HIGH COURT OF AUSTRALIA

BEECH-JONES J

IN THE MATTER OF AN APPLICATION BY PHILIP JOHN HEINER FOR LEAVE TO ISSUE OR FILE

[2026] HCASJ 18
Date of Judgment: 17 June 2026
C8 of 2026

ORDER

1. *The ex parte application filed on 5 May 2026 for leave to issue or file the proposed application for a constitutional or other writ is dismissed.*

Representation

The applicant is unrepresented

1 BEECH-JONES J. This is an ex parte application for leave to issue or file an application for a constitutional or other writ ("the writ").

2 On or about 23 April 2026, the applicant, Mr Philip John Heiner, sought to file an application for the writ. On 29 April 2026, Edelman J directed the Registrar of this Court to refuse to issue or file that application without the leave of a Justice first had and obtained by the party seeking to issue or file it.[1] On or about 5 May 2026, the applicant sought that leave.

3 The terms of the writ are addressed below but the relief sought includes a declaration that the applicant's "Australian citizenship did not and cannot be ceased lawfully". The application names the Minister for Home Affairs and the Secretary of the Department of Home Affairs as defendants.

Background

4 The applicant was born in Australia and acquired Australian citizenship by birth.[2] In November 1994, he married an Irish citizen. In June 1999, the applicant became an Irish citizen.[3]

5 The applicant's child was born in Spain on 11 March 2011. On 11 April 2011, the applicant lodged an application on behalf of his daughter for Australian citizenship by descent. At that time, the applicant believed he was an Australian citizen.[4] On 29 July 2011, a delegate of the Minister for Immigration and Citizenship refused the application for his daughter's citizenship, on the basis that neither of the daughter's parents were Australian citizens at the time of her birth.[5] In so deciding, the delegate concluded that, by his actions in acquiring Irish citizenship, the applicant had lost Australian citizenship in June 1999 by virtue of (former) s 17 of the *Australian Citizenship Act 1948* (Cth) ("the Citizenship Act"). As at June 1999, s 17 of the Citizenship Act provided:

> (1) A person, being an Australian citizen who has attained the age of 18 years, who does any act or thing:
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> (a) the sole or dominant purpose of which; and

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1 *High Court Rules 2004* (Cth), r 6.07.2.

2 *Heiner v Minister for Home Affairs* [2021] FCA 212 at [2].

3 *Heiner v Minister for Home Affairs* [2021] FCA 212 at [2].

4 *Heiner v Minister for Home Affairs* [2021] FCA 212 at [6].

5 *Heiner v Minister for Home Affairs* [2021] FCA 212 at [6].

(b) the effect of which;

is to acquire the nationality or citizenship of a foreign country, shall, upon that acquisition, cease to be an Australian citizen.

(2) Subsection (1) does not apply in relation to an act of marriage.

6 Through her father, an application in the name of the applicant's daughter for merits review of the delegate's decision was made to the (then) Administrative Appeals Tribunal ("the AAT"). The AAT ultimately affirmed the decision of the delegate.[6] An appeal against the AAT's decision naming the applicant's daughter, by her next friend the applicant, was made to the Federal Court of Australia. At first instance, Marshall J identified the "essential issue for determination" on that appeal as whether the applicant had "ceased to be an Australian citizen" as at 11 March 2011.[7] His Honour determined that the applicant had ceased to be an Australian citizen by the time of his daughter's birth and the appeal was dismissed. His Honour observed that the applicant's daughter was eligible to apply for Australian citizenship under s 21(6) of the Citizenship Act and the applicant was eligible to apply for Australian citizenship under s 29(3).[8] The applicant filed an appeal from that decision but later withdrew the appeal.[9]

7 Subsequently, in 2019, the applicant applied for a visa to travel to Australia. A delegate of the Minister for Home Affairs refused the application for a visa, on the basis that the applicant owed outstanding debts to the Commonwealth.[10] The applicant then lodged a complaint with the Australian Human Rights Commission ("the Commission"), claiming that the Department of Home Affairs had violated his rights by denying his re-entry into Australia.[11] On 6 May 2020, a delegate of the President of the Commission ceased inquiring into the applicant's complaint on the basis that they were not satisfied that continuation of the inquiry was warranted.[12]

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6 *Heiner v Minister for Immigration and Citizenship* [2012] AATA 933.

7 *Heiner v Minister for Home Affairs* (2013) 213 FCR 280 at 281 [1].

