



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

COMMISSIONER MCKINNON

C2023/4168, C2023/4170, C2023/4171, C2023/4172, C2023/4174

s.120 - Application to vary redundancy pay for other employment or incapacity to pay

**RingIR Pty Ltd
and
Ms Maryanne Spiers
(C2023/4168)**

**Application by RingIR Pty Ltd
(C2023/4171)**

**Application by RingIR Pty Ltd
(C2023/4170)**

**Application by RingIR Pty Ltd
(C2023/4172)**

**Application by RingIR Pty Ltd
(C2023/4174)**

Sydney

10.00 AM, WEDNESDAY, 23 AUGUST 2023

PN1

THE COMMISSIONER: Good morning, everybody, it's Commissioner McKinnon here. Mr Simmonds, you're appearing for the applicant; is that correct?

PN2

MR T SIMMONDS: Yes. Yes, that's correct.

PN3

THE COMMISSIONER: Okay. And are you being paid for your time today, or will you be?

PN4

MR SIMMONDS: No.

PN5

THE COMMISSIONER: And why is that?

PN6

MR SIMMONDS: It falls outside the Tax Agent Services Act, and so getting remunerated for this is not appropriate.

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THE COMMISSIONER: Do you usually get paid for the work that you do for the company?

PN8

MR SIMMONDS: Yes, in my capacity as tax agent and accountant, and more specifically payroll.

PN9

THE COMMISSIONER: All right. We are going to just deal with permission to appear, just in case that's necessary given the relationship you have with the business. So I assume that you're seeking permission to appear on behalf of the applicant?

PN10

MR SIMMONDS: Yes.

PN11

THE COMMISSIONER: Yes, okay. Does anybody in the room have an objection to that request? No? Lots of head shaking. Permission is granted on efficiency grounds, Mr Simmonds, to the extent that it's required. All right. This matter is listed today for hearing in relation to whether the redundancy entitlements of the five individuals I can see on my screen today should be varied, including by being reduced to nil. The application as you know, Mr Simmonds, is opposed, and there are some disputes I think about the facts, and we can work through those one by one.

PN12

So today is the hearing. It's your opportunity for all of you to tell me everything you want me to know about this issue so that I can make a decision with as much knowledge as I can garner from the material you filed and also what you tell me today. So if you don't tell me something you can't assume that I will know it. I can only deal with the facts as I'm apprised, and I have read everything that's been provided. I've read the digital court book and all of its contents. I will say that there's some documents in there that I can't really read, they're very hard to decipher, just because of the document quality. So if there's something that turns on one of those documents we will deal with that as we go. Before we begin, Mr Barry, you had some questions about whether the information provided by the applicant about your employment was correct. So I might just start with you and ask you to clarify what you say your length of service and rate of pay were.

PN13

MR BARRY: Yes, absolutely. Can you hear me now, I've swapped to a different machine?

PN14

THE COMMISSIONER: I can, thank you.

PN15

MR BARRY: Okay. Thank you very much for that. Yes. Effectively it was just some issues I raised when I first received the F45A form; namely that my term of employment was listed as three - sorry, I don't have it open any more because I have just jumped machines - but it was listed as three years and something, and I think it's - I don't have the exact date because I don't have a copy of that starting date here, but I believe I was at two years six months as opposed to the three years and five or something that it was. Also it has my base pay as 105, where it's actually for the last 12 months been at an increased rate of 140.

PN16

THE COMMISSIONER: Okay. Two years and six months you say?

PN17

MR BARRY: Yes, that's approximately correct based off my documents at this end.

PN18

THE COMMISSIONER: All right. Mr Simmonds, do you have any different view?

PN19

MR SIMMONDS: No. That was an error on my submission on that F45A document. So, yes, I agree with Alex's input there.

PN20

THE COMMISSIONER: Just let me do some maths. All right. So the next question I have is for you, Mr Simmonds, in relation to the total value of the redundancies that if no order is made will be payable. There's some discrepancy on the documents about that. I think in Mr Robinson's submission he said that it was \$129,000. On my calculations it's about \$110,000. And the reason for the

discrepancy is not only Mr Barry's adjustment that he's just made, but also that some of the amounts of redundancy pay are incorrect in the application, having regard to section 119 of the Act. So if it would be helpful I can run through those now and give you an opportunity to just confirm those.

PN21

MR SIMMONDS: Yes, sure thing, yes, yes.

PN22

THE COMMISSIONER: So I have Ms Spiers as working for the business for two years and two months, and her redundancy pay entitlement on that basis would be six weeks pay. I think the application stated four weeks. Ms Linssen's details appear to be correct unless, Ms Linssen, they're not correct and you will tell me about that in a minute I'm sure. Mr Hebden, his figures also appear to be correct, as long as those facts are correct. Mr Filiti's period of service was stated as two years and one month, and so his entitlement to redundancy payout under section 119 would appear to be six weeks pay rather than four. And Mr Barry, his entitlement based on that amended period of service of two years and six months would be six weeks pay under section 119. So I'm happy if you want a minute to just check that, Mr Simmonds.

PN23

MR SIMMONDS: Yes, thanks, I'll do it in the background.

PN24

THE COMMISSIONER: Okay. So if you can do that and to get to a weekly figure I've done a very rough calculation of dividing the annual salary by 52 and then multiplying it by the number of weeks. So that's how I get to the figure of roughly \$110,000.

PN25

MR SIMMONDS: Yes.

PN26

THE COMMISSIONER: So I will give you time to do that as required. All right. As far as this hearing it's one of those strange processes in the sense that when people make applications like this they usually want them dealt with pretty quickly. So we don't have a long process for filing evidence and materials, and so today we don't have for example witness statements from anybody. But we do have the documents that we have, and an opportunity for you each to speak to the application and the facts, and that will mean that I can make a judgment based on what I have read and what I hear today, and we do that just to try and deal with these matters promptly if we can.

PN27

So I think as far as how the process might work I might just go through speaking with you each separately. So I will start with the applicant and then I will work through each of the respondents and ask you to tell me what you would like to say, and then I will ask Mr Simmonds to respond. So if anybody's got any concerns about that or any different approach that you'd prefer that's fine, you can let me know, but that seems to me probably the best way to make sure everybody

gets a chance to say what they want to say. Is everybody okay with that process? Yes? Great. Okay, thanks very much. All right. So, Mr Simmonds, let's start with you. You've got the digital court book?

PN28

MR SIMMONDS: Yes, thanks for that. In (indistinct) background to myself, so like I said at the start there I'm the tax agent and accountant for RingIR. I have been since May 2016, so I've seen basically - and the inception of the company was prior to that, but I've been here with the company for a while. I guess my relevance to this is really payroll and working out whether - just getting clarity on what our responsibility is for paying out these redundancies.

PN29

Two key points we sort of want clarity on is just whether - we're a small business essentially and whether RingIR Pty Ltd is associated with RingIR Inc, and that definition of common control. We just want to have clarity on that and we'll go through the detail of that.

PN30

And the second point is on the Fair Work Commission website it says basically where an employer finds themselves that they actually don't have enough - can't afford to pay out redundancies they apply to the Commissioner for the discretion - like whether to pay the redundancies or not. So they're basically the two points that we just clarify on. I'm not saying we don't want to pay out the redundancies. I haven't given advice saying we're not paying redundancies or anything like that, we just simply want clarity on how to move forward with that.

PN31

Like I sort of said at the start this does fall out of the scope of tax agent services. At no point have I given advice, but it's just a matter of clarity and how to proceed. I might pass over to Michael to sort of do an intro providing more background. Like I sort of said I basically provide financial services to this entity, so Michael probably can give more insight into the operations and things like that.

PN32

THE COMMISSIONER: All right. Before you do that, Mr Robinson, can I just make my own request for clarity. On the small business employer issue I understood your submission to be that you think you are a small business employer because you're an associated entity of the principal company, but that you're asking me to exercise my discretion on that issue. But is your position today that you want me to make a decision about whether you are an associated entity of RingIR Incorporated?

PN33

MR SIMMONDS: Yes, simply we are. Like my point now is like we are a group, we have 17 employees, we're not a small business entity. And we're sort of applying for your discretion on whether we are or not and whether common control between RingIR Inc is there.

PN34

THE COMMISSIONER: Okay. So I don't have any discretion over that issue because it's a question of fact. You're either a small business employer or you're not, and which category you fall in affects whether you have an obligation to pay redundancies or not. I think you accept that you are not a small business employer; is that correct?

