Federal Court of Australia

Ferdinands v Registrar Cridland [2022] FCAFC 80

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| Appeal from: | *Ferdinands v Registrar Cridland* [2021] FCA 592  *Ferdinands v Registrar Parkyn* [2020] FCA 1676 |
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| File numbers: | SAD 102 of 2021  SAD 172 of 2020 |
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| Judgment of: | **CHARLESWORTH, BURLEY AND CHEESEMAN JJ** |
|  |  |
| Date of judgment: | 16 May 2022 |
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| Catchwords: | **ADMINISTRATIVE LAW** — concurrent appeals – appellant lodging documents for filing – Registrars rejecting the documents under r 2.26 of the *Federal Court Rules 2011* (Cth) – primary judge dismissing applications for judicial review of the Registrars’ decisions —primary judge concluding that the Registrars did not err in characterising the documents as an abuse of process, vexatious or frivolous—primary judge concluding that r 2.26 did not confer judicial power—primary judge concluding that the litigation sought to be commenced by the appellant was beyond the jurisdiction of the Court and foredoomed to fail — no appealable error – appeals – appeals dismissed |
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| Legislation: | *Administrative Decisions (Judicial Review) Act 1977* (Cth) ss 3, 5  *Corporations Act 2001* (Cth) ss 180, 181, 182, 183, 184  *Judiciary Act 1903* (Cth) s 78B  *Federal Court Rules 2011* (Cth) r 2.26  *Civil Liability Act 1936* (SA) |
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| Cases cited: | *Bechara v Bates* (2021) 286 FCR 166  *Bizuneh v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 128 FCR 353  *Ferdinands v Registrar Cridland* [2021] FCA 592  *Ferdinands v Registrar Parkyn* [2020] FCA 1676  *Nyoni v Murphy* (2018) 261 FCR 164  *Rana v Google Inc* (2017) 254 FCR 1 |
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| Division: | General Division |
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| Registry: | South Australia |
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| National Practice Area: | Administrative and Constitutional Law and Human Rights |
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| Number of paragraphs: | 49 |
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| Date of last submission: | SAD102/2021 Appellant: 25 February 2022  SAD172/2020 Appellant: 25 February 2022 |
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| Date of hearing: | Determined on the papers |
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| **SAD 102 of 2021** |  |
| Counsel for the Appellant: | The Appellant was self-represented |
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| Counsel for the Respondent: | The Respondent did not appear |
|  |  |
| **SAD 172 of 2021** |  |
| Counsel for the Appellant: | The Appellant was self-represented |
|  |  |
| Counsel for the Respondent: | The Respondent filed a Submitting Notice |
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ORDERS

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|  | | SAD 102 of 2021 |
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| BETWEEN: | TREVOR KINGSLEY FERDINANDS  Appellant | |
| AND: | MEREDITH CRIDLAND, NATIONAL REGISTRAR, FEDERAL COURT OF AUSTRALIA  Respondent | |

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|  | | SAD 172 of 2020 |
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| BETWEEN: | TREVOR KINGSLEY FERDINANDS  Appellant | |
| AND: | NIC PARKYN, ACTING NATIONAL JUDICAL REGISTRAR AND DISTRICT REGISTRAR,  FEDERAL COURT OF AUSTRALIA  Respondent | |

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| order made by: | CHARLESWORTH, BURLEY AND CHEESEMAN JJ |
| DATE OF ORDER: | 16 MAY 2022 |

THE COURT ORDERS THAT:

1. The appeal is dismissed.

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

REASONS FOR JUDGMENT

THE COURT:

1. On 14 August 2020 and 11 November 2020 the appellant lodged documents in the South Australia District Registry. On each occasion a Registrar refused to accept the documents for filing (refusal decisions). The appellant commenced separate applications for judicial review in respect of each refusal decision. Both applications were dismissed:  *Ferdinands v Registrar Parkyn* [2020] FCA 1676 (*Ferdinands v Parkyn)*; *Ferdinands v Registrar Cridland* [2021] FCA 592 (*Ferdinands v Cridland*).
2. The appellant appeals from each of the judgments in *Ferdinands v Parkyn* and *Ferdinands v Cridland.* His appeals may be referred to respectively as the Parkyn Appeal and the Cridland Appeal. In each appeal the respondent Registrar will be referred to simply as the Registrar.
3. At the appellant’s request, the appeals are to be determined on the papers. They raise common issues and are now determined concurrently.
4. For the reasons that follow, both of the appeals should be dismissed.

