



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT CLANCY

C2023/7024

s.604 - Appeal of decisions

**Appeal by Humphries
(C2023/7024)**

Melbourne

10.00 AM, FRIDAY, 22 MARCH 2024

PN1

THE DEPUTY PRESIDENT: Good morning. Mr Humphries, can you hear and see me?

PN2

MR C HUMPHRIES: Deputy President, yes, I can.

PN3

THE DEPUTY PRESIDENT: Thank you. From the Australian Capital Territory we have Mr Hamack, Mr Wright, Ms Pith and Mr Dawson. Can you hear and see me?

PN4

MR B HAMACK: Yes, we can, Commissioner.

PN5

THE DEPUTY PRESIDENT: Thank you. You were rather later in confirming your attendance in response to correspondence from my chambers. Is there any reason why?

PN6

MR HAMACK: No. Apologies, Commissioner. It just got buried in my email.

PN7

THE DEPUTY PRESIDENT: It got buried in your email, okay.

PN8

MR HAMACK: I do apologise, Commissioner. That's my fault.

PN9

THE DEPUTY PRESIDENT: Sorry, you're Mr Hamack, are you?

PN10

MR HAMACK: Yes. Normally my colleague, Mr David Leggett, has carriage of this matter, but he had to take unexpected leave this past week.

PN11

THE DEPUTY PRESIDENT: Thank you, Mr Hamack. I have called the matter on this morning to get an update so that the further progress of the application for permission to appeal can progress. Mr Humphries, there has been quite extensive correspondence prior to today about your medical condition.

PN12

MR HUMPHRIES: Yes.

PN13

THE DEPUTY PRESIDENT: When the original directions were vacated and the original hearing date was vacated, it was on the basis of medical information you had supplied. In response to that, the Full Bench had conferred and required you to produce reports from Dr Hassain and Dr Rowe pertaining to your current and future capacity to comply with directions to prepare material and then participate.

PN14

MR HUMPHRIES: Yes.

PN15

THE DEPUTY PRESIDENT: As things currently stand there has not been anything provided and the request was that be done by no later than 29 February 2024. It's now 22 March, and could you please update me as to what is the current position in relation to getting those reports.

PN16

MR HUMPHRIES: Right. So I believe I had an appointment with my neurology team scheduled for sometime in February, but unfortunately I was admitted to hospital again - the headache - the night before and I was discharged after, I guess, the clinic was finished. However, I did try and get in touch with Dr Rowe for quite some time and in the end I had a phone number for the neurosurgeon who operated on me, and I was able to speak with him directly, and he informed me that Dr Rowe had actually moved on.

PN17

Dr Hassain, I don't have much contact with, but up until that point I was in touch with Dr Rowe and otherwise my GP who I see once a month. Otherwise - excuse me for waffling on, but I'm just trying to recall. On 27 March I have a clinic as such and actually today I've got a CT scan, but if this is a question about whether I'm comfortable proceeding at this time, I don't anticipate that I'm - there being too much change in the next couple of months, so I suppose now would be as good a time as any. That's the concern.

PN18

THE DEPUTY PRESIDENT: Okay. Well, you see, we have to then take you at your word. Up until now there were directions and there was correspondence, and you were requesting the matter be adjourned and directions be vacated. So we took into account what you were producing in terms of medical certificates, which were not stating much beyond a period during which you would have incapacity, and we had no real insight into the extent of that incapacity; what that incapacity meant.

PN19

For our purposes we're only interested in whether or not you have the capacity to prepare material and then participate in an appeal hearing. When we get a medical certificate that is perhaps more directed to the capacity to attend and perform work, we don't know whether that's the same thing, but if your advice now is that you think that your condition is in sort of a holding pattern, so to speak, and that that may persist for a number of months and that you are prepared to proceed with your appeal application and all that that entails, then the Commission will take you at your word.

PN20

MR HUMPHRIES: Okay. Thank you. Yes, I have submitted some documents that would otherwise outline the procedures that I've had in recent months. I think it does affect - it seems to be affecting my ability to speak, but otherwise I think my thinking as such - yes, it is what it is for the time being and I'm so fortunate

enough as to have some legal representation by the time the hearing is scheduled for.

PN21

THE DEPUTY PRESIDENT: All right. Well, I'll address a couple of those things in turn. So on 29 February you submitted to the Commission a document that you said:

PN22

I attempt to produce a document that would otherwise be of value to you. It's a 205-page document.

