

# HIGH COURT OF AUSTRALIA

EDELMAN J

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IN THE MATTER OF AN APPLICATION BY DESI  
COCHRANE FOR LEAVE TO ISSUE OR FILE

[2026] HCASJ 19  
*Date of Judgment: 20 July 2026*  
C10 of 2026

## ORDER

1. *The application for leave to issue or file a constitutional or other writ filed 19 June 2026 is refused.*

## Representation

The applicant is unrepresented



EDELMAN J.

## Introduction

1       The applicant, Mr Cochrane, sought to issue and file an application for a constitutional or other writ. The principal relief sought by Mr Cochrane in the application was a writ of certiorari to quash orders said to have been made by the Federal Magistrates Court of Australia on 14 August 2001 and 21 June 2002. The application would have required an extension of time of more than 24 years.<sup>1</sup>

2       On 26 May 2026, Steward J, acting pursuant to r 6.07.2 of the *High Court Rules 2004* (Cth), directed the Registrar to refuse to issue or file Mr Cochrane's application for a constitutional or other writ without the leave of a Justice. By this ex parte application under r 6.07.3, filed on 19 June 2026, Mr Cochrane applies for that leave.

3       Leave to issue or file an application for a constitutional or other writ will ordinarily be refused where 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>2</sup> For the reasons that follow, Mr Cochrane's proposed application for a constitutional or other writ appears on its face to be an abuse of process, and manifestly hopeless and accordingly "frivolous or vexatious", for the purpose of r 6.07.3.<sup>3</sup> The application for leave to issue or file the proposed application for a constitutional or other writ is refused.

## Background

4       Although Mr Cochrane's proposed application for a constitutional or other writ seeks to quash orders made by the Federal Magistrates Court on 14 August 2001 and 21 June 2002, the only decision and orders exhibited in his affidavit in support of his application for leave are a decision and orders of the Federal Magistrates Court on 14 August 2001, by which a federal magistrate (Rimmer FM) made orders including an order pursuant to s 66G of the *Family Law Act 1975* (Cth) that Mr Cochrane:

"pay to the MOTHER, as and by way of Child Maintenance for the CHILDREN ... the sum of \$100.00 per week per CHILD".

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<sup>1</sup>    *High Court Rules 2004* (Cth), r 25.02.2(a).

<sup>2</sup>    *High Court Rules*, r 6.07.1. See *Re Young* (2020) 94 ALJR 448 at 451 [11]; 376 ALR 567 at 570.

<sup>3</sup>    *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 at 245-247 [70]-[73].

5 Mr Cochrane says in his proposed application that, as a result of the Federal Magistrates Court proceedings, a "Sheriff's Warrant was issued against [Mr Cochrane's] property" in Wandong, Victoria on 21 February 2002, and "a property sale order" was made in respect of that property on 21 June 2002.

6 In his affidavit, Mr Cochrane also says that, following the decision of the Federal Magistrates Court, "the Child Support Agency officially implemented an administrative child support assessment". Mr Cochrane exhibits an assessment by the Australian Government Child Support Agency dated 9 March 2006 in respect of one child for a monthly amount of \$14.42.

7 In his proposed application for a constitutional or other writ (requiring an extension of time of more than 24 years), Mr Cochrane seeks relief including: (i) a writ of certiorari to quash the orders of the Federal Magistrates Court for jurisdictional error; and (ii) a declaration that the Federal Magistrates Court proceedings are a "legal nullity". Mr Cochrane also seeks the following further relief, which is dependent upon quashing the orders of the Federal Magistrates Court: (iii) a declaration that the transfer of the Wandong property "founded upon the aforementioned nullified orders" is void and orders for "the restitution of [that] property"; (iv) an order for compensation "for the loss of the property and subsequent damages resulting from the ultra vires exercise of judicial power"; and (v) that issues "regarding the administration of non-existent judicial file numbers" be referred to the Australian Federal Police and the National Anti-Corruption Commission.

8 The grounds upon which Mr Cochrane seeks this relief in the proposed application reduce essentially to two submissions. The first is that the order made pursuant to s 66G was ultra vires the Federal Magistrates Court by reason of s 66E of the *Family Law Act*, and that the order should in any event be quashed in light of the 2006 assessment by reason of s 152 of the *Child Support (Assessment) Act 1989* (Cth). The second is that "[c]onfirmation from the Court's Registry that file ZB 3840/2001 does not exist within the authorized records establishes that any purported orders associated with this file are null and void ab initio based on the principle of administrative non-existence".

