



## HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA  
CANBERRA REGISTRY

No. C3 of 2024, No. S24/2024, No. C4/2024

BETWEEN:

**COMMONWEALTH OF AUSTRALIA**

Appellant

and

**MR STRADFORD (A PSEUDONYM)**

First Respondent

**HIS HONOUR JUDGE SALVATORE PAUL VASTA**

Second Respondent

**STATE OF QUEENSLAND**

Third Respondent

BETWEEN:

**STATE OF QUEENSLAND**

Appellant

and

**MR STRADFORD (A PSEUDONYM)**

First Respondent

**HIS HONOUR JUDGE SALVATORE PAUL VASTA**

Second Respondent

**COMMONWEALTH OF AUSTRALIA**

Third Respondent

BETWEEN:

**HIS HONOUR JUDGE SALVATORE PAUL VASTA**

Appellant

and

**MR STRADFORD (A PSEUDONYM)**

First Respondent

**COMMONWEALTH OF AUSTRALIA**

Second Respondent

**STATE OF QUEENSLAND**

Third Respondent

**SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE  
STATE OF SOUTH AUSTRALIA (INTERVENING)**

**Part I: CERTIFICATION**

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1. These submissions are in a form suitable for publication on the internet.

**Part II: BASIS OF INTERVENTION**

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2. The Attorney-General for the State of South Australia (**South Australia**) seeks leave to intervene in proceedings numbered C3/2024, S24/2024 and C4/2024 pursuant to rules 42.08A and 44.04 of the *High Court Rules 2004* in order to advance submissions that are generally in support of Queensland and the Commonwealth.

**Part III: LEAVE TO INTERVENE**

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3. South Australia's interests are likely to be substantially affected by the outcome of the proceedings in this Court.<sup>1</sup> If the decision of the Trial Judge is upheld, South Australian police and prison authorities, and thereby the State itself,<sup>2</sup> may be exposed to liability for executing unlawful orders made by inferior courts established by both South Australia and the Commonwealth.<sup>3</sup>
4. South Australia's written submissions, as supplemented by brief oral submissions, will assist the Court to reach a correct determination without resulting in undue cost or delay.<sup>4</sup>

**Part IV: SUBMISSIONS**

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**Overview**

5. South Australia's submissions may be summarised as follows:
  - 5.1. Errors committed by inferior courts should only rarely be characterised as jurisdictional.<sup>5</sup>
  - 5.2. Nonetheless, Judge Vasta did fall into jurisdictional error in declaring Mr Stradford guilty of contempt and ordering his imprisonment. Accordingly, the declaration and order were void *ab initio*, thereby affording Judge Vasta no protection from civil liability.<sup>6</sup>

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<sup>1</sup> *Roadshow Films Pty Ltd v iiNet Ltd* (2011) 248 CLR 37, [2] (the Court).

<sup>2</sup> *Police Act 1988 (SA)*, s 65; *Public Sector Act (SA)*, s 74.

<sup>3</sup> The State is obliged to receive and hold in its prisons persons who have been ordered to be detained by a Federal Court: *Constitution*, s 120; *Crimes Act 1914* (Cth), ss 18(2), 19A.

<sup>4</sup> *Roadshow Films Pty Ltd v iiNet Ltd* (2011) 248 CLR 37, [4], [6] (the Court).

<sup>5</sup> [6]-[11] below.

<sup>6</sup> [12]-[16] below.

5.3. In contrast to the declaration and order, the warrant of commitment issued by Judge Vasta, which was regular on its face and within the subject matter jurisdiction of the Federal Circuit Court (**the FCC**), was not void *ab initio*. Accordingly, the warrant did afford those persons to whom it was directed, including the Marshal of the FCC, Queensland Police and Queensland Corrective Services, protection from civil liability.<sup>7</sup>