# Rule 2.26

1. In refusing to accept the documents for filing, each of the Registrars acted under r 2.26 of the *Federal Court* ***Rules*** *2011* (Cth). It provides:

A Registrar may refuse to accept a document (including a document that would, if accepted, become an originating application) if the Registrar is satisfied that the document is an abuse of the process of the Court or is frivolous or vexatious:

(a) on the face of the document; or

(b) by reference to any documents already filed or submitted for filing with the document.

1. Rule 2.26 has its predecessor in O 46 r 7A of the rules as previously in force. In *Bizuneh v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 128 FCR 353 the Full Court said, of the former rule (at [15]):

The rule in its current form removed a clog on the Registrar’s discretion to act by permitting the Registrar to refuse to accept or issue a document without the Registrar being required to obtain authority from a judge so to act. The first point to note in the construction of the rule is that O 46 is directed to administration of registries of the Court. The purpose of r 7A is to assist the Registrar to maintain efficient operation of a registry and, thereby, the Court. Even without a rule in the terms of r 7A it may be thought that it would be implied that a Registrar would have the power, or be under a duty, to protect court procedures from abuse by refusing to accept a document for lodgment or filing which, on its face, would be an abuse of court process or frivolous or vexatious.

1. Rule 2.26 does not confer judicial power. As the Full Court said in ***Nyoni*** *v Murphy* (2018) 261 FCR 164 (at [38]):

…  r 2.26 is the means by which an administrative requirement is expressed that all documents filed in the Registry must not in their form and content (irrespective of any substantive assessment of their merit) be an abuse of the process of the Court or frivolous or vexatious.  …

1. And, as the primary judge correctly observed, the function of the Registrar is to ensure “compliance with procedural requirements, by refusing to accept for filing documents which *on their face* are frivolous or vexatious or would be an abuse of the Court’s process”:  *Ferdinands v Cridland* (at [12], original emphasis). The primary judge went on to observe that the words “frivolous” and “vexatious” were not defined in the dictionary contained in the Rules. In respect of their meaning, his Honour said this:

27 …  However, the term ‘vexatious proceeding’ is defined in s 37AM(1) of the *Federal Court of Australia 1976* (Cth) (the FCA Act) for the purposes of Pt VAAA of the Act. That section provides:

***vexatious proceeding*** includes:

(a) a proceeding that is an abuse of the process of a court or tribunal; and

(b) a proceeding instituted in a court or tribunal to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and

(c) a proceeding instituted or pursued in a court or tribunal without reasonable ground; and

(d) a proceeding conducted in a court or tribunal in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

28 As is apparent, that definition is not an exhaustive definition. It indicates, however, that a proceeding will be vexatious if, amongst other things, it is instituted or pursued without reasonable cause.

29 In *Prior v South West Aboriginal Land and Sea Council Aboriginal Corporation* [2020] FCA 808, McKerracher J discussed the meaning of the terms ‘vexatious’ and ‘frivolous’ appearing in r 26.01(1) of the FCR. His Honour said:

[35] The expressions ‘scandalous’, ‘vexatious’ and ‘frivolous’ can be used either separately, or in conjunction, or interchangeably, with the expression ‘abuse of process of the court’ …

[36] A matter is ‘frivolous and vexatious’ where the ‘cause of action is one which on the face of it is clearly one which no reasonable person could properly treat as bona fide, and contend that he had a grievance which he was entitled to bring before the court’ …

[37] In relation to the term ‘frivolous’:

(a) a matter that is ‘frivolous’ may be described as one that is ‘without substance or groundless or fanciful’ …;

