FEDERAL COURT OF AUSTRALIA

JAN MAREK KANT v COMMISSIONER OF TAXATION

File number(s):	**VID 1173 of 2024**
Judgment of:	**JUDICIAL REGISTRAR CURNOW**
Date of judgment:	5 September 2025
Legislation:	*Privacy Act 1988* (Cth) ss 25(1), 25(a), 25A(2), 80U, 25, 25A, 12B, 12B(2)(a), 80U(2), 80, pt IIIA *Judiciary Act 1903* (Cth) s 80 *Regulatory Powers (Standard Provisions) Act 2014* (Cth) s 82(2), s 80, pt 4, s 80U(2) *Federal Court Rules 2011* (Cth) r 8.05, 30.2, 26.01, items 21 and 185 of sch 2, r 26.01(1), 16.21(b),(d),(e), 26.01(1)(a), s 30.32 *Evidence Act 1995* (Cth) s 98, 100(2) *Federal Court of Australia Act 1976* (Cth) s 31A(2), 31A *Freedom of Information Act 1982* (Cth) *Australian Human Rights Commission Act 1986* (Cth) *Charter of Human Rights and Responsibilities Act 2006* (Vic) *Legal Services Directions 2017* *Privacy (Tax File Number) Rule 2015* *Taxation Administration Act 1953* *Australian Human Rights Commission Amendment (Costs Protection) Act 2024* (Cth)
Cases cited:	*Edmonds v Barrington Winstanley Group Pty Ltd* [2024] FCA 821 *Azad v Avant Insurance Limited (No 2)* [2025] FCA 853 *Scordo v Commonwealth Bank of Australia* [2024] FCA 359 *Sayed v Salvation Army Housing* [2023] FCA 526 *Fortron Automotive Treatments Pty Ltd v Jones (No 2)* [2006] FCA 1401 *Blunden v Commonwealth* [2003] HCA 73

	Grueff v Virgin Australia Airlines Pty Ltd [2021] FCA 501 *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* [2001] HCA 63 *Re an application by Jan Marek Kant for leave to issue or file* [2025] HCASJ 16 *Kant v Principal Registrar of the Federal Court of Australia* [2025] FCA 274 *Spencer v Commonwealth of Australia* [2010] HCA 28
Division:	General Division
Registry:	Victoria
National Practice Area:	General
Number of paragraphs:	71
Date of last submission/s:	28 April 2025

ORDERS

VID1173 of 2024

BETWEEN:	**JAN MAREK KANT** Applicant
AND:	**COMMISSIONER OF TAXATION** Respondent
ORDER MADE BY:	**JUDICIAL REGISTRAR CURNOW**
DATE OF ORDER:	**5 SEPTEMBER 2025**

THE COURT ORDERS THAT:

1. Pursuant to s 31A(2) of the *Federal Court of Australia Act 1976* (Cth) and r 26.01(1)(a) of the *Federal Court Rules 2011* (Cth), the proceeding be dismissed.
2. The applicant pay the respondent's costs of the proceeding, to be taxed if not agreed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

BACKGROUND

1 The applicant filed an originating application on 28 October 2024 (**OA**) naming the Commissioner of Taxation as the respondent and seeking:

a) Ordinary damages under s 25(1) of the *Privacy Act 1988* (**Privacy Act**) or s 80 of the *Judiciary Act 1903* (**Judiciary Act**), in the alternative;

b) Exemplary damages in amount equal to sum tax revenue of the Commonwealth in the year ending 30 June 2024 under s 25(a) of the Privacy Act or s 25A(2) of the Privacy Act, or s 80 of the Judiciary Act, in the alternative; and

c) A civil penalty order "if necessary" under s 82(2) of the *Regulatory Powers (Standard Provisions) Act 2014* (the **RP Act**).

2 The applicant also claimed interlocutory relief which is not presently relevant.

3 The applicant filed two affidavits in support of the OA: the first (**A-1**) was filed on 28 October 2024 but, on its face, purports to have been sworn by the applicant on 29 October 2024 before a Deputy Registrar or the Magistrates' Court of Victoria. The second (**A-2**) was filed on 1 November 2024 but purports to have been sworn by the applicant on 7 November 2024 before a Registrar of the Magistrates' Court of Victoria.

