IN THE HIGH COURT OF AUSTRALIA

PERTH REGISTRY

No. P22 of 2019

BETWEEN:

In the matter of
Jerrod James Conomy

APPELLANT'S AMENDED[1] SUBMISSIONS

Part I: Certification for internet publication

10 1. I certify that this submission is in a form, to the best of my knowledge, suitable for publication on the internet.

Part II: Statement of issues

2. This appeal is brought from the Judgment of Justices Keane and Edelman in the proceedings P3 and P11 of 2019 given on 20 March 2019 (Judgment below). Although the original scope of the said proceedings involved applications for special leave to appeal, the High Court, by way of s 77RN(3) of the Judiciary Act 1903, initiated a vexatious proceedings related scope which engaged the original jurisdiction[2] of the High Court and resulted in orders dismissing my special leave applications and associated summonses in exercise of s 77RN(2a) of the Act and also resulted in
20 restrictive orders being made against me in exercise of s 77RN(2b). This appeal will consider if error (inferable if not definable) or miscarriage of justice (or both) contaminated the judgment below.

3. **Application** – I also apply for the applications defined in the argument section below.

Part III: Considerations regarding s 78B of the Judiciary Act

4. I have made the necessary consideration but have been unable to ascertain a conclusive definition for a 'constitutional matter'.

Part IV: Reasons for judgment below (P3 and P11 of 2019)

5. The judgement of Justices Keane and Edelman is reported as [2019] HCATrans 049; 20 March 2019 [see CAB 3-14].

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[1] Change history can be seen in the version filed showing all Markup's which was lodged with this document in order to comply with rule 3.01.4.

[2] or equivalent to original jurisdiction in the context of interpreting section 34 of the Judiciary Act

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Email/Service: jjconomy@gmail.com Ref: Jerrod Conomy

Part V: The pertinent factual findings of the Justices

6. As directed in the standard form, this part only presents some of the facts found by the justices in the proceeding directly below. For the record, the facts found by the Justices are partially disputed. The facts found in other related Judgments are also partly disputed.

7. At CAB 4, lines 35-43, the Justices implied that I had been notified on the 13 February 2019 that the potential vexatious proceedings orders were in relation to all of my High Court proceedings. The finding is disputed.

8. At CAB 12, line 359, the Justices stated (which I dispute):

> *"Mr Conomy's persistence in refusing to accept that the litigation relating to this matter has been concluded since 12 October 2016 is clearly vexatious. For that reason, his applications in P3/2019 and P11/2019 must be dismissed."*

9. At CAB 12, line 366-367, it is clear that the Justices clearly commissioned the dismissal of the said special leave applications in exercise of section 77RN of the Act.[3] This was also the case for all summonses filed in P3 and P11 of 2019.[4]

10. All orders published by the Justices were therefore in exercise of section 77RN(2) of the Act. The orders as published by the Justices are at CAB 16 and state:

> *"Matters Nos P3/2019 and P11/2019*
> 1. *The application for special leave to appeal be dismissed*
> 2. *The summons filed 22 February 2019 be dismissed*
> 3. *The summons filed 27 February 2019 be dismissed*
> 4. *The applicant be prohibited from instituting any further proceedings in this court relating to the convictions the subject of Conomy v Maden [2016] WASCA 30 and Conomy v Maden [2016] WASCA 31"*

11. It is important to note that the signed and sealed orders prepared by Deputy Registrar Gesini are significantly different from those published by the Justices and obviated by their published reasons. I have taken several steps to have this imperfection corrected as is dealt with later in this document and by the relevant summons in this proceeding.

Part VI: Argument

12. Some preliminary or common matters are best dealt with first which follow.

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[3] Note also that the appellants latest special leave applications were not implied in any way to have been dismissed in exercise of Part 41 of the High Court Rules.

[4] CAB 14 lines 456-461.

Terms, definitions, abbreviations and legal statements

13. 'Parent contention' must be taken to mean a contention (verbal or written or both) which is comprised of multiple individual contentions or options.

14. 'Child contention' must be taken to mean an individual contention linked with a parent contention.

15. 'Cumulative' must be taken to mean: (a) that all child contentions must be fully taken into consideration before the parent contention is determined; and (b) that the rejection of one or more child contentions must not render the parent contention a failure unless all child contentions are rejected; and (c) that one or more child contentions must not be rejected until all child contentions have been considered; and (d) that only once all child contentions have been considered, the child contentions not rejected are to apply collectively toward the parent contention.

16. All child contentions of a parent contention raised by me (verbal or written or both) in this proceeding must be treated cumulatively unless specifically indicated otherwise. For example: 'x or y or z' and 'x;y;z' must both be treated as the cumulative effect of x,y,z.

17. The Judiciary Act 1903 (The act); The High Court Rules 2004 (The rules).

18. My High Court proceeding P3 and P11 of 2019 (Proceeding below); My applications for special leave to appeal in P3 and P11 of 2019 (Latest special leave applications); My prior application for special leave to appeal in P19 of 2016 (Prior special leave application); Core Appeal Book [CAB]; Further Materials Book [FMB].

19. 'Vexatious' is intended in similar terms to that at s 77RL of the Judiciary Act unless otherwise indicated; 'Vexatious proceeding order' is intended in the same terms as the definition at s 77RL of the Judiciary Act unless otherwise indicated.

20. Deputy Registar Rosemary Musolino (Ms Musolino); Deputy Registrar Olivia Gesini (Ms Gesini); Senior Registrar Carolyn Rogers (Ms Rogers); Chief Executive and Principal Registrar Philippa Lynch (Principle Registrar or Ms Lynch).

Swearing in of documents presented in the CAB and FMB

21. I apply for the Affidavit sworn 9 July 2019 as lodged with this document sworn 9 July 2019 to be filed for the purpose of me swearing on oath to the evidential authenticity of the CAB and FMB which is otherwise explained in the said affidavit.