(b) a proceeding will be ‘frivolous’ where, despite whatever attempts are made to discern a cause of action in the case, it is still not arguable …; and

(c) ‘frivolous’ may also describe a situation where a party is trifling with the Court or wasting the Court’s time …

[38] In relation to the term ‘vexatious’:

(a) a ‘vexatious’ proceeding is one without foundation, which cannot succeed, or is brought for an ulterior and collateral purpose. ‘Vexatious’ might also describe proceedings that are seriously and unfairly burdensome, prejudicial or damaging …;

(b) proceedings may also be described as ‘vexatious’ where they impose on a respondent party an unnecessary injustice in the form of a burden other than, and additional to, the burden necessarily imposed on a party to litigation instituted on reasonable grounds for the purpose of obtaining relief within the scope of the available remedy …;

(c) a proceeding is to be regarded as ‘vexatious’ where:

(i) it is instituted with the intention of annoying or embarrassing the person against whom the proceeding is brought; or

(ii) it is brought for collateral purposes, and not for the purpose of having the court adjudicate on the issues to which it gives rise; or

(iii) irrespective of the motive of the litigant, the proceeding is so obviously untenable or manifestly groundless as to be utterly hopeless …; and

(d) ‘vexatiousness’ is a quality of the proceeding rather than a litigant’s intention, so that the question is not whether the proceedings have been instituted vexatiously but whether the legal proceedings are in fact vexatious …

(Citations omitted)

30 As is apparent, a proceeding will be frivolous and vexatious if, amongst other things, it is based on a cause of action which no reasonable person could properly treat as *bona fide* or if it is without substance, groundless, or fanciful.  …

# The Registrars’ Decisions

1. In *Ferdinands v Parkyn* the appellant applied for judicial review of the Registrar’s decision to refuse to accept for filing three documents:  an originating application for judicial review, an affidavit of the appellant made on 14 August 2020 and a document titled “Notice of a Constitutional matter under s 78B of the Judiciary Act 1903”. In a letter informing the appellant of his decision to refuse to accept the documents for filing the Registrar said:

The originating process is a discursive document that does not set out any cogent grounds of review against the named respondent. It appears from the documents that you are seeking to re-litigate criminal proceedings that have already been determined in other Courts. I am satisfied having considered all the documents you have sought to file that they are on their face frivolous and vexatious. It would constitute an abuse of the process of the Court if they were accepted for filing.

1. In *Ferdinands v Cridland* the appellant expressly sought review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (ADJR Act) of the Registrar’s decision to refuse to accept for filing six documents:  an originating application, a statement of claim, an affidavit made by the appellant on 20 November 2020, a notice to produce, an outline of submissions and a document titled “Legislation Relied Upon” (containing extracts from various statutes). By a letter dated 12 November 2020, the Registrar set out r 2.26 before explaining the decision to refuse the documents for filing in the following terms:

It appears that you are seeking to re-litigate criminal proceedings that have been determined in other Courts. Having considered the documents you have sought to file, I am satisfied that they are on their face frivolous and vexatious as described in the Rule above. In accordance with that Rule, I refuse to accept the Documents.

I suggest that you seek independent legal advice in relation to this matter.

1. As will be explained, by lodging the documents the appellant in each case sought to commence proceedings to agitate grievances arising out of his dismissal from South Australia Police (SAPOL) more than twenty years ago.

# Reasons of the Primary Judge

## The reasons in *Ferdinands v Parkyn*

1. The primary judge treated the appellant’s application for review as having been made pursuant to the ADJR Act, although the originating application had not expressly said so. The primary judge noted that this Court’s jurisdiction to review a decision under the ADJR Act was limited to decisions meeting the description of “a decision to which this Act applies” as defined in s 3.
2. The primary judge provided the following brief summary of the appellant’s factual assertions as contained in the documents. The correctness of that summary is not subject to challenge. It is convenient to reproduce it here:

11 Between 1986 and 2001, the applicant was a member of South Australia Police. In 2001, the applicant was charged on summons by South Australia Police on one count of common assault against an arrested person held in the City Watch House. He was convicted and fined. The applicant’s appeal against his conviction was dismissed by a judge in the Supreme Court of South Australia. The applicant was dismissed from SA Police by reason of the offence. He then commenced proceedings in the Industrial Court of South Australia seeking relief in respect of that dismissal but it ruled that it did not have jurisdiction in the matter. That decision was upheld in the Supreme Court of South Australia (*Ferdinands v Commissioner for Public Employment* [2004] SASC 30) and by the High Court:  *Ferdinands v Commissioner for Public Employment* [2006] HCA 5; (2006) 225 CLR 130.