### **Jurisdictional error of inferior courts**

6. Many of the issues that arise in the present proceedings can be clarified upon a careful consideration of the jurisdictional limits that condition the powers conferred on inferior courts.<sup>8</sup> Those limits are critically different to the jurisdictional limits that commonly attend the exercise of powers by administrators and tribunals.<sup>9</sup> Administrators and tribunals will commonly fall into jurisdictional error if they breach any of the express or implied rules that govern the exercise of powers conferred on them in a manner that is material.<sup>10</sup> Generally, a material error of law will undermine the jurisdiction of an administrator or tribunal.<sup>11</sup> By contrast, it is fundamental that inferior courts may commit many kinds of errors, including errors of law, that do not undermine their jurisdiction.<sup>12</sup> Such errors, although not jurisdictional, may be remedied on appeal.<sup>13</sup>
7. The narrow compass of jurisdictional error committed by inferior courts promotes finality in the exercise of judicial power because it reduces the scope of “outstanding question[s]” concerning the validity of court orders, which cannot be finally

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<sup>7</sup> [17]-[21] below.

<sup>8</sup> The Trial Judge described this as the “thorny” and “critical” question at [208] and [316].

<sup>9</sup> *Craig v South Australia* (1995) 184 CLR 163, 179 (the Court); see also, 176.

<sup>10</sup> *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12, [3] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot JJ), [38] (Beech-Jones J). Whether the failure of an administrator or tribunal to conform with statutory standards in the exercise of their powers undermines jurisdiction is a question of statutory construction: *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355.

<sup>11</sup> *Craig v South Australia* (1995) 184 CLR 163, 179 (the Court); *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531, [68] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

<sup>12</sup> *Parisiennne Basket Shoes Pty Ltd v Whyte* (1938) 59 CLR 369, 389 (Dixon J), 394 (Evatt J agreeing), 394 (McTiernan J agreeing); *Craig v South Australia* (1995) 184 CLR 163, 179-180 (the Court); *Craig v Workers Compensation Tribunal* (2004) 90 SASR 490, [61] (Doyle CJ); *Police (SA) v Lymberopolous* (2007) 98 SASR 433, [29] (Doyle CJ), [74], [82] (Bleby J and Sulan J agreeing); *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531, [68] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ); *Stanley v Director of Public Prosecutions (NSW)* (2023) 97 ALJR 107, [17]-[18] (Gageler J).

<sup>13</sup> *Parisiennne Basket Shoes Pty Ltd v Whyte* (1938) 59 CLR 369, 389 (Dixon J), 394 (Evatt J agreeing), 394 (McTiernan J agreeing).

ascertained until determined by a superior court in subsequent proceedings.<sup>14</sup> It promotes legal certainty because it allows for parties, including third parties, to order their affairs on the assumption that the orders of inferior courts may be relied upon unless and until they are set aside; they cannot be ignored or subjected to collateral attack.<sup>15</sup>

8. The confined scope of jurisdictional error committed by inferior courts also has constitutional dimensions. It promotes judicial independence by reducing the exposure of inferior court judges to liability.<sup>16</sup> Further, legislation conferring jurisdiction on inferior courts should not readily be construed as intending to impose jurisdictional limits in circumstances where non-jurisdictional errors may be corrected on appeal. In this way, the narrow scope of jurisdictional error committed by inferior courts conforms with the integrated system for appeals provided for by Chapter III of the *Constitution*.<sup>17</sup> It also reflects the judicial professionalism, training and qualifications of most inferior court judges and the confidence that is reposed in inferior courts.<sup>18</sup>
9. For all of these reasons, there is a strong presumption that the statutory requirements governing inferior courts, even when objectively expressed, are directed to the exercise of power without imposing jurisdictional limits.<sup>19</sup>

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<sup>14</sup> *Parisiennne Basket Shoes Pty Ltd v Whyte* (1938) 59 CLR 369, 389 (Dixon J), 394 (Evatt J agreeing), 394 (McTiernan J agreeing) (“Conceding the abstract possibility of the legislature adopting such a course, nevertheless it produces so inconvenient a result that no enactment dealing with proceedings in any of the ordinary courts of justice should receive such an interpretation unless the intention is clearly expressed.”); *Rajski v Powell* (1987) 11 NSWLR 522, 534 (Kirby P), 539 (Priestley JA), 537 (Hope JA agreeing); *Re Gray; Ex parte Marsh* (1985) 157 CLR 351, 374 (Mason J), 394 (Dawson J); *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531, [57] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ); *New South Wales v Kable* (2013) 252 CLR 118, [56] (Gageler J); *Stanley v Director of Public Prosecutions (NSW)* (2023) 97 ALJR 107, [17] (Gageler J). This principle finds expression in s 14 of the *Federal Circuit Court of Australia Act 1999* (**FCC Act**).

