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## TRANSCRIPT OF PROCEEDINGS

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O/N H-1203383

**FEDERAL COURT OF AUSTRALIA**

**VICTORIA REGISTRY**

**MIDDLETON J**

**No. NSD 464 of 2020**

**APPLICATION IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD  
(ADMINISTRATORS APPOINTED) and OTHERS**

**MELBOURNE**

**10.15 AM, FRIDAY, 15 MAY 2020**

**DR R. HIGGINS SC appears with MR D. KROCHMALIK for the 1<sup>st</sup> plaintiffs  
MR MOORE appears for the Commonwealth of Australia  
MR HANKS appears for the Deputy Commissioner of Taxation**

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**THIS PROCEEDING WAS CONDUCTED BY TELEPHONE CONFERENCE**

HIS HONOUR: I will take appearances, please.

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DR R. HIGGINS SC: May it please the court, I'm here with my learned friend, Mr Krochmalik, for the first plaintiffs.

HIS HONOUR: Thank you.

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MR MOORE: Your Honour pleases, I appear on behalf of the Commonwealth of Australia.

HIS HONOUR: Thank you. Mr Hanks?

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MR HANKS: And, your Honour, I appear for the Deputy Commissioner of Taxation.

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HIS HONOUR: Thank you. Before we start, I just need to make an order dealing with the section 17 of the Federal Circuit Court of Australia Act. For the reasons that were given and the notation that was made in the order dealing with section 17.1 of the *Federal Circuit Court of Australia Act (1976)* made on 13 May 2020, the court orders that:

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(1) Pursuant to section 17(4) of the Act, the public be excluded from this hearing listed at 10.15 am on 15 May 2020 other than for the following arrangements:

(a) any member of the public is able to join the meeting via the Microsoft teams platform by providing an email address to the associate of Middleton J as stipulated in the court notice of proceedings; and

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(b) any member of the public is able to listen to the hearing via the Microsoft Teams platform by dialling the number and ID allocated to the hearing published on the court list.

(2) Members of the public other than the media representatives who attend the hearing via the methods in paragraph (1) of these orders do so on the condition that they are:

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(a) permitted to observe and listen to the hearing, but are in no circumstances permitted to participate in the hearing;

(b) prohibited from making any recording or photographic record of the hearing or any part thereof by any means whatsoever; and

- (c) advise that failure to observe the conditions in (a) and (b) above may constitute a contempt of court and be punishable as such.

5 So, Dr Higgins, I will just indicate that I have had the opportunity of reading your supplementary submissions. I have had the opportunity of reading the submissions from Mr Moore in relation to the Commonwealth of Australia. I have also had the opportunity of reading the latest affidavit of the administrator given to me this morning of 15 May. I should say it's the affidavit of – not the administrator – it's Ms Adams.

10 DR HIGGINS: Yes, your Honour. Did your Honour also receive an affidavit of Vaughan Neil Strawbridge of 15 May 2020?

HIS HONOUR: I did. A very short affidavit - - -

15 DR HIGGINS: One .....

HIS HONOUR: Yes, I have received that, and I've read that.

DR HIGGINS: Yes.

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HIS HONOUR: So does that - - -

DR HIGGINS: And your Honour should also finally have received some minutes of proposed orders as well.

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HIS HONOUR: And I have those as well. So is that effectively the material in addition to the material I've had before – that is before me and up to date now?

DR HIGGINS: Yes, your Honour. That's all.

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HIS HONOUR: Excellent. Thank you. Well, Mr Moore, I may come to you first. Do you want to say anything further than what you've put in your very helpful submission.

35 MR MOORE: Yes. Just very briefly, your Honour. The Commonwealth appreciates that in – having regard to two circumstances in particular, namely those mentioned by Dr Higgins in paragraph 9, that the administration is one of only two national airlines operating in Australia and that the COVID pandemic has imposed severe and ongoing restrictions on aviation travel – having regard to those  
40 circumstances and many others, this administration is unique, both in its own right and because of the economic environment in which it has taken place, and the Commonwealth notes the information that has been provided to it by the voluntary administrators and the agreement to provide further information to both the Commonwealth and the committee of inspection – having regards to all of those  
45 unique circumstances, the Commonwealth does not oppose the orders sought limiting the personal liability of the administrators.