12 The applicant continues to be dissatisfied with that outcome. Over the succeeding years, has commenced proceedings in different courts with a view to pursuing his complaints. The applicant has come to believe that he has been the victim of a conspiracy in the criminal and curial processes in and since 2001.

13 On Saturday, 1 August 2020, the applicant wrote to the Honourable Steven Marshall MP, the current Premier of South Australia, at Parliament House, Adelaide. The subject line of the letter was as follows:

Re:  Trevor Kingsley Ferdinands – **FERDINANDS V POLICE [2001] SASC – Video Tape evidence**

14 The letter commenced with a statement of the applicant’s purpose in writing to the Premier:

My purpose in writing is to advise you that I have been seeking for some time the full and complete file including video tape evidence from [the] Attorney General’s Department including Director of Public Prosecutions and Commissioner of Police in [the] State of South Australia.

That file has not been made available to me.

The matters are now bound for the Federal Court of Australia as they involve matters of due diligence pursuant to the Corporations Act 2001 (Cth) to which you are bound by (sic).

15 The letter then went on to request intervention by the Premier so as to facilitate the provision to the applicant of various documents including the video tape of evidence used in his Magistrates Court trial, the personal notes of the Magistrate who heard the trial, the personal notes of the Supreme Court Judge who dismissed the appeal against conviction, as well as other documents. It extended over three pages and it is not easy to summarise its contents succinctly.

16 The applicant concluded the letter by saying:

As Premier you are required to show due diligence and duty of care yet you have refused to. I shall seek to bring this action as soon as possible to determine whether you have breached your due diligence provisions and duty for (sic) care provisions under the Corporations Act 2001 (Cth).

I hope to hear from you within 14 days with all evidence thereafter I shall file judicial review in the Federal Court of Australia.

17 So far as the materials lodged by the applicant for filing with the Court indicate, the Premier had not made any response to the applicant’s request by 14 August 2020 when the applicant lodged the documents for filing in the Court.

1. The proposed originating application lodged by the appellant named “Steven Marshall, Premier of South Australia” as the sole respondent. It commenced with a statement to the effect that the appellant applied to the Court to review the respondent’s decision, described as:  “declined to intervene and omitted to make a decision and settle a case out of court”.
2. There then followed 279 paragraphs followed by further material under the heading “Questions of Law” and “Answers to Questions of Law”. There were seven further paragraphs under a heading “Grounds of Application” and 14 further paragraphs under the heading “Orders sought”.
3. The primary judge concluded that the documents lodged in the Court did not disclose on their face that the Court had jurisdiction over the matters the appellant wished to litigate and so suffered from a fundamental flaw.
4. The primary judge said that there was scope for doubt as to whether the Premier of South Australia had made any “decision” within the meaning of the ADJR Act but even if he had done so, none of the statutes regulating the appellant’s former employment as a police officer were Acts to which the ADJR Act applied.
5. The primary judge continued:

29 It seems that the applicant may have been alert to this difficulty because he asserted in the documents rejected for filing by the Registrar that the Premier was bound by ss 180, 181, 182 and 184 of the *Corporations Act 2001* (Cth) and, in addition, by s 13 of the Corporations Act. The Corporations Act is of course an enactment of the Australian Parliament. However, if that was the applicant’s intention, it does not avail him as it is plain that those provisions have no application to Mr Marshall in his capacity as Premier of the State of South Australia.

