

# HIGH COURT OF AUSTRALIA

GLEESON J

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IN THE MATTER OF AN APPLICATION BY  
MRS ORMOND FOR LEAVE TO ISSUE OR FILE

[2026] HCASJ 10  
*Date of Judgment: 11 May 2026*  
B26 of 2026

## ORDER

- 1. The application for leave to issue or file an application for a constitutional or other writ is refused.*

## Representation

The applicant is unrepresented



GLEESON J.

## Introduction

1 Pursuant to r 6.07.3 of the *High Court Rules 2004* (Cth) and by application filed on 31 March 2026, Mrs Ormond (a pseudonym allocated by the Federal Circuit and Family Court of Australia (Division 1) ("the Division 1 Court"))<sup>1</sup> seeks leave to have issued or filed an application for a constitutional or other writ ("the proposed application") seeking: (1) a writ of prohibition directed to Justice Jarrett in his capacity as a judge of the Division 1 Court "prohibiting any further exercise of jurisdiction towards [Mrs Ormond]" in proceeding BRC2437/2016 in the Division 1 Court;<sup>2</sup> (2) a writ of certiorari quashing three sets of orders purportedly made by Jarrett J in the proceeding; and (3) an interim order prohibiting Jarrett J from taking any further steps in the proceeding. Leave is required because of a r 6.07.2 direction made by Gordon J on 3 March 2026, directing the Registrar to refuse to issue or file the proposed application without first having and obtaining the leave of a Justice of this Court. The application is supported by affidavits of Mrs Ormond, affirmed on 30 March 2026 and 24 April 2026. The proposed application also refers to an affidavit of Mrs Ormond, affirmed on 1 March 2026. I have read each affidavit.

2 The three sets of orders in respect of which certiorari is sought are, firstly, the following orders made on 24 September 2025:

- (1) The Application in a Proceeding filed by [Mrs Ormond] on 21 March 2025 and the Application in a Proceeding filed by [Mrs Ormond's former son-in-law, Mr Hertwig] on 18 July 2025 be listed for interim defended hearing at 9.30am on 14 November 2025 in the Federal Circuit and Family Court of Australia (Division 1) at Brisbane.
- (2) The subpoena directed to [a process server] be enlarged to 9.30am on 14 November 2025.

3 Secondly, the following orders made on 11 December 2025:

- (1) Pursuant to rule 10.13(1)(a) of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth), set aside orders 3, 4, 5 and 6 made on 3 July 2023.

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1 The use of the pseudonyms in the Division 1 Court continue in proceedings in this Court: High Court of Australia, *Practice Direction No 2 of 2010: Use of Initials or Pseudonyms in Applications*, 2 November 2010.

2 Referred to by Mrs Ormond as "the purported proceedings".

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- (2) By no later than 4.00pm on 23 December 2025 [Mrs Ormond] and [Mr Ormond] (by his litigation guardian, if necessary) shall file and serve upon the applicant and the respondent a response to the Application in a Proceeding filed by [Mr Hertwig] on 13 April 2023 together with any supporting affidavit upon which they might wish to rely.
- (3) Paragraphs 1 and 2 of the Application in a Proceeding filed on 19 April 2023 are listed for further hearing and determination on Thursday 8 January 2026 at 9.30am at the Federal Circuit and Family Court of Australia (Division 1) sitting at Brisbane.
- (4) Otherwise the Application in a Proceeding filed on 21 March 2025 is dismissed.
- (5) The Application in a Proceeding filed by [Mr Hertwig] on 18 July 2025 be adjourned to a date to be fixed.

4 Thirdly, the following orders made on 8 January 2026:

- (1) [Mrs Ormond] be joined to the proceedings and designated as the second respondent.
- (2) [Mr Ormond] be joined to the proceedings and designated as the third respondent.
- (3) [Mr Hertwig] cause a copy of this order and of the amended Initiating Application he is to file pursuant to order 4 hereof to be served personally upon [Mrs Ormond] and [Mr Ormond].
- (4) [Mr Hertwig] file and serve an amended Initiating Application (noting that he was originally the respondent to the proceeding but has now been designated the applicant) setting out and particularising the orders sought against each of the respondents by no later than 4.00pm on 22 January 2026.
- (5) Each respondent shall file and serve a Response to the amended Initiating Application by no later than 4.00pm on 5 February 2026.

5 Since the three sets of impugned orders were made, on 9 March 2026, Jarrett J made further orders including orders dismissing two applications filed by Mrs Ormond on 5 March 2026. In dismissing the first of those applications, his Honour apparently rejected an application by Mrs Ormond to set aside her joinder to the proceeding on 8 January 2026.