PN35

MR SIMMONDS: Yes, definitely. Like our (indistinct) right now is we've got 17 employees in this group, but whether the two entities should be associated or not that's sort of the question mark. But if it's as simple as, no, we are controlled by (indistinct) A I'm happy with that.

PN36

THE COMMISSIONER: Yes. I mean I haven't made a finding about whether or not you are associated entities or not, because I understood that was conceded. I could do that if needs be, but I probably need to ask you some probing questions about the relationship between A and B. I have some information about that. Some of that is in dispute, but it will probably come down to - you would have I think looked at the definition in section 50AAA of the Corporations Act, and I think it's the final limb of that definition that would pick up that question of control.

PN37

MR SIMMONDS: Yes, exactly, and if it's just that black and white then happy to proceed on that point. But then I guess to our second point is whether the entity can afford the redundancy payments as well.

PN38

THE COMMISSIONER: Yes. And that seems to me to be primarily the question in dispute.

PN39

MR SIMMONDS: Yes.

PN40

THE COMMISSIONER: All right. So, Mr Robinson, if you'd like to talk about the operational matters. What's going to happen is you're about to tell me some facts and figures I anticipate. So that I can rely on those facts and figures what I might do is ask you to take an affirmation which is a promise to tell the truth, and then you can say what you want to say, and I'll do that for each of the individuals here today when it comes to your turn, so that that can be the evidence in the proceeding. Is that okay, Mr Robinson?

PN41

MR ROBINSON: Yes, it is.

PN42

THE COMMISSIONER: Thank you. All right. Well, please listen to my associate, and she'll ask you a question. Just listen very carefully and give your answers.

<MICHAEL ROBINSON, AFFIRMED

[10.18 AM]

EXAMINATION-IN-CHIEF BY THE COMMISSIONER

[10.18 AM]

PN43

THE COMMISSIONER: Thank you, Mr Robinson. I'll hand over to you now to tell me what you want to say?---Thanks, Commissioner. Is it all right if I give a bit of background, or you want a fairly short statement?

*** MICHAEL ROBINSON

XN THE COMMISSIONER

PN44

No. Say what you want to say. That's fine?---Okay. Thank you. I think most of the stuff is in our documents, but I think this provides some context and a summary, if you like. The RingIR technology was first developed here in Australia. It's an innovative gas technology and has hundreds of potential uses from defence to medical to agricultural, mining and more. It has the potential to be a multibillion dollar technology. RingIR Inc is a C corp in the United States and has been leading the development of the technology in the US. Since our establishment, when we were established, it's 100 per cent subsidiary of the RingIR Inc to service defence contracts here in Australia. We're even leading the development of a technology within the Australian defence and agricultural markets. Unfortunately, with a number of internal challenges and unforeseen external events, we have hit very difficult financial times. For example, the defence strategic review finalised earlier this year has delayed many SME innovation and other provider contracts including our current major defence Innovation Hub project, and the supported - proposed and supported next day of contract, this was pushed out from commencing in July this year and apparently now won't be contracted for at least a year, if at all. Also, in early 2023, DAT terminated one contract. Then in late June, unexpectedly, our major current contract with DAT was delayed a further three months, and now until mid-December. These challenges and implications for the financial position of the company were well-known to the staff. In addition to the communication made by the board and the general manager prior to my arrival, I personally met each staff member one on one in my first month and subsequently and made it very clear what I was intent on getting the company through and keeping every staff member. Redundancies were a possibility, and my recommendation to each was that they all had a plan B, that is, they were looking for other employment. With the delay in the current DAT contract, we had no choice and made the difficult decision at a board level that if we were to have any chance of continuing a development of this unique technology in Australia, we had to make as many cost savings as possible including significantly downsizing as soon as practical. In implementing these redundancies, we have tried to follow correct procedures at all times. To this end, we've noted some greyness in whether we're a small business by level of control, and that we may not have to pay redundancy entitlements as we can't afford to pay. We sought advice directly from the Fair Work Ombudsman and the Fair Work Commission, and they pointed us here. Our intention has and is simply to get clarity on our responsibilities to pay the redundancy entitlements to the five staff we've had to make redundant due to our circumstances. It has been and continues to be our intention to fulfil our responsibilities. So we think we are a small business, as we are a standalone

company with an independent set of matters with systems and structures. There are no shared employees, no day-to-day management of the business from RingIR Inc or redirectors. We freely acknowledge that RingIR Inc has 100 per cent shareholder, controls the board of RingIR Proprietary Limited, the board is currently sold to RingIR Inc representatives. Until a month ago, there were three directors. Lisa Linssen is the general manager of RingIR Proprietary Limited, was the third director on the board. We freely acknowledge there has been close oversight of the company by RingIR Inc directors Charles Harb, Anna Harb and Lisa Linssen. The day-to-day management was led by the general manager Lisa Linssen, as we think our evidence shows. If the Commissioner rules that a control of the company was through the board, and the board is controlled by RingIR Inc by virtue of Charles and Anna Harb representing Inc, we're happy to accept that we're a small business. In this case, we're happy to move directly onto our ability to pay redundancy entitlements. In this regard, we think the evidence is pretty clear. Despite the costs savings made, we currently cannot survive as a company and pay the redundancies of the five staff. We may not survive anyway. Should we have secured funds already, even in the last six or eight weeks, the picture may have been different, and we could pay redundancies. We haven't secured extra funds yet. We've stated in our submissions that we think funds are imminent, but imminent is a relative and rubbery term. So let me clarify and update where we're at. We think funds from the potential sale of existing devices could happen in one to two months. Although, this appears quite unlikely at the moment with the initial quote we gave rejected outright. The sale of new devices followed provision of a quote to a defence - potential defence client is at least four months away. The probability seems low, as defence is not spending at the moment. We hope to sell new devices to DAF, but that is dependant on delivering on a current contract later this year. So sales are probs at least eight months away. We are pursuing a loan from the shareholder. Importantly, they are short of funds for some of the same sorts of reasons as such, and so a loan looks unlikely at this point. We are seeking an equity investment. Initial discussions to date are positive, but the flow of funds, in my experience, will probably take months, if successful. Should you, Commissioner, provide that ruling that we do have to pay our redundancy entitlements, we are almost certain depending on the timing and the events that occur between now and then almost serve to recommend to the shareholder that we need to go into voluntary liquidation or that we are, indeed, insolvent. So with those comments, I look forward to providing any further information that may assist. We look forward to a ruling in the shortest time possible.

PN45

All right. Well, I do have some questions. So is it okay if I ask you those now?---Absolutely.

*** MICHAEL ROBINSON

XN THE COMMISSIONER

PN46

All right. So the materials discuss an RND tax credit receipt, and there are a couple of different figures given for that, but my question to you is did you get the tax credit, when did you get it, and how much was it?---So we had the tax credit approved by the Department of Industry. We haven't received it yet because it's still with the ATO, but we're expecting that in a matter of weeks.

PN47

MR SIMMONDS: For the ATO, it could be 28 days. Yes.

PN48

THE COMMISSIONER: Okay. Do you know when the advice from the ATO came through so that we can get a sense of when the 28 days kicks over?

PN49

MR SIMMONDS: Yesterday.

PN50

THE COMMISSIONER: Yesterday. So four weeks from now.

PN51

MR SIMMONDS: Yes.

PN52

THE COMMISSIONER: And the value of that credit.

PN53

MR SIMMONDS: 438,000.

PN54

THE COMMISSIONER: Okay. And the Innovation Hub contract, final instalment of \$30,000, has that come in?---No, it hasn't. So we have sent the final invoice. The Defence department - the Defence Innovation Hub has come back with some queries on our delivery and request to do further work before they approve that last - or that final payment.

PN55

Okay. And is that work you'll be able to do given the short staffing at the moment?---There will be - that would be - depend on a negotiation of the discussion with Defence about what is still required to be done.

PN56

Okay. Now, I'm going to ask you a personal question, Mr Robinson, and I'm sorry if it's embarrassing for you, but what is your salary?---Currently, I'm on a 300,000 package plus some incentives.

PN57

Okay. And is that what began when you became full time in the middle of the year?---No.

PN58

No. Was that previously your salary?---When I started my package, (1) I was part time, but my total package at the full-time rate was 190, and we had an agreement - clauses written into my contract about when it would go to that 300 k rate.

*** MICHAEL ROBINSON

XN THE COMMISSIONER

PN59

Okay. And when did that happen?---Well, would have been about a month ago or
- - -

PN60

MR SIMMONDS: Early July, yes.

PN61

THE COMMISSIONER: Okay.

PN62

MR SIMMONDS: I can get the exact date, if you want.