4 I conducted a case management hearing in the proceeding on 3 March 2025. The applicant appeared in person and the respondent by his lawyers, who foreshadowed that an interlocutory application would be filed once the applicant filed a statement of claim. Orders were made for the applicant to file a statement of claim, which was required by r 8.05 of the F*ederal Court Rules 2011* (the **Rules**) and, thereafter, for the respondent to file an interlocutory application and submissions, with the applicant's responsive evidence and submissions due on 1 May 2025.

5 In accordance with these orders, the applicant filed a statement of claim on 7 March 2025 (**SOC**), and the respondent filed an interlocutory application on 11 April 2025 (**IA**) supported by two affidavits affirmed on 11 April 2025 by Jordan Patrick Sullivan (**R-1**) and Michael Lawrence Wright (**R-2**), and an outline of submissions on 11 April 2025 (**Respondent**).

6 In addition to three affidavits of service, the applicant filed a responsive affidavit (**A-3**) on 22 April 2025, followed by an outline of submissions (**Applicant**) and a list of authorities on 28 April 2025.

7 He also filed a Notice of Intention to Adduce Coincidence Evidence on 22 April 2025 (the **Notice**) under s 98 of the *Evidence Act 1995* (Cth) (the **Evidence Act**). The Notice refers to A-1, an affidavit of service filed by the applicant on 7 November 2024, and R-2.[1] On its face, the Notice is inapt for the purposes of s 98 of the Evidence Act. However, as the applicant is self-represented, it has been considered.

8 This should not be understood to detract from the duty imposed on all parties to a civil proceeding before the Court, whether they are legally represented or not[2], to conduct the proceeding in a way that is consistent with the overarching purpose in s 37M of the *Federal Court of Australia Act 1976* (the **FCA Act**), that is, to facilitate the just resolution of disputes:

a) according to law; and

b) as quickly, inexpensively and efficiently as possible.

9 By the IA, the respondent seeks an order for summary judgment against the applicant pursuant to s 31A(2) of the FCA Act and r 26.01 of the Rules, and an order that the applicant pay its costs, as taxed or agreed.

10 It was understood at the time of the case management hearing that the proceeding was to be determined, on the papers, by the docket judge. However, Justice McEvoy subsequently referred the IA to me for determination, noting that, under items 21 and 185 of Schedule 2 to the Rules, the power to give summary judgment for a defending party under s 31A(2) of the FCA Act and r 26.01(1) of the Rules may be exercised by a Registrar of the Court. The parties were notified of this determination on 1 August 2025.

11 For the reasons that follow, the IA is allowed, and summary judgment shall be entered for the respondent against the applicant.

[1] The Notice also refers to the submissions in Respondent, however, these submissions do not contain evidential material.
[2] *Edmonds v Barrington Winstanley Group Pty Ltd* [2024] FCA 821 at [57] (Perry J).

The Interlocutory Application – IA

12 The respondent submits that the OA should be dismissed pursuant to s 31A of the FCA Act because the applicant does not have reasonable prospects of successfully prosecuting the proceeding, for three reasons:[3]

a) there has been no interference with the applicant's privacy;

b) the applicant's claims for ordinary and exemplary damages, based on statutory provisions and common law, are misconceived; and

c) the applicant does not have standing to apply for a civil penalty order.

13 The respondent relied on the same matters in support of the alternative position in the IA, that the OA and SOC should be struck out in their entirety under r 16.21(b), (d) and (e) of the Rules, namely, that these documents contain frivolous or vexatious material, are likely to cause prejudice, embarrassment or delay in the proceeding, and fail to disclose a reasonable cause of action.

14 Section 31A(2) of the FCA Act provides as follows:

> (2) The Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:
>
> (a) the first party is defending the proceeding or that part of the proceeding; and
>
> (b) the Court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceeding or that part of the proceeding.

15 Section 31A(3) of the FCA Act provides that a defence or a proceeding or part of a proceeding need not be hopeless or bound to fail for it to have no reasonable prospect of success.

16 The respondent set out the principles relating to summary judgment in its written submissions[4] and advanced three reasons why it says the applicant has no reasonable prospect of successfully prosecuting the proceeding. It submits that a proceeding which, despite whatever attempts are made to discern a cause of action, is still not arguable, is frivolous.[5] In particular, the respondent submits that the applicant's claim for damages under ss 25 and 25A of the Privacy Act "confront a fundamental, insurmountable difficulty."[6]

[3] Respondent [5] to [7].
[4] Respondent [23].
[5] Respondent [22].
[6] Respondent [29].