6 For the reasons that follow, leave to issue or file the proposed application must be refused.

### The relevant principles

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The discretion to refuse the leave sought by Mrs Ormond is to be exercised by reference to the criteria set out in r 6.07.1, namely whether the proposed application "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> Implicit in the requirement that a document the subject of an application under r 6.07.3 be considered "on its face" is that such an application falls to be determined on the papers, that is, without an oral hearing.<sup>4</sup> While there are no "closed categories" of what amounts to an abuse of process, the concept includes attempts to invoke the jurisdiction of the Court on bases that are vexatious or oppressive,<sup>5</sup> including by suing concurrently in different courts for the same thing.<sup>6</sup> The concept of abuse of process also includes attempts to circumvent the usual appellate process of following through the hierarchy of courts culminating (usually after satisfying the requirement of special leave to appeal) in a decision of this Court.<sup>7</sup> The original jurisdiction of this Court is not properly invoked to raise issues that have been, or could and should have been, raised and determined in the Division 1 Court, which is a court that sits within the structure of courts from which an appeal lies by special leave to appeal to this Court in its appellate jurisdiction.<sup>8</sup> A litigant should exhaust his or her statutory rights of appeal before this Court will contemplate an application for a constitutional or other writ directed to achieving a result that, in substance, may be obtained on appeal.<sup>9</sup>

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

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

5 *Jago v District Court (NSW)* (1989) 168 CLR 23 at 74; *Batistatos v Roads and Traffic Authority (NSW)* (2006) 226 CLR 256 at 266-267 [12]-[14]; *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 at 245-247 [69]-[74].

6 *Moore v Inglis* (1976) 50 ALJR 589 at 591-592; 9 ALR 509 at 513-514; *Henry v Henry* (1996) 185 CLR 571 at 591.

7 See, eg, *Bussa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2020) 94 ALJR 497 at 501 [13]; 377 ALR 228 at 232; *San Bao Pty Ltd v Minister for Immigration and Citizenship* [2026] HCA 6 at [3].

8 *In the matter of an application by Kimberly Nichles for leave to issue or file* [2022] HCATrans 95.

9 See, eg, *R v Federal Court of Australia; Ex parte Pilkington ACI (Operations) Pty Ltd* (1978) 142 CLR 113 at 126-127; *R v Gray; Ex parte Marsh* (1985) 157 CLR 351 at 375-376; *Construction Forestry Mining and Energy Union v Director of the*

**Mrs Ormond's contentions**

8 Mrs Ormond's principal contention is that Jarrett J has purported to exercise federal jurisdiction in proceeding BRC2437/2016, and intends to continue to exercise that jurisdiction, although no property settlement proceeding has ever been validly instituted under the *Family Law Act 1975* (Cth). Her proposed application contains five grounds of review, under the following headings: (1) absence of jurisdiction; (2) denial of procedural fairness; (3) exercise of jurisdiction in respect of a person under disability; (4) orders sought beyond statutory power; and (5) threatened exercise of jurisdiction.

9 These grounds of review correspond with issues raised by Mrs Ormond in written submissions dated 6 March 2026, filed in proceeding BRC2437/2016. The principal contention is that the Division 1 Court does not have jurisdiction to make an order in proceeding BRC2437/2016, because s 44(3) of the *Family Law Act* operates as a statutory bar to the claims for relief presently made by the former son-in-law. Mrs Ormond did not appear at a hearing on 9 March 2026 before Jarrett J but states in her 30 March 2026 affidavit that "the jurisdictional question was raised before [Jarrett J], supported by Case Summary Outlines".

*Absence of jurisdiction*

10 Mrs Ormond contends that orders made by Jarrett J on 8 January 2026 to join her and her husband to proceeding BRC2437/2016 on the application of her former son-in-law "and all subsequent steps" are beyond the jurisdiction of the Division 1 Court.

11 The Division 1 Court, as a court of limited jurisdiction, has the authority and duty to decide whether a controversy lies within the limits of its jurisdiction.<sup>10</sup> Mrs Ormond contends that she has attempted unsuccessfully on three occasions to raise jurisdictional issues in the Division 1 Court, including: (1) in an application filed in March 2025 (amended in May 2025); (2) in an application for summary dismissal filed in June 2025; and (3) by a notice of appeal filed in September 2025, which was rejected. Mrs Ormond asserts that "[e]very avenue of appeal within the [Division 1 Court] has been exhausted without the jurisdictional issues ever being substantively determined".