PN63

THE COMMISSIONER: All right. And if you have to finish up, too, if the business goes into voluntary administration, there's a reference in the papers to a notice period. Is that a long notice period?---Yes. The contract has a three-month notice period in it.

PN64

All right. You talked about, already, the DAF contract and its delay. You say it's been pushed out from November to December this year; is that correct?---That was the discussion as of Monday afternoon with DAF. So since the papers were put in, we've been working on the redesign and a project plan of those deliverables, and at the moment, as I say, the discussion from Monday afternoon was that we'd have a December 15 final milestone on that contract.

PN65

Okay. All right. And there's a passing reference in one of the documents which might just be terminology, but it suggests that Ms Linssen resigned in July. Did she resign, or was she made redundant?---As I understand it, she resigned from her board position of RingIR Inc.

PN66

Resigned from the board position, but not from the employment?---Sorry, the board - the shareholder, not the board of privately limited company.

PN67

Okay. All right. If, Ms Linssen, you want to talk to me about that later, just make a note of it so you don't forget it. Okay. Now, am I right in understanding that it's five people in total that have been terminated, and two of those were in July, and three were on 9 August?---Yes.

PN68

Okay. And so which ones were in the July bracket?---So Alex Barry and Lisa Linssen chose to not work their notice period. So they were in July.

PN69

Okay. And everybody else who's on the call today was in August?---All those being made redundant, yes.

*** MICHAEL ROBINSON

XN THE COMMISSIONER

PN70

Yes. Okay. So I think you said you were looking to get a loan from the parent company, but that's unlikely given their own situation; is that what you said?---It's - it's been unlikely due to their cashflow position. It - that may change. I'm not sure. I haven't delved into theirs, but you'll see in board papers, we've discussed it. We discussed it again last week. They're hoping to receive some funds and then being able to make that loan, but at this point, it's not happening.

PN71

Okay. And there was also a reference to a potential investor. Do you want to tell me a bit more about that?---So the last two weeks, we've opened discussions with a particular investor about investing into the company. Those discussions are still very early. We've provided them a virtual data room, and the non-disclosure agreement, and we're going back and forth at the moment providing early information for them to do their due diligence. No offer had been made. No discussion yet about what their investment would get. So they're progressing positively, but they're still some time away.

PN72

Okay. And some time away, you think probably a matter of months rather than weeks?---My experience would suggest that. We have discussed with the investor that weeks would be better. I think they would like to support us in that, but already we're behind the schedule that we talked about originally.

PN73

All right. And the management fee. The 278,000 for the last financial year, that's money that's gone to the parent company; is that correct?

PN74

MR SIMMONDS: Yes, yes. So the 13 months - so in the request, it was June to June. So it's gone for 13 months, that period, but for the last financial year, 149,000 went to the parent, and we provided documents on Monday of the detail of those transactions, but it's a bit of a wash of reimbursement for costs and just a general management fee. Yes.

PN75

THE COMMISSIONER: Okay. And it's called a management fee, but you say that they're not doing any managing. It's more payroll function, by the look of it?---There isn't a document to dictate exactly what that management fee is for. So it's really them transferring money, whether it's a reimbursement or they're just transferring money for - because they are shareholders in business. I - yes. It varies.

PN76

Okay. And has there been any discussion with them about putting the management fees on hold to fund the redundancy entitlement?---Yes, so I believe you will see that like the management fees have died off, definitely in the last four months. So there is no management - there is no money to really be transferred to be honest at this point in time. So - - -

*** MICHAEL ROBINSON

XN THE COMMISSIONER

PN77

Yes, yes. Okay?---Yes.

PN78

All right. Well, those are the only questions I had. From my questions, did anything occur to you that you'd like to clarify or tell me in addition?---There's just one point. Just on the \$438,000 RNB refund. There is a secured loan against that \$438,000. So we have got RNB Finance, as a result in early June. So that will be about \$205,000. Just under that. So when you take into consideration, we're going to receive 438, we actually have to pay \$205,000 out in the same time.

PN79

To pay off the loan?---Yes. Yes.

PN80

So you will be ending up with 233?---Yes. Yes, that's right.

PN81

Okay. And why couldn't you use that money to pay for the redundancy entitlements?---Well, Commissioner if you look at our cash flow, if we're to say, all right, we have budgeted that into the cash flow, and we still can't afford to pay with that money coming in, so basically, if we look at our cash position now, we're significantly under 100,000 by today. So, if we're to survive through to hopefully where we can get other funds in later in the year, we will need that to pay the salaries of the two remaining staff and small produced overheads. Yes. Particularly when you consider the Super liability, the HEO liabilities that we have got at the moment. We have got about 60 – about \$65,000 in the bank account today and we have got Super payments, we have got high like activity statements to pay and things like that. So there's a question of solvency definitely. Even with that \$200,000 – 233,000 coming in.

PN82

Okay. And is then any consideration given to talking with employees about the opportunity to pay the entitlements by instalments to assist with the cash flow difficulty that you're having?---No, I – to be honest, didn't know that was an option.

PN83

All right. IS that something you'd be open to considering if the others were also open to considering that?---Absolutely, if that's – if that's what's decided then yes.

PN84

We could consider it - - -

MICHAEL ROBINSON

XN THE COMMISSIONER

PN85

It's been something - - -?---Commissioner, we'd consider it. Happy to consider it again in the context of will we survive. Even happy to consider if the participants and yourself would like to go this way, that we delay them until we actually have some funds come in, if we get funds in.

PN86

Well, it's not something I could order because I can only order variation in the entitlement but that's something that you could talk with each other about and reach agreement on if there's something that you wanted to do as an alternative to having me make that decision and if you want to do that, I can give you both – give you all the opportunity to have that discussion today?---Commissioner, if I may, I'd be happy to pay the entitlements full stop, if I had the money. And if I had the money full stop - and delaying – delaying or instalments right now doesn't work anyway. If we had extra funds in, then it's a completely different story.

PN87

Yes. But you will get some extra funds in at least by the end of the year, by the sound of it?---We hope.

PN88

Well, you will certainly get the tax credit and I know you have built that in. But that's cash in bank once it comes, isn't it?---Yes, absolutely and then there are liabilities sitting there as well. That we have got to consider in that – yes.

PN89

Sure? Okay. All right. Now, does any of the five respondents wish to ask any questions of Mr Robinson? You can just raise your hand if you do. Mr Hebden?

CROSS-EXAMINATION BY MR HEBDEN

[10.38 AM]

PN90

MR HEBDEN: Hello. I just wanted to ask the question, so you – Michael Robinson, you were saying that you escalated to a full time role in early July?---No, it was early June that I went full time.

PN91

Okay. Didn't you say early July just before?---No, early July, I think was when my package went, late July. When my package went (indistinct) I went full time 1 July.

PN92

Okay. So your package came – so you changed from the 190 to the 300k in that early July, is that correct?---Yes. But I can't remember the exact date, but yes. There was - - -

PN93

The reason I am asking – sorry, to - - -?---Yes?

*** MICHAEL ROBINSON

XXN MR HEBDEN

PN94

The reason I am asking is because the original conversations to officially consider making the five staff redundant occurred during June, during your director's meeting, according to the minutes. So I am asking the question, did you make the decision to make us redundant and then following shortly afterwards, increase your entitlements?---So I did not make the decision to increase my

entitlements. That was hardwired into my contract with certain trigger events and trigger events were around income to the company.

PN95

That could have been changed though, based on the circumstances, is that correct?---Absolutely.

PN96

Okay. That's all I wanted to know.

PN97

THE COMMISSIONER: All right. Thank you, Anybody else? Mr Barry?

PN98

MR BARRY: Hi. Yes, look, I am not sure if it's necessarily a question that could be answered by the two representatives here, but it does – in - to the point of I guess, the responsibilities of the acting CEO, I think – I think – and please do correct me. Lisa understands this more than I do, but the hiring of Michael Robinson as the CEO was a decision I believe was made potentially by the Board but was made with really short notice. And as Michael's stated, we knew our financial position was quite rocky even at that stage. And I just wonder about the – you know, the responsibility of hiring on a 300,000 per annum liability in a situation where we didn't have a projected cash flow to sustain that. It's kind of feels like it's part of what we have come for – where we have landed up here.

PN99

I recall us raising this with Charles Harb, CEO - - -

PN100

THE COMMISSIONER: I might just – yes, I might just interrupt you, so I am not wanting to hear what you say, Mr Barry, but at the moment, it's – Mr Robinson's giving his evidence, so it's just about asking him questions. You will have a chance to say whatever you want to say once he's finished.

PN101

MR BARRY: Yes, absolutely. Sorry about that.