PN23

I don't want you to press each and every page of that document now, but I did want to get a sense of that document. A high level scan of the material suggests that there are things in it such as the original decision and the court book from the proceeding before Ryan C, and some other documents that are a matter of record such as application forms and notices of appeal. Have you got that document to hand?

PN24

MR HUMPHRIES: Yes, I can certainly pull that up. Just give me a moment.

PN25

THE DEPUTY PRESIDENT: It might be useful. I'll just confirm, Mr Hamack, the ACT has a copy of that document? It was sent to my chambers and copied in to David Leggett and Michael Chilcott. Is that something that you have got access to?

PN26

MR HAMACK: Yes, Commissioner.

PN27

THE DEPUTY PRESIDENT: Thank you. Well, we will refer to that - I'll be referring to that now, so if you can just follow what's going along.

PN28

MR HAMACK: Thank you.

PN29

THE DEPUTY PRESIDENT: Mr Humphries, just let me know when you have called that up on your screen, please.

PN30

MR HUMPHRIES: Certainly. I'm sorry, I just can't recall the actual title of the document itself. I think it was - - -

PN31

THE DEPUTY PRESIDENT: Okay. Well, the front page of it says 'Mr Christopher Humphries against Australian Capital Territory as represented by the Chief Minister, Treasury and Economic Development Directorate' and that is in quite large font. Then the second page of it has a heading 'Australian Law

School Super GPT' and that's a two-page document, then it goes into the decision of Ryan C of 25 October 2023.

PN32

MR HUMPHRIES: Yes, yes. I was, yes, reviewing that not too long ago. Yes, I have a lot of information in there from the previous hearing with Ryan C.

PN33

THE DEPUTY PRESIDENT: Yes.

PN34

MR HUMPHRIES: Then I think I've kept it to about two pages with regards to my appeal - the claims for my appeal.

PN35

THE DEPUTY PRESIDENT: Yes.

PN36

MR HUMPHRIES: I think there are three points listed there.

PN37

THE DEPUTY PRESIDENT: Sorry, just a moment. When you say that two pages, is that the first two pages of the document?

PN38

MR HUMPHRIES: No, that would be probably about three-quarters of the way through the book, so - - -

PN39

THE DEPUTY PRESIDENT: Okay. Can I take you perhaps page 187 of that .pdf document.

PN40

MR HUMPHRIES: Yes. Sorry, yes, just one moment, please. That would be Sent Items in Outlook and then I should have it listed there sent. My (audio malfunction) cut off yesterday and I only managed to get it back on this morning.

PN41

THE DEPUTY PRESIDENT: Okay.

PN42

MR HUMPHRIES: So, yes, I apologise for the - I'm happy to proceed if it - - -

PN43

THE DEPUTY PRESIDENT: We might try and share the document on the screen and that might assist.

PN44

MR HUMPHRIES: Thank you.

PN45

THE DEPUTY PRESIDENT: Right, now, Mr Humphries, you will see here we have brought up on the screen page 187.

PN46

MR HUMPHRIES: Thank you.

PN47

THE DEPUTY PRESIDENT: This immediately follows one of your notices of appeal and I've noted the heading of this page 187 is 'Analysis of Commissioner's decision denying extension of time'. Was this what you were referring to before when you said this is what you've attempted to make three points in terms of addressing the decision?

PN48

MR HUMPHRIES: Yes. So those are the three points that I was - that were available to me at the time.

PN49

THE DEPUTY PRESIDENT: Okay.

PN50

MR HUMPHRIES: Otherwise, yes, I believe those are the three that have - - -

PN51

THE DEPUTY PRESIDENT: All right. I'm just sort of scrolling down through that now. From 187 this document goes to about page 191. At 191 you have got 'Conclusion' and 'Call for action', and then some references, right?

PN52

MR HUMPHRIES: Yes.

PN53

THE DEPUTY PRESIDENT: So that's one part of the document you have prepared. Then when we scroll down to the next page, 192, you have then got an index and you've listed four documents there. I'm going to assume that what follows then are the four documents; is that correct?

PN54

MR HUMPHRIES: I believe they are listed, so the pages 4 to 8 would be the formal directions and then otherwise pages 9 to 10 would - - -

PN55

THE DEPUTY PRESIDENT: Yes, all right.