17 The applicant opposes the IA and submits that it is oppressive and an abuse of process.[7] He complains that it is "wrong" and amounts to a "breach of duties imposed on him" by various instruments.[8] He disagrees that he has no prospect of successfully prosecuting the OA.[9]

18 The applicant submits that the SOC contains as much material, none of it vexatious, as is reasonably necessary for narrowing the issues in dispute.[10] He seeks leave to replead "in the alternative."[11]

19 From the submissions advanced by the parties, the success of the IA turns in large measure on whether the applicant faces, as the respondent submits, "a fundamental, insurmountable difficulty" in his pleaded case, "and any case which might be propounded by permissible amendment."[12] That is, whether the relief sought by the applicant under the Privacy Act (and at common law) is available, as a matter of law, against the respondent, and, similarly, whether the applicant has standing to apply for a civil penalty order against the respondent under the RP Act.

20 If the respondent's submissions (set out above at subparagraphs 12b) and c)) regarding the applicant's claims for ordinary and exemplary damages, and for a civil penalty order, are accepted, logic demands that the application be dismissed on the basis that the applicant has no reasonable prospect of successfully prosecuting any aspect of the proceeding.

Legal Principles

21 It is trite that the power to summarily dismiss a proceeding is not to be exercised lightly.[13] The critical question is whether, as dictated by the text of s 31A(2) of the FCA Act, the moving party has persuaded the court that the opposing party has no reasonable prospect of success.[14]

[7] Applicant [35] to [36].
[8] Applicant [34].
[9] Applicant [37].
[10] Applicant [69].
[11] Applicant [71].
[12] *Spencer v Commonwealth* [2010] HCA 28, 131 (French CJ and Gummow J).
[13] *Spencer v Commonwealth* [2010] HCA 28, 141 [60] (Hayne, Crennan, Kiefel and Bell JJ).
[14] *Spencer v Commonwealth* [2010] HCA 28, 131 to132 [24] (French CJ and Gummow J), [53] to [60] (Hayne, Crennan, Kiefel and Bell JJ).

22 Justice Colvin recently observed in *Azad v Avant Insurance Limited (No 2)* [2025] FCA 853 (**Azad**) at [9]:

> The dismissal is a consequence of the demonstrated failure to meet a fundamental procedural obligation that is essential to the fair conduct of proceedings, namely clearly and concisely stating a recognisable basis for a valid form of legal claim that is justiciable by the Court.

23 Justice Button also stated in *Scordo v Commonwealth Bank of Australia* [2024] FCA 359 (**Scordo**) at [42] that the Court's power to give judgment under s 31A of the FCA Act does not involve "mere pleading points" but is concerned with substance.

24 Her Honour noted at [53]:

> The Court's resources are finite. Parliament has, through s 31A, equipped the Court with power to avoid the waste of those resources by unmeritorious claims (and defences). While granting summary judgment is a serious matter as it brings to an end a litigant's ability to pursue claims (or defences) to trial, the Court should not shy away from exercising its powers in an appropriate case: *ThoughtWare Australia Pty Ltd v IonMy Pty Ltd* [2023] FCA 906 at [53] (Derrington J); *Woods v T&FS Woods Pty Ltd* [2023] FCA 1108 at [33] (Thomas J).

25 The principles governing summary judgment applications based on a lack of reasonable prospects, as set out in r 26.01(1)(a) of the Rules, were summarised by Justice O'Callaghan in *Sayed v Salvation Army Housing* [2023] FCA 526 (**Sayed**) at [45] and referred to by Button J in *Scordo* at [45]:

> The essential requirement for an order under s 31A or r 26.01 is that the court be satisfied that the Applicant has no reasonable prospect of successfully prosecuting the claim: *Spencer v Commonwealth* (2010) 241 CLR 118 at 131–32 [24]–[25] (French CJ and Gummow J) and 141 [60] (Hayne, Crennan, Kiefel and Bell JJ). As *Spencer* makes clear, this is a lower standard than the "General Steel test" of "hopeless" or "bound to fail" (see *Dey v Victorian Railways Commissioners* (1949) 78 CLR 62 and *General Steel Industries Inc v Cmr for Railways* (NSW) (1964) 112 CLR 125). In *Sop and Sop Pty Ltd v Cmr of Taxation* [2019] FCA 102 at [14]–[15], Kenny J said that "when well-established propositions of law deny the prospect of success" summary judgment is available. Although, as her Honour said, summary dismissal is a "serious step taken only with great care and if it is possible to conclude with confidence that there is no reasonable prospect of success", quoting *Danthanarayana v Commonwealth* [2016] FCAFC 114 at [4] (Jagot, Bromberg and Murphy JJ).

