

HIGH COURT OF AUSTRALIA

GORDON J

IN THE MATTER OF AN APPLICATION BY
JAN MAREK KANT FOR LEAVE TO ISSUE OR
FILE

[2025] HCASJ 40
Date of Judgment: 10 November 2025
M82 of 2025

ORDER

- 1. The ex parte application filed on 1 October 2025 for leave to issue or file an application for a constitutional or other writ is refused.*

Representation

The applicant is unrepresented

1 GORDON J. This is the fourth ex parte application for leave to issue or file an application for a constitutional or other writ against various defendants, including the Commissioner of the Australian Federal Police, the Principal Registrar of this Court, and the United Nations High Commissioner for Human Rights, filed by the applicant.¹ The present application is the second filed by the applicant seeking leave to issue or file an application for a constitutional or other writ against the United Nations High Commissioner for Human Rights ("the defendant"). The substance of each application against the defendant concerns communications sent by the applicant to the defendant and the defendant's response to those communications.

2 On 23 September 2025, Steward J directed that, pursuant to r 6.07.2 of the *High Court Rules 2004* (Cth), the application for a constitutional or other writ against the defendant was not to be issued or filed without the leave of a Justice first had and obtained by the applicant. This application for leave to issue or file that application for a constitutional or other writ is supported by an affidavit affirmed by the applicant on 30 September 2025. I have read the applicant's affidavit filed in support of the application as well as the proposed application for a constitutional or other writ against the defendant.

3 The relief that the applicant seeks in the proposed application for a constitutional or other writ is, relevantly, "a writ or an injunction requiring the [d]efendant do all things necessary":

- (1) "to have the [applicant's] complaint UR/CAT/24/AUS/13 resolved in accordance with Article 22 of *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*";
- (2) "to bring to resolution all complaints already made by the [applicant] to the Human Rights Committee in accordance with the Optional Protocol to [the] *International Covenant on Civil and Political Rights*";
- (3) in the alternative to (2), "to have the [applicant's] complaint UR/CCPR/24/AUS/22 resolved in accordance with the Optional Protocol to [the] *International Covenant on Civil and Political Rights*".

4 The application for a proposed constitutional or other writ states that on six occasions the applicant produced to the Office of the United Nations High

1 The applicant filed ex parte applications for leave to issue or file a constitutional or other writ in Matter Nos M65 of 2023, M8 of 2025, and M16 of 2025. The applicant filed applications for leave to appeal in Matter Nos M71 of 2023 and M30 of 2025. See also *In the matter of an application by Jan Marek Kant for leave to issue or file [2025] HCASJ 5* and *In the matter of an application by Jan Marek Kant for leave to issue or file [2025] HCASJ 16*.

Commissioner for Human Rights ("the OHCHR") an individual communication for submission to a specified committee. The applicant states that the defendant variously "failed to bring [the communications] to resolution in compliance with relevant treaty provisions", "made known his refusal or failure to deal with the issues raised in the [applicant's] communications" or has not acknowledged the communications.

5 The applicant's complaint is, in substance, that the defendant has "refused or failed, and intends to continue to refuse or fail, to properly discharge his duties under [the] *Privacy Act 1988* [(Cth)] and treaties to which Australia is a State Party" and that Ch III of the *Constitution* empowers this Court to command the performance of any duty imposed on any person by any treaty to which Australia is a party.

6 In correspondence exhibited to the applicant's affidavit, the registry of this Court expressed concerns to the applicant that he previously sought to file a related application that sought "almost identical relief and [was] drafted in substantially similar terms" and that leave to file that prior application was refused on the basis that it was "manifestly untenable" and would be an "abuse of process".² The applicant stated that he seeks, in his current application, different relief because his current claim is based on the defendant's refusal or failure to deal with his complaints, as opposed to the defendant's delay in dealing with his complaints.

7 Neither the application for a constitutional or other writ against the defendant, nor the applicant's supporting affidavit, discloses any rational legal argument that could support the relief sought. The claims set out in the proposed application against the defendant are manifestly hopeless and, therefore, an abuse of process.³ The applicant's contentions proceed on fundamental misunderstandings.

8 A treaty – an international agreement concluded between two or more states and, relevantly, an international organisation – is governed by international law and gives rise to international legal rights and obligations.⁴ The signing and ratification of a treaty by the Executive Government of the Commonwealth does

2 See *In the matter of an application by Jan Marek Kant for leave to issue or file* [2025] HCASJ 16 at [10].

3 See *In the matter of an application by Leonard William Clampett for leave to issue or file* [2024] HCASJ 5 at [7], citing *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 at 234 [35], [37], 246-247 [72]-[73].

4 See *Victoria v The Commonwealth (Industrial Relations Act Case)* (1996) 187 CLR 416 at 478.

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not make the terms of the treaty the law of Australia.⁵ To give a treaty legal force in Australia, the Commonwealth Parliament must pass an Act that implements the terms of the treaty, in whole or in part, so that the terms, as enacted, are the law of Australia.⁶ Australia is a party to core international human rights treaties⁷ and is also a party to a number of other optional protocols⁸ and related mechanisms.⁹

⁹ The Commonwealth Parliament has not implemented all of the international human rights treaties to which Australia is a party as part of its domestic law. So, for example, under the *Australian Human Rights Commission Act 1986* (Cth), "human rights" are defined by reference to various international human rights treaties and declarations.¹⁰ However, the *Australian Human Rights Commission Act* does not give those treaties or declarations any substantive effect as the law of Australia. For those reasons, claims based directly on breaches of provisions of human rights treaties are misplaced.¹¹ Moreover, neither the defendant, nor the OHCHR, is subject to the *Privacy Act*.¹²

⁵ *Industrial Relations Act Case* (1996) 187 CLR 416 at 480-481.

⁶ *Constitution*, s 51(xxix). See *Industrial Relations Act Case* (1996) 187 CLR 416 at 476.

⁷ See, eg, International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Cultural Rights (1966); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

⁸ See, eg, Optional Protocol to the International Covenant on Civil and Political Rights (1966); Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002).

⁹ For example, Australia is a party to complaints mechanisms under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

¹⁰ *Australian Human Rights Commission Act*, s 3 definition of "human rights".

¹¹ See, eg, *Minogue v Williams* (2000) 60 ALD 366.

¹² *Privacy Act*, s 12B(1) and (2), read with s 6(1) definition of "agency" and s 6C definition of "organisation".

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10 In any event, as Gleeson J said in relation to a previous application for leave to issue or file an application for a constitutional or other writ by the applicant in relation to two of the applicant's communications to the defendant:¹³

"Neither Art 22 of the Convention nor the Optional Protocol impose a duty on the defendant to resolve the relevant complaints without delay. The applicant has not identified any other basis for finding a duty owed by the defendant to resolve the complaints without delay. Accordingly, on the face of the application, the applicant is seeking to invoke this Court's jurisdiction on a basis that is 'manifestly untenable'."

11 Given that a document the subject of an application for leave to issue or file under r 6.07.3 of the *High Court Rules* is to be considered "on its face",¹⁴ it is implicit that the application falls to be determined without an oral hearing.¹⁵ The ex parte application filed on 1 October 2025 for leave to issue or file an application for a constitutional or other writ is refused.

13 *In the matter of an application by Jan Marek Kant for leave to issue or file* [2025] HCASJ 16 at [10], citing *Re Young* (2020) 94 ALJR 448 at 451 [13]; 376 ALR 567 at 570.

14 *High Court Rules*, r 6.07.1.

15 *Re Young* (2020) 94 ALJR 448 at 451 [12]; 376 ALR 567 at 570.