

HIGH COURT OF AUSTRALIA

BEECH-JONES J

GUNILLA RINDEKLEV

PLAINTIFF

AND

COMCARE & ANOR

DEFENDANTS

[2025] HCASJ 29

Date of Judgment: 2 September 2025

P27 of 2025

ORDERS

- 1. The plaintiff's application for a constitutional or other writ filed on 25 June 2025 is dismissed.*
- 2. The plaintiff pay the first defendant's costs of and incidental to the application.*

Representation

The plaintiff is unrepresented

The first defendant is represented by Moray & Agnew Lawyers

Submitting appearance for the second defendant

1 BEECH-JONES J. The plaintiff, Ms Rindeklev, applies for constitutional or other writs directed to the Federal Court of Australia (the second defendant to the plaintiff's application). The relief sought concerns two decisions of the Federal Court relating to her application for leave to commence proceedings against Comcare¹ ("the first defendant"), alleging it engaged in unlawful discrimination.

2 Rule 25.09.1 of the *High Court Rules 2004* (Cth) provides that an application for a constitutional or other writ may be determined by the Court or a Justice without the application being listed for a hearing. Rule 25.09.2 enables a Justice to make an order under r 25.09.1 and publish reasons for doing so other than in open Court. Rule 25.09.3(c) enables the Court or Justice to determine finally the whole or part of an application.

3 The plaintiff's application for a constitutional writ does not depend on any contested issue of fact but instead only involves an analysis of the Federal Court decisions the subject of the application. Both the plaintiff and the first defendant have provided useful written submissions addressing and responding to the points raised, respectively. No question of principle is raised by the application. In those circumstances it is appropriate that the whole of the matter be finally determined without the matter being listed for hearing and to publish reasons other than in open court. Further, for the reasons set out below the whole of the matter should be dismissed.

Background

4 In March 2023, the plaintiff lodged a complaint with the Australian Human Rights Commission ("the AHRC"), alleging "unlawful discrimination"² by or on behalf of the first defendant.³ On or about 10 January 2024, the delegate of the President of the AHRC concluded that the complaint was "misconceived and/or lacking in substance" and terminated the complaint.⁴

5 The plaintiff then sought to apply to the Federal Court for redress for the alleged unlawful discrimination.⁵ Given the basis for the termination of her

1 Comcare is established under s 68 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

2 *Australian Human Rights Commission Act 1986* (Cth) ("AHRC Act"), s 46P.

3 In contravention of s 28L of the *Sex Discrimination Act 1984* (Cth). See also *Sex Discrimination Act*, ss 28A, 28B; AHRC Act, s 3(1) (definition of "unlawful discrimination").

4 AHRC Act, ss 46PF(1)(b), 46PH(1B)(a).

5 AHRC Act, s 46PO(1).

complaint to the AHRC, the plaintiff required a grant of leave from the Federal Court to make the application.⁶

- 6 On 23 July 2024 Colvin J refused the plaintiff leave to make the application.⁷ On 1 April 2025 Feutrill J, exercising the appellate jurisdiction of the Federal Court,⁸ dismissed an application for leave to appeal from Colvin J's decision and ordered that the plaintiff pay the costs of that application.⁹ No appeal can be brought to this Court against that refusal of leave to appeal.¹⁰

Colvin J's reasons

- 7 The decision of the delegate identified the "unlawful discrimination" the subject of the plaintiff's complaint as alleged sexual harassment contrary to the *Sex Discrimination Act 1984* (Cth) ("the SDA"). The conduct the subject of the complaint concerned the filing in the Administrative Appeals Tribunal, and service upon the plaintiff, of a statement from a former co-worker to the effect that the plaintiff had previously undertaken sex work. The statement was filed by lawyers retained on behalf of the first defendant who was the respondent to those proceedings.¹¹ The plaintiff sought workers compensation in respect of an injury arising out of her employment by a Commonwealth agency. The plaintiff strongly disputes that the evidence had any relevance to the proceedings.

- 8 Colvin J refused the plaintiff leave to commence proceedings on the basis that the proposed application lacked merit. His Honour found that the conduct the subject of the complaint could not constitute "sexual harassment" within the meaning of the SDA.¹²

- 9 The relevant part of the definition of sexual harassment required that the conduct the subject of the complaint constitute "unwelcome conduct of a sexual nature" in relation to the person harassed, "in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or

6 AHRC Act, s 46PO(3A)(a).

7 *Rindeklev v Comcare* ("Primary Decision") [2024] FCA 804.

8 *Federal Court of Australia Act 1976* (Cth), s 25(2)(a).