<sup>15</sup> *Posner and Collector for Inter-State Destitute Persons (Victoria)* (1946) 74 CLR 461, 483 (Dixon J); *Stanley v Director of Public Prosecutions (NSW)* (2023) 97 ALJR 107, [17] (Gageler J).

<sup>16</sup> *Garnett v Ferrand* (1827) 6 B & C 611, 625; 108 ER 576, 581 (Lord Tenterden CJ); *Anderson v Gorrie* [1895] 1 QB 668, 670-671 (Lord Esher MR); *Sirros v Moore* [1975] QB 118, 132-333, 136 (Lord Denning MR); *Pierson v Ray* 286 US 547 (1967), 553-554; *Yeldham v Rajski* (1989) 18 NSWLR 48, 69 (Hope AJA); *Najjar v Haines* (1991) 25 NSWLR 224, 233 (Kirby P); *Rajski v Powell* (1987) 11 NSWLR 522, 528 (Kirby P), 539 (Priestley JA), 537 (Hope JA agreeing); *Wentworth v Wentworth* (2000) 52 NSWLR 602, [24], [35] (Fitzgerald JA), [260] (Heydon JA), [271] (Davies AJA agreeing); *Fingleton v The Queen* (2005) 227 CLR 166, [38]-[39] (Gleeson CJ).

<sup>17</sup> The relevance of the position of inferior courts within the judicial hierarchy was acknowledged in the analysis of this Court in *Craig v South Australia* (1995) 184 CLR 163, 176 (the Court); *Rajski v Powell* (1987) 11 NSWLR 522, 528 (Kirby P).

<sup>18</sup> *Craig v South Australia* (1995) 184 CLR 163, 176 (the Court); *Karina Fisheries Pty Ltd v Mitson* (1990) 26 FCR 473, 488 (Sheppard, Foster and Hill JJ). Cl 1, Pt 1, Sch 1 of the FCC Act provides that judges of the FCC must meet the same qualifications as Justices of the High Court.

<sup>19</sup> *Parisiennne Basket Shoes Pty Ltd v Whyte* (1938) 59 CLR 369, 391 (Dixon J); *Posner and Collector for Inter-State Destitute Persons (Victoria)* (1946) 74 CLR 461, 483 (Dixon J); *R v Commonwealth Court of Conciliation and Arbitration; Ex parte Amalgamated Engineering Union* (1953) 89 CLR 636, 651

10. Although the kinds of errors that constitute jurisdictional errors when committed by inferior courts are very different to the broader range of errors that constitute jurisdictional errors when committed by administrators and tribunals, the consequence of committing a jurisdictional error is the same, namely the purported exercise of power must be taken to have been void *ab initio*.<sup>20</sup>
11. The many authorities recognising protection from civil liability for inferior court judges who make orders for imprisonment, and for police and prison authorities who execute warrants in furtherance of such orders, can be understood as tracing the boundary that lies between jurisdictional and non-jurisdictional error.<sup>21</sup> Putting to one side specific statutory or common law rules that may be applicable to protect officials,<sup>22</sup> it is generally the conferral of jurisdiction on inferior court judges and public officials that protects them from civil liability; where jurisdiction is exceeded, protection is lost. Public officials, including judges, police and gaolers, do not enjoy any privileged status that immunizes them from civil liability; “any official acting without legal justification is as liable for what he does as any other citizen.”<sup>23</sup> In this sense, phrases such as ‘judicial immunity’<sup>24</sup> or ‘common law defence’<sup>25</sup> may be apt to mislead.

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(Taylor J); *R v Federal Court of Australia and McDowell Pacific Ltd; Ex parte Pilkington ACI (Operations) Pty Ltd* (1978) 142 CLR 113, 125 (Mason J); *Coordinated Construction Co Pty Ltd v Climatech (Canberra) Pty Ltd* [2005] NSWCA 229, [44] (Basten JA); *Stanley v Director of Public Prosecutions (NSW)* (2023) 97 ALJR 107, [17] (Gageler J); M Leeming, *Authority to Decide: The Law of Jurisdiction in Australia*, (2<sup>nd</sup> ed, 2020), 68.