26 The test under r 26.01(1)(a) of the Rules may be satisfied where there is a defect in the pleadings which may not be cured, or where there is evidence which reasonably excludes the possibility that facts essential to the success of the claim will be able to be established.[15]

The Facts

27 Based on the evidence in A-1, A-2, A-3 and R-1 and R-2, the following chronology of facts does not appear to be in dispute.

28 On 12 November 2022 the applicant's myGov account was accessed and the 'contact details' service was used to update the applicant's mobile telephone number with their linked member services. By this process, the applicant's mobile telephone number was provided to the Australian Taxation Office (**ATO**, the body under the direction of the respondent, who is appointed to administer taxation legislation).[16]

29 The applicant submitted a request to the ATO under the *Freedom of Information Act 1982* (**FOI Act**) on 23 August 2024, seeking access to documents containing personal information connected with the applicant and the University of Melbourne.[17] An officer of the ATO wrote to the applicant on 11 September 2024 advising that 4 documents had been identified in response to the request and access was granted to 1 document in full and 3 documents in part (the **Documents**).[18]

30 The respondent submitted a further request to the ATO on 12 September 2024 (the **Request**), seeking amendment/annotation of the Documents to show he had:

a) not done work for the University of Melbourne between 1 July 2023 and 31 (sic) June 2024; and

b) not received any payments from the University of Melbourne between 01 July 2023 and 31 Jun (sic) 2024.[19]

31 In A-2, Mr Wright, solicitor for the respondent, deposes, on instructions, that the applicant's mobile telephone number was retrieved from the ATO's "Siebel" database by the officer attending to the Request.[20] The officer used the applicant's name to search for the number. The

[15] *Fortron Automotive Treatments Pty Ltd v Jones (No 2)* [2006] FCA 1401.
[16] R-1 [9].
[17] R-2 Exhibit MLW-1.
[18] A-3 Exhibit JMK-6, R-2 Exhibit MLW-2.
[19] R-2 Exhibit MLW-3.
[20] R-2 [9].

officer then called the applicant on that number on 20 September 2024 and left a voicemail message when the call went unanswered.[21]

32 The same ATO officer emailed the applicant on 24 September 2024 indicating that he had attempted to contact him by phone on 20 September 2024, and had left a voicemail, but had not received a call back.[22] In this email the ATO officer requested further information about the Request. The requested information, primarily, concerned the possibility that the applicant had been the victim of identity theft.

33 The applicant replied by email dated 25 September 2025 and attached a statutory declaration relevant to the Request.[23] He queried how the ATO officer obtained his phone number, as he hadn't provided that information "for purposes of my FOI requests."[24] The ATO officer responded by email dated 26 September 2025, indicating that they obtained the applicant's phone number from the internal ATO system.[25]

34 The applicant filed the OA on 28 October 2024.

35 On 21 November 2024 an ATO officer wrote to the applicant, indicating that, in response to the Request an income statement would be removed from the applicant's records.[26] The applicant replied by email dated 9 December 2024, stating that he was "happy to withdraw my application."[27]

36 The applicant deposes that he had one mobile phone account and that number did not change between 6 and 25 September 2024.[28]

The Parties' Submissions

Applicant

37 The SOC and the applicant's submissions are prolix. A large part of the SOC is devoted to submissions regarding the (perceived) interaction between the Privacy Act and the *Australian Human Rights Commission Act 1986* and the *Charter of Human Rights and Responsibilities*

[21] R-2 [9].
[22] A-1 Exhibit JMK-1; R-2 Exhibit MLW-4.
[23] R-2 Exhibit MLW-5B.
[24] R-2 Exhibit MLW-5A.
[25] A-1 Exhibit JMK-1.
[26] R-2 Exhibit MLW-6.
[27] R-2 Exhibit MLW-7.
[28] A-3 [10].