HIS HONOUR: Thank you, Mr Moore. I agree with what you have said. They are, however, extraordinary orders in the normal circumstances, and I appreciate that, but it seemed to me appropriate to make the orders. One thing that you did raise, which I think is very important, which is taking into account in the orders – proposed order 3  
5 – that the first plaintiffs are to provide notice in the applicable agreements or otherwise to any counterparty of the restriction. So, therefore, anyone who deals with the administrators will know the extent of their liability and what would happen if something went into liquidation, and I think that’s probably the most critical matter, even though these are – I think I can describe them as quite extraordinarily  
10 wide orders, but in the circumstances I think they are justified.

When I provide my reasons next week in relation to these orders, I will emphasise that nature of the orders. As I had indicated, one has to be flexible, and to deal with the situation before the court now, but the court also has to be mindful of the due  
15 administration of the Act for future cases. So this shouldn’t be seen as a precedent that would apply to all circumstances of future administrations, but – and I will explain all that in my reasons. But thank you for your intervention and comments.

MR MOORE: Yes, your Honour. As your Honour pleases.  
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HIS HONOUR: All right. Now, Mr Hanks, do you – you’re appearing on behalf of the Commissioner of Taxation. As I understand the proposed order, the matter that you may want to address will stand over for another day; is that the position?

25 MR HANKS: No, your Honour, not quite.

HIS HONOUR: All right.

MR HANKS: Your Honour said to another day, yes, not for another day.  
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HIS HONOUR: Yes.

MR HANKS: It would be stood over to next Wednesday. In the meantime, we’re working to see if we can come up with a form of order that will meet the particular  
35 requirements of the administrators and protect the interests of our client and the Commonwealth.

HIS HONOUR: Yes.

40 MR HANKS: So there are a couple of problems that we’re exploring, your Honour. One of those is what is in the Corporations Law that actually renders the administrators liable for any overpayment of JobKeeper. That’s the first problem. And then the second problem we’re addressing is whether there ought to be some limitation on the particular protection that’s given under the proposed paragraph (b)  
45 of the order. So those were the two things that we want to investigate and discuss with our friends who appear for the administrator.

HIS HONOUR: Well, I'm content to standover – adjourn paragraph 18 of the interlocutory process, which is the issue that you're dealing with, to 10.15 on 20 May.

5 MR HANKS: Yes.

HIS HONOUR: And if you can work out a form of order, and that can be – that everyone is happy with, then that can be put to me; if not, then we can have a debate about it and determine it on that moment.

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MR HANKS: Yes.

HIS HONOUR: I must say, I am very happy with the way in which various interested parties have cooperated with the administrators and the court in trying to come to an agreed position. It does assist in the court's process; it also assists, obviously, in the administration. So I'm grateful for all interested parties, not just the ones that are appearing before me this morning, but I gather there was – obviously been discussions in relation to other matters of interested parties that have been resolved, and I'm content with the resolution that has been put in the affidavits and is reflected in the orders.

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So I just wanted to say – put that on the record, and I hope that continues in relation to where the administrators want to go, and that is to – on the basis of the material before me to a sale, and to an eventual entering into of a DOCA. Now, Dr Higgins, I don't know if I need any further assistance from you, unless there was something you wish to bring to my attention. I am content to make the orders that you now propose. And did that include adjourning to the – can't remember now. Did that include adjourning to 10.15 on 31 May?

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30 DR HIGGINS: Your Honour, order 1 of the proposed orders - - -

HIS HONOUR: Not 31 May, sorry. The - - -

DR HIGGINS: The 20<sup>th</sup>.

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HIS HONOUR: Next Wednesday.

DR HIGGINS: Stands the matter over to 10.15 on 20 May, as Mr Hanks has indicated.

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HIS HONOUR: Yes. All right. Let me just look at that. Again, as I've indicated, I will provide reasons for each of these orders. In relation to the matters that I had a specific concern about that I raised with you last time, I don't have to worry you about those; I have reflected further upon those, and then the interested parties that had issues – they have been resolved, other than Mr Hanks' client.

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DR HIGGINS: Yes, your Honour.

HIS HONOUR: So we will – if there’s nothing further you want to add, no one else is on the line to raise anything. I will make those orders. They will be made forthwith. I should indicate for members of the public that there is a portal that is available which will have all of the material that I will rely upon in my written  
5 reasons and do rely upon now in making these orders, including the submissions of the administrators and the supplementary submissions. So anyone who immediately wants to know what the orders are, what the material is and the submissions, they can find them through that portal on the Federal Court site. I don’t think there’s anything  
10 further that needs to be done, then, other than to adjourn over to 10.15 next Wednesday.

DR HIGGINS: May it please the court.

HIS HONOUR: All right. We will now adjourn the court.  
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**MATTER ADJOURNED at 10.26 am UNTIL WEDNESDAY, 20 MAY 2020**