<sup>20</sup> *Attorney-General (NSW) v Mayas Pty Ltd* (1988) 14 NSWLR 342, 357 (McHugh JA); *Pelechowski v Registrar, Court of Appeal (NSW)* (1999) 198 CLR 435, 445-446 [26]-[28], 453 [55] (McHugh J); *New South Wales v Kable* (2013) 252 CLR 118, [56] (Gageler J); *Director of Public Prosecutions (NSW) v Kmetyk* [2018] NSWCA 156, [43] (Leeming JA); *Stanley v Director of Public Prosecutions (NSW)* (2023) 97 ALJR 107, [15] (Gageler J). It is unnecessary for the purposes of these proceedings to determine the position that applies to superior courts, and in particular whether a superior court judge may act outside jurisdiction where acting with the knowledge that there is an absence of jurisdiction: *Sirros v Moore* [1975] QB 118, 134-136 (Lord Denning MR). That view has garnered some support in the Australian cases: *Moll v Butler* (1985) 4 NSWLR 231, 242 (Wood J); *Rajski v Powell* (1987) 11 NSWLR 522, 530 (Kirby P); *Fingleton v The Queen* (2005) 227 CLR 166, [33], [36] (Gleeson CJ). Others have rejected it: *Rajski v Powell* (1987) 11 NSWLR 522, 539 (Priestley JA), 537 (Hope JA agreeing). The fact that a purported exercise of power is void *ab initio* does not, of course, mean that statute cannot attribute a legal consequence to the purported exercise of power.

<sup>21</sup> This goes all the way back to *Case of the Marshalsea* (1612) 10 Co Rep 68b; 77 ER 1027. At [341], the Trial Judge observed that “the metes and bounds of the judicial immunity available to inferior court judges may not be entirely pellucid”. That statement may be a reflection of conformity between the notions of judicial immunity and jurisdictional error given that “it is impossible to divine a rigid classification of the errors that constitute jurisdictional errors”: *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12, [5] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot JJ), [38] (Beech-Jones J).

<sup>22</sup> Including, importantly, s 249 of the *Criminal Code 1899* (Qld).

<sup>23</sup> AV Dicey, *The Law of the Constitution* (1885), 177-178.

<sup>24</sup> Trial Judge, [199]-[372]. In a similar way the Trial Judge refers to “judicial immunity” as a defence: Trial Judge, [219].

<sup>25</sup> Trial Judge, [408], [414], [510].

**The declaration and order made by Judge Vasta were jurisdictionally flawed such that they afforded Judge Vasta no protection**

12. The Trial Judge found that Judge Vasta had committed the following jurisdictional errors:
  - 12.1. failing to make findings that Mr Stradford had breached the disclosure orders made on 10 August 2018;<sup>26</sup>
  - 12.2. failing to comply with the ‘code’ for dealing with contempt provided for in Parts XIII A and XIII B of the *Family Law Act 1975* (Cth), including by failing to be satisfied of a mandatory statutory preconditions that Mr Stradford’s non-compliance was a “flagrant challenge to the authority of the court” for the purposes of s 112AP of the *Family Law Act 1975* (Cth);<sup>27</sup>
  - 12.3. breaching the requirements in rule 19.02 - *Contempt other than in the face or hearing of Court* of the *Federal Circuit Court Rules 2001* by failing to follow the processes or procedures dictated by that rule;<sup>28</sup>
  - 12.4. denying Mr Stradford a procedurally fair hearing by not particularising the allegations and not providing Mr Stradford with an opportunity to admit or deny the allegations and state his defence or present evidence;<sup>29</sup> and,
  - 12.5. pre-judging the issue of whether Mr Stradford was in contempt and the appropriate sanction for Mr Stradford’s non-compliance with the disclosure orders.<sup>30</sup>
13. At certain junctures, the reasoning of the Trial Judge in reaching the conclusion that the above errors were jurisdictional may not have adhered to the strictures that govern the discernment of jurisdictional error on the part of inferior courts discussed above.<sup>31</sup> It is arguable that His Honour, despite describing circumstances where judicial immunity may be lost as “exceptional”,<sup>32</sup> had a “tendency [which] has been checked again and again”<sup>33</sup> to transpose errors of a kind recognised as conditioning the exercise

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<sup>26</sup> Trial Judge, [76]-[82].