PN102

THE COMMISSIONER: No, no, that's fine. Did you have any questions for Mr Robinson?

PN103

MR BARRY: Look, I guess the question was to do with – was probably one more directed at the CEO, Charles Harb of Inc, so I can pull that back, thanks.

PN104

THE COMMISSIONER: Okay. All right. Thank you for that. Mr Hebden?

*** MICHAEL ROBINSON

XXN MR HEBDEN

PN105

MR HEBDEN: Hello, again, just wanted to clarify once again with Michael. So we do – when I say we – RingIR Pty Ltd has a DAF contract which is due to be delivered in December.

PN106

Now, that the majority of the engineers from Australia have been made redundant with the exception of Morris, the mechanical engineer, who do you intend on completing the work to deliver that contract?---Thanks, Richard. AS – well, for the benefit of the Commissioner, because we have had the discussion collectively and individually with you all but my first intention was to do as much as we can with Morezio. My plan – next stage of the plan was to if possible and available your willingness, contact you guys back as needed, either short term, part time, casual, whatever it might be and then the third layer of that plan was to utilise services from the parent company.

PN107

THE COMMISSIONER: All right. Okay, anymore questions for Mr Robinson? No? Okay. Mr Robinson, do you feel the need to say anything else in response to those questions?---No, thanks Commissioner. I am good.

PN108

All right. Okay, well, I will excuse you from your affirmation. I may need to ask you some other questions later depending on what the others say in case something comes up so just stay with us. I am sure you will, but you can relax a little bit now.

<THE WITNESS WITHDREW

[10.42 AM]

PN109

THE COMMISSIONER: Okay. So let's ask each of the five respondents to say whatever they would like to say. Mr Hebden, I am going to start with you because you have asked the most questions. That's the science behind my choice. So will you take an affirmation?

PN110

MR HEBDEN: Yes.

PN111

THE COMMISSIONER: All right. Just listen to my associate and give your answers, please.

PN112

MR HEBDEN: Yes.

PN113

THE ASSOCIATE: Please state your full name and address.

PN114

MR HEBDEN: Richard Allan Hebden and (address supplied).

*** MICHAEL ROBINSON

XXN MR HEBDEN

<RICHARD HEBDEN, AFFIRMED

[10.43 AM]

EXAMINATION-IN-CHIEF BY THE COMMISSIONER

[10.43 AM]

PN115

THE COMMISSIONER: Thank you, Mr Hebden. All right. So you have heard what everyone has said this morning and have you also had a chance to look at the digital court book?---Yes, I have, Commissioner.

*** RICHARD HEBDEN

XN THE COMMISSIONER

PN116

Okay. Is there anything that's not in that document that you would like to tell me about this application?---Sure. I think it might be good just to provide some context on my history with the company, especially as I am one of the sort of original employees of the company. So I started back in 2018 in April. And I was brought on board to work on a defence innovation contract that was \$4.6 million and it was myself and a colleague, Dr Carl Pavey that were working in Australia. Lisa up in Sydney. And we have an administration woman, Mel up in Sydney as well. Now, the bulk of that project based on the amount of funding that they received was to create jobs in Australia and innovation in Australia. Now, we were brought on to be told that we would have a team to deliver that contract, so we were going to get engineers, software engineers, electronic engineers, but we were told by the CEO, Charles Harb, who resides in the US that we weren't going to be hiring Australian staff because we had all the staff that we required in the US. So we utilised mechanical engineer, John Roberts, electronics engineer, Luka Zowecko who I was part of actually recruiting and hiring whilst I was over in Albuquerque in 2019, Patrick Hemp, software engineer, Travis Rawson, software engineer, Xavier Moyer, optics engineer and another, other admin staff that they have there, Dawn – Dawn Hayney, and then obviously Charles being the CEO, he was meant to be the CTO at the same time and his wife, Anna Harb who was the Vice Principle of Ministration. So during that time, we had absolutely zero control over where our budgets were spent. All requests were – had to be sent through the US, so we saw no visibility of financials, we saw – had absolutely no oversight of how anything was run. All decisions were made basically from the US side, we would ask and then they would tell us if we could have it or not. Now, in 2019 into 2020, Carl Pavey ended his secondment. Because he was originally on secondment from DSDG for the two years. He was not invited back and it was myself from Melbourne and Lisa Linssen from Sydney. We were their two sole employees in Australia at the time. I managed to get a further development contract with DSDG in early 2020 and at the time, I solely had to use all the engineers in the US side to be able to deliver that contract. So basically just giving some context here but he implication or the you know, suggestion that the US has had basically no involvement in our work here is from my point of view, fundamentally incorrect. So, defence was not happy with the way that we were utilising the US. They wanted roles in Australia, they wanted, you know, to create jobs here and to have tax payers here. Right. So we baked in that we would hire all these new staff for our next defence innovation contract which is the one that's due to be finished up shortly. And through that, we have hired all the staff that you see in this – well, the other three staff that we see here. So Maryanne Spiers, Alex

Barry, Jack Filiti and a number of other staff that have either departed on their own terms or are still working there, such as Morris Gennal. So we baked in a contractual service to upskill all the staff, so the US side staff were going to transfer the knowledge to the Australian staff. Now, that was meant to be where it ended. And if that had have been what they said in the contract, then yes, I would have suggested that we would have been independent. However, the entire brains of the machine that we use, so the computer and the card that captures the information of the detector has been solely developed by the US side. We have requested that we have ownership and funding to build that ourselves, but we have been repeatedly told no, we're not allowed to do that because that's – they're running that, they're controlling that. So for the entire three years life with that contract, we have been entirely reliant on them. We have requested that they do things differently. Alex Barry has repeatedly tried to, as the expert in that area, requested certain specific features of that and they have denied him that and basically excluded him from the process of developing that. So yes, so just – that's basically then the relationship that I have had in this workplace, that's always been – we have been pushing for more independence and you will see that, you know, it's disappointing to see that the applicant decided to paraphrase sections of my personal development plan that was requested last year and they have used specific excerpts of that to try and make it look like we were a completely separate entity, when in fact one of the complaints that I was saying was the fact that I wanted us to have more independence, but in this time, we weren't allowed to have more independence. We were kept under the same umbrella. So that's basically to cover just the history of with regards to the sort of relationship that Pty has had with Inc over the years. My other main questions as to regards to the financials are the fact that the – let me just think before I speak, considering I am under the confines of what I am. The only one question that I would say is prior to our departure, defence were looking – I believe they submitted a request for quote for two devices that we had in our hands. Now, those devices were originally scheduled for DAF. That's what was going to be submitted through DAF to complete this project. That's due at the end of this year. Now, DAF have said that the devices as they currently stand don't meet their requirements but they would not accept them in the current configuration that they are in. Defence, however, are very interested in them and hence why they put forward a request for quote. Now, I don't know the exact numbers because I haven't been involved in these conversations but from my conversations with defence, basically the number that was provided was quite exceptional and seemed to have quite a large proportion of profit baked into that sale. Now, the - -

PN117

Do you want to – do you want to tell me what the devices are so that Mr Robinson can respond with you, Richard?---Sure. So he will know of them as hand held cavity ringdown spectrometers.

PN118

I should have expected it to be long. Hand held cavity what?---Ring down spectrometers.

*** RICHARD HEBDEN

XN THE COMMISSIONER

PN119

Ring? As in R-i-n-g?---Yes.

PN120

Got it?---That's where the company name comes from.

PN121

I was going to ask that. I will give you a sec in a minute, Mr Robinson, because I do want you to tell me all about that. But Mr Hebden, is there anything else you wanted to say before Mr Robinson makes a contribution?---I am assuming I will probably have some other opportunity to speak in this, so – but thank you.

PN122

Well, this is your main opportunity to tell me everything you want me to know that I don't know already. So if you have already – if it's already in writing, you don't have to tell me again. But you will have an opportunity to ask questions of the other five – other four employees, but Mr Robinson's already given his evidence. So the asking him questions – we have done that. Unless we need to revisit that process?---Yes.

PN123

So say what you want to say now is in a short version, what I want to say?---I suppose the only real question that I have which does make me worried for our ability to receive redundancy payments is if the applicant was saying that they have only got 65k in the bank today, and technically they have expressed for Michael's notice period and Morris's notice period would be above \$100,000, if that's a debt owed and you don't have money coming in and – that raises the question of how are they legally trading solvent?

PN124

Well, that's not a question I can answer?---Yes.

PN125

It's a question for somebody else?---Yes. I am just more flagging from a – this seems that – yes, it just seems a bit pitched against us is all. That's all. But anyway, I will leave any evocative or emotional aspects of this out of the case.

