

HIGH COURT OF AUSTRALIA

GLEESON J

IN THE MATTER OF AN APPLICATION BY
THOMAS WILLIAM RAYMOND TOWLE FOR
LEAVE TO ISSUE OR FILE

[2026] HCASJ 31

Date of Judgment: 4 September 2026

A28 of 2026

ORDER

- 1. The application for leave to issue or file an application for a constitutional or other writ is refused.*

Representation

The plaintiff is unrepresented

Introduction

1 Pursuant to r 6.07.3 of the *High Court Rules 2004* (Cth) and by application filed on 11 August 2026, the applicant seeks leave to have issued or filed an application for a constitutional or other writ ("the proposed application"). The substantive relief sought comprises several orders concerning the applicant's entitlement to amounts in respect of a disability support pension ("the disability pension") granted under the *Social Security Act 1991* (Cth) ("the Act"), particularly for the period 8 July 2016 to 27 August 2018, and including the possible correction or setting aside of "any overpayment or debt" of the disability pension during the period 26 June 2013 until 23 October 2019. The proposed respondents are the Secretary, Department of Social Services ("the Secretary") and the Commonwealth (together, "the proposed respondents").

2 In support of his application for leave, the applicant filed: (1) an affidavit made by him on 16 July 2026; (2) a second affidavit made by him on 16 July 2026, entitled "Affidavit exhibiting documents in support of Form 12 application"; (3) two bundles of exhibits comprising, respectively, 57 and 19 pages; (4) a third affidavit made by him on 7 August 2026; and (5) a document entitled "Originating submission" dated 12 July 2026 (collectively, "the filed materials").

3 The proposed application is expressed to concern "administrative treatment from about 24/12/2015 and its continuing consequences" and "any past or present de facto couple-status treatment of the [applicant] for any period from 26/06/2013 and prior to 23/10/2019, including for suspension, arrears, overpayment, debt or review consequences, unless that treatment is founded upon a lawful application of s 4 of the [Act]".

4 Section 4 is entitled "Family relationships definitions—couples". At all relevant times, s 4(2) provided that, subject to s 4(3), a person is a member of a couple for the purposes of the Act if certain criteria were satisfied. The only criterion that was capable of applying to the applicant is s 4(2)(b) which relevantly required, by s 4(2)(b)(i), that the applicant had a relationship with another person and, by s 4(2)(b)(iii), that relationship was, in the Secretary's opinion (formed as mentioned in ss 4(3) and 4(3A)), a de facto relationship. Section 4(3) of the Act provided that, in forming an opinion about the relationship between two people for the purposes of s 4(2)(b)(iii), the Secretary "is to have regard to all the circumstances of the relationship" including "in particular", the matters specified in s 4(3). Section 4(3A) of the Act provided that the Secretary must not form the opinion that the relationship between a person and his or her partner is a de facto relationship if the person is living separately and apart from the partner on a permanent or indefinite basis.

2.

5 The applicant makes two complaints about his "treatment" by the Departments that administered the Act from time to time, namely that: (1) the treatment proceeded on an "erroneous administrative premise" that on 24 December 2015, the applicant told the Department of Human Services ("the DHS") that he and Ms Chang were in a de facto relationship from 27 June 2013; and (2) the applicant was treated as a member of a couple within the meaning of s 4(2)(b) of the Act without the Secretary undertaking the inquiry required by ss 4(3) and 4(3A) of the Act.

6 For the reasons that follow, leave to issue or file the proposed application will be refused. In short, the proposed application has no prospects of success.

Background facts

7 The following facts and observations are drawn from the proposed application, the filed materials and public records of decisions of the then Administrative Appeals Tribunal ("the Tribunal") and the Federal Court of Australia. For the purposes of this application, I have assumed the correctness of the facts contained in the proposed application, except where those facts are plainly inconsistent with the filed materials. I have not adopted any finding of fact of either the Tribunal or the Federal Court, except where that fact is alleged by the applicant.