9 *Rindeklev v Comcare* ("Appeal Decision") [2025] FCA 291.

10 *Federal Court of Australia Act*, ss 25(2)(a), 33(4B)(a).

11 Primary Decision [2024] FCA 804 at [36].

12 Primary Decision [2024] FCA 804 at [29], [38], [50].

3.

intimidated".¹³ Colvin J accepted that the conduct of the first defendant by its lawyers in presenting the witness statement may have been "unwelcome" and may have occurred in circumstances in which a reasonable person would be offended and humiliated.¹⁴ However, his Honour found that the conduct was not of a sexual nature given its character and the context in which it occurred; namely, proceedings in a tribunal. His Honour reasoned that the conduct was "depersonalised", did not involve "acting in a sexual way" or in a manner "which involves a form of communication that might be described as containing sexualised or gender-based insults or taunts".¹⁵

Feutrill J's reasons

10 In refusing leave to appeal, Feutrill J identified the two interrelated factors governing the plaintiff's application for leave to appeal as being: (a) whether the decision of Colvin J was attended with sufficient doubt to warrant it being reconsidered; and (b) whether a substantial injustice would result if leave were refused.¹⁶ As the practical effect of Colvin J's orders was to determine finally the plaintiff's claim, Feutrill J focussed on the first factor, namely whether Colvin J's decision was attended with sufficient doubt to warrant a grant of leave to appeal.¹⁷

11 Feutrill J characterised the plaintiff's argument as being that Colvin J erred in undertaking a "detailed evaluation of the merits" of the plaintiff's claim and analysing whether the relevant conduct was capable of satisfying the definition of sexual harassment by reference to an "unduly narrow set of facts and not the full and complete facts with greater context and nuance" as would occur following a full hearing.¹⁸ However, Feutrill J found that Colvin J had not erred in principle because his Honour had, in "making all assumptions of fact most favourable to the [plaintiff]", conducted an evaluation of the merits of the plaintiff's claim "without

13 *Sex Discrimination Act*, s 28A(1). See also Primary Decision [2024] FCA 804 at [31(3)].

14 Primary Decision [2024] FCA 804 at [37].

15 Primary Decision [2024] FCA 804 at [36].

16 Appeal Decision [2025] FCA 291 at [13], citing *Décor Corp Pty Ltd v Dart Industries Inc* (1991) 33 FCR 397 at 398-399.

17 Appeal Decision [2025] FCA 291 at [14].

18 Appeal Decision [2025] FCA 291 at [19]-[20].

resolution of contested evidence".¹⁹ Feutrill J concluded that it was not reasonably arguable that Colvin J misconstrued the relevant provisions of the SDA.²⁰

The application for a constitutional or other writ

12 The principal relief sought by the plaintiff in her application to this Court included a writ of certiorari directed to the "quashing" of the judgment of Colvin J, a declaration that the decision of Feutrill J is "null or without legal effect" insofar as it relies upon the judgment of Colvin J and a writ of mandamus "directing the Federal Court of Australia to determine the plaintiff's application for leave to appeal".

13 The Federal Court is a superior court of record²¹ and its decisions are valid unless and until set aside on appeal or by relief granted under s 75(v) of the *Constitution* even if the relevant decision is made without jurisdiction.²² As stated, there is no appeal from the judgment of Feutrill J. Nevertheless, the Judges of the Federal Court are officers of the Commonwealth amenable to this Court's jurisdiction under s 75(v) of the *Constitution*,²³ including writs of mandamus compelling the performance of a duty imposed on the Federal Court by law and, ancillary to that relief, writs of certiorari.²⁴ However, such relief is only available in the event that the Federal Court exceeds the limits of its jurisdiction,²⁵ including mistakenly denying jurisdiction.²⁶ Certiorari quashing a decision to refuse leave to appeal, such as the decision made by Feutrill J, was granted by this Court in *Edwards v Santos*.²⁷

19 Appeal Decision [2025] FCA 291 at [29].

20 See Appeal Decision [2025] FCA 291 at [39], citing *Sex Discrimination Act*, s 28A(1)(b).

21 *Federal Court of Australia Act*, s 5(2).

22 *Cameron v Cole* (1944) 68 CLR 571 at 590; *Re Macks*; *Ex parte Saint* (2000) 204 CLR 158 at 185-186 [53]; *New South Wales v Kable* (2013) 252 CLR 118 at 133 [32]; *Queensland v Stradford* (2025) 99 ALJR 396 at 413 [53]; 421 ALR 376 at 389.

23 *Re Macks* (2000) 204 CLR 158 at 210 [136].