PN126

Thanks, Mr Hebden. Can I just ask you one question before Mr Robinson does?---Sure.

PN127

There's a reference in the documents to your on boarding eight additional staff in July 2022?---Yes.

*** RICHARD HEBDEN

XN THE COMMISSIONER

PN128

Eight seems higher than the number we have heard about. So was there eight staff in July 2022 in addition to whoever I am looking at now?---So the task, the staff total at the time in Australia at 2022 was 10 staff. So that's five of the staff here,

and you will notice one of the audience members, James Corcinski, he was a previous employee as well.

PN129

Yes. And then there was Chuyi Wang, Gabriel Denwar and Alex Nendedar.

PN130

Okay. So you agree with the company that at the time you finished up in August, there were – and including Mr Barry and Ms Linssen, seven employees in total?---Yes, in Australia, I am not sure if you want to consider Tom Simmonds an employee of the company as well.

PN131

I don't think so. It looks like he's employed by Von Seller?---Exactly, he's – so yes, RingIR Pty staff were certain staff. Now, that also depends on whether you factor in Charles and Anna were staff of Pty. Because if they were, then there was nine.

PN132

THE COMMISSIONER: Okay. Well, I can only count them once. So - - - ?---Yes.

PN133

Doesn't really matter which category I – they fall in. Okay. Mr Robinson or Mr Simmonds, you have your hand up?

CROSS-EXAMINATION BY MR SIMMONDS

[10.54 AM]

PN134

MR SIMMONDS: Thanks, Commissioner, I was just quickly going to say I know which devices that Richard Hebden was referring to and happy to answer his question in regard to those or provide some more information, but basically as I said in the last sort of opening statement, those – the request for quote was received, we provided a quote and it was rejected outright at that point. Happy to make further commentary around that if you would like.

PN135

THE COMMISSIONER: Okay. So you provided a quote, it was rejected. Was there a further process for a revised quote or is that the end of the road?

PN136

MR SIMMONDS: Yes. It looks like the end of the road.

PN137

THE COMMISSIONER: Okay. All right. Thank you for that. Does anybody else have any questions for Mr Hebden?

CROSS-EXAMINATION BY MR ROBINSON

[10.54 AM]

*** RICHARD HEBDEN

XXN MR SIMMONDS

*** RICHARD HEBDEN

XXN MR ROBINSON

PN138

MR ROBINSON: Maybe just to clarify that – that solvency issue of having \$65k in the bank account. Like, I guess, yes, the 65k in the bank account, there's 230,000 coming in, in the next few weeks. So it's very close to being solvent. Yes. And it's a pretty stressful time, but I think we're right on the fringe, like if we get money, find money in the next couple of weeks, it will be good. Whether that's likely or not, I don't know, but yes, definitely solvency is an issue in the next few weeks. Yes?---And perhaps Commissioner, another way of saying that, I mean, cash position is different to what you have on the balance sheet and your balance sheet is what you're looking at in terms of solvency.

PN139

THE COMMISSIONER: That's right?---So - and from a solvency perspective, you have got to consider all your assets and whatever else.

PN140

Yes, indeed. Okay. now, I can see two hands up, Mr Barry and Ms Linssen. Are they questions for Mr Hebden? Yes? Ms Linssen's a no. Because I will come to you, Ms Linssen, so just again, if you could make a note. Mr Barry, what was your question for Mr Hebden.

CROSS-EXAMINATION BY MR BARRY

[10.57 AM]

PN141

MR BARRY: Hi. I – please let me know if this is outside the bounds of what I can ask, but I was just going to ask Richard if he believes that the value of those two devices that a sell price would cover the 110,000 liability for these redundancies between the two devices?---Are you happy for me to answer that?

PN142

Whether they're worth – whether you believe in your relationship with defence, whether they would pay at least 110,000 for the two devices. And I understand it's conjecture but based off our working experience with them and you know the value that they applied to those devices?---Yes, my understanding with conversations with defence is yes, that would be covered. And the sale price for the two would be above the 110.

PN143

THE COMMISSIONER: Okay. All right. Well, then, I suppose the difficulty is that until there's a sale it's all optimism?---Yes.

PN144

All right. Anybody else questions for Mr Hebden? No? Thank you. All right. Mr Hebden, you're excused from your affirmation?---Thank you.

<THE WITNESS WITHDREW

[10.57 AM]

*** RICHARD HEBDEN

XXN MR BARRY

PN145

THE COMMISSIONER: Now, I am going to go to Ms Linssen next because twice I have asked her to make a note and hold on. So Ms Linssen are you happy to take an affirmation.

PN146

MS LINSSEN: Yes.

PN147

THE COMMISSIONER: Thank you.

PN148

THE ASSOCIATE: Please state your full name and address.

PN149

MS LINSSEN: Lisa Ann Linssen, (address supplied).

<LISA ANN LINSSEN, AFFIRMED [10.59 AM]

EXAMINATION-IN-CHIEF BY THE COMMISSIONER [10.59 AM]

PN150

THE COMMISSIONER: Thank you, Ms Linssen. All right. I have read your contributions to this case. Thank you for that. And have you also had a chance to look at the digital court book?---Yes.

PN151

Yes. Okay. So is there anything else you want to tell me about all of this?---Yes, I have got some notes, so I will just go through them if that's all right.

*** LISA ANN LINSSEN

XN THE COMMISSIONER

PN152

Sure. That's fine?---So as background, I have worked for the company for six years, but I have been involved for eight years. I was a person that licensed the technology to Charles and Anna Harb when they first created RingIR. I helped them get the first defence contract and then I became the first employee. So I feel like I am family so to speak. I have been – I have been through the ups and downs, I was the first employee of Inc and Pty Limited. I was on the board of RingIR Inc and I was on the board of Pty Limited. We – I signed a couple of documents over the years for Pty Limited but I have never been to a board meeting for Pty Limited. I believe that they started when Michael started. Just – yes, the – just the background was that things were getting tight financially at the beginning of the year that was acknowledged, we had some other contracts that were coming up that we were going to be renewed. There was an alpha contract for defence. There were some extensions and some new contracts with DAF. But money was still tight. The last board meeting that I went to for RingIR Inc, well, there was a crisis meeting for budgets. I think that was late February, beginning of March but that wasn't actually an official board meeting. The previous board meeting was back in the previous year, so towards the end of October/November of the previous year. Back then it was spoken about potentially getting a new CEO or just developing the company further for Pty Limited, but when we had the crisis meeting in February, about budgets and all the rest, it was never mentioned

that a new CEO was coming or anything like that. And I had – in the previous board meeting, said that I'd like to throw my hat into the ring and be considered for that position. So in February, I can't – sorry, I can't remember if it was late February, early March, but in that time period there was a crisis meeting talking about funds that, you know, we might have to make some changes if things don't happen and things weren't looking good. So Charles and Anna Harb had a phone call with Richard and myself in that same time period, saying that we may need to reduce the staff by 50 per cent just because we weren't quite sure what was happening with all the contracts. And that was a really stressful time. Yes, I took that very personally. So then I went on holidays to Japan. I got back from holidays from Japan, I had a phone call with Charles Harb on the Wednesday morning. This was mid to late May and Charles said that he'd hired Michael Robinson who was going to be the new CEO and that from now on everything was to go through him and that he was in charge of the company. So over the next period of weeks, several of the various contractors and staff and everyone came to me concerned because all of my work was taken away from me. So I was in charge of the defence, I was given all the DAF contracts, everything that I was doing was then given to Michael to do, so I was literally all of my responsibilities, all the work that I was doing was taken away. I didn't know that he was being employed. I believe that he spoke to at least two of the RingIR Inc board members before being employed. I don't know if that was a separate board meeting. I don't know. I wasn't included, I had no idea. So I sent a four-page letter to Charles and Anna saying - expressing my concerns about my status of - as my role as general manager within the company and talking about my role as the director of the company of Pty Limited and Inc because I'd been removed from all this happening - well, I don't know what it was removed from because I wasn't part of it, so I don't know what I actually missed out on.

PN153

Yes?---At the end of May I had paperwork arrive which was a letter asking me to be a personal guarantor for a loan for Pty Limited. I spoke to Charles and Anna and said I'm not being a personal guarantor for a RingIR Pty Limited loan and at that stage, I was on the board of Pty Limited. Charles and Anna then did a - or Tom can speak to that. There was supposedly a resolution or something by both of them to remove me as a board member of Pty Limited.