8 On 27 June 1996, the applicant was first granted a disability pension.

9 On 27 June 2013, Ms Chang first entered Australia on a "temporary subclass 417 Working Holiday visa." On 13 July 2013, the applicant and Ms Chang met. In a statutory declaration, not included in the filed materials but which was recited from and recorded in the transcript of earlier Tribunal proceedings, the applicant said:

"Our relationship began in 2013, and we have lived together for six years."

10 On 21 December 2015, Ms Chang signed a form completed by her and the applicant. In answer to questions about her current relationship status, Ms Chang marked a box next to the words "Partnered (living together in an opposite-sex or same-sex relationship including de facto)" and nominated the date that she and the applicant "started living together" as 25 or 29 October 2013.

11 On 24 December 2015, a Manager of the DHS wrote to the applicant, stating relevantly:

"I am writing to you about your Disability Support Pension. You will be paid the rate for a single person, even though you have a partner. The reason for this is that your partner is unable to claim an income support payment due to her [v]isa and she does not have any income and assets to support you."

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12 At least to this point, although the 24 December 2015 letter stated that the applicant had a partner, there is no evidence that this status affected his "treatment" for the purposes of the disability pension. To the contrary, the 24 December 2015 letter states that the applicant would be treated as a single person for the purpose of paying him the disability pension.

13 On 30 June 2016, a customer services adviser in the DHS sent the applicant a questionnaire seeking answers to questions including as to the applicant's relationship with Ms Chang and Ms Chang's employment status and income. On 6 July 2016, the applicant completed the questionnaire. He answered "yes" to the question "Do you still consider yourself partnered to [Ms] Chang?" In answer to the request "Please describe how your partner is financially supported", the applicant answered "She uses her savings, some casual work and I also contribute to her support". In answer to the request "Please describe your partner's employment status", the applicant answered "I am not privy to her bank accounts or any income...". In answer to the request "Please provide payslips for all work your partner has done in the last three months, the applicant answered "She is not a permanent resident. I am not privy to her private information. Centrelink does not support her."

14 On 8 July 2016, the applicant's pension was suspended ("the suspension decision"). The applicant contends that the suspension decision was a "consequence of the impugned de facto couple-status treatment." An internal DHS record, dated 14 July 2016, contains the following note:

"Customer will not provide partners [sic] employment details/ amount earned each fortnight ... Customer needs to be strongly advised that he is clearly partnered and they have applied for a partner visa which is pending the outcome. In order for Centrelink to pay customer [d]isability payment we are required to have all information requested for both customer and his partner regardless if she is herself receiving a payment."

15 On 26 July 2016, an Authorised Review Officer ("ARO") of the Appeals Branch of the DHS wrote to the applicant to advise him that the suspension decision was affirmed. The findings of fact included the following fact ("the erroneous fact"):

"On 24 December 2015 you provided to the department your partner's details advising that you became partnered to [Ms Chang] on 27 June 2013."

16 The 26 July 2016 letter contained written reasons for the ARO's decision, which concluded:

"On 6 July 2016 you returned the request for information to the department. You confirmed that you are still partnered to [Ms Chang] and that she is financially supported by her savings, casual work and by you."

You failed to provide to the department copies of your partner's payslips or a letter from her employer/s. In response to this request you said that your partner is not a permanent resident, you are not privy to her private information and Centrelink does not support her.

The request made by the department was not unreasonable. As already mentioned, this information is required to calculate your ongoing rate of Disability Support Pension.

As you failed to provide all of the requested information your ongoing rate of Disability Support Pension could not be established and your entitlement to the payment was correctly suspended. The payment will cancel at a future date."

17 On 13 December 2016, Ms Chang was granted a temporary partner visa.

18 The ARO's decision to affirm the suspension decision was affirmed on external review by the Tribunal (Social Services and Child Support Division) and the Tribunal's decision was subsequently affirmed by the Tribunal (General Division).¹ On 28 March 2018, the applicant's appeal to the Federal Court pursuant to s 44 of the *Administrative Appeals Tribunal Act 1975* (Cth) was dismissed.² On 20 August 2018, the applicant's appeal from the decision of the Federal Court was dismissed by a Full Court of the Federal Court.³

