

HIGH COURT OF AUSTRALIA

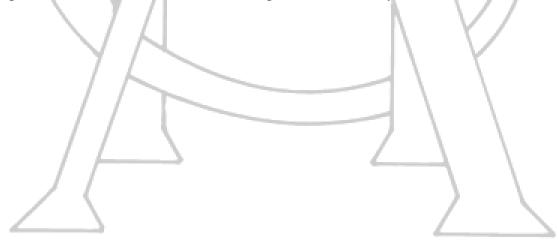
NOTICE OF FILING

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Details of Filing		
File Number: File Title:	C4/2024 His Honour Judge Salvatore Paul Vasta v. Mr Stradford (a pseu	ι
Registry:	Canberra	
Document filed: Filing party:	Form 27F - Appellant's (Judge Vasta) Outline of oral argume Applicant	;
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Important Information

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IN THE HIGH COURT OF AUSTRALIA CANBERRA REGISTRY

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BETWEEN:

Second Respondent

No C4 of 2024

and

STATE OF QUEENSLAND

Third Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

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

20 Part II: Propositions to be advanced in oral argument

Coherence

- 2. An 'inferior court' judge exercising the judicial power of the Commonwealth has, or should have, no lesser judicial immunity than that afforded to a superior court judge.
- 3. Immunity from civil liability is conferred by the common law, not as a perquisite of judicial office for the private advantage of judges, but for the protection of judicial independence in the public interest [**VS 22**].
- 4. This underlying principle applies equally to a judge of the FCCA.
- 5. The value of judicial independence does not depend upon the status of the judge.

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6. The same principle should not result in different rules, absent some compelling justification.

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The Role of the High Court

- The High Court has an important role in developing or clarifying the common law and remedying incoherence between legal principle and legal rules [VS 13 – 16].
- 8. This is not a case where clarification or development of the common law would require this Court to depart from one of its earlier decisions (VS [17]; VR [6]).
- 9. Even if it were, the relevant considerations are met (VS [15]-[16]).

No Sound Justification for Different Rules

- 10 10. There is no compelling justification for different rules for different judges, at least within the integrated federal judicial system:
 - (a) the structure of the contemporary federal Australian legal system is materially different from the historic circumstances in which the confined immunity was first suggested (VS [17] [19], [31] [35];
 - (b) relatedly, there are now direct and appropriate mechanisms to correct error in decisions made by inferior court judges: particularly appeal (VR [9]);
 - (c) a confined immunity is incoherent with other immunities under the common law
 (VS [36] [43]);
 - (d) the existing law is uncertain (VS [27] [29]);
- 20 (e) at that time that the FCCA was established the confined immunity had been expressly doubted judicially and academically (VS [44] [45]; VR [10] [11]).

Disposition

11. The necessary premise of the first respondent's case at trial was that the appellant was *not* protected by the same immunity as that conferred on a judge of a superior court (**unconfined immunity**) (ASOC [38], JCAB 31). The first respondent did not plead or prove: malice or bad faith or knowing or wilful misconduct. Nor, critically, did he

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contend that any of the 'jurisdictional errors' found by the trial judge would have taken case outside of the unconfined immunity. In the premises, ground 5 of the Notice of Appeal is not pressed.

12. If the proposition in paragraph [2] is accepted the appeal must be allowed.

Dated: 14 August 2024

S J Wood KC

Ben W Jellis SC

T Katz