Federal Court of Australia

Towle v Secretary, Department of Social Services [2025] FCA 42

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| File numbers: | SAD 178 of 2024  SAD 179 of 2024 |
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| Judgment of: | **MCDONALD J** |
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| Date of judgment: | 4 February 2025 |
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| Catchwords: | **PRACTICE AND PROCEDURE –** interlocutory application for orders including orders setting aside procedural orders and orders seeking consolidation of proceedings – order that related proceedings be consolidated – application dismissed in part |
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| Legislation: | *Federal Court Rules 2011* (Cth) r 30.11 |
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| Division: | General Division |
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| Registry: | South Australia |
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| National Practice Area: |  |
|  |  |
| Number of paragraphs: | 21 |
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| Date of last submission: | 21 January 2025 |
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| Date of hearing: | Determined on the papers |
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| Solicitor for the Applicant | The Applicant in person |
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| Solicitor for the Respondent in SAD 178 of 2024 and the First and Second Respondents in SAD 179 of 2024 | Sparke Helmore Lawyers |
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| Solicitor for the Third Respondent in 179 of 2024 | The Third Respondent filed a submitting appearance |

ORDERS

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|  | | SAD 178 of 2024 |
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| BETWEEN: | THOMAS WILLIAM RAYMOND TOWLE  Applicant | |
| AND: | SECRETARY, DEPARTMENT OF SOCIAL SERVICES  Respondent | |

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| order made by: | MCDONALD J |
| DATE OF ORDER: | 4 FEBRUARY 2025 |

THE COURT ORDERS THAT:

1. Pursuant to r 30.11 of the *Federal Court Rules 2011* (Cth), the proceedings in SAD 178 of 2024 and SAD 179 of 2024 be consolidated into a single action, being the action designated as SAD 179 of 2024.
2. All documents filed to date in SAD 178 of 2024 be taken to have been filed in SAD 179 of 2024.

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

ORDERS

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|  | | SAD 179 of 2024 |
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| BETWEEN: | THOMAS WILLIAM RAYMOND TOWLE  Applicant | |
| AND: | COMMONWEALTH OF AUSTRALIA  First Respondent  SECRETARY, DEPARTMENT OF SOCIAL SERVICES  Second Respondent  ADMINISTRATIVE REVIEW TRIBUNAL  Third Respondent | |

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| order made by: | MCDONALD J |
| DATE OF ORDER: | 4 FEBRUARY 2025 |

THE COURT ORDERS THAT:

1. Pursuant to r 30.11 of the *Federal Court Rules 2011* (Cth), the proceedings in SAD 178 of 2024 and SAD 179 of 2024 be consolidated into a single action, being the action designated as SAD 179 of 2024.
2. All documents filed to date in SAD 178 of 2024 be taken to have been filed in SAD 179 of 2024.
3. Paragraphs 1, 2, 8 and 9 of the orders sought in the applicant’s interlocutory application filed on 14 January 2025 be dismissed.
4. The applicant’s interlocutory application filed on 14 January 2025 otherwise be listed for mention on 26 February 2025 at 9.30am (ACDT).

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

REASONS FOR JUDGMENT

MCDONALD J:

1. On 15 August 2024, the applicant, Thomas Towle, commenced two proceedings in this Court, SAD 178 of 2024 (**Action 178**) and SAD 179 of 2024 (**Action 179**).
2. The originating application in Action 178 identifies it as an application for judicial review using Form 66, which is the form used for applications under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**) and r 31.01 of the *Federal Court Rules 2011* (Cth). That originating application runs to some 50 pages. It is apparent that at least one object of the application is to seek review of a decision, or perhaps multiple decisions, made by the Administrative Appeals Tribunal. The only respondent to Action 178 is the Secretary of the Department of Social Services (**Secretary**).
3. The originating application in Action 179 is identified on its face as an application for relief under s 39B of the *Judiciary Act 1903* (Cth). That originating application runs to 13 pages. In Action 179, Mr Towle also filed a statement of claim of 18 densely packed pages. The respondents named in Action 179 are the Commonwealth of Australia (**Commonwealth**), the Secretary and the Administrative Appeals Tribunal. The Administrative Review Tribunal (**Tribunal**) has since been substituted for the Administrative Appeals Tribunal as a party to the proceedings. It appears from the cross-references in the headings of the two originating applications that the two proceedings are intended to be interrelated.
4. At a case management hearing held on 2 December 2024, I made orders in each of the proceedings requiring Mr Towle, by 13 January 2025, to file a document of no more than three pages, identifying the decision or decisions under review; containing the grounds of review for each ground he wished to pursue; and identifying what conduct was relied on and which causes of action were maintained or were not maintained. It was hoped that such a document would enable me, and the respondents, to better understand the nature of Mr Towle’s case. Mr Towle subsequently sought (and obtained) permission to file a document of up to six pages. On 9 January 2025, Mr Towle filed an affidavit of six pages in Action 179 with a view to complying with this order.
5. At the case management hearing on 2 December 2024, the Commonwealth and the Secretary had stated that they intended to file an application for summary dismissal in relation to all or part of one or both of the proceedings. In light of that intimation, I also made orders requiring the Commonwealth and the Secretary to file any such application by 10 February 2025 and excusing them from filing a defence until further order, or until the determination of any application that might be made for summary dismissal. The date for that step to be taken was fixed after the date fixed for the filing of Mr Towle’s document, so that the Commonwealth and the Secretary would have the benefit of that document when deciding whether to apply for summary dismissal and the scope of any application they might decide to make.
6. At the case management hearing on 2 December 2024, I did not make any orders consolidating the two proceedings but indicated that that question would be considered at the next case management hearing. The two proceedings were adjourned to a further case management hearing on 26 February 2025.
7. On 14 January 2025, Mr Towle filed an interlocutory application in Action 179. The orders sought by Mr Towle in that application are identified in the following terms:

**Interlocutory orders sought**

I respectfully ask this Honourable court to:

1) **urgently** relevantly amend or set aside its own order made on 02/12/2024 THAT: *“By 10 February 2025, the first and second respondents file and serve any application for summary dismissal of the whole or part of the proceeding.”* and/or,

2) dismiss any application for summary dismissal, if any are filed by either or both of the said respondents and/or,

3) set aside its own order THAT: *“Until further order, or until the determination of any application for summary dismissal, the first and second respondents be excused from filing a defence”* and/or;

4) order that the first and/or second respondent file a defence by [a date set by the Court] and /or;

5) order THAT; the matter/s SAD178 of 2024 be merged with matter SAD179 of 2024 as previously requested by me and that the merged matter progress to hearing, where all the primary and associated erroneous decisions may be examined by the Court free from the constraints of unfounded administrative assertions or any abuse of process or further intimidatory behviours [*sic*] and/or

6) examine the matter/s with a mind to award damages and compensation including repayment of $5000 Court costs paid to Sprake Helmore, and commensurate with the financial losses, deprivation of a reasonable standard of living for a welfare recipient, consequent unfair expenses incurred, and the degree of emotional and psychological trauma reasonably expected to flow from nigh on 9 years of what was in effect prolonged and consistent abuse of power and vexatious and frivolous abuse of process not remotely authorised by any legislation and/or;

7) make any other order or orders for the relief of and/or to compensate Ms Ya-Fen Chang and/or myself this Honourable Court thinks reasonable in the circumstances and/or with a view to disincentivise the respondent/s from making future abuses of the law and;

8) make any other order or orders, any interpretation/s of law, any declaration/s or any comment or comments relevant to the behaviour of or the application of law by government agencies, which this Honourable Court thinks necessary, relevant to the true facts and in the interests of the Australian community and for good jurisprudence and;

9) make any other order/s requested or implied within forms 66 and 69 I may have inadvertently omitted, not already requested above.

(Emphasis in original.)