PN154

Yes?---I only found out about this when I requested the paperwork but two or three months later. I had no idea. So this happened, I think 27, 28 May this year. So, yes. So then Michael started, I was - all my responsibilities were basically taken away. I haven't been involved in any of the board meetings. I held off resigning from the Inc board because legally, I wanted to see if there was any more board meetings or what the paperwork was or anything like that but nothing came through.

*** LISA ANN LINSSEN

XN THE COMMISSIONER

PN155

Yes?---So I actually sent - Michael made a reference of it earlier, that I was - I resigned from the board in July but it wasn't, it was 2 August this year because I was waiting for a board meeting to actually state my case, find out what the

paperwork was and actually question what had gone on behind my back without me knowing about it. So, yes. So I did actually get some lawyers in to consider about constructive dismissal, all those lines, because everything was taken away from me, so that line that Michael - the applicant used about me saying that I was in charge of the company and stuff like that, was taken - it was a one line taken from that four-page document about my concerns, about my role in the company and how things were going to be moving forward and all the rest. Yes, it's just really upsetting. Yes. Yes.

PN156

Take your time. There's no rush. You can turn your camera off for a minute if you want?---That's all right. The other things I'd probably like to point out are that Pty Limited - I've got a list here. We have brought in \$10.5 million of contracts over the six years. Inc has probably brought in a lot, lot less than that and one of the reasons for me asking about the financials for the whole six years was that my understanding is that the management fees that have gone out for previous years, have been incredibly large.

PN157

Yes?---So the last 12 months it may not have been as much management fees, but before that, there was a considerable amount that was taken out of the company and the group here, we have brought in \$10.5 million of funds over the six years. We've done a great job and it's just a shame that it's come to this.

PN158

All right. Thank you, Ms Linssen.

PN159

Does anybody have any questions for Ms Linssen?

PN160

Mr Barry?

CROSS-EXAMINATION BY MR BARRY

[11.07 AM]

PN161

MR BARRY: Hi Lisa. Sorry, I'm a bit choked up, so in terms of the admin payments, my understanding is that maybe you didn't have a schedule or a budget for those admin payments, that they were ad hoc sort of withdrawals from the Pty accounts which - and correct me if I'm wrong, I could be, and I don't claim to know otherwise, but I guess for me, the question is how could you as a GM have budgeted around that when, you know, between 150 and \$300,000 can be withdrawn without, you know, without appropriate forewarning?

PN162

THE COMMISSIONER: I'm not sure I understand the relevance of the question, Mr Barry. It seems to be going to Ms Linssen's difficulty with managing budgets.

*** LISA ANN LINSSSEN

XXN MR BARRY

PN163

MR BARRY: So, I guess just to clarify, this is more towards the question of independence between the two companies, you know, that it keeps getting said that Lisa and Richard had full control over the company and that this was all being run and we were independent but my question is how could that be true if we don't have access to the budgetary information to do so. I guess I call it a question, the idea that we are independent or have been independent when the parent company is able to withdraw ad hoc payments. Hopefully I've made that clear, and if not, I apologise.

PN164

THE COMMISSIONER: That's fine.

PN165

Ms Linssen, did you have an answer to that question?---Yes. Over the years I have had several conversations with Tom and my understanding of it was that the management fees came out when Charles and Anna decided that the management fees came out and they varied depending on what they felt like at the time. So, yes, it was very ad hoc and it did make budgeting and things like that, so whenever we did the defence budgets and whenever we did the DAF budgets and things like that, what is submitted on the paperwork wasn't necessarily how the company spent the money.

PN166

All right. But did you have access to information to do budgets for RingIR Proprietary Limited?---We did the - or for the tenders, so we costed them and it created the budget for the various projects but the last year or two, I had access to QuickBooks but I didn't have any access to approving payments or anything along those lines. That - all the invoicing was done by Anna Harb and Tom Simmonds and - yes, all of that was done separate so I had some visibility on what the accounts were but they did all the work and all the day-to-day works for that.

PN167

Understood. All right.

PN168

Mr Simmonds or Mr Robinson, your hand is up.

PN169

MR SIMMONDS: Yes. That's me, Tom. My hand up there. Just to clarify some things. Lisa's director resignation was - it was 30 March, everyone's referring to May.

PN170

THE COMMISSIONER: Sorry.

PN171

MR SIMMONDS: And it was resolution there that was passed down and (indistinct) documented with ASIC and things like that and yes, that's about it. Just clarifying that (indistinct).

PN172

THE WITNESS: Yes. Sorry, I've got my notes here and all the rest and yes, I acknowledge, sorry, it was March not May.

*** LISA ANN LINSSEN

XXN MR BARRY

PN173

THE COMMISSIONER: All right. So resigned from the Inc board, is that right?---No, no. That was when I was asked to be a personal guarantor of the Pty Limited loan.

PN174

All right?---That was in March and that's when the resolution both Charles and Anna, the remaining two Pty Limited directors, was to remove me but I only found out several months later.

PN175

All right. And was it still in May that you became aware of the new CEO hire?---Yes. Yes.

PN176

May was the right month. All right?---Yes.

PN177

Thank you. Mr Simmonds, other questions for Ms Linssen?

PN178

MR SIMMONDS: No. No. I agree with everything she's said. There's been at least 10 and a half million come in over the last seven-odd years, unfortunately it doesn't change the position that we're in though. Well, (indistinct) position to be in.

PN179

THE COMMISSIONER: All right. Thank you.

PN180

All right. Anybody else, questions for Ms Linssen? No.

PN181

All right. Thank you, Ms Linssen. You're excused, but obviously, stay in the hearing.

<THE WITNESS WITHDREW

[11.11 AM]

PN182

THE COMMISSIONER: Now, who would like to go next? Mr Barry, you've been the next most vocal so perhaps you. Would you like to take an affirmation?

PN183

MR BARRY: Absolutely. That's fine.

PN184

THE COMMISSIONER: Thank you. Just listen to my associate.

PN185

THE ASSOCIATE: Please state your full name and address.

*** LISA ANN LINSSEN

XXN MR BARRY

PN186

MR BARRY: My name is Alex John Barry, my address is (address supplied).

PN187

THE ASSOCIATE: Please repeat after me.

<ALEX JOHN BARRY, AFFIRMED [11.12 AM]

EXAMINATION-IN-CHIEF BY THE COMMISSIONER [11.12 AM]

PN188

THE COMMISSIONER: Thank you, Mr Barry. All right. You've heard what everybody has had to say and hopefully you've also had a chance to read through the digital court book?---Yes, absolutely.

PN189

All right. So is there anything that you want to tell me in addition to what I already know from what I've heard this morning and from those documents?---There's probably - I would be a risk of repeating a lot of information that I'm sure you're going to hear a few more times. The only thing I guess I would, I guess, if it's appropriate, I could offer some context to my position. So I was hired as a mechatronics engineer. In the time I was there, I was part of the hiring process and we brought in an electronics engineer.

PN190

Yes?---So part of - in my time in these, the two and a half years, we've been involved in - I've only been involved in the one defence project, also the DAF projects I've been part of delivering a lot of the technical requirements outside of mechanical. One of the early - and again, for context, this is to do with this idea of separation of the companies and independence. One of the very first major hurdles was a few months into my time at the company where I was absorbing and working alongside the US team.

PN191

Yes?---So as I understand it, they were contracted for that project to do some of the work and to onboard myself and other engineers. When we discussed moving to the next piece of hardware as described by Richard Hebden, which was this data capture and processing module, arguably the centrepiece of technology outside of the patents, I raised concerns that we were going to be banking all of our future projects on a, as yet unfinished piece of technology that was wholly designed internally by the RingIR Inc team and as Richard said, we requested that we explore alternatives and we requested that we would have better ownership of it internally.

*** ALEX JOHN BARRY

XN THE COMMISSIONER

PN192

Yes?---These were denied by Charles. He said that we already had this tech, it was just around the corner, it was going to work great. What that created was a situation where for the entirety of this project, we've been wholly dependent on that technology, their engineers for supporting it. That support work - this was above and beyond the contracted hours, which as I believe, would have expired sometime earlier on in the contract, we were still wholly dependent on them providing modifications and bug fixes and things like that to this hardware and to the firmware that was running on it.

PN193

Yes?---And again, when we had deliveries, there were items that were hand delivered by Charles Harb when he visited and documentation for that, I know they've claimed that it was documented and perhaps the error was at RingIR Pty's side, but I distinctly remember and I'm sure others can attest to this, that they ended up calling us and saying, 'How many did we give you', because they didn't know how many they'd brought. I know they landed on a number and I know that a lot of us here at Pty were quite confident that that number was incorrect because there was a lack of documentation on that and it wasn't ad hoc delivery of some hardware. I don't know the specifics and I wouldn't attest to but I - this is, you know, wholly true in my recollection of the incident and I believe it would be corroborated by others that were involved.

