

HIGH COURT OF AUSTRALIA

EDELMAN J

IN THE MATTER OF AN APPLICATION BY COLIN
GEORGE DUNSTAN FOR LEAVE TO ISSUE OR
FILE

[2026] HCASJ 11
Date of Judgment: 13 May 2026
C7 of 2026

ORDER

- 1. The application for leave to issue or file a constitutional or other writ filed 28 April 2026 is refused.*

Representation

The applicant is unrepresented

1 EDELMAN J. On 23 April 2026, Gordon J directed a Registrar of this Court under r 6.07.2 of the *High Court Rules 2004* (Cth) to refuse to issue or file an application by Mr Dunstan for a constitutional or other writ without the leave of a Justice. Mr Dunstan now applies for that leave. It is appropriate that the application for that leave be disposed of other than in open court in accordance with r 13.04 of the *High Court Rules*.

2 As Mr Dunstan explains in one of his affidavits, his proposed application for a constitutional or other writ is concerned with a decision of Thawley J in the Federal Court of Australia to dismiss a proceeding brought by Mr Dunstan as an abuse of process. Mr Dunstan's proceeding in that court raised allegations including that a 2023 judgment of Wigney J had been procured by fraud. Thawley J dismissed Mr Dunstan's proceeding as an abuse of process because it sought to relitigate issues, "including by the mechanism of asserting that judgments were procured by fraud",¹ that had in substance already been litigated and determined.

3 It appears from one of Mr Dunstan's affidavits that he brought an application for leave to appeal the decision of Thawley J. On 6 March 2026, that application was dismissed by Moshinsky J. In his proposed application for a constitutional or other writ in this Court, Mr Dunstan seeks relief including a writ of certiorari to quash the orders of the Federal Court, a writ of mandamus to direct the Federal Court to determine the proceedings according to law, and a declaration that the orders of the Federal Court were affected by jurisdictional error. The jurisdictional errors alleged by Mr Dunstan appear to include that "[t]he Federal Court dismissed the proceeding without determining the pleaded fraud allegations, without determining whether privilege had been waived, and without inspecting the documents sought for that purpose". Mr Dunstan submits that the reasoning of the Federal Court "proceeded on the basis that even if the alleged fraud were established, it could not affect the outcome. The Plaintiff's case was that the alleged fraud bore directly upon the factual foundation of the abuse of process finding and was not a collateral matter."

4 Mr Dunstan's proposed application misunderstands a number of matters: the nature of abuse of process based upon prior determination of an issue or proceeding; the findings of Thawley J concerning unwarranted use of judicial resources; and that, even if a finding of fraud were made, the proceeding before Wigney J would remain an abuse of process. Not only does Mr Dunstan's proposed application for a constitutional or other writ fail to reveal any basis for alleging jurisdictional error by Thawley J or Moshinsky J, but his proposed application reveals no basis for any error at all. The reasons of both Thawley J and Moshinsky J are plainly correct.

¹ *Dunstan v Orr* [2025] FCA 858 at [103].

5 In a separate affidavit, Mr Dunstan raises baseless concerns about procedures of the Registry of this Court and a concern about the absence of reasons given for the direction made by Gordon J under r 6.07.2 of the *High Court Rules*. A direction under r 6.07.2, requiring the Registrar to refuse to issue or file a document, may be made where the document 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". These categories overlap. In many cases, including this case, a direction will be given because the document appears on its face to be an application that is manifestly hopeless and therefore an abuse of process, vexatious, and outside the jurisdiction of the Court.² In any event, the premise of r 6.07.2 is that the formation of this view by a Justice of this Court will be on the face of the document and will therefore generally require no reasons.

6 In addition to dismissing Mr Dunstan's proceeding, Thawley J later made a vexatious proceedings order against Mr Dunstan.³ This Court also has the power to make such orders, including of its own motion, under s 77RN of the *Judiciary Act 1903* (Cth), based on frequent institution or conduct of vexatious proceedings in Australian courts or tribunals.

7 The application for leave to issue or file a constitutional or other writ filed 28 April 2026 is refused.

² *Re Young* (2020) 94 ALJR 448 at 451 [13]; 376 ALR 567 at 570; *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 at 245-247 [71]-[73].

³ *Dunstan v Orr (Vexatious Proceedings Order)* [2025] FCA 1653.