PN56

MR HUMPHRIES: Yes, yes.

PN57

THE DEPUTY PRESIDENT: Okay.

PN58

MR HUMPHRIES: I tried - - -

PN59

THE DEPUTY PRESIDENT: That's all right. That's all right. Let's just scroll down and go through that. Then you have got your - yes, all right - supporting evidence. Okay, so this first document here, this is page 194, is this the formal direction?

PN60

MR HUMPHRIES: 'These directions are advanced in relation to - - -'

PN61

THE DEPUTY PRESIDENT: Is that what you mean by the formal direction, 'Chris Humphries, pages 4 to 8?'

PN62

MR HUMPHRIES: Yes. So that's an example of one of the formal directions I received.

PN63

THE DEPUTY PRESIDENT: Okay. Keep scrolling down. Let's just stop there. Now, this is an email of 25 May and that says you were notified on 24 May of the decision to terminate your employment, so this is the second one. This is what you call 'Steven's email noting the 24th is my termination date'.

PN64

MR HUMPHRIES: That's correct.

PN65

THE DEPUTY PRESIDENT: Right, okay. Then we'll keep scrolling down and this is now - you have described this as 'Decision letter to applicant, no documents found'. Is that the right one?

PN66

MR HUMPHRIES: So the FOI request that we're looking at currently?

PN67

THE DEPUTY PRESIDENT: Yes.

PN68

MR HUMPHRIES: Yes, so I guess that is in - yes, that's in relation to trying to find investigation - a report of the investigation and how it was conducted into my termination.

PN69

THE DEPUTY PRESIDENT: Okay. Is that the one you mean though when you say 'no documents found'? Is that the document that we should be looking at?

PN70

MR HUMPHRIES: Sorry, if I could refresh the previous document, it was essentially about Steven Wright responding to my emails and otherwise he suggests that my termination occurred on 24 May.

PN71

THE DEPUTY PRESIDENT: Yes.

PN72

MR HUMPHRIES: It cause some confusion - - -

PN73

THE DEPUTY PRESIDENT: I see. Okay. All right. If we go to page 201, this is the 'Decision letter, no documents found', is it? If you scroll down to the heading 'Decision and access' there on the first page - - -

PN74

MR HUMPHRIES: Yes.

PN75

THE DEPUTY PRESIDENT: - - - there is:

PN76

A search of records has failed to identify any document in relation to your request. I am satisfied - - -

PN77

MR HUMPHRIES: Yes.

PN78

THE DEPUTY PRESIDENT: So that's that one you are referring to?

PN79

MR HUMPHRIES: That's correct. I guess I was looking for information in the actual investigation report that would support any appeal - claims that I could otherwise utilise in my appeal.

PN80

THE DEPUTY PRESIDENT: Okay.

PN81

MR HUMPHRIES: Yes.

PN82

THE DEPUTY PRESIDENT: All right. Then the final document in this .pdf document is the decision letter and that is a three-page letter.

PN83

MR HUMPHRIES: I believe that is, yes, the - - -

PN84

THE DEPUTY PRESIDENT: Okay.

PN85

MR HUMPHRIES: Yes.

PN86

THE DEPUTY PRESIDENT: All right. So can I take it then that what you have prepared in this .pdf document from page 187 through to the end of the document at page 205 is essentially in the nature of submissions you want to make about your application for permission to appeal and what you would say on an appeal hearing?

PN87

MR HUMPHRIES: That's correct. It was unfortunate, I had a key piece of evidence - or I thought I had a key piece of evidence - to confirm the time and the date that I actually opened the email about my termination.

PN88

THE DEPUTY PRESIDENT: Yes.

PN89

MR HUMPHRIES: Unfortunately the tool that I used to sort of interrogate the metadata which provides that sort of information around emails - so information pertaining to when they were sent, email server, what email server they arrived at, at what time the email was actually opened - in my case whilst I can confirm the email arrived in my mailbox on 23 May, it wasn't actually until the following day that I actually opened my emails, saw the actual - and then my responses at that point become - obviously I start responding at that point.

PN90

THE DEPUTY PRESIDENT: Okay. So what you are saying is your position is that you opened the email and this is, what, the email advising you that your employment was terminated on 24 May, is it?

PN91

MR HUMPHRIES: I believe the email says that the decision was arrived at on 23 May.