1. As is evident, this interlocutory application seeks a range of different orders. Only the first order sought was identified as asking the Court to act “urgently”. The third and fourth orders sought were closely connected with the first. It seemed to me that I should, as expeditiously as possible, determine (at least) whether to make the first, third and fourth orders sought, particularly given that the first order seeks the setting aside of an existing order that contemplates action on the part of the Commonwealth and the Secretary by 10 February 2025.
2. I formed the view that it would not be an efficient use of the Court’s or the parties’ resources to list Mr Towle’s interlocutory application for oral hearing before the next case management hearing that had already been listed for 26 February 2025. In order to facilitate the efficient determination of at least the urgent aspects of Mr Towle’s interlocutory application, on 14 January 2025 I made orders requiring that that interlocutory application be determined on the papers and requiring Mr Towle to file and serve written submissions in relation to the interlocutory application by 24 January 2025. On 21 January 2025, Mr Towle filed written submissions in accordance with those orders. I have had regard to those submissions.
3. The first order sought in Mr Towle’s interlocutory application filed on 14 January 2025 is that the Court set aside order 2 of the orders I made on 2 December 2024, requiring the Commonwealth and the Secretary to file any application for summary judgment by 10 February 2025. As I understand Mr Towle’s submission, the reason he contends that this order should be made is that it should now be apparent that the two proceedings have merit and ought not be summarily dismissed.
4. Order 2 of the orders made on 2 December 2024 was a procedural order that was made after hearing from all relevant parties, including Mr Towle. It was made in the knowledge that Mr Towle was also being required to file a further document designed to clarify his case. The terms of order 2 allow for the possibility that the Commonwealth and the Secretary may elect not to file an application for summary judgment, and otherwise fix a date by which they are to file any such application, if they decide to take that course. The existing order does not affect Mr Towle’s substantive rights. A party to a proceeding is entitled to make an application for summary judgment without first obtaining the leave of the Court (see r 26.01 of the *Federal Court Rules*), so the order simply makes clear that, if an application for summary judgment *is* to be made by the Commonwealth and the Secretary, that should be done by the date identified in the order. There have been no relevant changes in circumstances that were not anticipated when the order was made. I remain of the view that the order was and is an appropriate one.
5. For these reasons, I decline to make the first order sought in Mr Towle’s interlocutory application filed on 14 January 2025. If the Commonwealth and the Secretary do file an application for summary judgment, they should do so by 10 February 2025, and any such application will be mentioned at the same time as the next scheduled case management hearing on 26 February 2025. Any application for summary judgment that may be filed will not be decided then, but the parties will have the opportunity at that time to address me about the way any such application should be dealt with procedurally.
6. The third order sought in Mr Towle’s interlocutory application filed on 14 January 2025 is that the Court set aside order 3 of the orders made by me on 2 December 2024, which excused the Commonwealth and the Secretary from filing a defence for the time being. But for that order, r 16.32 of the *Federal Court Rules* would have required that each of the respondents file a defence in Action 179 within 28 days of the filing of the statement of claim. I am not inclined to vary order 3, at least until it is known whether or not the Commonwealth and the Secretary do intend to seek summary judgment.
7. The fourth order sought by Mr Towle in his interlocutory application would set a date for the filing of a defence. Without meaning any disrespect to Mr Towle, the statement of claim he has filed is not in a conventional form and would not be easy to plead to by way of defence. I am mindful of the need for the proceedings to be determined in as efficient a manner as possible, while ensuring fairness to both Mr Towle and the respondents. If the Commonwealth and the Secretary are entitled to summary judgment, it may be unnecessary for them to incur the costs of preparing a defence. In saying that, I am of course expressing no view as to the merits of any summary judgment application. I will hear the parties at the next case management hearing as to whether the respondents should be required to file a defence at this stage and, if so, the date by which they should do so. I do not consider that it is necessary or appropriate to determine this issue on an urgent basis before the next listed case management hearing.
8. The second order sought by Mr Towle is that any application by the respondents for summary judgment be dismissed. At this stage, no application for summary judgment has been filed. If and when such an application is filed, the Court will consider it on its merits, having regard to the submissions made by all parties. Mr Towle will have an opportunity to make submissions as to why summary judgment should not be granted. If an application for summary judgment is unsuccessful then it will be dismissed; it is not necessary for a party who seeks to resist summary judgment to make its own interlocutory application that any application for summary judgment be dismissed. For these reasons, the second order sought by Mr Towle is premature and unnecessary. I will dismiss the application for this order; this will not prejudice Mr Towle’s position in the event that the Commonwealth and the Secretary do apply for summary judgment.
