in relation to those subjects; ASIO's sources (including human sources); ASIO's investigative techniques; ASIO's technical capabilities and work methods; and ASIO's successes and the information derived from its successes."

16 Having accepted that evidence, his Honour concluded that the restricted counsel procedure would not be an adequate safeguard against the risk of inadvertent disclosure.[20] The primary judge also concluded that, regardless of whether the Federal Court has the power to order the procedure (an issue which was raised by the first and second defendants but was unnecessary to decide), he should not exercise the Court's discretion to implement it because the procedure would be attended by practical difficulties and deviated from a bespoke legislative scheme enacted for the same purpose.[21]

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15 *AIX20 v Director-General of Security (No 2)* [2024] FCA 1130 at [52].

16 (2007) 241 ALR 141.

17 *AIX20 v Director-General of Security (No 2)* [2024] FCA 1130 at [17]-[18], [35]. See also *Alister v The Queen* (1984)154 CLR 404 at 455.

18 *AIX20 v Director-General of Security (No 2)* [2024] FCA 1130 at [37]-[39].

19 *AIX20 v Director-General of Security (No 2)* [2024] FCA 1130 at [39].

20 *AIX20 v Director-General of Security (No 2)* [2024] FCA 1130 at [45].

21 *AIX20 v Director-General of Security (No 2)* [2024] FCA 1130 at [46]-[53].

The Full Court's decision to refuse leave to appeal

17 The plaintiff sought leave to appeal the primary judge's orders. The Full Court correctly identified that leave to appeal should only be granted if the plaintiff established that: (1) the decision giving rise to the orders is attended by sufficient doubt to warrant it being considered by a Full Court; and (2) substantial injustice would result if leave were refused.[22] The Full Court inspected the confidential documents in advance of its hearing, with the consent of the parties.

18 Their Honours noted that the plaintiff addressed two proposed grounds of appeal and considered that neither raised a sufficient doubt about the primary judge's decision.[23] The Full Court also recorded, and treated as a third proposed ground of appeal, the plaintiff's "overarching contention" that the primary judge had reached the wrong conclusion in upholding the PII claims.[24] The Full Court's treatment of the overarching contention is the subject of the application to this Court.

19 Before setting out their reasons for rejecting the overarching contention, the Full Court said: [25]

> "Not only are we not satisfied that the primary judge's decision is attended by sufficient doubt to warrant our consideration, having ourselves examined the [c]onfidential [d]ocuments and considered the Noyes confidential affidavit (provided to us under strict security arrangements on a read and return basis), as well as the Noyes open affidavit, we concur in the view that the PII claims should be upheld."

20 The Full Court identified three elements to the overarching contention.[26] Firstly, "the primary judge erroneously focussed upon the public interest in national security that could be harmed by the disclosure of the [c]onfidential [d]ocuments in a general sense and not by reference to the specific marginal risk of disclosure arising from the implementation of the [r]estricted [c]ounsel [p]rocedure". Secondly, the risk of disclosure was marginal because security-cleared counsel had already examined the confidential documents and they had also been reviewed by the primary judge and the Full Court. Thirdly, the primary

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22 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [13], citing *Décor Corporation Pty Ltd v Dart Industries Inc* (1991) 33 FCR 397 at 398.

23 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [14], [30], [37].

24 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [15].

25 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [18].

26 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [39].

judge failed to engage in the balancing exercise by reference to the correct risk calculus, being the minimal additional risk of disclosure from the implementation of the restricted counsel procedure. Thus, as summarised, the argument focussed attention on the "correct risk calculus" as opposed to the more general question of whether the primary judge had engaged in the required balancing exercise.[27] The plaintiff did not submit that the Full Court had misstated the elements of the overarching contention.

21 Contrary to the plaintiff's argument, the Full Court considered that the primary judge's reasons disclosed that he had addressed the marginal risk of disclosure and concluded that "the marginal risk of disclosure was outweighed by the gravity of the impairment to the public interest in national security notwithstanding the countervailing interests in the administration of justice having regard to the criticality of the [c]onfidential [d]ocuments to the [plaintiff]'s case against the [first and second defendants]".[28]

22 The Full Court continued by saying that, having examined both the confidential documents and both of Mr Noyes' affidavits, "we do not consider that the primary judge's conclusion is attended by sufficient doubt and, in fact, we agree with the conclusion that his Honour reached".[29] Their reasons were: (1) the risk to the impairment of national security is not limited to the risk of inadvertent disclosure arising from disclosure to security-cleared counsel; (2) the risk also involves an assessment as to the practicalities involved in the handling and examination of such material as part of proceedings before the Full Court, even where orders are made for such proceedings to occur in closed court and be subject to suppression orders; (3) the risk is not merely the prospect of the information being intercepted or falling into the hands of "bad actors"; (4) the risk must also be assessed against the prospect that the fact of such disclosure may place Australia’s security interests in jeopardy in respect of the sources of intelligence information both presently and into the future; and (5) "[t]he gravity or consequences of those risks materialising may, depending on the particular facts and context, outweigh the rival public interest in the administration of justice".[30]

23 On the question of injustice if leave to appeal were not granted, their Honours said: [31]

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27 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [39].