19 The reasons of the Full Court record a submission by the applicant that, since Ms Chang did not hold a permanent partner visa (although she had applied for one), he should have been treated as a single person for disability support pension purposes and, accordingly, there was no occasion for the suspension of his pension.⁴ Logan J (Farrell and Thawley JJ agreeing) observed that this contention "looks to have been the subject dealt with expressly by the Tribunal."⁵ Logan J concluded that there was no necessary inconsistency between the absence of a partner visa and the formation of an opinion that the person lacking a partner visa

1 *Towle and Secretary, Department of Social Services (Social services second review)* [2017] AATA 565 at [15], [35]; *Towle v The Commonwealth* (2025) 88 AAR 295 at 299 [7]-[8].

2 *Towle v Secretary, Department of Social Services* (2018) 75 AAR 288.

3 *Towle v Secretary, Department of Social Services* (2018) 264 FCR 127.

4 *Towle v Secretary, Department of Social Services* (2018) 264 FCR 127 at 132 [18].

5 *Towle v Secretary, Department of Social Services* (2018) 264 FCR 127 at 132 [18].

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is a member of a couple within the meaning of s 4 of the Act.⁶ As it could not be said that Ms Chang's visa status was determinative of whether the applicant and Ms Chang were in a de facto relationship, the questions asked in the 30 June 2016 questionnaire were lawful and the conclusion of the Tribunal (General Division) that the questions had not been answered was one that was open for that Tribunal to make.⁷

20 The applicant sought an extension of time within which to apply for special leave to appeal to this Court from the judgment of the Full Court. On 20 March 2019, that application was refused.⁸

21 On 28 August 2018, the applicant was notified that his disability pension was cancelled. The cancellation decision led to review proceedings, in which the applicant ultimately succeeded in having the decision set aside.⁹

22 The proposed application alleges that the "remaining suspended part" of the disability pension was restored with effect from 27 June 1996. However, the proposed application also refers to an "underpayment and arrears issue" for the period 8 July 2016 to 27 August 2018, which is said not to be "advanced as a separate merits dispute, but as a continuing consequence of the alleged jurisdictional error." In *Towle v The Commonwealth*,¹⁰ McDonald J dismissed summarily the applicant's application for judicial review of multiple decisions concerning his disability pension entitlements between 2016 and 2023. His Honour observed that it was unclear from the available material why the Tribunal decided that the payment of arrears should not cover the period 8 July 2016 to 27 August 2018. His Honour was evidently concerned that the Commonwealth and the Secretary "were not able to explain the legal basis on which the Tribunal, in the circumstances of [the applicant's] case, could find the disability pension should be reinstated from the date of the cancellation rather than from the date when it was first suspended."¹¹ This issue may be at the heart of the applicant's grievances concerning his disability pension, although the proposed application seeks more extensive relief. It is reasonable to assume, in the applicant's favour, that the

6 *Towle v Secretary, Department of Social Services* (2018) 264 FCR 127 at 132 [21].

7 *Towle v Secretary, Department of Social Services* (2018) 264 FCR 127 at 133 [23].

8 *Towle v Secretary, Department of Social Services* [2019] HCASL 51.

9 *Towle v The Commonwealth* (2025) 88 AAR 295 at 300 [12]-[13].

10 (2025) 88 AAR 295.

11 *Towle v The Commonwealth* (2025) 88 AAR 295 at 300 [14].

applicant seeks judicial review of decisions that include decisions relating to unpaid amounts of disability pension for the period 8 July 2016 to 27 August 2018.

23 On 23 October 2019, Ms Chang was granted a permanent subclass 801 partner visa. The applicant accepts that the relationship between him and Ms Chang should be treated as a de facto relationship for social security purposes from the date of the permanent visa grant, but not before that date.

24 The proposed application alleges that, on 6 October 2022, Services Australia acknowledged the applicant's underpayment and arrears claim for 8 July 2016 to 27 August 2018. The filed materials show that, by letter dated 6 October 2022, a Manager of Services Australia acknowledged receipt of the applicant's application for a formal review of the "decision made on 8 July 2016 not to pay you Disability Support Pension."

