

HIGH COURT OF AUSTRALIA

GORDON J

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

[2026] HCASJ 27
Date of Judgment: 24 August 2026
S73 of 2026

ORDER

1. *The ex parte application for leave to issue or file, and the application for a stay of the orders made on 17 July 2026 by the Court of Appeal of the Supreme Court of New South Wales, filed on 14 August 2026 is refused.*

Representation

The applicant is unrepresented

1 GORDON J. This is an ex parte application for leave to issue or file a second application for special leave to appeal from the whole of the judgment of the Court of Appeal of the Supreme Court of New South Wales given on 17 July 2026 in *KLH v Northern NSW Local Health District* ("NSWCA Decision").¹ The applicant, KLH, also seeks urgent and expedited consideration of the application for special leave and a stay of the orders made on 17 July 2026.

2 On 12 August 2026, Gleeson J directed that, pursuant to r 6.07.2 of the *High Court Rules 2004* (Cth), the second application for special leave to appeal from the NSWCA Decision was not to be issued or filed without the leave of a Justice first had and obtained by the applicant. This application for leave to issue or file the second application is supported by an affidavit affirmed by KLH on 13 August 2026.

3 The NSWCA Decision concerned a determination made by the Mental Health Review Tribunal under s 96(3) of the *Mental Health Act 2007* (NSW) ("MH Act") approving up to 12 treatments of electroconvulsive therapy ("ECT") to be performed on a person identified as JTR. KLH is JTR's mother and designated carer under s 71 of the MH Act. KLH's appeal against that determination was dismissed by the Supreme Court of New South Wales on 2 June 2026.² KLH then sought leave to appeal from that decision to the NSWCA. The NSWCA Decision records that the Court granted KLH leave to appeal but dismissed the appeal.³

4 KLH then filed an application in this Court in S71/2026 seeking special leave to appeal, on an expedited basis, from the NSWCA Decision. On 4 August 2026, special leave to appeal was refused by Beech-Jones J and me in *KLH v Northern NSW Local Health District* on the basis that:⁴

"The application does not raise any question of general principle and any appeal, if leave were granted, has insufficient prospects of success to warrant a grant of special leave. It is not in the interests of the administration of justice, either generally or in this case, for special leave to appeal to be granted. It would accordingly be futile to grant the expedition request that is sought."

1 [2026] NSWCA 136.

2 *KLH v Northern NSW Local Health District* [2026] NSWSC 590.

3 *KLH v Northern NSW Local Health District* [2026] NSWCA 136 at [7].

4 *KLH v Northern NSW Local Health District* [2026] HCADisp 152 at [2].

An application filed by KLH on 31 July 2026 for a stay of some of the orders of the Supreme Court of New South Wales made on 2 June 2026 and for an injunction was also dismissed.

5 KLH acknowledges that the proposed application for special leave to appeal would be KLH's second application for special leave to appeal from the NSWCA Decision. KLH contends that the proposed application does not seek to reargue the clinical merits of ECT or repeat the grounds refused by Beech-Jones J and me in *KLH v Northern NSW Local Health District*.⁵ Instead, KLH contends that the proposed second application for special leave to appeal is "advanced on a different and narrower basis: the constitutional and judicial-process question arising where the Supreme Court, under ss 163 and 164 of the [MH Act], acts as the final legal authoriser of non-consensual ECT for a capable adult who refused consent".⁶ KLH submits that the proposed application "raises a question of general principle not squarely determined by the refusal S71/2026: what minimum constitutional and procedural safeguards are required before a State Supreme Court may exercise judicial power to authorise serious non-consensual bodily interference, including whether there must be a real and practical opportunity to test the evidentiary foundation relied upon to override a capable refusal".

6 I have reviewed the earlier decision of the Supreme Court of New South Wales and the NSWCA Decision, as well as KLH's proposed second application for special leave to appeal from the NSWCA Decision and her affidavit. Neither the second application for special leave to appeal, nor the applicant's supporting affidavit, disclose any legal argument that could support the relief sought. The statutory scheme sought to be put in issue by KLH was the subject of detailed analysis by the NSWCA.⁷ Accepting as I do that the application is motivated by KLH's care for her son, I am not persuaded that there is any arguable appealable error in the NSWCA Decision. The claims set out in the proposed second application for special leave to appeal from the NSWCA Decision are manifestly hopeless.

7 Given that a document the subject of an application under r 6.07.3 of the *High Court Rules* is to be considered "on its face",⁸ it is implicit that the application falls to be determined without an oral hearing.⁹ The ex parte

5 [2026] HCADisp 152.

6 cf *Re Golding* (2020) 384 ALR 204; (2020) 94 ALJR 1014.

7 *KLH v Northern NSW Local Health District* [2026] NSWCA 136 at [21]-[61].

8 *High Court Rules*, r 6.07.1.

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

3.

application filed on 14 August 2026 for leave to issue or file an application for special leave to appeal is refused. KLH's application for a stay of the orders made on 17 July 2026 by the NSWCA is also refused.