28 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [42].

29 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [43].

30 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [43].

31 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [44].

> "The applicant submitted that refusing to grant leave to appeal would lead to an extraordinary outcome which would leave the applicant without access to documents that are critical to his case and in seeking to hold the Director-General to account for an alleged infringement of his civil liberties. The primary judge was conscious of this fact, as are we. The outcome here is fact dependent. The upholding of any claim for PII necessarily weighs in favour of one aspect of public interest over another. In the present case, it is our assessment of the facts that the balance weighed in favour of upholding the PII claim and the primary judge's decision in this regard was not attended by sufficient doubt to warrant the grant of leave to appeal. As we have separately considered and upheld the claim for PII, nor is there any relevant injustice in refusing leave to appeal as the outcome could not have been different."

24 The submission that the confidential documents were critical to the plaintiff's case, apparently accepted by the Full Court, was not supported by a finding of the primary judge. To the contrary, it conflicted with the basis on which the primary judge had proceeded, namely that the confidential documents were "not essential" to the continuance of the proceeding.

25 Finally, the Full Court noted that the question of the Federal Court's power to implement procedures such as the restricted counsel procedure, raised by notice of contention, did not arise if leave to appeal was refused. Therefore, like the primary judge, the Full Court did not decide whether the Federal Court would have power to make orders for the restricted counsel procedure.[32]

The plaintiff's application for a constitutional or other writ

Introductory observations

26 The plaintiff submits that the Full Court's summary of the facts is "incomplete and erroneous in certain respects" and its statement as to the "thrust" of the main proceedings misstates the nature and basis of the plaintiff's case as involving a failure to take reasonable care in making the first ASA and the second ASA when in truth it was an argument that three decisions of the first defendant were made on material that "is and was *as a matter of fact* not reliable, credible or probative" (original emphasis). Those complaints are overstated and are not material to the plaintiff's contention of jurisdictional error. The Full Court was plainly aware of the challenge to the validity of the three decisions, and of the claim for declaratory relief. In that context, the Full Court's description of the "thrust" of the main proceeding was not inapposite.

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32 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [45].

27 The three grounds advanced by the plaintiff in this Court fail for the reasons set out below.

Ground one

28 Ground one states (citations omitted):

> "[A]s a step in reasoning for refusing leave to appeal, the Full Court 'separately considered and upheld' the Director-General's 'claim to PII' ... In purporting so to decide, the Full Court exceeded its jurisdiction under s 24(1A) of the [FCA Act], which was only to decide the question of leave upon forming an opinion of the merits of the proposed appeal (and not separately to uphold any claim). Because the Full Court refused leave on the premise of that ultra vires decision-making, the Full Court's decision to refuse leave was itself beyond jurisdiction. These also were errors of law on the face of the record, amenable to correction by certiorari."

29 Section 24(1A) of the FCA Act provides that an appeal shall not be brought from an interlocutory judgment of a single Judge exercising the original jurisdiction of the Federal Court unless the Court or a Judge gives leave to appeal (see also s 24(1)(a)). The Full Court exercised its appellate jurisdiction by refusing leave to appeal;[33] it did not make orders determining any appeal.

30 In *Ex parte Bucknell*,[34] this Court observed:

> "[A]ny statement of the matters which would justify granting leave to appeal must be subject to one important qualification which applies to all cases. It is this. The court will examine each case and, unless the circumstances are exceptional, it will not grant leave if it forms a clear opinion adverse to the success of the proposed appeal."

31 That statement of principle has never been doubted.[35] Thus, *In the matter of an application by the Chief Commissioner of Police (Vic)*, after observing that

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33 *Thomas Borthwick & Sons (Pacific Holdings) Ltd v Trade Practices Commission* (1988) 18 FCR 424 at 431, cited in *Re Golding* (2020) 94 ALJR 1014 at 1016 [6].

34 (1936) 56 CLR 221 at 225.