25 By letter dated 2 February 2023, an ARO of the Appeals and Review Branch of Services Australia wrote to the applicant in the following terms:

"Formal review of decision

On 6 October 2022 you requested a formal review of the decision to pay you back payment of Disability Support Pension from 28 August 2018 to 29 March 2019 only, rather than for the period 8 July 2016 to 27 August 2018 and the decision made not to pay you Mobility Allowance at the higher rate for the period 8 July 2016 to 27 August 2018.

Services Australia does not have legal authority to undertake a formal review of these decisions. This is because these decisions have previously been reviewed by an Authorised Review Officer and the Social Services and Child Support Division of the Administrative Appeals Tribunal (AAT1). Accordingly the review has been deleted."

26 On 7 July 2023, at a directions hearing in the Tribunal, the applicant sought a direction that the Secretary produce documents concerning the erroneous fact. The Secretary's lawyer, Mr Visser, acknowledged that the erroneous fact was an error. The Tribunal member stated that there were no relevant documents and Mr Visser did not disagree. On 19 July 2023, Mr Visser wrote an email to the Tribunal which included the following:

"With regard to request A - The Respondent cannot locate 'records of interview of Ms Ya-Fen Chang AND Thomas W R Towle which contain their individual responses above their individual signature, to the questions enacted in the Social Security Act (Cwth) particularly at sections 4(3) and s4(3A) the guide to determining if a person is in a de facto relationship with another person'." [sic]

27 The applicant contends that the erroneous fact exposed him to "administrative consequences including alleged overpayment or debt consequences founded upon" the erroneous fact. Nothing in the filed materials evidences any claim against the applicant to recover overpayment of his disability pension or any demand for monies allegedly owing by the applicant in respect of the disability pension.

The relevant principles

28 The discretion to refuse the leave sought by the applicant is to be exercised by reference to the criteria set out in r 6.07.1, namely whether 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."¹² Implicit in the requirement that a document the subject of an application under r 6.07.3 be considered "on its face" is that such an application falls to be determined on the papers,¹³ that is, without an oral hearing. While there are no "closed categories" of what amounts to an abuse of process, the concept includes attempts to invoke the jurisdiction of the Court on bases that are confused or manifestly untenable,¹⁴ or to relitigate a case that has been disposed of by earlier proceedings.¹⁵

Consideration

29 The proposed application is centred on the two complaints identified at [5] above. In effect, the applicant complains that various decisions and conduct by the proposed respondents involved jurisdictional error by reason of one or both of the two complaints.

30 The first complaint concerns the erroneous fact. An error of fact only rarely amounts to jurisdictional error, and this will generally occur where a decision is to be treated as invalid if the fact does not exist. In this case, there is no arguable case that the erroneous fact affected any decision concerning the applicant's disability pension, with the exception of the internal review of the ARO who affirmed the suspension decision. Even then, that decision was affirmed on an external review, and the first external review decision was also affirmed by a second external review decision. The result is that the operative decision in respect of the suspension of the applicant's disability pension is the second external review

12 *Re Young* (2020) 94 ALJR 448 at 451 [11]; 376 ALR 567 at 570.

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

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

15 *Walton v Gardiner* (1993) 177 CLR 378.

decision.¹⁶ The second external review decision does not include a finding in accordance with the erroneous fact.¹⁷ Accordingly, to the extent that the proposed application is based upon a contention that the erroneous fact is capable of amounting to jurisdictional error, it is manifestly untenable.

31 The second complaint is that the applicant was treated as a member of a couple within the meaning of s 4(2)(b) of the Act without the Secretary undertaking the inquiry required by ss 4(3) and 4(3A) of the Act. The proposed application does not allege a failure to undertake the mandated inquiry at a particular point or points in time, and the applicant alleges no facts from which it might be inferred that the relevant Secretary (or their delegate) did not comply with ss 4(3) and 4(3A) of the Act at any relevant time. The absence of records of interview with the applicant and Ms Chang, discovered in July 2023, could not of itself support an inference of non-compliance with ss 4(3) and 4(3A). The filed materials do not contain an allegation or evidence that the applicant was never interviewed about the matters in ss 4(3) and 4(3A).