Right to appeal

22. Given all orders published by the Justices were made in exercise of s 77RN(2) of the act and all orders were deemed by the act as being 'vexatious proceedings orders'[5], it follows that all orders made: (a) were exercising the original jurisdiction[6] and (b) were final orders[7] in the context of interpreting s 34 of the Act. S 34(2) of that act is therefore rendered irrelevant leaving me with a legal avenue of appealing (without needing leave) to the appellate jurisdiction pursuant with s 34(1) of the Act 1903. If this was or is in doubt, the Judgment in '*Jones v Skyring*'[8] is relevant in that the orders made were on that occasion generous enough to reveal that it was open for the party to appeal the vexatious proceeding order if they so wished. Applied to this matter, that same right of appeal must exist for me in relation to all orders made in the proceeding below given they were all vexatious proceeding orders.

Application for 5 page increase

23. Pursuant in part to rule 2.02, I apply for an increase in the page limit of this document from 20 to 25 pages on the basis that: (a) there is no respondent in this appeal and I will therefore not get to use those additional 5 pages in reply; or (b) several ambiguities (to me) arise from the reasons given in the proceeding below which has caused me to have to cover all possible bases which has increased the amount of grounds and argument needed to present my case which is evident itself in this document; or (c) both a and b; and (d) it would be in best interest of justice. I also note that there is no Respondent to be prejudiced.

No further application required for this document and the further amended notice of appeal to be accepted for filing

24. I refer to my application via summons in this proceeding in which I sought to file an amended notice of appeal and submissions by 10 July 2019.[10] I also refer to my letters dated 28 June 2019 and 2 July 2019 in which I had confirmed that I had intended to file revised documents on the 10 July 2019. I do not need to apply any further for these

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[5] See the definition of such at s 77RL of the act.

[6] Or equivalent to the original jurisdiction in the context of interpreting s 34 of the act. The said s 77RN scope was initiated by the High Court and therefore originated in the High Court.

[7] See s 77RN(5) of the Act.

[8] Jones v Skyring [1992] HCA 39; (1992) 109 ALR 303; (1992) 66 ALJR 810 (27 August 1992).

[10] Seven weeks from the date of the orders of Gordon J on 22 May 2019

revised documents to be accepted for filing since the said summons has not been dismissed and I have filed the amendments within the provisional due date. It is the same principle which applies when people file amended documents without applying if it is within the due date or in this case the provisional due date.

Context of argument

25. As already covered in Part V above, all orders as published by the Justices in the determination of P3 and P11 of 2019 on 20 March 2019 were vexatious proceeding orders in exercise of s 77RN(2) of the Act and therefore all arguments raised must be understood to be raised in the overall context of s 77RN unless otherwise indicated or obviated.

Application for minor clerical amendments in documents

26. Core Appeal Book Index: At items 6,7,10,11 replace 'original' with 'unamended'; and at item 16 replace page '317' with '397'; and at item 21 replace '22-Feb-2019' (in date column only) with '27-Feb-2019'; and at item 22 replace 27-Mar-2019 (in the date column only) with '1-Mar-2019'.

Legal precedent regarding grounds of sought relief from discretionary decisions

27. All orders resulted from discretion therefore the well-known 'House'rules apply. Those rules being:

28. *"...if the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed ... it may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that there has been a failure to properly exercise the discretion which the law reposes in the court of first instant"* [11]

My approach

29. The question of whether a substantial miscarriage resulted is left until after all grounds have been addressed.

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[11] House v The King [1936] HCA 40; 55 CLR 499; 10 ALJ 22; 10 ALJR 202; 55 ALR 499; 9 ABC 117

Applications via summons(es) in this proceeding

30. Summons(es) were filed in this proceeding which I submit must be taken into consideration prior to any orders being made in the interest of: (a) procedural fairness or natural justice; or (b) the proper judicial process; or (c) both a and b.

31. In relation to the part(s) of the relevant summons relating to enlargement of time, I seek to amend those parts so as to be pursuant in part to rule '4.02 or 2.02 (or both)'.

32. In relation to the part of the summons requesting the correction of the signed and sealed orders of the proceeding below so as to align with those published by the Justices, I note that rule 3.01.2 is relevant and I reaffirm that it is highly likely that a serious miscarriage of justice will result if the signed and sealed orders are interpreted in a way that leads to a misconceived conclusion that I have sought to appeal from an order which I may not have a right of appeal from. This would especially be the case when I have taken so many informal and formal steps to cause the issue to be rectified as is addressed and proven in the relevant summons. I also reaffirm that this appeal has been brought on the presumption that where the signed and sealed orders (which are prepared and signed and sealed by a Registrar) differ from those published in writing and signed by the Justices [CAB 16] and obviated by their signed published written reasons [CAB 18-36] then siding with the Justices over the Registrar is a safe bet. I also submit for consideration that the only legislation identified by the Justices, in relation to the question of which legislation was exercised in making their orders, was s 77RN(2) of the Act [CAB 32 and 33].

33. In relation to the part of my relevant summons dealing with the question as to the timeliness of the initial filing of the appeal notice, I submit the following considerations in addition to those raised by summons which may greatly simplify the issue.

34. Firstly, in relation to my on time lodgment by post,[15] and to the direction of the Principal Registrar to me by letter after the conclusion of the Judgment below which notified me that I would no longer be able to lodge documents by post,[16] I submit that the direction was unreasonable or unjust (or both), if not unopen to be made, on the basis: (a) that I had been allowed to file documents by post and did file all documents by post in the proceeding below and all proceedings of mine in the High Court in the

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[15] Which is addressed in the relevant summons and has never been disputed by Ms Musolino.

[16] As referred to in Deputy Registrar Musolino's (Ms Musolino) email to me 5 April 2019 [FMB 312]

two years prior to the proceeding below and my residing address has never changed;[17] or (b) that there was no question or application before the Principal Registrar which gave rise to a question as to whether postal lodgment would continue to be allowed; or (c) both a and b. I therefore request an order be made that my initial appeal notice lodged by post within the due date[18] be accepted as filed on time and that the said direction of the Principlal Registrar to me in relation to postal filing be set aside.

35. Secondly, in relation to my subsequent lodgment in person at the Perth Registry approximately 45 minutes after the deadline, cogent evidence that I was initially incorrectly under the impression that I had 28 days in which to lodge an application for leave to appeal from the Judgment below can be seen in my email to Ms Gesini on 25 March 2019 [FMB 307 *'...leave to appeal...'*]. Further I submit whether it was likely that the 4pm deadline for filing 'in the registry' had slipped a person's mind who had not previously needed to file a document 'in person' at the registry for more than two years.

