

HIGH COURT OF AUSTRALIA

EDELMAN J

IN THE MATTER OF AN APPLICATION BY
SUSAN WILLIAMSON FOR LEAVE TO ISSUE OR
FILE

[2026] HCASJ 20
Date of Judgment: 20 July 2026
C11 of 2026

ORDER

1. *The application for leave to issue or file a constitutional or other writ filed 6 July 2026 is refused.*

Representation

The applicant is unrepresented

EDELMAN J.

Introduction

1 Are there "only two genders"? Is "sex or gender ... a social construct"? Is gender "fluid or alterable"? Can "a male at birth identify as a female or vice versa"? Should the 2026 Census for the Commonwealth of Australia "draw a distinction between sex and gender"?

2 Ms Williamson seeks leave to issue and file a proposed application for a constitutional or other writ. In her proposed application and supporting affidavit she raises questions including those set out above. She requires leave to issue and file the proposed application because on 1 July 2026, Gageler CJ directed a Registrar of this Court under r 6.07.2 of the *High Court Rules 2004* (Cth) to refuse to issue or file the proposed application for a constitutional or other writ without the leave of a Justice.

3 Some of the questions raised by Ms Williamson might be answered from perspectives of biology, sociology, anthropology, ethics, linguistics and philosophy of language, political philosophy, or public policy. But, by themselves, none is a justiciable question of law. None involves any question concerning the meaning and application of legislative provisions. None involves any question of legal relations or legal rights in contest, broadly any "immediate right, duty, or liability to be established by the determination of the Court".¹ None involves any dispute between parties to the proceeding of a "concrete or adequate adversarial nature ... sufficient to give rise to a justiciable controversy".² And none is said by Ms Williamson to affect any private legal relation or right of hers³ or any public duty about which she has a special or sufficiently affected interest beyond other members of the public.⁴

4 None of the questions above, or any related questions or associated relief sought by Ms Williamson, becomes a justiciable controversy by the relief sought by Ms Williamson in the form of the following declarations which mention

¹ *In re Judiciary and Navigation Acts* (1921) 29 CLR 257 at 265.

² *CGU Insurance Ltd v Blakeley* (2016) 259 CLR 339 at 351 [27], quoting Burmester, "Limitations on Federal Adjudication", in Opeskin and Wheeler (eds), *The Australian Federal Judicial System* (2000) 227 at 232.

³ *Hobart International Airport Pty Ltd v Clarence City Council* (2022) 276 CLR 519 at 538-539 [34], 557-558 [85].

⁴ *Forestry Corporation of New South Wales v South East Forest Rescue Inc* (2025) 99 ALJR 794 at 797-798 [8]; 422 ALR 358 at 362. See *Australian Conservation Foundation Inc v The Commonwealth* (1980) 146 CLR 493 at 518, 530.

legislation or (implicitly) the *Constitution*: (i) a declaration of the section or question of the 2026 Commonwealth Census which "refers to 'another term' or 'non-binary' in relation to gender or sex"; (ii) a declaration "that there only exists two genders male and female and it is ultra vires the Commonwealth to make gender or sex fluid or alterable"; and (iii) a declaration "that gender identity as defined in section 4 of the *Sex Discrimination Act 1984* (Cth) ... is invalid because it is ultra vires the Commonwealth to treat gender as fluid or changeable and therefore the category of 'non-binary' in the 2026 Census is invalid".

- 5 An application for 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".⁵ For the reasons below, Ms Williamson's proposed application falls outside the jurisdiction of this Court and is an abuse of process. Ms Williamson's application for leave to issue or file should be refused.

The application for leave to issue or file

- 6 The proposed application for a constitutional or other writ for which Ms Williamson seeks leave to issue or file is a ten-page document seeking the declaratory relief discussed above. The proposed application seeks to join the Commonwealth of Australia as the first defendant and the Treasurer of Australia, the Hon Dr Jim Chalmers MP, as the second defendant. The proposed application is verbose and confused. It contains very little legal argument. The proposed application does refer to a case in which there was a legal controversy, *Giggle for Girls Pty Ltd v Tickle*,⁶ but the legal issues of statutory interpretation and application in that decision have no bearing upon any of the broad issues that Ms Williamson seeks to agitate.

- 7 On 6 July 2026, Ms Williamson filed this application for leave to issue or file, supported by a three-page affidavit. Amongst the claims in Ms Williamson's affidavit is a claim that she be provided with an oral hearing of this application. But it is "implicit in the requirement that a document the subject of an application under r 6.07.3 be considered 'on its face' that the application falls to be determined without an oral hearing".⁷

⁵ *High Court Rules*, r 6.07.3 read with r 6.07.1. See *Re Young* (2020) 94 ALJR 448 at 451 [11]; 376 ALR 567 at 570.

⁶ [2026] FCAFC 64.

⁷ *Re Young* (2020) 94 ALJR 448 at 451 [12]; 376 ALR 567 at 570.