<sup>27</sup> Trial Judge, [83]-[105].

<sup>28</sup> Trial Judge, [106]-[116].

<sup>29</sup> Trial Judge, [117]-[118].

<sup>30</sup> Trial Judge, [119]-[136].

<sup>31</sup> [6]-[11] above.

<sup>32</sup> Trial Judge, [344].

<sup>33</sup> *Parisiennne Basket Shoes Pty Ltd v Whyte* (1938) 59 CLR 369, 389 (Dixon J), 394 (Evatt J and McTiernan J agreeing), quoted with approval in *Stanley v Director of Public Prosecutions (NSW)* (2023) 97 ALJR 107, [160] (Jagot J).



of power by administrators and tribunals into the analysis. For instance, Judge Vasta's failure to comply with the *Federal Circuit Court Rules* is unlikely to have been a jurisdictional error. Indeed, such an error may be considered to be a good example of a "routine step in the discharge of ordinary jurisdiction" of a kind that Parliament "entrusted" the FCC to take.<sup>34</sup> Further, it may be doubted that the matters to be considered in the exercise of powers under Parts XIII A and XIII B of the *Family Law Act 1975* (Cth) were mandatory preconditions going to jurisdiction.<sup>35</sup> There is even authority for the proposition that a failure afford procedural fairness may not necessarily amount to jurisdictional error.<sup>36</sup>

14. Nonetheless, it is unnecessary to reach any concluded view about whether the above errors constitute jurisdictional errors because it cannot be doubted that, even applying the appropriately stringent approach to the question, Judge Vasta did exceed his jurisdiction in, at least, the following two ways:

- 14.1. First, it was an essential condition to making the declaration of contempt and orders for detention that the Court be satisfied that Mr Stradford did in fact breach the Court's disclosure order.<sup>37</sup> The Trial Judge held that Judge Vasta proceeded on the misconception that Mr Stradford had been held in contempt by Judge Turner.<sup>38</sup> This error may be seen to travel beyond an inferior court merely failing to take into account "some matter which it was, as a matter of law, required to take into account".<sup>39</sup>

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<sup>34</sup> *Craig v South Australia* (1995) 184 CLR 163, 180 (the Court).

<sup>35</sup> Trial Judge, [85], [87], [97], [103]; cf the discussion regarding mandatory considerations in *Stanley v Director of Public Prosecutions (NSW)* (2023) 97 ALJR 107, [19] (Gageler J).

<sup>36</sup> *Craig v South Australia* (1995) 184 CLR 163, 175-176 (the Court) (failure to observe procedural fairness was considered to be distinct from jurisdictional error); *In re McC (A Minor)* [1985] AC 528, 546-547 (Lord Bridge of Harwich), 558 (Lord Templeman); *Police (SA) v Lymberopolous* (2007) 98 SASR 433, [41] (Doyle CJ), [74], [82] (Bleby J and Sulan J agreeing). These statements may be contrasted with the discussion in *Kirk* in which error of law on the face of the record was distinguished from jurisdictional error, arguably implying that a failure to afford procedural fairness is jurisdictional: *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531, [56], [60] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ). Most recently, a majority of this Court said that the jurisdiction of inferior courts is conditioned by a requirement to observe the rules of procedural fairness: *Oakey Coal Action Alliance Inc v New Acland Coal Pty Ltd* (2021) 272 CLR 33, [47]-[48] (Kiefel CJ, Bell, Gageler and Keane JJ). South Australia submits that the view that a particular failure to afford procedural fairness by inferior courts will not necessarily be jurisdictional (expressed in some of the authorities referred to above) does not conflict with the centrality of procedural fairness to the institutional integrity of Chapter III courts recognised in numerous authorities of this Court, including *Condon v Pompano* (2013) 252 CLR 3, [68] (French CJ), [156] (Hayne, Crennan, Kiefel and Bell JJ), [181]-[189] (Gageler J).