36. Thirdly, in relation to my attempt to cause a courier to file the relevant summons on 12 April 2019, cogent evidence that I had informed the courier of the 4pm cut-off can be seen in my email to the courier at 11:46am 12 April 2019 [FMB 315] and the email I received from the courier at 4:55pm the same day proves that the courier was under the impression he had lodged it at 3.55pm [FMB 315]. Please note that the subsequent email from the courier at the top of the same page incorrectly specifies 4.55 but is corrected later in the same email.

37. Fourthly, still in relation to the previous subject, and specifically to Ms Musolino's claims that the documents lodged on 12 April 2019 could not be accepted, I submit evidence being emails [FMB 313-314] proving that I had explained to Ms Musolino that the summons did not have a due date and that the Perth Office had confirmed the documents were received on the 12 April 2019 and were sent by overnight post to Ms Musolino on 15 April 2019 and that Ms Musolino did not reject the documents until 18 April 2019. I therefore contend that Ms Musolino had no basis for rejecting the documents lodged by courier on 12-13 April 2019.

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[17] These points are already addressed in the relevant summons.

[18] This is already covered adequately in the relevant summons and Ms Gesini has never disputed that I had posted the initial appeal notice on the due date.

38. Fifthly, still in relation to the previous subject I submit evidence [FMB 312 and 314] that I had taken steps to prepare and cause a summons to be lodged by 12 April 2019 which was within 5 business days of being notified of the initial rejection. Further, I caused the courier to re-lodge the summons in 23 April which was one business day after the further rejection [FMB 313-314 and CAB 435]. I therefore took swift action at each stage of the shenanigans that I was exposed to.

39. Sixthly, I rely on the Judgment of Gageler, Nettle and Edelman JJ in '*The Republic of Nauru*' in which it was found:

> *"The period fixed by r 42.03 is a period which r 4.02 permits to be enlarged or abridged by order of the Court or a Justice whether made before or after the period's expiration. There being an acceptable explanation for the minor delay which occurred in the circumstances of the present appeal, there is no reason why an order enlarging time should not now be made. There was no necessity for the Republic to seek and obtain such an order in advance of the time fixed for the hearing of the appeal, and the delay was not of such a nature as would make the imposition of any conditions on the order appropriate."* [19]

40. In relation to the part of my relevant summons proposing a due date for my submissions and amended notice of appeal, I further submit that I am unrepresented and this is the first time I have prepared a High Court appeal which are both points not requiring evidence other than the courts record. It therefore can be safely presumed that I have no counsel, no personal assistant and no researchers assisting me which needs to be taken into consideration. Further I submit that the refinement I have been able to achieve in both my further amended notice of appeal and this document is supreme evidence in itself that I needed more time.

41. In relation to the topic raised by summons or in this document which relates to the question of amendment, I submit that the lengths taken by the High Court in *'Agius v The Queen'* [20] is a relevant consideration, as is the Judgment in *'JL Holdings'*. [21]

42. In relation to the part of my relevant summons proposing I be allowed to file documents by post in any current or future High Court proceeding for as long as I live where I do, I further submit as evidence the shenanigans I was exposed to, as addressed above and in

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[19] The Republic of Nauru v WET040 [2018] HCA 56; 7 November 2018

[20] Agius v The Queen [2013] HCATrans 92; (30 April 2013), Agius v The Queen [2013] HCA 27; (5 June 2013).

[21] State of Queensland South Bank Corporation v JL Holdings Pty Ltd, F.C 97/001; [1997] HCA 1; 189 CLR 146; 71 ALJR 294; 141 ALR 353

the summons, as a relevant consideration and I reaffirm that my argument is not that I cannot make it to the Registry, rather it is impractical to do it every time I need to file something. I lastly submit that the fact that I have filed documents in person in this matter does not does plank an argument that it is impractical particularly if you consider that I may need to continue filing documents for years to come—the High Court cannot rule that out.

Initial argument for ground 1 (amendments not granted)

43. This ground is contended with a necessary presumption allowing for a circumstance in which the Judiciary in this appeal conclude that my proposed amendments to the latest special leave applications were never officially granted and therefore, despite the purported considerations and purported findings in relation to such, cannot be said to have in any way officially impacted the Justice's decision to dismiss my latest special leave applications. It will be contended that, the Justice's failure to grant the said proposed amendments occasioned: (a) error (inferably if not definably) or (b) a substantial miscarriage of justice or (c) both a and b.

44. A relevant consideration is the High Court proceeding '*Agius v The Queen*'[22] in which, during the appeal hearing, the full court advised the appellant to amend his case so as to avoid it being deemed incompetent. The amendment was subsequently applied for and granted.

45. Another relevant consideration is the High Court proceeding *'Clough & Rogers'* in which the flexible and reasonable principles set in *'Cropper'* were adopted by the High Court: *"The object of the Court is not to punish parties for mistakes made in the conduct of their case, but to correct errors with the result that a decision can be made on the real matters in controversy"* [23]

46. Another relevant consideration is the High Court proceeding *'JL Holdings'*[24] which also explored the question of amendment.

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[22] Agius v The Queen [2013] HCATrans 92; 30 April 2013, Agius v The Queen [2013] HCA 27; 5 June 2013.

[23] Clough and Rogers v Frog (1974) 4 ALR 615 at 618, citing Cropper v Smith (1884) 26 Ch D 700 at 710-711.

[24] State of Queensland South Bank Corporation v JL Holdings Pty Ltd, F.C 97/001; [1997] HCA 1; 189 CLR 146; 71 ALJR 294; 141 ALR 353

47. **Fact 1.1** - My unamended latest special leave applications were accepted for filing and, by the court's own direction [CAB 397], had progressed to a special leave hearing and were never officially deemed by any Justice to be vexatious prior to the Judgement given on 20 March 2019.[25]

48. **Fact 1.2** – I requested the amendments by summons filed 22 February 2019 in which I pointed out the relevant rules 3.01.1 and 3.01.3 [CAB 360, 362, 379, 381] relating to amendment. Also pointed out was the fact that the respondent had not yet been directed to file a response to the special leave applications and had no objection to such amendments [CAB 362, 381]. Also pointed out was the fact that the requested amendments did not raise any new special leave grounds and did not significantly alter the definition of each special leave ground [CAB 362, para 4 and CAB 364];[CAB 381, para 4 and CAB 383].

