Federal Court of Australia

Palmer v McGowan (No 3) [2022] FCA 140

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| File number: | NSD 912 of 2020 |
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| Judgment of: | **LEE J** |
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| Date of judgment: | 21 February 2022 |
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| Date of publication of reasons: | 22 February 2022 |
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| Catchwords: | **PRACTICE AND PROCEDURE** – reasons for orders as to conduct of trial |
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| Cases cited: | *Palmer v McGowan (No 2)* [2022] FCA 32 |
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| Division: |  |
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| Registry: | New South Wales |
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| National Practice Area: |  |
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| Number of paragraphs: | 4 |
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| Counsel for the Applicant / Cross-Respondent | Mr P Gray SC with Ms G Rubagotti, Mr B Dean, and Mr H Elachkar |
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| Solicitor for the Applicant / Cross-Respondent | Sophocles Lawyers |
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| Counsel for the Respondent / Cross-Claimant | Mr B W Walker SC with Ms C Amato |
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| Solicitor for the Respondent / Cross-Claimant | Clayton Utz |

ORDERS

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|  | | NSD 912 of 2020 |
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| BETWEEN: | MR CLIVE FREDERICK PALMER  Applicant / Cross-Respondent | |
| AND: | MR MARK MCGOWAN  Respondent / Cross-Claimant | |

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| order made by: | LEE J |
| DATE OF ORDER: | 21 FEBRUARY 2022 |

THE COURT ORDERS THAT:

1. The hearing dates be varied as follows:
   1. the listings on 26 February 2022 and 28 February 2022 be vacated; and
   2. the proceeding be listed part-heard at 10:15am on 7 March 2022 and, subject to further order, continue until 1pm on 9 March 2022.

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

REASONS FOR JUDGMENT

LEE J:

1. These are my reasons for making orders in chambers on my own motion deferring the commencement of the cross-examination of Mr McGowan, the Premier of Western Australia, and Mr Quigley, the first law officer of Western Australia.
2. As I explained in *Palmer v McGowan (No 2)* [2022] FCA 32 (at [40]–[41]), the course which best facilitates the *just* resolution of this case according to law is for the witnesses in the respondent’s case to give evidence in person. In order to facilitate that end, and to alleviate any impairment of Mr McGowan’s and Mr Quigley’s parliamentary duties, after the close of the applicant’s case (save for a documentary tender) I adjourned the hearing until 9:30am on Saturday, 26 February 2022. My only reason in taking the highly unusual step of sitting on the weekend, and thereby causing inconvenience to Court staff (and myself), was so that when Mr McGowan and Mr Quigley returned to Western Australia on the evening of 28 February 2022, they would then have a sufficient period by which they could quarantine for 14 days until the next sitting of the Legislative Assembly on 15 March 2022.
3. But the world has now changed, or at least Western Australia has. After the orders for an adjournment had been made, but without any communication from the parties, the Court became aware of media reports as to developments in Western Australia. I then directed my Associate to communicate with the solicitors for the parties in the following terms:

Dear Practitioners

His Honour has directed I write to the parties.

As is evident from the reasons published as *Palmer v McGowan (No 2)* [2022] FCA 32, the only reason why the Court was prepared to take the extraordinary step of sitting next weekend was to prevent there being any fetter on the Premier and Attorney General of Western Australia being able to attend the fixed sittings of the Legislative Assembly.

As his Honour understands it from media reports, the WA “hard border” will open from 12.01am Thursday 3 March 2022, and only unvaccinated persons will then be required to complete quarantine.

Assuming this information is correct, this means the reason why the Court was prepared to entertain the cost and inconvenience of a weekend sitting no longer exists.

In these circumstances, subject to hearing from the parties (and confirmation that his Honour’s understanding is correct), the evidence of the respondent’s witnesses could now be taken during ordinary sitting hours on **7, 8 (and if need be, the morning of 9 March 2022)**, leaving the current fixture for submissions on 11 March 2022.

This would … mean there will be no inconvenience to Court staff, no interference with the Parliamentary sitting obligations, and would obviate the need for any quarantine period for witnesses.

… his Honour requests that the parties confirm urgently that there is no insuperable difficulty with this course being adopted.

1. Both parties indicated that no insuperable difficulties existed, and orders were then made reflecting the course foreshadowed in the email communication from my Associate.

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| I certify that the preceding four (4) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Lee. |

Associate:

Dated: 22 February 2022