No "matter"

8 Ms Williamson asserts that this Court has jurisdiction under s 76(i)⁸ and s 76(ii)⁹ of the *Constitution* because, respectively, the relief she would seek concerns s 51(xi) of the *Constitution* (power with respect to "census and statistics") and Commonwealth laws, namely the *Census and Statistics Act 1905* (Cth) and the *Sex Discrimination Act 1984* (Cth). Ms Williamson also relies upon s 75(iii) of the *Constitution* because she seeks to join the Commonwealth as a party to her proceeding.

9 Both s 76(i) and s 76(ii) of the *Constitution* concern original jurisdiction of this Court "in any matter". Section 75(iii) concerns "matters" in which "the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party". Each of the provisions upon which Ms Williamson seeks to found the jurisdiction of this Court requires the presence of a "matter". A "matter" does not exist merely by agitation of some question in a court of law: "[t]he concept of 'matter' as a justiciable controversy [is] identifiable independently of the proceedings which are brought for its determination".¹⁰ Exceptional, historically justified categories aside, a matter will not exist unless there is a "concrete or adequate adversarial nature ... sufficient to give rise to a justiciable controversy"¹¹ concerning legal relations, with a dispute about those relations to be resolved by a

⁸ "The Parliament may make laws conferring original jurisdiction on the High Court in any matter ... arising under this Constitution, or involving its interpretation".

⁹ "The Parliament may make laws conferring original jurisdiction on the High Court in any matter ... arising under any laws made by the Parliament".

¹⁰ *Fencott v Muller* (1983) 152 CLR 570 at 603. See *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 at 232 [31].

¹¹ *CGU Insurance Ltd v Blakeley* (2016) 259 CLR 339 at 351 [27], quoting Burmester, "Limitations on Federal Adjudication" in Opeskin and Wheeler (eds), *The Australian Federal Judicial System* (2000) 227 at 232. See also *Hobart International Airport Pty Ltd v Clarence City Council* (2022) 276 CLR 519 at 536 [26]; *AZC20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2023) 278 CLR 512 at 527 [31]-[32], 539-540 [68].

court in a judicial manner.¹² Legal relations, or legal rights, include any "immediate right, duty, or liability to be established by the determination of the Court".¹³

10 Ms Williamson's claim involves no justiciable controversy and no matter. Ms Williamson's bald assertion that "[t]he Commonwealth in the 2026 Census is acting beyond their powers by distinguishing the two terms, sex and gender where none exists" is not based upon legal argument concerning any legal controversy. Nor does Ms Williamson explain how any of the declaratory relief that she would seek would affect any legal rights or be "directed to the determination of legal controversies".¹⁴

Further problems with the proposed application for a constitutional or other writ

11 Even if some justiciable legal question could be identified in Ms Williamson's proposed application for a constitutional or other writ, the proposed application would be an abuse of process because it fails to disclose any basis for her having standing, in the sense of a sufficient basis for power to invoke the jurisdiction of this Court.¹⁵

12 Ms Williamson identifies no private legal relation or right of hers that is affected by the purported controversy that she identifies.¹⁶ Nor does she have any special or sufficiently affected interest to complain of breach of a public duty.¹⁷ It is not sufficient that, as she claims, she "has a great interest in the law and constitutional law", "has a religious interest in gender not being fluid or alterable", or that she asserts to be "directly affected by" questions which will be asked by the Australian Bureau of Statistics "relating to sex and gender". Standing is not

¹² *AZC20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2023) 278 CLR 512 at 539 [68]. See also at 527 [31]-[32].

¹³ *In re Judiciary and Navigation Acts* (1921) 29 CLR 257 at 265. See *Hobart International Airport Pty Ltd v Clarence City Council* (2022) 276 CLR 519 at 536-537 [29], 555-556 [79].

¹⁴ *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 582.

¹⁵ *Hobart International Airport Pty Ltd v Clarence City Council* (2022) 276 CLR 519 at 555 [79]; *Forestry Corporation NSW v South East Forest Rescue Incorporated* (2025) 99 ALJR 794 at 798 [9]; 422 ALR 358 at 362.

¹⁶ *Hobart International Airport Pty Ltd v Clarence City Council* (2022) 276 CLR 519 at 538-539 [34], 557-558 [85].

¹⁷ *Forestry Corporation of New South Wales v South East Forest Rescue Inc* (2025) 99 ALJR 794 at 797-798 [8]; 422 ALR 358 at 362.

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established by "a mere intellectual or emotional concern" or a "belief, however strongly felt, that the law generally, or a particular law, should be observed, or that conduct of a particular kind should be prevented".¹⁸

13 Further, and in any event, the confused nature of Ms Williamson's proposed application and its failure to agitate any cogent legal arguments concerning any identifiable legal issue is independently sufficient for a conclusion that it is an abuse of process.¹⁹

Conclusion

14 Ms Williamson's application for leave to issue or file should be refused as both outside the jurisdiction of this Court and an abuse of process. It is appropriate that the application be disposed of other than in open court in accordance with r 13.04 of the *High Court Rules*.

¹⁸ *Australian Conservation Foundation Inc v Commonwealth* (1980) 146 CLR 493 at 518, 530.

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