49. **Fact 1.3** – In the context of the question of potential vexatiousness, the Justices identified nothing in the proposed amendments that was in addition to the problems identified in the unamended latest special leave applications [CAB 11, lines 344-350].

50. **Fact 1.4** - At the hearing, I brought the applications for amendment to the Justices attention and pointed out that it would be the proper judicial process to first determine those applications [CAB 38, lines 14-16, 31-41].

51. **Fact 1.5** – My contention will not significantly rely on this point but in any case, on news of the pending judgment, I lodged a letter by post, fax and email on 19 March 2019 [CAB 411, FMB 321-327], which was the same day of the said news. The letter sought to remind the Justices of the undetermined summonses and the letter included some relevant supporting legal contentions in relation to amendments.

52. **Fact 1.6** - The directions sent by Ms Gesini regarding the potential for a vexatious proceeding order did not prescribe how the written submissions in defence should be submitted [CAB 397].

53. **Fact 1.7** – s 77RN(4) of the act provides that *"The High Court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard"*.

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[25] See the directions in the letter from Ms Gesini dated 13 February 2019 [CAB 397, *"Your applications for special leave to appeal...listed for hearing...6 March 2019...possibility...vexatious proceeding order"*]

54. **Fact 1.8** - By way of my proposed amendments to my latest special leave applications, I had relevantly taken interim steps in defence of my latest special leave applications being deemed vexatious. These interim steps included the omission, inclusion and identification of relevant content relating to such an interim defence which I had pointed out to the Justices: (a) via my interim response to the potential vexatious proceedings orders [CAB 399, para 5 "The party making the allegations may wish ..."]; or (b) via the summonses filed 27 Feb 2019 [CAB 403, para 7]; or (c) both a and b. Further, the amendments significantly enhanced my case for obtaining special leave.

55. **Fact 1.9** – Keeping in mind the abovementioned presumption which applies to this ground, the Justices refusal to grant the amendments rendered a nullity my interim steps taken, via the amendments, in defence of a vexatious finding.

56. **Fact 1.10** – It would have been practical to grant the amendments and that would not have interfered with the Justices ability to then perform its considerations relating to section 77RN based on the amended special leave applications. This is a relevant point to the tests applicable to considerations as to whether a breach of procedural fairness or natural justice occurred.

Initial conclusion for ground 1

57. The Justices refusal to grant and apply the amendments before performing any further considerations: (a) was unreasonable or unjust or both; or (b) occasioned a breach of the rules of natural justice or procedural fairness in that a significant part of my interim submissions in defence of a vexatious finding was rendered a nullity in circumstances where a practical alternative existed; or (c) was a breach of the rules of equality; or (d) was a breach of my fundamental right to be heard in defence of the vexatious finding by way of the said content unnecessarily rendered a nullity; or (e) a,b,c,d applied cumulatively. A substantial miscarriage of justice resulted which will be contended later.

Initial argument for ground 2 (proceedings P3, P11.2019 deemed vexatious)

58. This ground is contended with a necessary presumption allowing for the contrary to the presumption adopted in the previous ground. The presumption in this ground is therefore that my proposed amendments to my latest special leave applications were, in effect, fully applied by the Justice's at least in the context of their considerations and determinations of the question whether the proceedings P3, P11 of 2019 were vexatious. It will be shown that in relation to the Justice's deeming that one or both of the

proceedings P3 and P11 of 2019 were vexatious, the judgment occasioned: (a) error (inferably if not definably) or (b) substantial miscarriage of justice or (c) both a and b.

59. It also seems important to note that, given the presumption which applies to this ground, the scope will be limited to the Justice's considerations and determinations relating to my proposed amended special leave applications. This helps by reducing the ambiguity and subsequent volume of argument required by approximately half.

60. **Fact 2.1** - The respondent was never required to file a response to my case in the relevant WASCA proceeding, nor any subsequent High Court proceeding.

61. **Fact 2.2** – The state of the law in WA with regard to any test of whether an error led to a miscarriage of justice, is that it is not normally dealt with until the appeal proper given the test needs to take into consideration the impact of potentially multiple grounds (add reference).

62. **Fact 2.**3 – The relevant WASCA proceeding was one in which, in order for my case to progress toward an appeal hearing, I only needed to convince the judiciary that the adversarial steps needed to be completed—nothing more—and I had made an application in that proceeding for the question of leave to be remitted to the appeal proper which the Judges agreed to consider.[28]

63. **Fact 2.4** - On 12 October 2016, the appellant's prior special leave application was disposed of via a special leave disposition by Justice's Bell and Gageler on the basis that *"the application does not raise any question of law suitable for the grant of special leave"* [CAB 432]. The said application, which was instituted before the recent overhaul to special leave forms, therefore did not progress any further than a consideration, in effect, as to whether the special leave grounds and special leave questions asked were of a type suitable for special leave. There was no determination of facts and no considerations of potential prospect of appeal related documents. The only finalising aspect of the disposition was that the grounds defined in the special leave application form and special leave questions raised in the summary of argument form could not be taken any further—nothing more.

64. **Fact 2.5** – As a result, despite the fact that I had defined a plethora of additional grounds in the draft notice of appeal and had incorrectly interpreted the rules in a way that led me to believe that the grounds in the special leave application became a

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[28] Conomy v Maden [No 2] [2015] WASCA 211 (23 October 2015); para 7

completely irrelevant document,[29] the only special leave grounds rejected by the special leave disposition for my prior special leave application were the grounds defined in my application for special leave form filed 29 April 2016 [CAB 413-419] which were never amended. I submit this is confirmed by the words in the disposition; *"The application..."*; and the lack of any words indicating any special treatment in relation to my said mistaken belief. I further submit that this is further confirmed by the reasons for decision in my other prior special leave application in P20 of 2016 where I had again not amended the application for special leave to include the additional grounds presented in the draft notice of appeal on the mistaken belief that the application for special leave form became irrelevant for unrepresented parties. Again, the words used in the reasons by Gordon J refer only to the grounds in the application for special leave form as being the subject of testing the prospect of success of the special leave application as opposed to the draft notice of appeal. See the published reasons of Gordon J in P20 of 2016 dated 19 April 2019 and the summons and supporting affidavit the subject of Gordon J's said decision which I will make available at the hearing if required.