35 cf *Contender 1 Ltd v LEP International Pty Ltd* (1988) 63 ALJR 26 at 29; 82 ALR 394 at 400; *McGraw-Hill Financial, Inc v Mitsub Pty Ltd* (2017) 347 ALR 18 at 34 [65]-[67].

an arguable case of error was a necessary, although not a sufficient condition for the grant of leave, a majority of this Court said:[36]

> "If, as the Court of Appeal concluded, there was 'no basis for the making of the orders to suppress indefinitely the matters encompassed by the orders', it was open to that court to conclude that the application for leave to appeal should fail. A conclusion that an order from which leave to appeal is sought is plainly right does not constitute some impermissible foray into issues that would arise only on a grant of leave and the hearing of an appeal. It is no more than an emphatic rejection of one aspect of the argument that must be made in support of a grant of leave." (citations omitted)

32 It was within the Full Court's jurisdiction to have regard to the merits of the proposed ground of appeal in such manner as it considered appropriate in the circumstances.[37] The Full Court's reasons show that their Honours formed "a clear view adverse to the success of the proposed appeal".[38] Lacking jurisdiction in the absence of a grant of leave to appeal, their Honours did not make a binding decision on the question of whether the confidential documents are protected by PII, and they did not purport to do so by their orders.[39]

33 The plaintiff makes an additional complaint concerning the Full Court's finding that there was no relevant injustice in refusing leave to appeal "as the outcome could not have been different".[40] That finding suggests that the Full Court went further than necessary to decide the relevant question about injustice which is concerned with the effect of refusing leave "supposing the decision to have been wrong".[41] Even so, in the absence of doubt as to the correctness of the primary judge's decision, the finding is immaterial.[42]

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36 (2005) 79 ALJR 881 at 886 [31]; 214 ALR 422 at 428-429.

37 cf *Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 276 CLR 579 at 592 [19].

38 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [44], cf *Ex parte Bucknell* (1936) 56 CLR 221 at 225.

39 cf *North Ganalanja Aboriginal Corporation v Queensland* (1996)185 CLR 595 at 642-643.

40 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [44].

41 *Décor Corporation Pty Ltd v Dart Industries Inc* (1991) 33 FCR 397 at 398.

42 *Melbourne City Investments Pty Ltd v Treasury Wine Estates Ltd* (2017) 252 FCR 1 at 4 [3].

34 Finally, the contention that there is error on the face of the record is misconceived. The relevant error is said to be the failure to make orders reflecting a grant of leave and dismissal of the plaintiff's appeal. There is no basis for concluding that there was any such failure where the Full Court refused to grant leave to appeal.

Ground two

35 The plaintiff's second ground is:

> "[T]he Full Court did not satisfy the following condition on its jurisdiction to decide the question of leave. Namely, that it decide that question on the basis that there was a prima facie case for the grant of leave because the interlocutory decision sought to be appealed has a significant impact upon the scope and outcome of the proceedings."

36 The plaintiff relies upon the well-established principle that an interlocutory order having the practical effect of finally determining the rights of the parties, though interlocutory in form, gives rise to a prima facie case for granting leave to appeal.[43] However, that principle does not apply in this case. Before the primary judge, the plaintiff did not argue that, if the PII claims were upheld, he would be required to discontinue the main proceedings.[44] To the contrary, the plaintiff accepted that he was able to maintain his proceeding without disclosure of the documents.[45] In his application to this Court, the plaintiff now contends that the primary judge's decision "in practical effect may dispose of the plaintiff's claim of negligence".

37 The plaintiff's broader contention, that the "significant impact" of an interlocutory order upon the scope and outcome of the proceedings affords a prima facie case for the grant of leave to appeal is not supported by authority and must, in any event, yield to a finding that the proposed appeal lacks prospects. It was the plaintiff's lack of prospects that was decisive in the Full Court's refusal to grant leave to appeal.

Ground three

38 The plaintiff's final ground is that, in upholding the PII claims, the Full Court committed jurisdictional error by failing to give adequate reasons.

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43 See, eg, *Ex parte Bucknell* (1936) 56 CLR 221 at 225.

44 cf *AIX20 v Director-General of Security (No 2)* [2024] FCA 1130 at [30].

45 *AIX20 v Director-General of Security (No 2)* [2024] FCA 1130 at [52].

39 The plaintiff does not contest the adequacy of the Full Court's reasons concerning the first two proposed grounds of appeal, nor the Full Court's reasons for rejecting the plaintiff's contention that the primary judge erred in his identification of the "correct risk calculus". The contention is that the Full Court failed to evaluate the PII claims "distributively", in other words their Honours did not evidence engagement in the balancing exercise at the appropriate level for each individual document or class of documents.

40 The requirement to give adequate reasons in this case must be understood in the context that the Full Court was deciding an application for leave to appeal. It was sufficient for the Full Court to give reasons that explained adequately why the decision of the primary judge was not attended by sufficient doubt to warrant a grant of leave, notwithstanding the Court's implicit acceptance that injustice would result, supposing the decision to have been wrong, because the relevant documents were critical to the plaintiff's case.

41 The Full Court should not have gone further, by stating that there was no relevant injustice in refusing leave to appeal because their Honours had "separately considered and upheld the claim" for PII.[46] The Court did not give reasons to explain that statement. However, because the Full Court did not uphold the claim except by refusing leave to appeal, the failure to give reasons did not involve jurisdictional error.

Disposition

42 The plaintiff's application for a constitutional or other writ filed on 28 May 2025 is dismissed with costs.

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46 *AIX20 v Director-General of Security* [2025] FCAFC 38 at [44].