<sup>37</sup> This may be understood to be one of the kinds of error identified in *Craig v South Australia* (1995) 184 CLR 163, 177 (the Court).

<sup>38</sup> Trial Judge, [78].

<sup>39</sup> *Craig v South Australia* (1995) 184 CLR 163, 180 (the Court), cited with approval in *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531, [67] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).



- 14.2. Second, the breach of procedural fairness visited upon Mr Stradford was so egregious that it must be understood to have constituted a “gross and obvious irregularity in procedure”.<sup>40</sup> With respect, the Trial Judge was correct to describe the hearing presided over by Judge Vasta “a gross parody of a court hearing”.<sup>41</sup>
15. Accordingly, Judge Vasta exceeded his jurisdiction in making the declaration that Mr Stradford was in contempt and in making the order for his detention, such that the declaration and order should be understood to have been void *ab initio*. It follows that the declaration and order afford Judge Vasta no protection against Mr Stradford’s claim for damages.<sup>42</sup>
16. The fact that the declaration and order made by Judge Vasta were invalid does not necessarily undermine the validity of the warrant. That is a separate question to be addressed immediately below.<sup>43</sup>

**The warrant issued by Judge Vasta was not jurisdictionally flawed such that it did afford protection to those to whom it was directed**

17. The analysis that applies to the question of the validity of the warrant yields a different result. Although no particular power for the issue of the warrant of commitment by Judge Vasta was identified by the Trial Judge, no doubt has been (or could be) raised about the power of the FCC to issue a warrant of commitment in aid of its power to punish for contempt.<sup>44</sup> Given that the FCC is an inferior court created by statute, the source of its power to issue warrants of commitment is necessarily statutory.<sup>45</sup> The relevant question then becomes: what jurisdictional limits did Parliament intend to impose upon the exercise of the implied statutory power of the FCC to issue warrants of commitment?

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<sup>40</sup> *In re McC (A Minor)* [1985] AC 528, 546-547 (Lord Bridge of Harwich), 558 (Lord Templeman). Accordingly, even if the view discussed in footnote 36 above (that not every breach of procedural fairness necessarily constitutes a jurisdictional error) is correct, the error committed by Judge Vasta was, on any view, jurisdictional.

<sup>41</sup> Trial Judge, [129].

<sup>42</sup> The fact that the order and declaration do not, in themselves, afford Judge Vasta protection does not deny the potential operation of a common law immunity of the kind contended for by the Commonwealth and Judge Vasta: Written submissions of the Commonwealth, [51]-[65]; Written submissions of his Honour Judge Vasta, [10]-[46].

<sup>43</sup> *Hill v Bateman* (1726) 2 Str 711; 93 ER 800 (a justice of the peace was held liable for false imprisonment for immediately committing a person to prison, when required first to attempt to distrain his goods; the warrant of commitment was nevertheless “sufficient justification” for the constable.).

<sup>44</sup> *Grassby v The Queen* (1989) 168 CLR 1, 16-17 (Dawson J) (‘power which carries with it everything necessary for its exercise.’); *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* (2018) 262 CLR 157, [40] (Kiefel CJ), [115] (Keane, Nettle and Gordon JJ); *Binsaris v Northern Territory* (2020) 270 CLR 549, [83] (Edelman and Gordon JJ).

<sup>45</sup> *Grassby v The Queen* (1989) 168 CLR 1, 16-17 (Dawson J); *Logwon Pty Ltd v Warringah Shire Council* (1993) 33 NSWLR 13, 16-17 (Kirby P).