30 Sections 180-184 of the Corporations Act are provisions specifying duties of directors, secretaries, officers and employees of corporations governed by the Corporations Act. The State of South Australia as a polity is not such a corporation. It is a constituent State of the Commonwealth of Australia. The Premier of the State of South Australia is not, in that capacity, a director, secretary, officer or employee of a corporation to which the Corporations Act applies. Sections 180-184 have no application to the discharge by the Premier of South Australia of his functions and responsibilities as Premier. Nor can those provisions have any application to Mr Marshall’s response (whatever it may have been) or, more likely, his non response to the applicant’s letter of 1 August 2020.

1. The primary judge said that references in the documents to s 51(xxiv) and s 51(xxv) of the Australian***Constitution*** could not assist the appellant because decisions under those placita were not decisions to which the ADJR Act applied.
2. Accordingly, his Honour said, the documents lodged by the appellant did not disclose on their face that the matter defined in them was within the jurisdiction of this Court. The proceedings were foredoomed to fail and so constituted an abuse of the Court’s process and the Registrar was correct to so conclude.
3. The primary judge went on to identify the following additional basis for dismissing the application for review (at [35]):

Moreover, the Registrar was justified in exercising the power pursuant to r 2.26 of the FCR to reject the applicant’s proposed proceedings by reason of their prolixity, which gave them a vexatious quality. The prolixity is evident in the length of the proposed application outlined earlier. It is a reasonable expectation that an application under the ADJR Act will state with conciseness the decision sought to be reviewed and identify clearly, with reference to the grounds stated in s 5 of the ADJR Act (or s 6 or s 7 as the case may be) the grounds upon which the review is sought. In the case of an application under s 5(1), the application will identify with precision the particular ground or grounds within that subsection on which the application is made and the manner in which those grounds are said to be engaged.

## The reasons in *Ferdinands v Cridland*

1. The primary judge (correctly) described the documents lodged by the appellant on 11 November 2020 at [13] to [22] of his reasons. Their content may be shortly summarised as follows:
2. The originating application listed 14 respondents including the **State** of South Australia and numerous State politicians and public office holders.
3. The statement of claim extended over 93 pages. It indicated that the appellant sought to have “negligent acts” relating to his dismissal from SAPOL “overturned and reversed”.
4. The statement of claim alleged that the State was a corporation within the meaning of the ***Corporations Act*** *2001* (Cth) and that it was subject to the duties imposed by ss 180 to 184.
5. The statement of claim also alleged that the remaining respondents knew or ought to have known that legal proceedings were taken against the appellant in 2000 and his subsequent termination from SAPOL was “negligent” and that their knowledge gave him a cause of action against each of them.
6. By the originating application, the appellant sought more than 34 forms of relief, among them orders quashing a judgment of the **Supreme Court** of South Australia on an appeal from the **Magistrates Court** of South Australia, and claims for punitive damages in the amount of $350m or otherwise calculated at a rate of $2.5m per annum.
7. His Honour went on to summarise the contentions advanced by the appellant in the following terms:

23 As was the case with the applicant’s previous applications for judicial review, the present application does not indicate the ground or grounds in s 5(1) of the ADJR Act on which he relies. The grounds of the application suggest that the applicant may intend to invoke s 5(1)(f), namely, that the Registrar’s decision involved errors of law. By way of example, the applicant alleges that the Registrar erred by misconstruing and then misapplying the words ‘frivolous’ and ‘vexatious’, the words ‘criminal proceedings’, ss 180, 181, 182, 183 and 184 of the Corporations Act, ss 31, 32, 33, 35, 44 and 73 of the *Civil Liability Act 1936* (SA), s 51(xxiv) and (xxv) of the *Australian Constitution*, and *Jones v Dunkel* [1959] HCA 8; (1959) 101 CLR 298. Moreover, the applicant’s originating application identifies (or at least purports to identify), seven question of law.

24 In addition, the applicant asserts that the Registrar was wrong in stating that it appeared that he was seeking to re-litigate criminal proceedings when instead he was intending to bring a civil law claim for damages. He also submitted that the Registrar had been in error in considering that he was attempting to ‘re-litigate’ a matter when he had not previously litigated the issues in this Court.