12 The material contained in and exhibited to Mrs Ormond's affidavits does not bear out this contention. However, as already noted, Mrs Ormond raised "the

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*Fair Work Building Industry Inspectorate* (2016) 91 ALJR 1 at 8-9 [22]; 338 ALR 360 at 367.

10 *R v Ross-Jones; Ex parte Green* (1984) 156 CLR 185 at 193; *New South Wales v Kable* (2013) 252 CLR 118 at 133 [31].

jurisdictional question" in proceeding BRC2437/2016 in her 6 March 2026 written submissions. The argument Mrs Ormond made, that the Division 1 Court lacks jurisdiction to grant relief sought by her former son-in-law, is substantially the same as the argument sought to be raised in this Court. Jarrett J evidently rejected the argument, at least so far as it concerned the power to remove a party from proceedings, on 9 March 2026 when his Honour refused Mrs Ormond's application. If Mrs Ormond wishes to reagitate the issue in connection with a future exercise of jurisdiction, she can and should raise it in the Division 1 Court.

- 13 Further, although a decision by a Division 1 Court judge may be subject to prerogative writs in an appropriate case,<sup>11</sup> prohibition will be refused if want or excess of jurisdiction is not clearly established. In this case, want or excess of jurisdiction is not clearly established. Having regard to the provision in s 44(3) that that "[t]he court may grant such leave at any time, even if the [relevant] proceedings have already been instituted", s 44(3) does not appear to operate as a statutory bar in the manner contended by Mrs Ormond. In those circumstances, the proposed application seeks to circumvent the usual processes for determining a court's jurisdiction by seeking relief that lacks apparent merit and is an abuse of process.

#### *Denial of procedural fairness*

- 14 Mrs Ormond alleges that she has been denied procedural fairness in connection with her joinder as a party to proceeding BRC2437/2016 "on multiple occasions" and "without any opportunity to be heard before orders affecting her property rights were made", although the available material does not indicate that any order has been made to date affecting Mrs Ormond's property rights. Mrs Ormond also complains that on 11 December 2025 she was directed to respond within eight working days to "the joinder application of April 2023".
- 15 Whether Mrs Ormond has been denied procedural fairness is a matter that can be raised and determined in the Division 1 Court. The prohibition of an appeal in connection with a decision concerning the joinder or removal of a party<sup>12</sup> does not deny the Division 1 Court's appellate jurisdiction to hear and determine an appeal against orders that depend upon the joinder order.<sup>13</sup> Accordingly, this aspect

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11 *DMW v CGW* (1982) 151 CLR 491 at 507; *R v Ross-Jones; Ex parte Green* (1984) 156 CLR 185 at 193.

12 *Federal Circuit and Family Court of Australia Act 2021* (Cth), s 26(2)(b)(i).

13 *Federal Circuit and Family Court of Australia Act*, s 36(5); *Chong & Kerimowa* [2025] FedCFamC1A 158 at [33].

of the proposed application is also an abuse of process for seeking to circumvent the usual appellate process.

*Exercise of jurisdiction in respect of a person under disability*

16 This aspect of Mrs Ormond's complaint concerns the joinder by Jarrett J of her husband to proceeding BRC2437/2016. Mrs Ormond contends that her husband lacks capacity. If this is correct, then any relief sought on behalf of Mr Ormond must be sought by a person with authority to act for him.<sup>14</sup> Mrs Ormond has not demonstrated that she has that authority.

*Orders sought beyond statutory power*

17 Mrs Ormond contends that Jarrett J has purported to "entertain and advance claims" for relief against herself and her husband that exceed the jurisdiction conferred by Pt VIII A A of the *Family Law Act*. Pt VIII A A is entitled "Orders and injunctions binding third parties" and comprises ss 90AA to 90AK. This contention is not advanced by reference to any order made or foreshadowed to be made by Jarrett J. As for the issue of denial of procedural fairness, the appropriate venue for Mrs Ormond to raise an issue as to the scope of the jurisdiction conferred by Pt VIII A A is in the Division 1 Court at first instance and, if necessary, on appeal in that court.

*Threatened exercise of jurisdiction*

18 Mrs Ormond contends that there is a "real and imminent risk that final orders affecting [her] property rights will be made on an undefended basis in proceedings that were not validly instituted and in which she was not validly joined". Again, the appropriate venue for Mrs Ormond to raise an issue as to whether final orders affecting her property rights may or should be made is the Division 1 Court, and not this Court except by grant of special leave to appeal from a decision made in the exercise of the appellate jurisdiction of the Division 1 Court.

**Order**

19 The application for leave to issue or file an application for a constitutional or other writ is refused.

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14 *High Court Rules 2004* (Cth), r 21.08.1.