18. The answer to that question is grounded in common sense which finds reflection in a long line of authority, also relied upon by Queensland and the Commonwealth.<sup>46</sup> A warrant “is a document issued under the hand of a designated person authorising the person or persons to whom it is addressed to do some act which would otherwise be unlawful.”<sup>47</sup> The very purpose of a warrant is that it is an instruction provided by formal instrument that can be relied upon by lay people, who are not parties to proceedings from which the warrant issued and cannot be assumed to be appraised of the conduct of those proceedings.<sup>48</sup> If a warrant that is regular on its face cannot be relied on as having been validly made then the very purpose of issuing the warrant would be undermined.
19. For this reason, the power of the FCC to issue a warrant of commitment should not be understood to be limited by a power to issue warrants only in aid of court orders lawfully made. Rather, the statutory power to issue a warrant of commitment should be understood to extend to circumstances where, despite an irregularity (or, even invalidity) in the making of the underlying orders, at least where those orders are made within ‘subject matter’ jurisdiction, a warrant that appears regular on its face is “sufficient justification” for those officers to whom it is directed.<sup>49</sup> The extreme “inconvenience” that would otherwise result, the reliance placed on warrants by third parties (namely,

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<sup>46</sup> *Shergold v Holloway* (1734) Sess Cas 154; 93 ER 156; *Andrew v Marris* (1841) 1 QB 3, 16; 113 ER 1030, 1036 (Lord Denman CJ) (“There would therefore be something very unreasonable in the law if it placed him in the position of being punishable by the court for disobedience, and at the same time suable by the party for obedience to the warrant”); *Henderson v Preston* (1888) 21 QBD 362, 366 (Lindley LJ) (“What is a governor of a gaol who receives such a warrant to do except obey it?”); *Demer v Cook* (1903) 88 LT 629, 631; 20 Cox CC 444, 449 (Lord Alverstone CJ) (“the warrant and nothing else is the protection to the gaoler, and he is not entitled to question it or go behind it”); *Smith v Collis* (1910) SR NSW 800, 813 (Cullen CJ) (“In the ordinary course of things the discharge of the governor’s duties would become impossible if he were called upon to decide upon the validity of a warrant good on the face of it, and his duty is simply to obey and not to question. In the case of actions for false imprisonment this has been made absolutely clear”); *O’Conaghlie v Wallace* [1938] IR 526, 547-549, 553-555 (Fitzgibbon J), 566-567 (Murnaghan J), 578-589 (Meredith J); *Posner and Collector for Inter-State Destitute Persons (Victoria)* (1946) 74 CLR 461, 483 (Dixon J), 476 (Starke J); *R v Oldham Justices, Ex parte Cawley* [1997] QB 1, 16 (Simon Brown LJ) (“a truly invidious position”); *Robertson v The Queen* (1997) 92 A Crim R 115, 122 (Steytler J), 116 (Malcolm CJ and Franklyn J agreeing) (“It would be an odd result, in a case in which a prison officer was simply enforcing a magistrate’s order, if he or she were to be held liable because of the invalidity of the order when the person issuing the order was not so liable, at least in circumstances in which the order was valid on its face. The courts have generally set their face against this kind of result.”); *R v Governor of Brockhill Prison, Ex p Evans* (No 2) [2001] 2 AC 19, 46 (Lord Hobhouse of Woodborough); *McGrath v Chief Constable of the Royal Ulster Constabulary* [2001] 2 AC 731, [24] (Lord Clyde): “penalizing the officers engaged in the enforcement of the warrant where they had acted reasonably and in perfect good faith ... would impose an unfair burden upon the police in acting responsibly and honestly in carrying out what is a ministerial function.”

<sup>47</sup> *Ousley v The Queen* (1997) 192 CLR 69, 99 (McHugh J), see also 118 (Gummow J), citing *Inland Revenue Commissioners v Rossminster Ltd* [1980] AC 952, 1000 (Lord Wilberforce), 1008 (Lord Diplock).

<sup>48</sup> *Corbett v The King* (1932) 47 CLR 317, 333 (Gavan Duffy CJ, Rich and Dixon JJ) (“A warrant is a precept under the hand and seal or hand of a person vested with authority empowering another or others to do an act or perform a function”).

<sup>49</sup> Footnote above. See, for instance, *Hill v Bateman* (1726) 2 Str 711; 93 ER 800.

those persons to whom the warrant is directed) and the availability of appeal rights, are all factors that support this construction.<sup>50</sup> A construction exercise of this kind has been engaged to uphold the validity of irregularly issued warrants on a number of occasions.<sup>51</sup>

- 20. The Trial Judge identified some authorities that support the proposition that an invalid warrant provides no protection.<sup>52</sup> For the reasons advanced above, it may be accepted that an *invalid* warrant will not afford protection. However, the authorities identified by the Trial Judge are not, in general, addressed to the prior inquiry about the circumstances in, and extent to, which a warrant in error will be treated as void *ab initio*.
- 21. For these reasons, the warrant of commitment issued by Judge Vasta, being regular on its face and within the subject matter jurisdiction of the FCC, was valid in so far as it may be relied upon by those persons to whom it was directed in defence of the civil claim brought by Mr Stradford.