PN92

THE DEPUTY PRESIDENT: Yes.

PN93

MR HUMPHRIES: However, I opened it on the following day. In fact I think I took two or three days away from emailing anyone. I sent items - - -

PN94

THE DEPUTY PRESIDENT: Okay.

PN95

MR HUMPHRIES: Yes, but otherwise - yes, I'm asserting that, yes, I did open it on the 24th and otherwise the responses that I started producing, I guess, or responding to the termination, all start from the 24th.

PN96

THE DEPUTY PRESIDENT: Right.

PN97

MR HUMPHRIES: Yes.

PN98

THE DEPUTY PRESIDENT: Okay. Not that we're going to go into it today, but can I discern from that that your proposition is that you became aware of your dismissal on the 24th and that should be day one, so to speak, not - that should be taken as the day you were notified of your dismissal, not the 23rd?

PN99

MR HUMPHRIES: Yes, that's correct. I mean, I worked at the ACT Government for 14 years and I did a lot of work there with regards to close call work; 8000 hours in seven years. Otherwise, I would have expected a phone call at least or some other way to notify me other than simply putting an email - sending me an email and including access to EAP of any issues dealing with the information that was being delivered to me.

PN100

I'm not quite sure whether it's my responsibility to keep a 24-hour watch on my mailbox. However, I think I referenced case law, the history where - - -

PN101

THE DEPUTY PRESIDENT: Yes.

PN102

MR HUMPHRIES: Yes.

PN103

THE DEPUTY PRESIDENT: All right. I understand. The short point is if you were notified on 23 May, your application made on 14 June is one day late, but you are saying you were notified on the 24th, therefore the application made on 14 June was not late, it was made on the 21st day after your dismissal took effect.

PN104

MR HUMPHRIES: Yes, that's correct, yes.

PN105

THE DEPUTY PRESIDENT: Okay. All right. So for present purposes can I proceed on the basis - and can the Full Bench proceed on the basis - that what you have filed in this document of 29 February, and in particular pages 187 through to page 205, are essentially your submissions in relation to your application for permission to appeal and the appeal?

PN106

MR HUMPHRIES: Yes. I mean, these are my submissions. However, obviously there are other concerns that I think I would like to include, as well. However, I'm not sure whether they are a public interest test or - - -

PN107

THE DEPUTY PRESIDENT: Well, what the Appeal Bench will be hearing is your application for permission to appeal and that is where you have got to address what you say are the error or the errors in the decision of Ryan C. You can also - and should also - address the question of the public interest, because if the Commission is persuaded it's in the public interest for you to be granted

permission to appeal, we must grant you that permission. So if there are matters that you say go to the public interest, you should address those if you want us to consider them.

PN108

Does the document that you have filed on 29 February cover everything you want to cover and everything you want to put to the Commission? Bear in mind this is not a hearing that is going to rehear the case you ran before Ryan C.

PN109

MR HUMPHRIES: Yes.

PN110

THE DEPUTY PRESIDENT: You have to get permission to be able to do that. This is the first step, you have got to get permission, so you have got to be able to articulate and persuade us as to error. If there is a public interest consideration that compels us to grant permission, you have got to put that before us, as well.

PN111

MR HUMPHRIES: I mean, I guess the primary - I'll be relying primarily on the argument that it's very well to send someone a notification that they've been terminated from their workplace - - -

PN112

THE DEPUTY PRESIDENT: Yes.

PN113

MR HUMPHRIES: - - - but otherwise there should be some - at least there should be some sort of forewarning about that. Certainly my situation, my mental health was pretty vulnerable and it goes to - - -

PN114

THE DEPUTY PRESIDENT: Okay. Look, I don't expect you and I don't want you to go into what you would be presenting before the Full Bench. Really what I wanted to clarify this morning is in this document filed on 29 February, the 205-page document, have you covered all the material you wish to put before the Commission in relation to your appeal?

PN115

MR HUMPHRIES: I could certainly add more and I'm just concerned that it might not be relevant, and otherwise would be evidence and the claims that I've made. Those three - - -

PN116

THE DEPUTY PRESIDENT: Okay.

PN117

MR HUMPHRIES: I think the three would - - -

PN118

THE DEPUTY PRESIDENT: Yes.

PN119

MR HUMPHRIES: Yes, I'm - - -

PN120

THE DEPUTY PRESIDENT: Sorry, you go.