PN194

Yes?---As to, I guess my - the only final point I'd like to bring up is just the idea that I find it quite disappointing to even believe that the idea of sacrificing these employees' entitlements to gain potentially another six to eight weeks of life where two additional people could keep getting their wage and the CEOs and shareholders continue to earn money off those two weeks and to ask that these five people who have worked hard and through no fault of their own, have seen the collapse of the company. As I said, that's sad. Yes. So that's it.

PN195

Thank you, Mr Barry.

PN196

Does anybody have questions for Mr Barry? No.

PN197

All right. Thank you, Mr Barry.

<THE WITNESS WITHDREW

[11.16 AM]

PN198

THE COMMISSIONER: All right. Ms Spiers, or Dr Spiers, I think. Would you like to take an affirmation?

PN199

MS SPIERS: Certainly.

PN200

THE COMMISSIONER: Thank you.

PN201

THE ASSOCIATE: Please state your full name and address.

*** ALEX JOHN BARRY

XN THE COMMISSIONER

PN202

MS SPIERS: Maryanne Spiers, (address supplied).

PN203

THE ASSOCIATE: Please repeat after me.

<MARYANNE SPIERS, AFFIRMED [11.17 AM]

EXAMINATION-IN-CHIEF BY THE COMMISSIONER [11.17 AM]

PN204

THE COMMISSIONER: Thank you, Dr Spiers. Is there anything you would like to tell me in addition to what I've heard today or in addition to the documents in the digital court book?---Most of what I would have to say would be repetition, I suspect. The only thing that I can add more context to is as my role as senior chemist, I was in charge of the laboratory and as part of the evidence, there is a business case there about gaining more equipment for the laboratory and I would just like to point out this was not the first and only time that I needed to request that my purchases be approved directly to Charles and Anna.

PN205

Yes?---Pretty much everything in the laboratory I needed to justify the purchases and they were constantly queried. I was constantly asked to justify them and I would also like to give context to that. I was also often asked to justify how certain projects went as well. We had a Deltamethrin project at one point and Charles and Anna insisted on being informed of that and when - informed of certain progress in that report, in that project, my apologies, and at one point they criticised me and Lisa's note taking and I was asked to explain how the project worked because they had been going to certain events and discussing how our company had completed that project.

PN206

Yes?---So it wasn't simply purchases that I needed to (indistinct) before Charles and Anna and justify, it was also how projects went. So I think that's all I need to say or else that will be repetition. Yes.

PN207

All right. Thank you, Dr Spiers.

PN208

Does anybody have questions for Dr Spiers? No. Off the hook, Dr Spiers, and I'll excuse you from your affirmation.

<THE WITNESS WITHDREW [11.19 AM]

PN209

THE COMMISSIONER: All right. And Mr Filiti, you've been waiting patiently. Are you willing to take an affirmation?

*** MARYANNE SPIERS

XN THE COMMISSIONER

PN210

MR FILITI: Sure.

PN211

THE COMMISSIONER: All right. Please listen to my associate.

PN212

THE ASSOCIATE: Please state your full name and address.

PN213

MR FILITI: Jacob Filiti, (address supplied).

PN214

THE ASSOCIATE: Please repeat after me.

<JACOB FILITI, AFFIRMED

[11.20 AM]

EXAMINATION-IN-CHIEF BY THE COMMISSIONER

[11.20 AM]

PN215

THE COMMISSIONER: Thank you, Mr Filiti. Is there anything you would like to tell me that I haven't already heard?---Yes. As the others before me, I believe they've summed up very well the main points that I was going to bring across anyway. Just in terms of a bit of context, so as Maryanne mentioned before, I work underneath Maryanne as the chemist beneath her and in terms of my experience in relation to the company being a second entity.

PN216

Yes?---Initially at the start I was under the assumption that I would have to (1) argue why we would need purchasing of certain products or certain instrumentation, equipment in the lab to initially Maryanne and to Lisa, but after the first experience with that, I later realised that it was Charles and Anna that I had to essentially argue to in terms of to be able to purchase the product to begin with or the equipment.

PN217

Yes?---The business case is a fine example as Maryanne mentioned before but following on with that, essentially any piece of equipment over X amount of - well, \$100, \$500, would essentially have to be emailed or communicated to Charles and Anna about why we need it initially to begin with, which was a feat in its own and then the second issue with that is actually trying to purchase it so we can actually develop the Australian side in terms of experimental and completing contracts which, in some circumstances, ended up being a bit of a hindrance because there was certain equipment that we, as an Australian side, in particular, Maryanne agreed, that was a necessity that unfortunately got declined by Charles and Anna which made our ability to commit and complete certain task performance measures in our hub contract as well as all the other contracts spread

across RingIR Pty Limited extremely difficult to complete and requiring additional time to complete on top of that.

*** JACOB FILITI

XN THE COMMISSIONER

PN218

Yes?---But aside from that, everything else has been pretty well covered by the rest of the team.

PN219

All right. Thank you, Mr Filiti.

PN220

Does anybody have questions for Mr Filiti? No.

PN221

All right. Thank you, Mr Filiti, you're excused from your affirmation.

<THE WITNESS WITHDREW

[11.23 AM]

PN222

THE COMMISSIONER: All right. Well, that is the extent of the evidence. So now you each have a opportunity just to summarise what you want me to find in this case and then that will be the end of the hearing.

PN223

Mr Robinson, I'm just aware Mr Simmonds is getting a charger. Do you want a short break to prepare for that?

PN224

MR ROBINSON: No, I'm happy to wait for Mr Simmonds if that's all right. He should only be a minute or two, but other than that, I don't need further time.

PN225

THE COMMISSIONER: All right. And what about the respondents? Do you need any additional time to prepare for any final comments you might wish to make? No? All right.

PN226

All right. Well, we'll just wait for Mr Simmonds and then we'll do that process. While - here he comes. While we're waiting, does - I mentioned before to Mr Robinson and Mr Simmonds the opportunity for parties to have discussions about payment of entitlements by instalment. Are any of the employees interested in having that discussion with the company? I don't have a preference one way or the other.

PN227

Mr Barry, can I take your hand up as a 'Yes'?

PN228

MR BARRY: Sorry, I just wanted to - I wasn't sure if you just wanted a 'Yes', 'No', or a further expansion upon that point so - - -

PN229

THE COMMISSIONER: Well, I don't really mind. It's probably a yes or no question but you're free to expand if you're not sure what I'm asking.

*** JACOB FILITI

XN THE COMMISSIONER

PN230

MR BARRY: I think my personal thoughts on that is probably that it sounds like - and perhaps Michael would agree, that the idea of paying in instalments isn't really a solution to the problem and I think if we are worried about insolvency in the near future with - we're probably more interested in trying to make sure that entitlements are paid while there's money available should this tax payment come through, for instance, but rather than - yes, it sounds like perhaps not a useful discussion.

PN231

THE COMMISSIONER: All right. I'll take that as a 'No', from you, Mr Barry. And Ms Linssen's nodding in firm agreement.

PN232

Is that also a no from you, Ms Linssen? Yes.

PN233

Dr Spiers? That's a no from you. Yes.

PN234

And Mr Filiti? That's a no from you.

PN235

All right. And Mr Hebden?

PN236

MR HEBDEN: The only one caveat I'll add to that is I agree with what Mr Barry has said but if that then results in us receiving zero payment, then some sort of mediation would probably be preferred.

PN237

THE COMMISSIONER: All right. And I'll just revisit that question before I ask the applicant to make their closing submissions.

PN238

Is that something you wanted to explore with the respondents, Mr Simmonds or Mr Robinson?

PN239

MR SIMMONDS: To be honest, I didn't know that was an option, but if - yes, I know it's come - like we've got the same conclusion as everyone here but if we have the money or there is - it was on the horizon at some point, then, yes, we could negotiate that but I just don't see it on the horizon, from my perspective right now.

PN240

THE COMMISSIONER: All right. Well, I think generally we're in agreement that that's not to get distracted by that discussion. So - all right. Let's move on then.

PN241

Mr Simmonds and Mr Robinson, your closing submissions, please.

PN242

MR ROBINSON: Thanks, Commissioner. Look, I think it would be our position that (indistinct) the opening statement, I think some of the things we've heard will add to - current movement, if you like, to the arguments. We - I mean, I do note Lisa Linssen has confirmed her responsibilities as running the company by saying that as per our submission that with my arrival all the responsibilities were taken away.