Act 2006 (Vic). The SOC also contains numerous references to the *Legal Services Directions 2017* (**LSD**) and Appendix B thereto, and the *Public Service Act 1999*.

38 Fundamentally, the applicant pleads that "retrieving the applicant's phone number from the ATO database was a use of his tax file number (**TFN**) and TFN information contrary to the *Privacy (Tax File Number) Rule 2015*."[29] The applicant contends that the respondent contravened s 8WB(1) of the *Taxation Administration Act 1953* (**TAA 1953**) by "using personal information about the applicant, provided by the applicant for the purposes of (the Request), to locate records of personal information about the applicant in the internal ATO system."[30]

39 The applicant also pleads, in 3 identical paragraphs, that the respondent required the applicant to provide further information for the purposes of processing the Request.[31] He separately alleges that this requirement was made "under false pretences"[32] and "by unfair means."[33]

40 The applicant pleads that:

a) he has standing in his claim to a "civil penalty order"[34]

b) the respondent is guilty of conduct "criminalised by 24(2) *Privacy Act 1988*"[35];

c) the respondent is guilty of conduct "criminalised by 12B(2(a) *Privacy Act 1988*"[36]; and

d) "the proceeding is not defamatory or otherwise vexatious."[37]

41 Under the sub-heading "Judiciary Act" the SOC refers to ss 79 and 80 of the Judiciary Act, as well as the common law and pleads that: "the common law is in this proceeding that of Australia as modified by the Constitution and statute law in force in Victoria."[38]

42 Under the sub-heading "Privacy Act" the SOC reads:

> Division 7 of Part IIIA
>
> [164] 12B(2)(a) *Privacy Act 1988* allows an application for compensation under s

[29] SOC [126]; Applicant [22].
[30] SOC [127].
[31] SOC [105] to [107].
[32] SOC [108].
[33] SOC [135] to [141].
[34] SOC [202].
[35] SOC [203].
[36] SOC [204].
[37] SOC [208].
[38] SOC [152] to [157].

> 25(1) *Privacy Act 1988* be made whether or not requirements of 25(1)(a) *Privacy Act 1988* are met.
>
> [165] **Alternatively**: 12B(2)(a) *Privacy Act 1988* provides that any natural person is, so far as he has standing in the matter, an authorised applicant for civil penalty orders required by s 25(1)(a)(i) *Privacy Act 1988*.

43 Under the sub-heading "Regulatory Powers Act" the SOC reads:

> [178] s 80 *Judiciary Act 1903* requires any pecuniary penalty ordered under 82(3) Regulatory Powers (Standard Provisions) Act 2014 in this proceeding be paid to the Applicant.

44 In his submissions the applicant explains that the source of his grievance is the use of his mobile telephone number and attempt to procure his personal information under false pretences.[39] He argues that it is not "reasonably expectable" that a person's phone number will be used for the purpose of responding to an FOI Request in circumstances where the phone number was not provided for that purpose.[40] He distinguishes between "Income tax assessment" and "FOI Act Amendment" as different purposes for which information might be used by the respondent.[41]

45 The applicant also alleges that the respondent "fabricated evidence which might suggest the amendment/annotation request under FOI Act was in fact a matter of *tax law*".[42] He refers to s 100(2) of the Evidence Act, in connection with the Notice, and seeks a direction that the coincidence rule not apply "with respect to the application for summary judgement (sic)" if the Notice is unsatisfactory. It is not clear what the applicant means by this submission: it appears that he is applying to the Court for a direction that the coincidence rule is not to apply to evidence of 2 or more related events – although this evidence is not particularised – in respect of the respondent's IA.

46 I put the Notice, and the submissions regarding it, to one side.

47 I also put to one side the applicant's submissions under the sub-heading "Abuse of Process."[43]

Respondent

48 The respondent relies on R-1 and R-2 and submits that the material facts, which are not in dispute, are not capable of supporting a case founded on an interference with the applicant's privacy because the impugned use of the applicant's telephone number was for the purpose of

[39] Respondent [15].
[40] Applicant [24].
[41] Applicant [23].
[42] Applicant [30].
[43] Applicant [32] to [37].

progressing the Request. This, according to the respondent, is a purpose relating to tax administration.[44] The respondent also denies that the email request for information described at paragraph 3231 above, was improper or unfair.[45]

49 The respondent otherwise submits that the OA should be dismissed because the applicant does not have reasonable prospects of successfully prosecuting the proceeding. This is because ss 25 and 25A of the Privacy Act are contained in Part IIIA of that Act, entitled "Credit Reporting." A plain reading of these sections indicate that orders are only available if (in addition to other matters):

a) a civil penalty order has been made under subsection 82(3) of the RP Act against the entity for a contravention of a civil penalty provision of this Part; or

b) the entity is found guilty of an offence against this Part.