8 *Heiner v Minister for Home Affairs* (2013) 213 FCR 280 at 288 [46].

9 See *Heiner v Minister for Home Affairs* [2021] FCA 212 at [44]-[46].

10 *Heiner v Minister for Home Affairs* [2021] FCA 212 at [10].

11 *Heiner v Minister for Home Affairs* [2021] FCA 212 at [12].

12 See *Australian Human Rights Commission Act 1986* (Cth), s 20(2)(ba).

8 The applicant sought judicial review of the Commission's decision in the Federal Court, seeking, amongst other things, a "declaration that my Australian citizenship has not and never will be ceased".[13] At first instance, Anastassiou J refused the judicial review application. Relevantly, his Honour held that the applicant had "sought to convert his complaint about the Commission's decision ... into an application, in effect, to re-open his complaint about the cessation of his Australian citizenship".[14] The Federal Court considered that this issue "was finally determined by Marshall J" and that "the present application constitutes a clear abuse of process by which the Applicant seeks to ventilate earlier grievances".[15] An appeal from that decision to the Full Court of the Federal Court was dismissed.[16] Both Anastassiou J and the Full Court appear to have treated the applicant as having been a party to the proceedings in the AAT and the proceedings before Marshall J.[17]

The writ

9 Mr Heiner's application contains nine prayers of relief. The first prayer for relief seeks seven declarations, the first of which is that his citizenship "did not and cannot be ceased lawfully" under former s 17 of the Citizenship Act and that the "2011 cessation decision ... was arbitrary and void". The other six declarations sought are described as "declarations of constitutional principle" which appear to principally contend that former s 17 was not authorised by any head of Commonwealth legislative power. The balance of the relief sought includes certiorari and mandamus concerning his citizenship status, declaratory relief concerning his daughter and wife (who are not named as parties to the writ) and wide-ranging orders directed to actions supposedly taken by the executive in reliance on s 17 of the Citizenship Act from 1984 until the provision's repeal in 2002. This includes a declaration that the alleged "pattern of decisions" constitutes "malfeasance in public office", a "referral to the Commonwealth Attorney-General for investigation and prosecution", and a "Court-directed systemic inquiry". These aspects of the writ are vague and unparticularised.

10 In support of his application for leave to issue or file the writ, the applicant swore an affidavit dated 23 April 2026. By that affidavit, the applicant contends that, as a consequence of the finding that he was not an Australian citizen, he had

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13 *Heiner v Minister for Home Affairs* [2021] FCA 212 at [22].

14 *Heiner v Minister for Home Affairs* [2021] FCA 212 at [44].

15 *Heiner v Minister for Home Affairs* [2021] FCA 212 at [45], [47].

16 *Heiner v Minister for Home Affairs* [2022] FCAFC 81 at [3].

17 *Heiner v Minister for Home Affairs* [2021] FCA 212 at [45]-[51]; *Heiner v Minister for Home Affairs* [2022] FCAFC 81 at [6].

been denied entry to Australia. He deposes that he holds "sole allegiance to Australia", and that he "has never been naturalised as a citizen of any foreign country by application or by any volitional act of naturalisation".

Leave to file the writ must be refused

11 The discretion to refuse leave to issue or file a document will ordinarily be exercised 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".[18] The concept of abuse of process includes "an attempt to invoke the original or appellate jurisdiction of the High Court on a basis that is *confused* or manifestly untenable".[19] The exercise of the discretion to refuse leave "is appropriate only in the clearest of cases".[20]

12 It is not the function of this Court to identify from the various assertions in the writ whether the applicant could now raise and litigate a viable "matter" as to whether his citizenship was lost in the circumstances identified by the delegate of the Minister for Immigration and Citizenship, including whether the effect of his participation in the proceedings described above renders any attempt to litigate such a matter an abuse of process. Instead, it suffices to observe that the confused and discursive form of the relief sought in the writ and the grounds relied on warrants the conclusion that on its face the application is frivolous or vexatious.

13 Leave to issue or file the writ is refused. The applicant's ex parte application for leave to issue or file the writ is dismissed without an oral hearing.

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18 *High Court Rules* (Cth), r 6.07.1.

19 *Re Young* (2020) 94 ALJR 448 at 451 [13]; 376 ALR 567 at 570 (emphasis added).

20 *Re Young* (2020) 94 ALJR 448 at 451 [13]; 376 ALR 567 at 570.