65. **Fact 2.6 (prior grounds rejected)** – As a result, the only grounds rejected by the prior special leave disposition were:

a. that the WASCA had erred by resorting to measures beyond the limits required to determine the question of reasonable prospects [CAB 415]; and

b. that the WASCA gave inadequate reasons [CAB 416]; and

c. that grounds contending errors of fact before the WASCA had been improperly dealt with without identifying any in particular [CAB 418]; and

d. that grounds before the WASCA had not been interpreted correctly or had not been dealt with without identifying any in particular [CAB 418]; and

e. that the WASCA deprived me of my right to a speedy resolution [CAB 418]; and

f. that the factual background created by the WASCA was bias towards the complainant [CAB 418]; and

g. that an error was made in relation to the WASCA's rejection of ground 15 which related to a subpoena not being properly executed [CAB 418-419].

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[29] see para 8 of my summary of argument in my prior special leave application [FMB 11]

66. **Fact 2.7** – In relation to the summary of argument filed in the prior special leave application (prior SOA) [FMB 10-19], it is important to note that in paragraph 30 under part IV, I did include a list of a number of issues from the WASCA but it was clear that those issues were not to be taken as being special leave grounds and rather were provided as information only [FMB 16 para 30]. Similarly, in the prior SOA, I had effectively instructed the judiciary only to consider the grounds relating to inadequacy of reasons in the draft notice of appeal and that the other grounds were provided as more of a checklist for the WASCA in the event I successfully convinced the High Court to send the matter back to the WASCA to issue further reasons [FMB 12 paras 11-14];[FMB 18 para 31]. I also note that I had made it clear that I had not at that stage sought for the written case and appeal books from the WASCA to be taken into consideration evident by the last sentence in para 9 of the prior SOA [FMB 11].

67. **Fact 2.8** – It was evident throughout my prior SOA and specifically at para 23 [FMB 15] that I had decided to focus my argument on the inadequacy of reasons given I had been denied an application for an extension of the page limit and that I was under the impression I had taken that request as far as I could. Further, the rules which applied to the prior SOA limited the SOA to 10 pages[30] and I had used all 10 pages [FMB 19].

68. **Fact 2.9** – Evident by the prior SOA, I was under the impression at the time of the prior special leave application that the High Court supported the fundamental principles regarding the sufficiency of reasons and its links to natural justice and the proper intended function of the appellate system[31] [FMB 12-16].

69. **Fact 2.10** - The grounds contended in my amended latest special leave applications [CAB 364,383], which incidentally were virtually the same as the unamended version, were:

> ***"Special leave ground 1 –*** *The WASCA erred (inferably) in failing to deem that the trial magistrate fell into error by failing to afford the applicant any opportunity to explain the purpose of a question*[footnote omitted] *to the complainant before rejecting it on grounds of irrelevance. A substantial miscarriage of justice resulted.*
>
> ***Special leave ground 2 –*** *In the alternative, in relation to an instance(s) during the cross-examination of the complainant in which the trial magistrate proactively obstructed the applicant from explaining the purpose of a question, the WASCA*

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[30] See rule 41.07 of the version of the rules applicable to the prior special leave application.

[31] Not to be taken in any way to be a further contention of that argument.

erred in holding that the rejected question was correctly deemed irrelevant by the trial magistrate. A substantial miscarriage of justice resulted.

Special leave ground 3 – *The WASCA erred (inferably, if not definably) in failing to deem that the trial magistrate's findings failed to properly make out the offence. A substantial miscarriage of justice resulted.*

Note: *Any additional proposed grounds for the potential appeal proper would be provided in the draft notice of appeal furnished to the court in the potential hearing of this application as described in the current rules*[footnote: *"...draft notice of appeal furnished to the Court on the hearing of the application for leave or special leave to appeal..."*]*"*

70. **Fact 2.11** – My amended latest special leave applications directed the Judiciary to refer to my affidavit in support of an extension of time which relevantly included a general explanation for raising my latest special leave applications [CAB 367-368, preliminary matter 4 and CAB 189-191];[CAB 386, preliminary matter 5 and CAB 357-359]. The said affidavit(s) included the following content (emphasis added):

*"... 3. This will be [my] further attempt at obtaining special leave to appeal from the decision by the WASCA in matter CACR 113 of 2015 given on 18 February 2016. My first attempt was denied special leave on the 12th of October 2016 in P19 of 2016 on the basis that "The application does not raise any question of law suitable for the grant of special leave". **I was unable to define the special leave questions given it was my understanding at the time that I had only one shot at gaining special leave which led me to contending far too many grounds, of which would have raised too many questions to be practical to list and I also could not argue many of my grounds due to the 10 page limit. I applied for an extension which was denied** by Nettle J in the matter P23 of 2016. **At that time I did not understand that I could have applied for leave to appeal** and it was not until after the matter P19 of 2016 had been dismissed that I discovered this right which was too late.*

*4. **As a result, I was only able to argue the grounds relating to inadequacy of reasons** and I hoped the High Court would send the matter back to the WASCA. In the time since then, I have taken many steps to re-open that matter and my other matter relating to a different decision in the WASCA. There are various reasons I have taken those steps in relation to my belief that there has been a denial of natural justice or just a substantial wrong with relation to the rules which applied to unrepresented parties and which documents needed to be considered or amended and it was hoped that the High Court would allow me to make amendments and further submissions. I obviously needed to take those steps as far as I could before lodging any new applications for special leave to appeal from the WASCA decisions and I certainly could not reasonably have known that those endeavours would fail.*

5. To the inevitable question of ***whether this new application for special leave raises issues already dealt with in the first one. The answer is no because none of the grounds raised and questions asked contended in this new application were raised in the first attempt*** **[[footnote:** ***See the application for special leave lodged 8 March 2016 (filed 29 April 2016)*** **[CAB 413-421]** ***and the summary of argument filed 29 July 2016*** **[CAB 423-431]]**...