32 Although it is not entirely clear, the applicant may contend that, prior to 23 October 2019 when Ms Chang obtained her permanent partner visa, no opinion could lawfully have been formed that the relationship between the applicant and Ms Chang was a de facto relationship. Any such contention must fail because, as the Full Court held, Ms Chang's visa status was not determinative of whether there was a de facto relationship for the purposes of s 4 of the Act.¹⁸ As this issue has been litigated, it would be an abuse of process to attempt to relitigate it.

33 If there is any arguable claim that the plaintiff can make for the non-payment of the disability pension during the period 8 July 2016 to 27 August 2018, it is not apparent from the proposed application. As explained below, there is no arguable basis for any of the asserted substantive claims for relief. If there are no prospects of succeeding upon a substantive claim, it necessarily follows that consequential relief could not be granted.

34 The first substantive claim seeks a writ of mandamus, or similar relief, "requiring the Secretary to deal according to law with the legal and financial consequences of the impugned administrative treatment, including [the disability pension] suspension, restoration and arrears without treating migration-law

16 cf *Plaintiff M174/2016 v Minister for Immigration and Border Protection* (2018) 264 CLR 217 at 241-242 [70]; *FEL17 v Minister for Immigration and Multicultural Affairs* (2025) 99 ALJR 775 at 779 [16]; 422 ALR 334 at 339.

17 *Towle and Secretary, Department of Social Services (Social services second review)* [2017] AATA 565.

18 *Towle v Secretary, Department of Social Services* (2018) 264 FCR 127 at 132 [21].

material or s 24 as having supplied or displaced the anterior inquiry required by s 4 of [the Act]." The reference to "migration-law material" appears to be a reference to Ms Chang's temporary partner visa and to s 5CB of the *Migration Act 1958* (Cth). Section 5CB defines the concept of a "de facto partner" for the purposes of the *Migration Act*. The applicant contends that the Secretary "conflated the migration-law inquiry under s 5CB" with the "distinct social-security inquiry under s 4" of the Act. As the applicant has not identified an arguable basis for a finding that there was a failure to conduct the "anterior inquiry required by s 4" in connection with any decision or conduct that adversely affected the applicant, there is no prospect that the Court might grant this relief.

35 The second substantive claim is for a writ of certiorari, or similar relief, quashing the 24 December 2015 "decision" to the extent that the applicant was treated as a member of a de facto couple. As framed, the claim reflects the fact that the applicant does not cavil with payments made to him at the rate for a single person, but only with the finding that the applicant had a partner. Whether there was an error made in finding that fact as at 24 December 2015, the "decision" was immaterial because it was accompanied by a decision to pay the applicant disability pension at the rate for a single person.

36 The third substantive claim seeks relief in respect of the erroneous fact. As explained above, there is no arguable basis for finding that this error was jurisdictional so as to invoke the exercise of this Court's supervisory jurisdiction.

37 The fourth substantive claim, seeks a writ of prohibition "preventing the Secretary from maintaining, enforcing, or giving continuing legal effect to any past or present de facto couple-status treatment" to the applicant in the period from 26 June 2013 to 23 October 2019. Prohibition is a remedy that can be granted when there is something remaining to prohibit.¹⁹ In the absence of any alleged threatened excess of power, or continuation of an unlawful course of action, the remedy has no potential application.

38 The other substantive relief sought is declaratory. In essence, the applicant seeks declarations that migration materials provided by Ms Chang to government officials could not "determine, displace or substitute" the "distinct ... inquiry" under the Act, and that the "mandated anterior inquiry" under s 4 of the Act is not to be determined by reference to migration law. These claims appear to challenge the decision of the Full Court that visa status is relevant to but not determinative of the question whether a person is a member of a couple for the purposes of social security law. Special leave to appeal was refused from that decision. In any event,

19 *R v Hibble; Ex parte The Broken Hill Proprietary Company Limited* (1920) 28 CLR 456 at 463.

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the alleged facts do not indicate that declarations in the terms sought could have any utility.

Order

39 The application for leave to issue or file an application for a constitutional or other writ is refused.