50 Part IIIA of the Privacy Act regulates the privacy of information relating to credit reporting and applies to credit reporting bodies and credit providers, and the handling of credit information, credit eligibility information and permitted disclosures. It is unclear from the SOC and the facts (which are not controversial) how Part IIIA of the Privacy Act is engaged and, accordingly, how a cause of action lies against the respondent as alleged by the applicant.

51 Further, as the respondent points out, by s 82(1) of the RP Act, read together with s 80 of that Act, only the Australian Information Commissioner may apply for a civil penalty under s 80U of the Privacy Act. As noted above at paragraph 49, the imposition of a civil penalty or a finding that an entity is "guilty of an offence" against Part IIIA of the Privacy Act are preconditions to a compensation order being made under ss 25 and 25A of that Act.

52 The respondent otherwise submits, and I accept, that the applicant's submissions with regard to s 80 of the Judiciary Act as an alternative basis upon which the Court can award damages are without foundation. Section 80, together with s 79 of the Judiciary Act are choice of law provisions that aid the identification of the applicable law in a Commonwealth law area.[46]

53 Further, as the respondent submits, even if s 80 was capable of being engaged because the Privacy Act was "insufficient to carry (itself) into effect" or failed to "provide adequate

[44] Respondent [25].
[45] Respondent [28].
[46] *Blunden v Commonwealth* [2003] HCA 73; *Grueff v Virgin Australia Airlines Pty Ltd* [2021] FCA 501.

remedies and punishment"[47], the common law in Australia would not assist the applicant, as it does not recognise a tort of invasion of privacy.[48] The respondent contends, therefore, that this aspect of the applicant's claim is incurable by repleading.[49]

54 Finally, the respondent rejects the applicant's complaints regarding the conduct of the case management hearing on 3 March 2025 as unfounded and relies on the excerpt of the transcript annexed at MLW-8 to R-2.[50]

Consideration

55 It is not in issue that, by s 80U of the Privacy Act, the civil penalty provisions of that Act are enforceable under Part 4 of the RP Act. It is not disputed that, under s 80 of the RP Act, a person is an "authorised applicant" for the purpose of exercising powers in relation to the contravention of a civil penalty provision if an Act provides as such. And, by s 80U(2) of the Privacy Act, the Australian Information Commissioner is an authorised applicant in relation to these provisions.

56 The applicant pleads (see paragraph 42, above) that s12B(2)(a) of the Privacy Act alters this position. He does not explain how this is so, but submits:[51]

> In *Re Kant* (2025)[18], per Gleeson J, the High Court found it has jurisdiction to issue writs and injunctions against the *United Nations High Commissioner for Human Rights*, with 12B(2) Privacy Act relevantly providing the Act also has the effect if would have if its operation in relation to *regulated entities* were expressly confined to an operation to give effect to the Covenant.
>
> [18] [2025] HCASJ 16 at [6,7]

57 I have reviewed the reasons of Justice Gleeson in *Re an application by Jan Marek Kant for leave to issue or file* [2025] HCASJ 16. By order dated 19 March 2025, the applicant was refused leave to issue or file an application for a constitutional or other writ dated 21 February 2025.

[47] *Judiciary Act 1903* (Cth) s 80.
[48] *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* [2001] HCA 63, 258 (Gummow and Hayne JJ).
[49] Respondent [35].
[50] Respondent [37].
[51] Applicant [56].

58 Gleeson J recorded in her reasons, at [6], that the applicant identified, among other things, s 12B of the Privacy Act as the source of the High Court's jurisdiction to hear the proposed application. She stated that:

> Nothing in the proposed application, nor the supporting affidavit, discloses an arguable basis for the relief sought. The proposed application would be an abuse of process if the document was filed.[52]

59 The applicant's submissions regarding the decision in *Re an application by Jan Marek Kant for leave to issue or file* are mischievous and misleading.