8. I finish by noting that the state of the law with regard to multiple applications for special leave from one decision of a state court is that it is not disallowed and has been allowed many times in the past on the basis that a prior application dismissed by disposition has no bearing on the correctness of the decision from which it was brought. The cases that have been allowed a second application for special leave ***raise different grounds or questions than the prior one which is exactly the case in this new application for special leave.*** *"*

71. **Fact 2.12** - My amended latest special leave applications related to appeal against criminal conviction which the Justices were alert to evident in their reasons given [CAB 6-8].

72. **Fact 2.13** – My amended latest special applications addressed three grounds and consumed approximately 20 pages. For argument sake say 6 pages for each ground [CAB 364-375 and CAB 383-393].

73. **Fact 2.14** – In relation to paragraphs 9 onward of my affidavit in support of my summons dated 27 February 2019:

    a. I had requested free access to copies of documents in relation to High Court proceedings involving four parties, other than myself, which would have assisted my case in defence of vexatious proceedings orders and contended in detail why such should be issued to me free of cost, and identified the documents wanted in substantial, if not thorough detail [CAB 403-405]; and

    b. I had, pursuant with section 77RO(1) of the Act, requested to be issued with one certificate in the format described in section 77RO(2) in relation to one person which would have assisted my case regarding the potential vexatious proceedings orders.

2(i) - Finding that one or both of my amended latest special leave applications were, in some capacity, vexatious by allegedly defining ground(s) that had already been rejected via the disposition in the prior special leave application P19 of 2016 [CAB 11 line 345 - 348]

74. I submit that in the context of any considerations relevant to vexatiousness, the question of whether a ground has already been tested or dealt with on a prior occasion can only be an objective consideration as to which grounds were officially rejected by the judiciary and in what legal context were the grounds rejected.

75. As covered above, my amended latest special leave applications defined special leave grounds which were different from those special leave grounds which were rejected in my prior special leave application. The Justices finding to the contrary: (a) occasioned error (inferably, if not definably); or (b) was unjust or unreasonable (or both).

2(ii) - Finding that one or both of my amended latest special leave applications were, in some capacity, vexatious by allegedly defining ground(s) that were raised in the WASCA, or could and should have been raised in the WASCA [CAB 11 lines 345 – 348]

76. As is evident above, each of the three grounds in my amended latest special leave applications reacts to something the relevant WASCA judiciary: (a) did which should not have been done; or (b) did not do what should have been done. I therefore submit that literally the only time grounds of this nature could be contended is after the judgment of the WASCA had been made. In the absence of any evidence suggesting that I had access to a time machine, a finding that I had, or could and should have defined my amended latest special leave grounds in the relevant WASCA proceeding occasioned error (inferably if not definably.

77. *2(iii) - Finding that one or both of my proposed amended latest special leave applications were, in some capacity, vexatious by allegedly defining ground(s) that 'could and should' have been defined in my prior special leave application P19 of 2016 [CAB 11 line 345-348]*

78. I submit that, in the context of considerations relating to vexatiousness, a test as to whether something 'could and should' have been done in my prior special leave application must take into consideration the limitations which applied to the earlier proceeding. Further, such a test would need to take into consideration whether I had taken steps to go beyond those limitations. Further, the question of whether **I** 'could and should' have done something must be a question of what **I** reasonably 'could and

should' have done based on objective facts relating to **my** abilities and **my** understanding of the circumstances which applied to my prior special leave application as opposed to some other persons abilities and understandings.

79. As covered above, it is evident: (a) that I had used all of the allotted 10 pages for the prior SOA; and (b) that I had taken steps to request an increase in that 10 page limit which was rejected; and (c) that, at the relevant time, I was under the impression that I had taken the said request for more pages as far as I could. It was not possible, or would have been pointless (or both) for me to include additional grounds in my prior special leave application form since I could not have argued any additional grounds and the Justices fell into error (inferably, if not definably) by suggesting otherwise.

2(iv) - Applying a test which considered whether 'the reasons for the Court of Appeal's decision' gave 'any reason to doubt its correctness' [CAB 11, lines 340 - 342]

80. The grounds contended by my amended latest special leave applications did not in any way suggest that error could be realised merely by consideration of the reasons for decision of the WASCA alone. Further, the error or miscarriage (or both) contended by the said grounds cannot properly or justly be determined merely by a consideration of the reasons for decision of the WASCA alone. The Justices were in error (inferably if not definably) by allowing such a test to persuade them in that any result of such a test was irrelevant.

2(v) - Applying a test which considered whether the reasons given for the rejection of my prior special leave application (P19 of 2016) gave 'any reason to doubt its correctness' [CAB 11, lines 340 - 342]

81. My amended latest special leave applications did not in any way contend that the determination of my prior special leave application was flawed,[37] and they did not need to in order to be potentially successful. The Justices were in error (inferably, if not definably) by allowing such a test to persuade them in that any result of such a test was irrelevant. Alternatively, the Justices were in error (inferably, if not definably) in that any decision to perform such a test was borne of the flaw contended above under *'2(i)'*.

2(vi) - Applying a test which included a consideration as to whether my amended latest special leave applications had raised 'any ground' that 'would justify a reconsideration of

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[37] Not to be confused as a contention that the determination in the prior special leave application P19 of 2016 did or did not occasion error or injustice.

whether special leave' should have been granted in the appellant's prior special leave application P19 of 2016 [CAB 11-12, lines 351- 357]

82. As is evident above or otherwise in the content of my amended latest special leave applications, my amended latest special leave applications did not in any way seek to re-open the prior special leave application P19 of 2016, nor did they need to in order to be potentially successful. The Justices were in error (inferably, if not definably) by allowing such a test to persuade them in that any result of such a test was irrelevant. Alternatively, the Justices were in error (inferably, if not definably) in that any decision to perform such a test was borne of the flaw contended above at *'2(i)'*.

2(vii) - At CAB 12, lines 359-362, finding that my amended latest special leave applications demonstrated a refusal to accept the legal effect of the disposition for my prior special leave application P19 of 2016.

83. The finding occasioned error (inferably, if not definably): (a) in that there is no evidence, or otherwise materials, which could have led to such a finding; or (b) in that the finding was borne of the flaw contended above at *'2(i)'*.