PN121

MR HUMPHRIES: I'm concerned as to what you have advised me with viewing Ryan C's decisions in granting me the extension - or not granting me, rather, the extension due to exceptional circumstances. I guess that evidence, I'm relying on that, as well.

PN122

THE DEPUTY PRESIDENT: Okay.

PN123

MR HUMPHRIES: The argument that - - -

PN124

THE DEPUTY PRESIDENT: I just need you to confirm whether what you have filed is what you want to put before the Commission or if there is other material you want to put before the Commission. Do you require an opportunity to do that?

PN125

MR HUMPHRIES: I would appreciate an opportunity to do that, to view what I've submitted and perhaps add something further to clarify what it is that I've - - -

PN126

THE DEPUTY PRESIDENT: Yes, well, this can't go on and on. If I grant you a date to file any remaining material - and bear in mind it's going to assist us if it's easy for us to discern what material you want us to refer to. If you're sending in material in two or three parts, it becomes more difficult for us understand what it is your case on appeal is. If there is a single point of reference we can know very clearly what it is you want us to consider, but if you're sending us random emails or things that occur to you on one day to the next, it makes it difficult for us to actually understand what your whole case is.

PN127

So that's why we make directions and require a party to put all the material before us, and it also then assists the other party - in this case the ACT - to make their response, because they are then making a response to what they understand to be your full case. Okay?

PN128

MR HUMPHRIES: Absolutely. Okay.

PN129

THE DEPUTY PRESIDENT: Now, you have also made reference in your email of 29 February - or had previously made reference to some evidence that you wanted to put before the Appeal Bench and you were advised in reply that if there

is evidence you wish to put before the Commission that was not before Ryan C, there is an opportunity to seek to put it before the Full Bench on appeal, but it won't necessarily be admitted. It has to satisfy certain principles.

PN130

The power to admit fresh evidence on appeal is a discretionary power and this was outlined in an email from my chambers to you on 22 February, that there are certain principles that go to the admission of fresh evidence on appeal, so you need to be mindful of that, too.

PN131

MR HUMPHRIES: I'll review those requirements and ensure that I submit - - -

PN132

THE DEPUTY PRESIDENT: All right. If I was to make new directions and give you the opportunity to file and serve any further material that you wish to have considered in relation your application for permission to appeal, and the merits of your appeal, how long would you like - so I can consider the timeline - for that opportunity?

PN133

MR HUMPHRIES: If I were given six weeks, that would be - - -

PN134

THE DEPUTY PRESIDENT: Six weeks?

PN135

MR HUMPHRIES: Four weeks. Four weeks would be - I have an underpayment matter that has me otherwise engaged for presentation, as well, so - - -

PN136

THE DEPUTY PRESIDENT: I beg your pardon? I didn't catch the first part of that.

PN137

MR HUMPHRIES: I apologise. So I have a significant underpayment issue with the ACT Government, being otherwise investigated through the Fair Work Ombudsman.

PN138

THE DEPUTY PRESIDENT: All right.

PN139

MR HUMPHRIES: This process has been going on now for nine months and I've been trying to compile a list of time sheets, but accessing those time sheets has been very difficult. I've had word back from the Fair Work Ombudsman's office that they want to talk with me about some progress that has been made in that area and I'm hoping that in the next couple of weeks, or week or two, I'm not sure, I might actually have some funds available to me which would then - which would allow me to engage representation.

PN140

THE DEPUTY PRESIDENT: That involves a whole realm of activity that doesn't have a definite sort of a timeline on.

PN141

MR HUMPHRIES: Yes.

PN142

THE DEPUTY PRESIDENT: You know, if the Fair Work Ombudsman is conducting some sort of investigation they will then have a series of processes that they undertake and decisions that they undertake, then there would be perhaps some correspondence and dialogue with the ACT about that, and that could go back and forth for some time.

PN143

MR HUMPHRIES: I guess what I'm trying to contend is that, you know, the Fair Work Act stipulates something - I believe three days for an employee to access their time sheets, et cetera, otherwise I think the extension can be made for 14 days, but otherwise I've been asking for access to this information since my termination.

PN144

THE DEPUTY PRESIDENT: Yes. Look, again it's an issue arising out of your employment, but it's not an issue that pertains to this appeal process.