25 The applicant elaborated these claims in a number of ways. Amongst other things, he submitted that the Registrar had exceeded her powers under r 2.26 of the FCR. I have already addressed this aspect of the Registrar’s decision and need not repeat it. I am satisfied that the Registrar confined herself to the proper exercise of the power contained in r 2.26 and did not purport to make any substantive decision concerning the merits of the applicant’s claim.

26 For the reasons which will become apparent, it is not necessary to outline the applicant’s submissions in more detail.

1. The primary judge noted that the appellant had not specified the ground or grounds in s 5(1) of the ADJR Act upon which he relied. His Honour nonetheless observed that the appellant’s grounds alleged that the Registrar had erred in construing statutory terms, including the words “frivolous” and “vexatious” (as they appear in r 2.26 of the Rules), as well as terms contained in the Corporations Act, the *Civil Liability Act 1936* (SA) and the Constitution.
2. The primary judge did not consider it necessary to outline the appellant’s submissions in more detail. He concluded that the Registrar had not made an error in refusing to accept the documents for filing on the basis that they were frivolous or vexatious on their face and referred to six matters supporting that conclusion. In summary:
3. The appellant’s assertion that the State was a corporation for the purposes of the Corporations Act was plainly wrong (at [32]).
4. The Court did not have jurisdiction to hear claims for damages in respect of alleged negligence unless they formed a part of a single justiciable controversy which was the subject of a non-colourable Federal Claim:  ***Rana v Google*** *Inc* (2017) 254 FCR 1 at [21] – [22]. As the appellant had been precluded from relying on causes of action based on the Corporations Act, he had not articulated a Federal claim, let alone a colourable Federal claim. The Registrar was entitled to have regard to a matter “so obvious” when concluding that the proposed proceeding was frivolous or vexatious. The appellant’s reference to the Constitution did not give rise to any cause of action in him.
5. This Court did not have jurisdiction to quash a judgment of the Supreme Court on an appeal from the Magistrates Court. It was plainly frivolous for the appellant to pursue any such claim for relief in this Court.
6. The documents lodged by the appellant did not indicate a basis upon which this Court had jurisdiction in respect of the appellant’s dismissal from SAPOL in 2001.
7. The declarations sought on the originating application were “in such sweeping and general terms as to be fanciful” (at [36]). It was plain that the appellant had no reasonable prospect of persuading the Court to issue declarations in the terms sought. The primary judge gave examples demonstrating (among other things) that it was obvious that the proposed declarations lacked utility (at [36]). His Honour went on to say (at [37]):

At the very least, it can be said that the applicant’s proposed declarations are not in a form which concerns some immediate right, duty or liability to be established by the determination of the Court:  *Swee Yen Tay v Migration Review Tribunal* [2009] FCA 515; (2009) 178 FCR 1 at [25]-[27]. This was plain on the face of the documents before the Registrar.

1. It was fanciful to suppose that the Court would make an order for damages quantified in the manner proposed by the appellant. The fact that claims in those amounts had been made served to underline the Registrar’s conclusion that, on the face of the documents, the proposed proceeding was frivolous or vexatious.
2. The conclusion that the Registrar had not erred in characterising the documents as frivolous or vexatious rendered it unnecessary to consider the merits of the appellant’s other grounds for review (at [39]).

# The Parkyn Appeal

1. On this appeal the Court has before it the following material:

* the documents rejected for filing by the Registrar on 19 August 2020 together with the letter containing the Registrar’s reasons;
* the originating application filed at first instance together with an accompanying affidavit;
* a notice issued or purportedly issued under s 78B of the *Judiciary Act 1903* (Cth) in respect of an issue alleged by the appellant to have arisen under the Constitution at first instance;
* the reasons of the primary judge;
* a notice of appeal filed on 1 December 2020 together with an affidavit of the appellant filed on the same day; and
* two sets of written submissions filed by the appellant on 1 December 2020 (one of which contains nothing more than the reasons of the primary judge) and 25 February 2022.