**The proposed application for a constitutional or other writ is an abuse of process**

9 Despite saying in his proposed application that he has made "numerous attempts to address these grievances through appropriate channels, including emails and correspondences with various legal entities", Mr Cochrane provides no evidence, and makes no submissions, (i) to establish that he has followed the usual court processes or (ii) to explain why those processes have not been followed. In this case, the usual court processes would have involved, or would involve, prior to an application for special leave to appeal to this Court, pursuing his claims

## 3.

through the hierarchy of appeals, or applications for judicial review and appeals, concerning the orders of the Federal Magistrates Court.

10 Mr Cochrane's affidavit is silent as to whether he sought to appeal from, or to bring an application for judicial review of, the orders of the Federal Magistrates Court made on 14 August 2001 and 21 June 2002. If Mr Cochrane has followed those usual court processes, then it would be an abuse of process for him now to seek, by his proposed application, to relitigate issues that were, or should have been, raised in the original jurisdiction of this Court.<sup>4</sup>

11 If Mr Cochrane did not seek to follow the usual court processes, the ordinary rule should apply such that it is an abuse of process to seek to invoke the original jurisdiction of this Court if doing so would circumvent the usual court processes, being through the hierarchy of tribunals and courts culminating in a final appeal—usually after satisfying the requirement of special leave to appeal—to this Court.<sup>5</sup> Indeed, it may be that the usual court processes remain available to Mr Cochrane, subject to the large obstacle of the extraordinary extension of time that is required.<sup>6</sup> But even if the transitional arrangements established upon the changes to the Federal Magistrates Court (and, subsequently, the Federal Circuit Court of Australia) would preclude Mr Cochrane from seeking an extension of time to raise the matters the subject of his proposed application in accordance with

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<sup>4</sup> *KDSP v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2021) 95 ALJR 666 at 669 [3]; 392 ALR 186 at 188; *In the matter of an application by Sarah Jane Robinson for leave to issue or file* [2024] HCASJ 11 at [11]; *Manikantan v Secretary, Department of Employment and Workplace Relations* [2025] HCASJ 42 at [17].

<sup>5</sup> *San Bao Pty Ltd v Minister for Immigration and Citizenship* (2026) 100 ALJR 391 at 393 [3]. See also *Construction Forestry Mining and Energy Union v Director of the Fair Work Building Industry Inspectorate* (2016) 91 ALJR 1 at 8 [22]; 338 ALR 360 at 367; *Dimitrov v Supreme Court (Vic)* (2017) 263 CLR 130 at 138-139 [19].

<sup>6</sup> *Federal Circuit Court of Australia Legislation Amendment Act 2012* (Cth), Sch 1, item 25; *Federal Circuit Court of Australia Act 1999* (Cth), s 8(1); *Federal Circuit and Family Court of Australia Act 2021* (Cth), s 8(2). See *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021* (Cth), Sch 1, item 109, Sch 5, item 27(1); *Family Law Act*, s 94AAA(1)(a) (in force at 31 August 2021); *Family Law Rules 2004* (Cth), rr 1.14, 22.03 (in force at 31 August 2021). See also *Judiciary Act 1903* (Cth), s 39B.

the usual court processes, Mr Cochrane has not explained why a delay in invoking the usual court processes is not his own manifest fault.<sup>7</sup>

**The proposed application for a constitutional or other writ is frivolous or vexatious**

12 The antique expression "frivolous or vexatious" in r 6.07.1, when applied to decisions regarding whether to grant leave to issue or file, has been re-expressed in numerous modern ways,<sup>8</sup> most of which reduce to the proposed application being "manifestly hopeless".<sup>9</sup> The relief sought in Mr Cochrane's proposed application depends upon quashing orders of the Federal Magistrates Court made more than 24 years ago. The proposed application is properly characterised as manifestly hopeless.

13 The starting point is that under r 25.02.2 of the *High Court Rules*, an application for a writ of certiorari must be filed within six months after the day the decision sought to be quashed was made. An extension of time to file such an application<sup>10</sup> should be refused in "all but very exceptional cases".<sup>11</sup> This is not an exceptional case. It is well-established that considerations significant to the exercise of the discretion to extend time include: the length of the delay; the explanation for the delay; the utility of the applicant advancing their case; and the prospects of the applicant in succeeding in that case.<sup>12</sup>

14 The extraordinary length of the delay in this case of more than 24 years is an overwhelming factor. The need for great caution in extending time rests on the public interest in the finality of litigation.<sup>13</sup> The greater the delay, the greater the

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<sup>7</sup> *San Bao Pty Ltd v Minister for Immigration and Citizenship* (2026) 100 ALJR 391 at 393 [3].

<sup>8</sup> See *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125 at 129. See also *Dey v Victorian Railways Commissioners* (1949) 78 CLR 62 at 91.

<sup>9</sup> *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 at 245-247 [70]-[73].

<sup>10</sup> *High Court Rules*, r 4.02.

