

HIGH COURT OF AUSTRALIA

EDELMAN J

IN THE MATTER OF AN APPLICATION BY DAWN
KELLY FOR LEAVE TO ISSUE OR FILE

[2025] HCASJ 48

Date of Judgment: 17 December 2025

C22 of 2025

ORDER

- 1. The ex parte application filed on 9 December 2025 for leave to issue or file an application for a constitutional or other writ is refused.*

Representation

The applicant is unrepresented

1 EDELMAN J. In this ex parte application, the applicant, Ms Kelly, seeks leave under r 6.07.3 of the *High Court Rules 2004* (Cth) to issue or file an application for a constitutional or other writ. Ms Kelly requires that leave because, on 8 December 2025, Jagot J directed the Registrar, pursuant to r 6.07.2 of the *High Court Rules*, to refuse to issue or file Ms Kelly's proposed application without the leave of a Justice of this Court.

2 The discretion to refuse leave on an application made under r 6.07.3 of the *High Court Rules* will ordinarily be exercised where the document appears "on its face" to be: an abuse of the Court's process; "frivolous or vexatious"; or outside the Court's jurisdiction.¹ An application falls within the meaning of the antique phrase "frivolous or vexatious" if it is manifestly hopeless.²

3 The relief sought by Ms Kelly is described as "Urgent Injunctive Relief Sought with Supplementary Order". She seeks an initial injunction under s 75(v) of the *Constitution* against the "Minister for Communications and Sport" from "enacting or giving any legal effect to requirements of the *Online Safety Act 2021* (Cth)". She also apparently seeks another injunction to require compliance with that initial injunction, that (in her words):

"If the writ of injunction is granted, in order to have legal effect, the Court to order any and all corporate entities such as Meta and the like or online platform providers prohibiting them from any action that undermines, alters, impairs or detracts from the legal operation of the injunctive relief absent such an order would render the injunctive relief nugatory or otiose."

4 The legal arguments in Ms Kelly's proposed application for a constitutional or other writ (for which she seeks leave to issue or file) and in her affidavit are not easy to follow. She raises constitutional issues including the implied freedom of political communication. And she also raises factual questions including those related to assertions of unconscionable conduct and improper purposes of Commonwealth officers.

5 It appears that the legislation with which she is concerned is the *Online Safety Act 2021* (Cth) as amended by the *Online Safety Amendment (Social Media Minimum Age) Act 2024* (Cth). But nothing in Ms Kelly's application for leave to issue or file, or her proposed application, or her affidavit in support provides any support for her standing to bring the proposed application. Ms Kelly provides no basis upon which it could be said that her private rights are affected, or interfered with, by the legislation, or that she has a special interest in the subject matter of

1 *Re Young* (2020) 94 ALJR 448 at 451 [11]; 376 ALR 567 at 570.

2 *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 at 245-247 [70]-[73].

the action she proposes, sufficient to support standing³ and thus to give her the power to invoke the jurisdiction of the Court. The best that can be discerned from Ms Kelly's affidavit is that she might have an emotional or merely intellectual interest in the subject matter of the legislation.⁴

6 In addition to Ms Kelly's lack of any apparent standing, the manifestly hopeless nature of the relief she seeks is informed by her decision to seek to bring a proposed application in the original jurisdiction of this Court in a form which is confused, unclear, and raises questions of fact. In *Ravenor Overseas Inc v Readhead*,⁵ Brennan CJ said that "parties who seek interlocutory relief ... even if it be based on some constitutional point, ought to seek that relief from a court in which the trial of issues is ordinarily conducted, not from this Court". The same is true of relief that is sought on an apparently final basis but which raises contested and contestable questions that would be more suitable for a court in which such trials are ordinarily conducted. And yet Ms Kelly opposes any remittal order if her proposed application were given leave to be issued and filed.

7 In Ms Kelly's affidavit in support of her application for leave to issue or file her proposed application for a constitutional or other writ, Ms Kelly submits that there are (or "can be") "exceptional circumstances" warranting an oral hearing of the application for leave "such as the fact that this Court has accepted a matter ... challenging the same impugned [A]ct, the *Online Safety Act 2021* (Cth), for constitutional invalidity by reason of the same constitutional guarantee" (namely, Matter No S163/2025). Ms Kelly also argues that an oral hearing is necessary because this Court's "interpretation of the Rules requiring no reasons is flawed and contrary to the rules of natural justice, unreasonableness and the decision in *Re Young*^[6]".

8 Ms Kelly had the opportunity, which she took, to make submissions in support of her application for leave in her supporting affidavit.⁷ An oral hearing in relation to the application for leave is not required and is rarely (if ever) appropriate. This is because "it is implicit in the requirement that [such] a

3 *Hobart International Airport Pty Ltd v Clarence City Council* (2022) 276 CLR 519 at 550 [65], 558-560 [86]-[90].

4 *Australian Conservation Foundation v The Commonwealth* (1980) 146 CLR 493 at 530; *Bateman's Bay Local Aboriginal Land Council v Aboriginal Community Benefit Fund Pty Ltd* (1998) 194 CLR 247 at 282 [96].

5 (1998) 72 ALJR 671 at 672 [6]; 152 ALR 416 at 417.

6 (2020) 94 ALJR 448; 376 ALR 567.

7 See *Practice Direction No 1 of 2024 — High Court Rules 2004 Approved Forms*, Form 31 – Ex parte application for leave to issue or file, "Grounds".

document ... be considered 'on its face' that the application [for leave to issue or file] falls to be determined without an oral hearing".⁸ Ms Kelly's application for leave to issue or file should be determined without an oral hearing.

- 9 The ex parte application for leave to issue or file an application for a constitutional or other writ, filed on 9 December 2025, is refused and should be disposed of other than in open court in accordance with r 13.04 of the *High Court Rules*.

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