1. There are eight grounds of appeal. They may be shortly disposed of.

## Disposition

1. The first four grounds are to the effect that r 2.26 is invalid because it is contrary to the Constitution and the separation of Judicial and Executive power for which it provides. Each such ground proceeds on the incorrect premise that r 2.26 confers judicial power upon the Registrar and/or that the Registrar purported to exercise judicial power. The primary judge correctly pointed out, by reference to *Nyoni* at [38] that the Registrar has no judicial power, but rather exercises an administrative function, which is reviewable by a judge or judges of the Court. As the Full Court recently observed in *Bechara v Bates* (2021) 286 FCR 166 at [1]:

When it comes to federal judicial power in Australia, certain matters are fundamental. The judicial power of the Commonwealth may only be exercised by judges of federal courts or other courts exercising federal jurisdiction and membership of a federal court is confined to judges appointed in accordance with s 72 of the *Constitution*. However, federal judicial power may be delegated to registrars if the power exercised by them is subject to review or appeal by a judge or judges of the court:  *Harris v Caladine* (1991) 172 CLR 84 at 94–95 (Mason CJ and Deane J), 123, 126 (Dawson J), 150–151 (Gaudron J) and 164 (McHugh J) (noting the dissenting views to the effect that federal judicial power invested in a federal court cannot be exercised by a registrar, at 109 (Brennan J) and 141 (Toohey J)).  …

1. Those grounds must be dismissed.
2. Grounds 5 to 9 are to the effect that the primary judge misconstrued or otherwise misunderstood the meaning of the words or expressions “abuse of process”, “vexatious”, “frivolous”, “criminal proceeding” and “re-litigate”. Those grounds find no support in the submissions and other materials upon which the appellant relies. The proceedings sought to be commenced by the appellant were, on their face, an attempt to re-agitate the legal controversies the history of which is described in the documents themselves:  see [13] above. The claims made fall squarely within the established meaning of those terms, as to which see [8] above.
3. More fundamentally, the grounds of appeal do not grapple with the conclusion of the primary judge that the proceeding was purportedly in the nature of an application for review of a “decision” of the Premier. The characterisation of the proceeding in that way is not the subject of challenge. Nor is the conclusion that the “decision” of the Premier did not meet the description of a decision to which the ADJR Act applies:  ADJR Act, s 3. The primary judge was correct to conclude that the litigation sought to be commenced by the appellant was foredoomed to fail. That is a sufficient basis to dismiss the Parkyn Appeal in and of itself.
4. There being no error in that conclusion (and no error otherwise demonstrated), the Parkyn Appeal is dismissed.

# The Cridland Appeal

1. The material before the Court on this appeal is as follows:

* the originating application filed at first instance together with an accompanying affidavit of the appellant;
* the reasons of the primary judge;
* a notice of appeal filed by the appellant on 18 June 2021 together with an affidavit of the appellant filed on the same day; and
* written submissions filed by the appellant on 13 November 2020, 23 November 2020, 18 June 2021, and 25 February 2022.

