



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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**IN THE HIGH COURT OF AUSTRALIA
HOBART REGISTRY**

BETWEEN: **ATTORNEY-GENERAL FOR THE STATE OF TASMANIA**
Appellant

AND:

GREGORY JOHN CASIMATY
First Respondent

HAZELL BROS GROUP PTY LTD (ACN 088 345 804)
Second Respondent

**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL OF
THE COMMONWEALTH (INTERVENING)**

PART I INTERNET PUBLICATION

1. This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

10 **A. CONSTRUCTION OF “QUESTIONED” IN ART 9**

2. The word “questioned” should not be construed by reference to synonyms or dictionary definitions. Doing so simply multiplies labels, and tends to encourage a construction that is either under-inclusive or over-inclusive (cf **RS [44]; AS [42]; Reply [11]**).

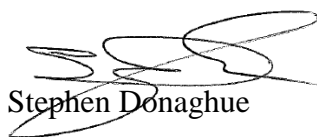
3. The decisive consideration in determining whether proceedings in Parliament are being “questioned” is the purpose for which evidence of those proceedings is sought to be used. If evidence, cross-examination or submissions concern the propriety or validity of what occurred in Parliament, that amounts to “questioning” the proceedings contrary to Art 9: *Prebble v Television New Zealand* [1995] 1 AC 321 (**Vol 8, Tab 69**) at 337; *CJC v PCJC* [2002] 2 Qd R 8 (**Vol 7, Tab 53**) at [23]. If the purpose is simply to establish what
20 occurred as a fact, that does not amount to “questioning”: *Rann v Olsen* (2000) 76 SASR 450 (**Vol 9, Tab 74**) at [73]-[74], [79], [122]; *Leyonhjelm v Hanson-Young* (2021) 282 FCR 341 (**Vol 8, Tab 60**) at [47], [248]-[250], [365]-[371].

4. Often the “fact” of a parliamentary proceeding (eg, a committee report on a topic), as distinct from the truth or correctness of statements that the report contains, will not be relevant to any issue in proceedings. However, if that fact is relevant, evidence may be led concerning that fact: eg, to enable effective identification of the subject-matter a committee was dealing with: see *NSW Branch of the AMA v Minister for Health and Community Services* (1992) 26 NSWLR 114 (**Vol 8, Tab 64**) at 124, 126.

B. APPLICATION OF ART 9 TO THE “COMPARISON” UNDER SECTION 16

5. There is no dispute that the first respondent’s claim requires some kind of “comparison” to be undertaken between the proposed work that was referred to and reported on by the Committee in the 2017 report, and the work that was in fact undertaken, so as to determine whether the condition precedent in s 16(1) of the PWC Act was satisfied: **AS [49], RS [44], ACT [46]-[48], SA [29]**.
6. The appellant appears to submit that even reading the 2017 report to identify the public work that was “referred to and reported upon” by the Committee is prevented by Art 9, because it would involve the report being “examined judicially”: **Reply [11]**; also **ACT [47]**. However, the operation of Art 9 depends upon the use that is proposed to be made of the report. If the report is tendered for the sole purpose of establishing the work that was referred to and reported on by the Committee as a matter of historical fact, the tender does not infringe Art 9 because it does not question (or rely upon) the validity or propriety of proceedings in Parliament. If s 16(1) of the PWC Act makes that a relevant fact, it can be proved. That is true whether or not that fact is relevant to a “contentious” issue, for the operation of Art 9 cannot depend upon the matters on which the parties have joined issue.
7. The pleadings do not establish the arguments that will be advanced to attempt to establish that the work in fact carried out was within or outside the scope of the work referred to and reported on by the Committee in the 2017 report. It therefore cannot now be said that Art 9 necessarily prevents the first respondent from establishing that the condition precedent in s 16(1) was not satisfied. His claim should not have been struck out.

Dated: 9 April 2024


Stephen Donaghue

Edwina Smith

Minh-Quan Nguyen