**Part V: ESTIMATED TIME FOR ORAL ARGUMENT**

- 22. It is estimated that up to 20 minutes will be required for the presentation of South Australia’s oral argument.

Dated: 12 April 2024



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<sup>50</sup> *Posner and Collector for Inter-State Destitute Persons (Victoria)* (1946) 74 CLR 461, 483 (Dixon J); *Australian Broadcasting Corporation v Redmore Pty Ltd* (1989) 166 CLR 454, 457-459 (Mason CJ, Deane and Gaudron JJ); *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 388-389 (McHugh, Gummow, Kirby and Hayne JJ);. To the extent that considerations of whether the issue of a warrant constitutes a judicial or administrative act may bear upon the analysis, the power to issue a warrant of commitment in this case, closely tied as it was to the exercise of judicial power, must be understood to be judicial: *Ousley v The Queen* (1997) 192 CLR 69, 99 (McHugh J).

<sup>51</sup> *Robertson v The Queen* (1997) 92 A Crim R 115, 122 (Steytler J); *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, *Tulloh v Chief Executive Officer of the Department of Corrective Services* [2020] WASCA 10, [38], [134] (Murphy, Beech, Pritchard JJA); *Abdulrahim v Adult Parole Board of Victoria* [2023] VSC 432, [65], [71], [83], [90] (John Dixon J).

<sup>52</sup> *Feather v Rogers* (1909) 9 SR (NSW) 192, 196 (Simpson ACJ): “If a constable executes a warrant which the Magistrate had no jurisdiction to issue, the warrant affords him no protection at common law.” *Corbett v The King* (1932) 47 CLR 317, 327-328 (Gavan Duffy CJ, Rich and Dixon JJ). See also, Trial Judge [497] referring to *Kable v New South Wales* (2012) 268 FLR 1, [35] (Allsop P).

IN THE HIGH COURT OF AUSTRALIA  
CANBERRA REGISTRY

No. C3 of 2024, No. S24/2024, No. C4/2024

BETWEEN:

**COMMONWEALTH OF AUSTRALIA**

Appellant

and

**MR STRADFORD (A PSEUDONYM)**

First Respondent

**HIS HONOUR JUDGE SALVATORE PAUL VASTA**

Second Respondent

**STATE OF QUEENSLAND**

Third Respondent

BETWEEN:

**STATE OF QUEENSLAND**

Appellant

and

**MR STRADFORD (A PSEUDONYM)**

First Respondent

**HIS HONOUR JUDGE SALVATORE PAUL VASTA**

Second Respondent

**COMMONWEALTH OF AUSTRALIA**

Third Respondent

BETWEEN:

**HIS HONOUR JUDGE SALVATORE PAUL VASTA**

Appellant

and

**MR STRADFORD (A PSEUDONYM)**

First Respondent

**COMMONWEALTH OF AUSTRALIA**

Second Respondent

**STATE OF QUEENSLAND**

Third Respondent

**ANNEXURE**

**PROVISIONS REFERRED TO IN THE SUBMISSIONS OF THE  
ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA  
(INTERVENING)**

No.	Description	Date in Force	Provision
<u>Constitutional provisions</u>			
1.	Commonwealth Constitution	Current	s 120
<u>Commonwealth statutory provisions</u>			
1.	<i>Federal Circuit Court of Australia Act 1999</i>	As at 6 December 2018	s 14 Cl 1, Pt 1, Sch 1
2.	<i>Family Law Act 1975</i>	As at 6 December 2018	Parts XIII A and XIII B
3.	<i>Crimes Act 1914</i>	Current	ss 18(2), 19A
<u>State statutory provisions</u>			
1.	<i>Police Act 1988 (SA)</i>	Current	s 65
2.	<i>Public Sector Act (SA)</i>	Current	s 74