PN243

I think we need to recognise that things like making approvals, that's perfectly normal for a board to make significant Capex type approvals (indistinct) recognise as per our submission that management fees are a perfectly normal and standard practice in this sort of situation. What is perhaps slightly abnormal but not completely, is that they weren't planned out and there's no management agreement and as per submission, we said that it is not economically sensible to develop a management agreement to this point in the company and so it still doesn't change anything in submission and our ability to pay it right now.

PN244

Personally, and I can speak for Charles and Anna, and probably Tom as well, we hate this position that we're in. We would like to be able to pay redundancies but even more so, we would have preferred not to be in this position and I can honestly say that in my - in the process of my getting appointed, Charles and Anna never raised that this was the plan, that they wanted any of this to happen.

PN245

They employed me to keep the company alive and that is still my number 1 priority and where it just reiterates the position that we're not finding this fun either. It's the last thing we wanted to do, but in order to keep the company alive, we've explored this path. But whatever our responsibilities are, according to your ruling, we'll endeavour to make happen.

PN246

THE COMMISSIONER: Thank you, Mr Robinson. Can I just confirm one thing with you? Ms Linssen made some comments about the timeline of your onboarding to the company, did you agree with that timeline? Did you come on in May of this year?

PN247

MR ROBINSON: I think it was May the 8th and it was following - it was probably an eight-week process, from my point of view. I was approached, I think about mid-March. I can confirm what Lisa said in terms of my discussions with a couple of the Inc directors, again, just being quite upfront, transparent. I did have a discussion with a couple but it wasn't at a board meeting.

PN248

So, yes, May 8th, I think it was, Tom?

PN249

MR SIMMONDS: Yes. Yes. Yes.

PN250

THE COMMISSIONER: All right.

PN251

MR ROBINSON: So, yes, I more or less confirm those - that commentary. Sorry, I would add I do agree - I think the directors Charles and Anna would agree that things perhaps haven't been included in the CEO appointment process, haven't been managed as well as they should and that's part of the reason, I presume, that I was brought on board and that process wasn't managed as well as it should have been.

PN252

THE COMMISSIONER: All right. Thank you. So am I right in understanding then that your salary points and triggers were something you talked about when you came on board in May, so that would be - your contract would be the contract you entered into in May 2023?

PN253

MR ROBINSON: Yes. So - well, actually, I think I signed the contract in April. I think, from memory, before I started and those trigger points were written into that contract. The only variation that has happened since has been - the intention was that I would be part-time through to the end of June because I had other commitments and then during May in discussion with the directors, we brought that forward given the urgency to help improve the company.

PN254

THE COMMISSIONER: All right. Thank you. All right. Thank you, Mr Robinson.

PN255

MR ROBINSON: Thank you.

PN256

THE COMMISSIONER: Now, would any of the respondents like to make a closing submission? It's optional, not compulsory.

PN257

Mr Hebden?

PN258

MR HEBDEN: Yes, I may as well just add some stuff that I missed before. Just reiterating what everyone else has said as just the disappointment that this has come to this now. Mr Barry and I returned from a US defence trial where we were demonstrating Australian solvent technology on a world platform. I also managed to squeeze in a holiday, the first holiday, that I'd had in a year and I

found out the day that I returned that my team and myself had been made redundant.

PN259

So I don't currently have any gainful employment. I've been unable to find any employment since I've been made redundant, so I have no income. I have a mortgage to pay. I would absolutely not return back to work with this company, based on recent events that have transpired and I think anyone would probably think that's a relatively reasonable statement to make.

PN260

I don't want to speak on behalf of the rest of the team, but I believe they probably share the same feelings with regards to if there contracts to return because I'd be asking the question if we did return back to work at RingIR, would we then exactly end up in this exact same position, you know, two months down the road. So, you know, there's questions as to the financial stability of the company.

PN261

So my questions would be with regards to the payment and final statements would be there's several hundred thousand dollars of assets currently sitting in a warehouse in Thomastown in Melbourne, scientific laboratory equipment, many things that could be, you know, sold that are not currently being used, that could probably contribute to paying these redundancies.

PN262

I think the statement that they, you know, are waiting for money to come in, there's lots of money coming in, I think that's just a deflection. I think there's plenty of opportunities where if they really did want to pay this, they could. I'm not overly convinced that their - it's in their full interests that they want to pay us this. So alongside with the sale of those two handheld devices, you know, they could meet in the middle somewhere and that would easily pay for this.

PN263

So I guess my final statement is there seems to be a lot of, you know, promise about trying to keep the company alive, trying to keep the company going and I'm sort of - at what cost. Like, are we the five applicants - not applicants, respondents going to have to bear the brunt of not getting paid a redundancy to allow a company to continue and is that fair on the five of us.

PN264

Also begs the question of how is the company going to continue with no money and no staff. So is that even a valid argument. So that's my closing argument.

PN265

THE COMMISSIONER: Thank you, Mr Hebden.

PN266

Anybody else? Ms Linssen?

PN267

MS LINSSEN: Hi, just wanted to go through and yes, just say how sad it is. I really do feel that I have no trust with Michael, Charles and Anna, the team that are currently running RingIR. I feel that, you know, we've heard lots about how much the company cares and how they are really sad to be in this position. If they cared that much, they wouldn't have tried to seek not paying the redundancy.

PN268

The redundancy is an employee right. It's a startup, we've given our heart and soul into this company for so many years. You know, some weeks might be short weeks, other weeks you might work really, really long hours. We've been a family. We've been all these things. I just feel it's really - doesn't reflect well on them to say, 'Look, we haven't got heaps of cash at the moment. We don't want to pay the redundancies so we're going to try and not pay the redundancies.'

PN269

It just doesn't seem fair. It doesn't seem equitable and it - yes, the cost of those defence units, they could sell them at a discount maybe even. I don't know what the value that they went in at and I'm not sure what a fair value would be but they could have reduced the cost by 20, 30 per cent, 40 per cent just to get a sale and that would cover most of the redundancies as well.

PN270

Just really sad that it's come to this. Yes. And I think as employees, we've done all the right things. We came into this knowing it was a startup but we did everything we could to make this successful and I feel as if we're being punished, unrightfully so.

PN271

THE COMMISSIONER: All right.

PN272

MS LINSSEN: Thank you.

PN273

THE COMMISSIONER: Thank you, Ms Linssen.

PN274

Anybody else? No. All right. Final word, Mr Robinson, to you, anything, or Mr Simmonds?

PN275

MR SIMMONDS: Not necessarily from me.

PN276

MR ROBINSON: Thanks, Commissioner. No, I'm not going - if you allow it, I'm happy to put a lid on more detail and the discussion around the sale of devices which seems to be a lot of speculation on those, if that helps anything, but it doesn't change anything.

PN277

THE COMMISSIONER: All right. All right.

PN278

Well, thank you everybody. So what I'm going to do is I'm going to reserve my decision which means I'm not going to tell you the answer right now. I'm going to write a decision, taking into consideration everything I've heard today and the documents that you've provided for me and then I'm going to send that to you by email, just the same way you've received the other notices that were sent from my chambers.

PN279

So I will try not to let that take too long, but just to give you some indication, these decisions can take somewhere between five and 12 weeks. As I said, I'll try not to let it take that long, I'm conscious of the position that you're all in and the need to have some certainty, but I don't want you to be unhappily surprised if it doesn't come to you soon.

PN280

Ms Linssen, you had a question?

PN281

MS LINSSEN: Yes, just my concern is - sorry. I'm not going to try and speak out of line, but it seems that the longer the (indistinct) goes on, the less chance there will be for them to pay the redundancies. So if a decision isn't made for 12 weeks, I think there'll be less chance of us ever getting our money, whereas if a decision was made in the next week, that would be in time for the RND tax money to come through and then that could be one of the first expenses.

PN282

We could be cleared, we could be removed from the books and they could keep going and do whatever, but if this decision is delayed another five, 12 weeks, or whatever, what's to not stop them from buying other things or doing other things with that money in the meantime. So then we are the ones that miss out again.

PN283

THE COMMISSIONER: Well, I do hear your concern but ultimately, I've got some work to do to write a decision and I've got other cases I also need to deal with. So I am very aware of the need that you all have for urgency, indeed, when the application was made even the applicant wanted it done very quickly. So I think you all want that and as fast as I can, I will, but I'm just letting you know that sometimes it takes longer than you hope.

PN284

All right. Thanks everybody. We'll now adjourn.

PN285

MR ROBINSON: Thanks, Commissioner.

ADJOURNED INDEFINITELY

[11.39 AM]

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