PN145

MR HUMPHRIES: It has certainly put me at a disadvantage not having access to those funds, but whether those funds are - yes, I guess that's another thing, isn't it?

PN146

THE DEPUTY PRESIDENT: Yes. Well, again the Act contemplates parties appearing unrepresented and it's not necessarily going to be something that holds up the progress of this appeal. You have filed material that you want to present. You have said there might be other material. How much other material do you think you want to put before the Commission in this appeal?

PN147

MR HUMPHRIES: Okay, I'll explain that. When I went into the initial appeal before Ryan C, I was of the mistaken sort of understanding that it was a reverse onus situation which I now understand was not the case. It's not the case in an appeal process - or a jurisdictional matter, rather, that was being heard. I otherwise didn't provide the evidence and there was evidence also that I wasn't able to produce at that time.

PN148

For example, I have a diagnosis of ADHD, which, you know, I was prohibited from accessing at the time because I simply didn't have the money to see the psychiatrist for that, but I have in time since a copy of a diagnosis, I guess, and certainly I would think that should support any - - -

PN149

THE DEPUTY PRESIDENT: Yes. Again, I understand there are arguments you want to put before the Commission, but what I want to know is how long would it take for you to - you've outlined some material already.

PN150

MR HUMPHRIES: Yes.

PN151

THE DEPUTY PRESIDENT: In your document you filed on 29 February.

PN152

MR HUMPHRIES: Yes.

PN153

THE DEPUTY PRESIDENT: You have said you want to address some other matters. How long will it take you to address other matters?

PN154

MR HUMPHRIES: I'm happy to go ahead with this next Friday, if that's - two weeks, if that's something that's suitable.

PN155

THE DEPUTY PRESIDENT: I will give that some consideration. I will just hear from Mr Hamack and then I'll come back to you. All right?

PN156

MR HUMPHRIES: Thank you.

PN157

THE DEPUTY PRESIDENT: Thank you. Mr Hamack, in terms of the original directions in this appeal proceeding, they were made by the President of the Commission on 24 November and they contemplated Mr Humphries filing material by 5 pm on Friday, 22 December. Now, obviously that didn't occur and the correspondence on the Commission's file bears that out. We also can see from those original directions there was an opportunity for the respondent to file material in response and other steps that were to be taken ahead of a hearing before a Full Bench on 13 February, which also did not occur.

PN158

Now, looking at the original timetable, it seems to me it was taken into account at least that there was the Christmas/New Year period and probably a period during which there would be a few, if any, personnel who would be involved in this case in attendance due to the holiday period in December/January. The respondent originally had until 2 February to file its material in response.

PN159

If the opportunity was given to Mr Humphries to file any additional material with the Commission - and I appreciate that you haven't seen what additional material might come. You may have had the opportunity to review what had been filed on 29 February, but what sort of a timeline do you submit would be reasonable then for the respondent to provide a response?

PN160

MR HAMACK: In the circumstances, Commissioner, I think two weeks would be more than sufficient.

PN161

THE DEPUTY PRESIDENT: All right. Thank you. Well, on that basis if we were to grant Mr Humphries two weeks to file any additional material that would take us through to 5 April, and then a two-week period for the respondent to provide a response would take us through to 19 April. I would then need to confer with the other members of the Full Bench in terms of their availability for listing a hearing, but in the ordinary course that might be something that takes place approximately 10 to 14 days after 19 April, so we would be looking possibly in the week commencing 29 April. In lieu of that, maybe something commencing in the week of 6 May 2024, but I'm inclined to make directions with at least those two dates.

PN162

Now, Mr Hamack, is it the position of the respondent that it does not require permission of the Commission to be represented by the ACT Government solicitor? Is that going to be the position?

PN163

MR HAMACK: That is our normal position, Commissioner. However, if the Commission would like a formal request for representation, we're happy to provide that, as well.

PN164

THE DEPUTY PRESIDENT: All right. It may be just something that you square off and that way Mr Humphries can be satisfied of the position that's ultimately taken by the Commission. All right.

PN165

MR HAMACK: Yes.

PN166

THE DEPUTY PRESIDENT: We will deal with that, as well, and then of course the original directions contemplated the parties to provide authorities 24 hours before the hearing and we'll repeat that, as well. Mr Hamack, out of all the matters that have been discussed this morning, was there anything else you wanted to comment on at this stage?