60 The applicant also refers to the decision of Justice Murphy in *Kant v Principal Registrar of the Federal Court of Australia* [2025] FCA 274, and submits that:

> It is not the opinion of the Federal Court expressed in *Kant v PRFCA* that s 12B serves only to ensure the widest operation of the Privacy Act consistent with Commonwealth constitutional legislative power. [53]

61 I have reviewed the reasons of Murphy J in *Kant v Principal Registrar of the Federal Court of Australia*, in which he stated:

> The applicant's argument reflects a fundamental misunderstanding of the effect of s 12B of the Privacy Act, which is concerned with ensuring that there is a Constitutional basis for the operation of the Act. It does not operate to alter the meaning of the text of the Act as the applicant proposed. The *Explanatory Memorandum* to the Privacy Amendment (Private Sector) Bill 2000 provides that "Clause 12B is intended to ensure that the Act is given the widest possible operation consistent with Commonwealth constitutional legislative power."[54]

62 The applicant's submissions in respect of the effect of s 12B of the Privacy Act are misconceived and his description of the reasons of Murphy J in *Kant v Principal Registrar of the Federal Court of Australia* is inaccurate.

63 As noted above at paragraph 49, ss 25 and 25A of the Privacy Act empower the court to make orders, including orders for compensation, which may be recovered as a debt due to a person. However, the preconditions for such an order being sought are not satisfied on the facts of this case: among other things, no civil penalty has been imposed by the court and no finding of guilt has been made for an offence against Part IIIA, and the applicant is not an "authorised applicant" for the purpose of seeking a civil penalty. This is fatal to the proceeding.

[52] *Re an application by Jan Marek Kant for leave to issue or file* [2025] HCASJ 16 [10].
[53] Applicant [61].
[54] *Kant v Principal Registrar of the Federal Court of Australia* [2025] FCA 274 [52].

64 The respondent has made good its submissions in respect of the matters at subparagraphs 12b) and c) above. It is unnecessary to consider the matter in subparagraph 12a).

65 With regard to the IA, including the application (in the alternative) to strike out the SOC, the applicant refers to *Spencer* and submits that:[55]

> the public interest in protecting privacy and other (Constitutionally protected) human rights requires the Court not to dismiss or strike out the proceeding.[33]
>
> [33] See: *Spencer v Commonwealth of Australia* [2010] HCA 28

66 *Spencer* is not authority for this proposition. *Spencer* was a case which "involved important questions of public and constitutional law and potentially complex questions of fact."[56] It was also a case involving issues which, following its dismissal by the Full Court of this Court, were engaged by a subsequent decision of the majority of the High Court of Australia.[57]

67 This is not such a case. It ought to be dismissed.

Costs

68 The applicant complains that the respondent has failed to conduct the proceeding lawfully by reference to Part VB of the FCA Act (entitled "Case Management in Civil Proceedings"), referred to above at paragraph 8, and contends that costs ought to be awarded on "punitive/exemplary bases…as it reasonably necessary to completely, perpetually and universally deter similar misbehaviour in judicial proceedings."[58]

69 I note that six paragraphs of the SOC under the sub-heading "Fair hearing" concern the respondent's lawyer's conduct at the case management hearing on 3 March 2025.[59] The contents of these paragraphs are scandalous and irrelevant.

70 The applicant also refers to the LSD and the *Australian Human Rights Commission Amendment (Costs Protection) Act 2024* (the **AHRC Costs Amendment**) in support of his submission that the respondent pay the costs of the IA "irrespective of its outcome." This submission must be

[55] Applicant [69].
[56] *Spencer v Commonwealth* [2010] HCA 28, 133 (French CJ and Gummow J).
[57] *Spencer v The Commonwealth* [2010] HCA 28, 133 (French CJ and Gummow J),138 (Hayne, Crennan, Keifel and Bell JJ).
[58] Applicant [76] to [78].
[59] SOC [142] to [147].

rejected: the LSD are not justiciable in this Court and the AHRC Costs Amendment has no application in this proceeding.[60]

71 The respondent seeks its costs and, as the successful party, in the ordinary course, it shall have those costs.

[60] This is because it does not relate to an application made under s 46PO of the *Australian Human Rights Commission Act 1986.*