1. There are fifteen grounds of appeal. They are summarised below, together with our reasons for rejecting them.

## Disposition

1. Ground 1 is to the effect that the primary judge mischaracterised the proceeding as an application under the ADJR Act in circumstances where s 51(xxv) of the Constitution supplied a basis for the primary judge to intervene (presumably not only in relation to the Registrar’s decision but also in respect of the proposed litigation the appellant had sought to commence). That contention must be rejected. Section 51(xxv) of the Constitution is concerned with the legislative power of the Parliament. It does not operate to confer jurisdiction on this Court. The primary judge was correct to identify that the documents lodged by the appellant did not refer to s 51(xxv) of the Constitution in a way that disclosed a cause of action in any event.
2. Ground 2 is to the effect that the primary judge erred in failing to identify that the Registrar had exercised or purported to exercise judicial power. The primary judge did not proceed on an assumption that r 2.26 of the Rules confers judicial power on the Registrar. It is well established that it does not:  *Nyoni* at [32] and [37] – [38].
3. Grounds 3, 4 and 6 are to the effect that r 2.26 of the Rules is invalid in that it purports to confer judicial power on the Executive. Those grounds are rejected for the same reason given in relation to Ground 2.
4. Ground 5 alleges that the primary judge erred in failing to make certain substantive findings against the persons named as respondents in the litigation proposed to be commenced by the documents the appellant had lodged for filing. The proceeding at first instance was in the nature of an application for review of the Registrar’s decision. On such an application it formed no part of the function of the primary judge to determine the substantive merits of the proceeding the appellant had sought to commence.
5. Ground 7 alleges that the primary judge erred in concluding that the State was not a corporation and that the Premier was not bound to comply with the duties imposed on company directors under ss 180 to 184 of the Corporations Act. No such error is established. The primary judge was plainly correct to conclude that the proceeding sought to be commenced by the appellant was fundamentally flawed in that respect.
6. Ground 8 is to the effect that the primary judge erred in concluding that this Court did not have jurisdiction in respect of claims founded in negligence except in cases where the justiciable controversy otherwise involved a Federal claim in the sense discussed in *Rana v Google*. The ground asserts that the Court’s power to deal with such cases is to be found in s 51(xxiv) of the Constitution. As has been mentioned, s 51 of the Constitution does not confer jurisdiction on this Court.
7. Ground 9 is to the effect that the primary judge erred in concluding that this Court did not have jurisdiction to set aside a judgment of the Supreme Court on appeal from the Magistrates Court. The appellant again seeks to invoke the provisions of s 51 of the Constitution to make good that contention. This ground is rejected for the same reasons given in relation to Ground 1.
8. Ground 10 is expressed as follows:

The primary judge erred at paragraph 35 when he failed to alert his mind to substantial areas of law that initiated and activated deliberate interference by this courthouse to repair the face of the public record and uphold the Constitution namely, s 5 of the Police Act 1998 (SA), regulation 10 of Police Regulations 2014 (SA), s 5 and s 9 of the Whistleblowers Protection Act 1993 (SA), s 9, s 10, s 11 and s 13 of the Racial Discrimination Act 1975 (Cth) and s 131 and s 238 of the Criminal Law Consolidation Act 1935 (SA).

1. It is difficult to understand what is meant by this ground. It appears to assert a failure on the part of the primary judge to make findings in respect of the substantive grievance the appellant sought to agitate by lodging the documents. It formed no part of the function of the primary judge to do so.
2. Ground 11 complains that the primary judge misused the word “fanciful” in relation to the appellant’s proposed claims. The ground goes on to complain that it is the conduct of the respondents in the proposed litigation that should be characterised as “fanciful”. The primary judge was correct to describe the appellant’s claims for damages in the proposed litigation in that way. And, as has been mentioned, it formed no part of the function of the primary judge at first instance to make any substantive findings as to the merits of the claims sought to be litigated by the appellant.
3. Ground 12 alleges that it was the duty of the primary judge to “set a new formula for punitive damages”, such that the claim for damages should be awarded to him in the amounts claimed. The primary judge was under no such duty. Consistent with what we have said in connection with Ground 11, the claims for damages sought to be agitated by the appellant were appropriately characterised by the primary judge as fanciful. We respectfully agree with that characterisation.
4. Ground 13 contains a number of assertions concerning the history of the appellant’s grievance with or in relation to SAPOL, together with an assertion that there is nothing frivolous about those things. This ground proceeds from a misunderstanding of the role of the primary judge in determining whether there was error in the Registrar’s construction or application of r 2.26 of the Rules. It does not disclose appealable error.
5. Grounds 14 and 15 are to the effect that the primary judge erred in failing to make substantive adverse findings about some of the persons named as respondents in the documents rejected by the Registrar. These grounds must also fail. As has already been explained, it formed no part of the function of the primary judge to determine the claims articulated in the documents rejected for filing by the Registrar.
6. It follows that the Cridland Appeal must also be dismissed.

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| I certify that the preceding forty-nine (49) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justices Charlesworth, Burley and Cheeseman. |

Associate:

Dated: 16 May 2022