<sup>11</sup> *Genesalio v Justice Johns* (2025) 100 ALJR 1 at 4 [15]; 426 ALR 160 at 164, citing *Re Commonwealth; Ex parte Marks* (2000) 75 ALJR 470 at 474 [16]; 177 ALR 491 at 496.

<sup>12</sup> *Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 276 CLR 579 at 589 [12], 600 [40].

<sup>13</sup> *Autodesk Inc v Dyason [No 2]* (1993) 176 CLR 300 at 302.

impairment of that public interest in finality if an extension of time were granted. It has been held that an extension of time of far less than the period in this case, without a strong explanation, would "make a mockery" of the time limits.<sup>14</sup> Mr Cochrane's explanation for the delay is that "the jurisdictional error and the lack of a validly constituted Court record were only recently discovered and confirmed by the Court Registry". He provides no explanation as to when and how these matters were discovered, and why they were not discovered at an earlier time.

15 Further, it is not apparent that there would be any utility for Mr Cochrane even if he were to succeed in quashing the orders of the Federal Magistrates Court. Apart from vexatious allegations concerning "non-existent judicial file numbers", there is nothing to suggest that Mr Cochrane would be able to overcome limitation periods concerning the consequential orders that he seeks for compensation or restitution of property.

16 In these circumstances, Mr Cochrane's proposed application for a constitutional or other writ would be manifestly hopeless even if there were strong merit to the proposed application. It is therefore not necessary to attempt to address the question of merit in any detail, save to explain that it is arguable that the federal magistrate did not commit a jurisdictional error.

17 As to the submission that the orders of the Federal Magistrates Court were ultra vires by reason of s 66E of the *Family Law Act*, that section relevantly provides that a "court having jurisdiction under [Part VII of the *Family Law Act*] must not, at any time, make ... a child maintenance order in relation to a child ... if an application could properly be made, at that time, under the *Child Support (Assessment) Act* ... for administrative assessment of child support". Even assuming that the making of orders by a federal magistrate contrary to s 66E involved jurisdictional error (a matter which would require close consideration of s 66E), it may be arguable that the circumstances did not satisfy the requirements for an application under the *Child Support (Assessment) Act*.

18 The conditions that must be satisfied before the *Child Support (Assessment) Act* applies are fact intensive,<sup>15</sup> particularly the condition, apparently relied upon by Mr Cochrane in para 7 of his affidavit, that the child's parents both

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<sup>14</sup> *Gallo v Dawson* (1990) 64 ALJR 458 at 459; 93 ALR 479 at 481. See also *Re Commonwealth; Ex parte Marks* (2000) 75 ALJR 470 at 473-474 [13]; 177 ALR 491 at 495; *Vella v Minister for Immigration and Border Protection* (2015) 90 ALJR 89 at 90 [3]; 326 ALR 391 at 392.

<sup>15</sup> *Child Support (Assessment) Act*, ss 18, 19-21.

(i) cohabited,<sup>16</sup> and (ii) separated on or after 1 October 1989.<sup>17</sup> Despite a finding of fact that Mr Cochrane and the children's mother "cohabited from 1985 to 1990", people "may be held to have separated and to have lived separately and apart notwithstanding that they have continued to reside in the same residence".<sup>18</sup>

19 The submission that the orders of the Federal Magistrates Court should be quashed in light of the 2006 assessment by reason of s 152 of the *Child Support (Assessment) Act* has no merit. Section 152 relevantly provides that, "[w]here ... an amount of child support for a child becomes payable ... under an administrative assessment ... and ... immediately before that time, a court order ... had effect under which child support or maintenance for the child was payable ... the court order ... ceases, *at that time*, to have effect" (emphasis added). Mr Cochrane does not suggest that an amount of child support became payable under an administrative assessment before the 2006 assessment.

20 Finally, Mr Cochrane's submission about the "principle of administrative non-existence" in respect of the court file for the Federal Magistrates Court proceedings does not disclose a basis upon which jurisdictional error could be established but instead reinforces the importance of the finality of litigation, particularly after more than 24 years.

## Conclusion

21 Mr Cochrane's application for leave to issue or file a constitutional or other writ filed on 19 June 2026 is refused.

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<sup>16</sup> *Child Support (Assessment) Act*, s 20(1)(a).

<sup>17</sup> *Child Support (Assessment) Act*, s 20(1)(b) read with s 2(1); *Commonwealth of Australia Gazette*, S314, 28 September 1989.

<sup>18</sup> *Family Law Act*, s 49(2). For the purpose of s 20 of the *Child Support (Assessment) Act*, the parents of a child are to be taken to have separated in circumstances in which the parties to a marriage are, under the *Family Law Act*, taken to have separated: *Child Support (Assessment) Act*, s 5 (meaning of "separated"), s 9.