2(viii) – at CAB 13, lines 441-444, in relation to my interlocutory application by summons dated 27 February 2019: (x) finding that it was, in some capacity, vexatious in that it allegedly placed 'exorbitant demands on the time and resources of the court'; or (y) failing to only dismiss the parts of the interlocutory application which was alleged to be vexatious

84. In relation to part *'(x)'*, I had not caused any High Court employee to do anything over and above their normal duties and the volume of the request was not unreasonable and the relevance of the request was unquestionable. The Justices finding that the interlocutory application was vexatious: (a) was unreasonable or unjust (or both); or (b) occasioned error (inferably if not definably). In relation to part *'(y)'*, the Justices should only have dismissed the parts that were found to be vexatious pursuant to section 77RN(2)(a) ["*...all or part...*"].

Initial conclusion for ground 2

85. Keeping in mind the presumption which applies to this ground: (a) my amended latest special leave applications would otherwise not have been deemed vexatious; or (b) my summons dated 27 Feb 2019 would otherwise not have been deemed vexatious; or (c) both a and b. The contended miscarriage is otherwise addressed later.

Initial Argument for ground 3 (unreasonable opportunity to argue in defence)

86. It will be shown that, in relation to the Justice's, in effect, deeming that I had been afforded a reasonable opportunity to prepare my argument in defence of the vexatious proceedings orders, the judgment occasioned: (a) error (inferably if not definably) or (b) substantial miscarriage of justice or (c) both a and b.

87. Section 77RN(3) of the Judiciary Act 1903 prescribes that the High Court must not make a vexatious proceedings order without giving the person an opportunity of being heard. The obvious intention of the legislation is that the opportunity to be heard must be a reasonable opportunity. For me to have had a reasonable opportunity of being heard in defence of vexatious proceedings orders I needed two fundamental things. Firstly, I needed to be provided with sufficient information setting out unambiguous particulars of the scope of the allegations[40]. Secondly, I needed sufficient time to prepare for obvious reasons. It will be shown that I was not afforded a reasonable opportunity to argue in defence of the vexatious proceedings allegations.

88. **Fact 3.1 (The directions)** – On 13 February 2019, I received a letter from Ms Gesini [CAB 397] in which it was stated:

> *"Your Applications for special leave to appeal in P3/2019 and P11/2019 have been listed for hearing before a Full Court on 6 March 2019... .*
>
> *Pursuant to s 77RN(3) and (4) of the Judiciary Act 1903 (Cth) ("the Act"), I have been directed to inform you of the possibility that, given the history of applications by you in relation to the matters the subject of your present Application, a vexatious proceeding order, being an order under s 77RN(2) of the Act, may be made against you following the hearing of your Applications.*
>
> *Accordingly, you are directed to file any written submissions you may wish to make, not exceeding 10 pages, as to the making of any such order by 4.00pm on 1 March 2019.*
>
> *The Respondent is not required to file a Response to your Applications..."* [CAB 397]

89. **Fact 3.2 (Informal response to the directions)** – On 14 February 2019, I reacted to the abovementioned directions by emailing Ms Gesini and other Registrars in her absence which included the following relevant content [CAB 406-407]:

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[40] I rely on the principles of any trial or court case in which the particulars of the offence or claim must at least generally define an unambiguous scope for reasons all too obvious.

"... if the proposed vexatious proceedings order was instituted on the High Court's own initiative, I will need to be issued with a document identifying specifically the problems which have given rise to this action taken—for example identifying which grounds or special leave questions are said to have already been determined by a full court and specifically identifying the previous applications which support the claim or otherwise state exactly and concisely what is the problem with these new applications otherwise it is impossible for me to make any relevant argument which is not the intended function of the system; ...

Please advise what is the primary purpose of the hearing, is it to determine the applications in alignment with rule 41.08 or purely to determine if a vexatious proceedings order is made?" [CAB 406-407]

90. **Fact 3.3 (Formal response to the directions)** - On 27 February 2019, I filed interim submissions [CAB 398-400] and a related summons [CAB 401-405] in response to Ms Gesini's directions above. The following content was included in the said interim submissions and the supporting affidavit for the said summons (emphasis added and paragraph numbers removed for convenience):

"...Firstly, I seek directions as to whether the upcoming hearing is to determine my applications for special leave in the normal way prescribed in the rules or if the purpose of the hearing is only determine if the Respondent will be directed to respond or for me to be heard in relation to the potential vexatious proceedings order.

Secondly, ... Section 77RN(4) prescribes that I have a right at the very least to be given an opportunity of being heard on the matter and I submit it is the intention of that legislation that I must have sufficient information provided as to what the allegations are that I am supposed to be arguing in order for a me to have a reasonable opportunity of arguing my case. ***It is impractical, if not impossible to argue in defence of 77RN(1a) being made out without sufficient particulars claiming that it is made out. As it stands, the only particulars I have been provided are that in the quoted paragraph above*** **[refers to the directions above]** ***from the said letter which effectively contends that I have made one previous application for special leave to appeal from the decision of the WASCA for CACR113 of 2015 therefore this second attempt at seeking special leave to appeal from the same decision is somewhat suspect.*** *It falls along way short of being sufficient and concise particulars and does not identify anything satisfying 77RN(1a) of the Act. ...*

Thirdly, I am going to need an extension of time ... as it is ***unfair and impractical to try and prepare arguments of this nature within a two week time frame, let alone when in that two weeks I am in the middle of preparations*** **[relating to special**

leave] *for the upcoming hearing already mentioned above which relates to the most important thing I have ever dealt with in my life..."*

91. **Fact 3.4** – On 1 March 2019, I received an email from Ms Rogers[41] [CAB 410] which included the following relevant content:

"...On 6 March the Court will hear your arguments concerning your currently pending applications for special leave to appeal as well as each summons filed on 22 February 2019 and 27 February 2019. You will also have the opportunity to make submissions on whether the Court should make vexatious proceedings orders in respect of these and related proceedings. ..." [CAB 410]

10 92. **Fact 3.5** – On 4 March 2019 I reacted to Ms Rogers email above by emailing Ms Rogers and Ms Gesini which included the following relevant content [FMB 304]:

"... I will not be in a position to be able to argue in defence of the vexatious proceedings orders on 6 March 2019 for the same reasons already addressed in the said documents [the abovementioned interim submissions and summons].