24 *Edwards v Santos* (2011) 242 CLR 421 at 441 [53].

25 *Re Gray*; *Ex parte Marsh* (1985) 157 CLR 351 at 385.

26 *Edwards* (2011) 242 CLR 421 at 439 [46].

27 (2011) 242 CLR 421 at 445 [68].

14 It follows that, to secure either a rehearing of her application for leave to make a claim for unlawful discrimination or her application for leave to appeal, the plaintiff must first obtain a writ of certiorari to quash Feutrill J's decision. I will treat her application for declaratory relief as being an application to that effect and her complaints about error on the part of Colvin J as complaints about the decision of Feutrill J to that extent that Feutrill J did not accept that Colvin J erred.

15 The plaintiff's application and supporting affidavit identified four grounds upon which it is said that the writs should issue. First, it is contended that Colvin J failed to assess the plaintiff's complaint as made to the AHRC in that the complaint described by Colvin J is said not to correspond with the subject matter of the terminated complaint. This contention is without substance. Colvin J's analysis of the conduct the subject of the complaint corresponds with that made to and addressed by the AHRC.

16 Second, it is contended that Colvin J accepted that the conduct the subject of the complaint was "a breach" of the SDA but required "something more" to be demonstrated. This ground mischaracterises his Honour's reasons. As noted, his Honour accepted that the conduct complained of may have been "unwelcome", humiliating and offensive,²⁸ but his Honour did not accept that it was "conduct of a sexual nature" within the definition of sexual harassment in the SDA.

17 Third, it appears to be contended that Colvin J erred in failing to set out the relevant statutory provisions and therefore failed to "integrate and deliberate on the opposing contentions". There was no obligation on his Honour to set out the entire text of the legislative provisions. His Honour stated the effect of the definition of "sexual harassment" in the SDA correctly.

18 Fourth, the plaintiff contends that Colvin J erred in "requiring evidence from the [p]laintiff" which was "outside the bounds of [an application for] leave to appeal" and "exceeded ... jurisdiction by mischaracterising the proceeding as a merits review rather than a leave application". This ground appears to be a restatement or refinement of the argument advanced before Feutrill J to the effect that Colvin J addressed the merits of the plaintiff's complaints too closely when refusing leave to commence proceedings (and that Feutrill J erred in refusing to accept that contention).

19 This contention does not raise a complaint of jurisdictional error on the part of either Colvin J or Feutrill J. In refusing the plaintiff leave to commence proceedings against the first defendant, Colvin J was exercising the original jurisdiction of the Federal Court²⁹ as vested in that Court by the *Australian Human*

28 Primary Decision [2024] FCA 804 at [37].

29 *Federal Court of Australia Act*, ss 19(1), 20(1).

Rights Commission Act 1986 (Cth).³⁰ None of the statutory provisions conferring or governing the exercise of the Federal Court's jurisdiction, authority or power to grant or refuse a person leave to make an application alleging unlawful discrimination was dependent on the Court either correctly analysing the merits of a claim for unlawful discrimination or investigating those merits at a particular level of abstraction. Thus, even if Colvin J erred in the manner contended for by the plaintiff, which I do not accept, such an error was wholly within jurisdiction.³¹

20 Similarly, in refusing the plaintiff leave to appeal from Colvin J's decision, Feutrill J was exercising the appellate jurisdiction of the Federal Court,³² which, in the case of an appeal from an interlocutory judgment,³³ required a grant of leave to appeal³⁴ and which jurisdiction could be exercised by a single Judge.³⁵ There is no basis to conclude that Feutrill J misconceived the nature of the function that was to be performed in considering whether to grant leave to appeal.³⁶

21 In the absence of demonstrating a jurisdictional error on the part of Colvin J or Feutrill J, no basis for any of the forms of relief sought is made out.

Conclusion

22 The following orders should be made:

- (1) The plaintiff's application for a constitutional or other writ filed on 25 June 2025 is dismissed.
- (2) The plaintiff pay the first defendant's costs of and incidental to the application.

30 AHRC Act, s 46PO.

31 cf *Re McJannet; Ex parte Minister for Employment, Training and Industrial Relations* (1995) 184 CLR 620 at 644.

32 *Federal Court of Australia Act*, s 24(1)(a).

33 The judgment of Colvin J was an interlocutory judgment: see, eg, *Weir v Telstra Ltd* (2023) 301 FCR 261 at 263 [3].

34 *Federal Court of Australia Act*, s 24(1A).

35 *Federal Court of Australia Act*, s 25(2).

36 See *Helensburgh Coal Pty Ltd v Bartley* [2025] HCA 29 at [52]-[56].