9. The fifth order sought by Mr Towle repeats his request (previously made in a separate interlocutory application filed by him on 17 September 2024, and orally at the case management hearing on 2 December 2024) that the two proceedings be joined. I indicated at the last case management hearing that I would revisit this question at the next case management hearing. However, it is convenient to deal with it in this judgment. It appears that, at the least, the two proceedings are based on facts and circumstances that overlap to a significant extent. It is also clear from the headings in the originating applications that, although they were filed as separate documents, Mr Towle’s intention has always been that they should be consolidated into one action. It also appears to me that the Tribunal is probably a necessary respondent to Action 178, even though it was not named as a respondent in that proceeding. Consolidating both proceedings into the single action, Action 179, will have the effect that the Tribunal (as well as the Secretary and the Commonwealth) will be a respondent in respect of all matters raised by Mr Towle. There is no prejudice to the respondents in the two proceedings being consolidated, and doing so will simplify the filing of documents in the future. For these reasons, I will make orders pursuant to r 30.11 of the *Federal Court Rules* (in each of Action 178 and Action 179) to the effect that the proceedings be consolidated into a single action, to be designated as action no SAD 179 of 2024, and that all documents filed to date in Action 178 be taken to have been filed in Action 179.
10. The sixth order sought is that the Court “examine the matter/s with a mind to award damages and compensation”. It appears to be directed to final relief that Mr Towle seeks in the two proceedings. The seventh order is of a similar kind, but relates to orders for relief and/or compensation to Mr Towle and Ya-Fen Chang. I note that Mr Towle described Ms Chang as an “interested party” or “interested person” in some of the documents filed by him, but Ms Chang is *not* an applicant in the proceedings – so it is not apparent that any order in her favour could be made. To the extent that Mr Towle seeks orders that compensation or other relief be granted to Ms Chang, this is another issue that may need to be mentioned at the next case management hearing. In any case, it is not necessary for a party to apply, by way of an interlocutory application, to have the Court consider the substantive issues raised in a proceeding.
11. Although Mr Towle’s interlocutory application does not in terms seek an order for summary judgment in his favour, the submissions filed in support of it do state that he seeks summary judgment on the basis that the respondents “have no genuine prospect of success against [his] claims”. In that context, I shall proceed on the basis that the sixth and seventh orders sought in the interlocutory application can potentially be understood as an application for summary judgment in favour of Mr Towle. If that is right, then it seems that there is a prospect that the Court may have before it at the next case management hearing two competing applications for summary judgment, by Mr Towle on the one hand and by the Commonwealth and the Secretary on the other. If that is the case, then consideration will need to be given to how those applications can be decided most efficiently – for example, whether they should be heard together.
12. The eighth and ninth orders sought by Mr Towle are generic and effectively ask the Court to make other orders that have not been identified by him. The Court has broad powers to make orders to provide appropriate final relief if Mr Towle ultimately establishes that administrative decisions affecting him are affected by relevant error, or if he establishes a cause of action against one or more of the respondents. It is not necessary for Mr Towle to make an interlocutory application asking the Court to consider what orders should be made to give effect to its conclusions. Insofar as the intention behind the eighth and ninth orders is to invite the Court to conduct its own inquiry, or to pursue a case on behalf of Mr Towle that he himself has not articulated, it is not the proper role of the Court to do that. I consider that the appropriate course is to dismiss the application for the eighth and ninth orders; again, that will not adversely affect Mr Towle’s substantive position in the proceedings.
13. For these reasons, I will make an order dismissing Mr Towle’s interlocutory application filed on 14 January 2025 insofar as it seeks the first, second, eighth and ninth orders identified by him. I will make an order consolidating both proceedings into Action 179, and consequential orders. The remainder of the interlocutory application will remain undetermined at this stage and will be mentioned at the same time as the case management hearing that is already listed on 26 February 2025.
14. To avoid doubt and for Mr Towle’s benefit in particular, I emphasise that the orders I have made do not affect his substantive rights or his capacity to advance arguments about the substance of his claims.

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| I certify that the preceding twenty-one (21) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice McDonald. |

Associate:

Dated: 4 February 2025