Further, given the distractions which have resulted due to the vexatious proceedings allegations, and documentation I have since needed to lodge, it has interrupted my preparations for preparing my argument for the application for special leave to appeal which is extremely disappointing as it may cause me to have to apply for an adjournment which I will raise at the hearing..." [FMB 304]

20 93. **Fact 3.6** – At the hearing on 6 March 2019 it was evident:

a. that I had alerted the Justices to my interim submissions and summonses filed in the proceeding [CAB 38]; and

b. that I had contended that the correct judicial process is to determine interlocutory applications prior to the main application since they would ultimately affect my case for the main application [CAB 38, line 31-35]; and

c. that I had sought an adjournment of the hearing (as foreshadowed in my email above dated 4 March 2019) to allow me to properly prepare my submissions in defence of vexatious proceedings orders and in support of my latest special leave applications being granted [CAB 38-39, line 45-49]; and

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[41] Incidentally, the Justices found that the email was sent by a different Registrar which was and is an insignificant imperfection.

d. that I was twice cut-off from further explaining why I needed more time [CAB 39, lines 75, 89]; and

e. that I had reaffirmed that I intended on making use of the 10 page written submissions to argue in defence of vexatious proceedings orders [CAB 39, lines 82-84].

94. **Fact 3.7** - The Justices were alive to the fact that my latest special leave applications only related to the stalking conviction [CAB 12, lines 374-375].

95. **Fact 3.8** - The Justices were alive to the fact that the breach of VRO conviction was the result of a different trial than the stalking conviction and that at every appellate level, including the High Court, it had been a separate proceeding [CAB 5-11, lines 86-330].

96. **Fact 3.9** – The Justices were alive to the fact I had taken no further steps in relation to my breach of VRO conviction since 5 October 2018 and that all of those proceedings had been determined in 2018 or earlier [CAB 8-11].

97. **Fact 3.10** –The Respondent had entered an appearance in relation to my latest special leave applications, [42] but was not directed to respond to such prior to the special leave hearing [CAB 397].

98. **Fact 3.11** - The High Court, by rule 41.05, sees fit that 21 days be given to a party who only has to prepare a 10 page document in relation to one proceeding.

99. **Fact 3.12** - The Justices considered approximately 20 different proceedings which proceeded at various times over approximately 2 years as part of the vexatious proceedings considerations [CAB 6-11].

3(i) - Failing to find that the correspondence sent to me on 13 February 2019 had limited the scope of vexatious proceedings allegations only to those proceedings relevant to matters the subject of the P3 and P11 of 2019 applications [CAB 4 lines 37-40]

100. The Justices found that the said letter had informed me 'that, given the history of applications by him [me], a vexatious proceeding order' may be made [CAB 4]. As is evident above, the actual letter had limited the scope of the vexatious proceedings orders only to my 'history of applications in relation to the matters the subject of your [my] present Application [P3 and P11 of 2019]'. The Justices were in error not to have

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[42] See the Respondent's notice's of appearance for P3, P11 of 2019 filed 22 Jan 2019 and 6 February 2019.

noted this important detail which resulted in their misconceived belief that I had been notified that the vexatious proceedings related scope included all of my High Court proceedings.

3(ii) - Finding that, at some point prior to the hearing, I was undoubtedly aware that the scope of the vexatious proceedings allegations included all High Court proceedings relating to my breach of restraining order conviction [CAB 13, lines 431-436]

101. The finding occasioned error: (a) in that there is no evidence or materials which can support this finding; or alternatively (b) in that it was a finding borne of the flaw contended under *'3(i)'* above.

3(iii) - Failing to provide sufficient time

102. For the sake of arguing this contention only, it will be assumed (incorrectly) that the appellant had been adequately informed that the scope of the vexatious proceedings allegations was to include all proceedings of the applicant in the High Court.

103. I was given 15 days to prepare a 10 page document in relation to approximately 20 proceedings which proceeded at various times across a 2 year period approximately and on top of that, to also prepare verbal submissions for my latest special leave applications (say 5 - 10 pages) during substantially the same 15 day period. This, when the High Court's own rules set a benchmark of 21 days for a party to prepare one 10 page document in relation to one proceeding. The Justices failure to grant me more time was unreasonable or unjust (or both).

3(iv) - Finding that I had not taken up the opportunity to provide written submissions in relation to the directions the subject of the correspondence on 13 February 2019 [CAB 13, lines 419-421]

104. I had filed interim submissions on time which addressed what I had interpreted to be the scope of the vexatious proceedings directions. The Justices were in error (inferably, if not definably) to find otherwise.

3(v) - Finding that, at some point prior to the hearing, I was undoubtedly aware that the scope of the vexatious proceedings allegations included all High Court proceedings relating to my stalking conviction [CAB 13, lines 431-436]

105. The finding occasioned error: (a) in that there was no evidence or materials which could lead to such a finding; or (b) in that it was a finding borne of the flaw contended under *'3(i)'* above; or (c) both a and b.

Initial conclusion for Ground 3

106. If not by independent means, the cumulative effect of the above contentions resulted in me being denied a reasonable chance to prepare my argument in defence of: (a) all orders made by the Justices; or (b) some of the orders made by the Justices. The contended miscarriage is otherwise addressed later.

Substantial Miscarriage of Justice

107. If not by independent means, the cumulative effect of the grounds contended above resulted in a substantial miscarriage of justice which will be argued at the appeal hearing.

10 108. In the alternative, a substantial miscarriage alone resulted in the general context of the ground(s) above without contending error which will be argued at the hearing.

Part VII: Orders sought

109. In relation to this proceeding: (a) the appellant's applications raised by summons(es) and those initiated in this document or in the appeal hearing be granted in full; and (b) the appeal allowed; and (c) all orders and directions made in the proceeding P3 and P11 of 2019 be set aside; and (d) the appellant's proposed amendments to his special leave applications in the proceedings P3 and P11 of 2019 be granted in the terms filed on 22 February 2019 with his summonses of the same date;[56] and (e) all of my names be suppressed with JJC both in the Judgment and any related web page or document
20 available to the public via the High Court website. The remaining orders will depend on how the appeal is managed.

Part VIII: Estimated time required to present oral argument

110. The appellant would need at least 2 hours.

Originally dated: 11 June 2019

Amended version dated: 10 July 2019

.....(signed).....

Jerrod Conomy (Apellant)

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[56] See the appellant's summonses and associated proposed amended special leave applications at CAB 360-380 and CAB 380