

Form 12 – Application for a constitutional or other writ

Note: see rule 25.01.1.

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

JAN MAREK KANT
Plaintiff

and

COMMISSIONER OF THE AUSTRALIAN FEDERAL POLICE
Defendant

APPLICATION FOR A CONSTITUTIONAL OR OTHER WRIT

The plaintiff applies for the relief set out in Part I below on the grounds set out in Part II below

- Part I: The plaintiff seeks a writ of *habeas corpus*; and,
1. An order releasing the plaintiff from the effect of all *control orders* and similar instruments issued against him; and,
 2. An order prohibiting all public officials from covert experimentation with the plaintiff; and,
 3. An order making available to the plaintiff all information the Commonwealth has about *control orders* and similar instruments issued against the plaintiff; and,
 4. An order for the award of damages in respect of arbitrary detention of the plaintiff.

- Part II: The plaintiff has reason to believe that he is presently held in detention. The plaintiff suspects that his detention has effect by force of a *control order* issued under division 104 of the Criminal Code.

The plaintiff was not afforded an opportunity to make submissions on the evidence given in hearings convened for the making of *control orders* against him. This is a procedural injustice and an abrogation of the plaintiff's constitutional rights.

Proceedings for the making of *control orders* are criminal proceedings. The plaintiff was not afforded a trial by jury in hearings convened for the making of *control orders* against him. This is an abrogation of the plaintiff's constitutional right to trial by jury in criminal proceedings.

The plaintiff's detention, having effect by force of a *control order* or similar instrument issued against him, interferes with his right to proceed against the Commonwealth. The plaintiff's right to proceed against the Commonwealth is guaranteed by the Constitution.

Part III: On the information presently available to the plaintiff, this matter is without precedent. The application should not be remitted to another court because a lower court is not apt to hear it.

Part IV: The plaintiff believes that *control orders* or similar instruments were issued against him for the purpose of concealing evidence of a conspiracy involving public officials, and for shielding public officials from accountability for their conduct and decisions.

The plaintiff has evidence of disinformation provided to him by the Commonwealth.

Part V: Without affording the plaintiff an opportunity to make submissions on the evidence given for issue of *control orders* or similar instruments against him, the issue of such instruments against the plaintiff is a procedural injustice. Section 71 of the *Commonwealth of Australia Constitution Act* provides for procedural fairness in proceedings where the interests of a party are liable to be affected.

Proceedings for the making of *control orders* are criminal proceedings. Continuing detention of a person by *control order* without a trial by jury is contrary to section 80 of the *Commonwealth of Australia Constitution Act*.

Control orders and similar instruments are in use to limit the plaintiff's access to information required for proceeding against the Commonwealth. The right to proceed against the Commonwealth is guaranteed by 75(iii) of the *Commonwealth of Australia Constitution Act*.

Part VI: An order for costs should not be made against the plaintiff because it would likely cause him financial hardship.

Part VII: The relevant authorities are:
1. [2022] HCA 32 at [216]:

"Could it ever be procedurally fair for a court to decide that a person was lawfully stripped of their permanent right to (freedom) for reasons which the person will never be given, based upon specific allegations about which the person will never be told, involving evidence which the person will never see and will never be able to address, and without hearing from any counsel to represent the person's interests?"

2. [2022] HCA 32 at [217]:

"No."

3. [2022] HCA 32 at [218], quoting *Home Secretary v AF [No 3]* [2010] 2 AC 269 at 355 [63]:

"[A] trial procedure can never be considered fair if a party to it is kept in ignorance of the case against [them]."

Part VIII: The relevant constitutional provisions are:

4. Section 71 of the *Commonwealth of Australia Constitution Act*:

The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

5. 75(iii) of the *Commonwealth of Australia Constitution Act*:

In all matters, in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party, the High Court shall have original jurisdiction.

6. Section 80 of the *Commonwealth of Australia Constitution Act*:

The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

The relevant statutory provisions are:

7. 30(a) of the *Judiciary Act 1903*:

In addition to the matters in which original jurisdiction is conferred on the High Court by the Constitution, the High Court shall have original jurisdiction in all matters arising under the Constitution or involving its interpretation.

8. Section 31 of the *Judiciary Act 1903*:

The High Court in the exercise of its original jurisdiction may make and pronounce all such judgments as are necessary for doing complete justice in any cause or matter pending before it, and may for the execution of any such judgment in any part of the Commonwealth direct the issue of such process, whether in use in the Commonwealth before the commencement of this Act or not, as is permitted or prescribed by this or any Act or by Rules of Court.

9. Section 32 of the *Judiciary Act 1903*:

The High Court in the exercise of its original jurisdiction in any cause or matter pending before it, whether originated in the High Court or removed into it from another Court, shall have power to grant, and shall grant,

either absolutely or on such terms and conditions as are just, all such remedies whatsoever as any of the parties thereto are entitled to in respect of any legal or equitable claim properly brought forward by them respectively in the cause or matter; so that as far as possible all matters in controversy between the parties regarding the cause of action, or arising out of or connected with the cause of action, may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters may be avoided..

10. 33(1)(f) of the *Judiciary Act 1903*:

The High Court may make orders or direct the issue of writs of habeas corpus.

11. Section 33A of the *Judiciary Act 1903*:

The High Court may by order direct that an award in an arbitration in respect of any matter over which the High Court has original jurisdiction, or in respect of which original jurisdiction may be conferred upon the High Court, shall be a Rule of the High Court.

Dated: 30 August 2023



Jan Marek Kant

To: The Defendant
Australian Government Solicitor

TAKE NOTICE: Before taking any step in the proceeding you must, within **14 DAYS** from service of this application enter an appearance and serve a copy on the plaintiff.

The plaintiff is self-represented.