PN167

MR HUMPHRIES: No, Commissioner. Nothing else.

PN168

THE DEPUTY PRESIDENT: Thank you. All right. What will occur from here is that I will confer with the other members of the Full Bench and issue fresh directions which will provide an opportunity for Mr Humphries to file any additional material he wishes to lodge with the Commission in relation to permission to appeal and the merits of the appeal. That is likely to be by 5 pm on

Friday, 5 April. The respondent will then have two weeks to provide any material in response, so that would be by 5 pm on 19 April.

PN169

I would be contemplating that we would be seeking for the respondent to address the question of section 596 by 5 pm on 5 April, as well, and Mr Humphries, if he wants to respond to that, would be able to do that by 5 pm on 19 April. This will all be in the directions. Then there will be a direction in relation to the filing of authorities.

PN170

Now, in terms of the hearing date, as I've indicated I would anticipate that that would either be in the week of 29 April 2024 or 6 May 2024. In terms of those two weeks, are the parties able to indicate whether there is any times in those two weeks that they're not available? Mr Humphries, firstly you.

PN171

MR HUMPHRIES: I will ensure that I am available.

PN172

THE DEPUTY PRESIDENT: Yes. We would be only requiring the parties to be available on one day and that's not to say it would take a full day, but it would depend on ultimately how much material is filed that the parties want to address; but it will only be one day in that period that they would be required to be available. Mr Hamack, from the respondent's perspective, please.

PN173

MR HAMACK: Commissioner, some problematic dates would be 29 and 30 April.

PN174

THE DEPUTY PRESIDENT: Yes.

PN175

MR HAMACK: I think the rest of the dates are fine.

PN176

THE DEPUTY PRESIDENT: Thank you. That is most helpful. All right. The parties can expect some directions to be issued from my chambers on behalf of the Full Bench during the course of today outlining the timetable from here. Just a reminder, Mr Humphries, if there is new evidence that was not before Ryan C but you want to put it before the Full Bench on appeal, you need to point out what that evidence is, include it and make submissions in relation to why it should be admitted in the appeal proceeding. All right?

PN177

MR HUMPHRIES: Thank you, Commissioner.

PN178

THE DEPUTY PRESIDENT: I will refer you back to that email from my chambers on 22 February which addresses that.

PN179

MR HUMPHRIES: Just a question with regards to this time that I have to deduce additional evidence or material. Would it be a problem if I were to simply reformat the appeal book and provide a whole new structured document? That would make it easier perhaps - - -

PN180

THE DEPUTY PRESIDENT: No, I don't think so. We have prepared an appeal book based on the material that was before Ryan C and it includes the appeal notice. You have previously provided us with that 205-page document which includes a bit of duplication of what is in the appeal book, but most significantly from pages 187 through to 205 seems to be material that is squarely directed at your appeal. All I'm seeking for you is all that has been granted for you is that any additional material that you want to produce on appeal and points that you want to make, you do that in this next two-week period. All right?

PN181

MR HUMPHRIES: And that includes additional claims or simply supporting evidence for the claims I've already made?

PN182

THE DEPUTY PRESIDENT: When you say 'additional claims', perhaps if you could put it in these terms: additional arguments on appeal that you haven't currently put.

PN183

MR HUMPHRIES: That's right. That's fine. I'm asking, I guess - I put forward a few arguments, three arguments I guess, and otherwise I'm wondering whether there were additional supporting arguments - - -

PN184

THE DEPUTY PRESIDENT: Well, if there are additional arguments on appeal that are directed at the question of permission to appeal and the merits of your appeal, you have this two-week opportunity to prepare that material and then file and serve it.

PN185

MR HUMPHRIES: Sure. Thank you.

PN186

THE DEPUTY PRESIDENT: Thank you. Mr Hamack, any additional questions from the respondent?

PN187

MR HAMACK: No, thank you, Commissioner.

PN188

THE DEPUTY PRESIDENT: Thank you. Well, I thank the parties for their attendance this morning. It has been of great assistance and the new directions will be issued during the course of the day. The expectation will be that the parties comply with those and we will list this matter for an appeal hearing not

before 1 May 2024. There being nothing further, the Commission will now adjourn. Thank you.

PN189

MR HUMPHRIES: Thank you.

PN190

MR HAMACK: Thank you.

ADJOURNED INDEFINITELY

[10.54 AM]