



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD964/2020

**BODHI BOELE, BY THEIR LITIGATION REPRESENTATIVE, HEIKE FABIG**  
Applicant

**JETSTAR AIRWAYS PTY LIMITED ABN 33 069 720 243**  
Respondent

### ORDER

**JUDGE:** JUSTICE FARRELL

**DATE OF ORDER:** 12 April 2022

**WHERE MADE:** Sydney

#### BY CONSENT, THE COURT ORDERS THAT:

1. The settlement of this proceeding, as set out in the Settlement & Release Agreement (**Agreement**) marked as Annexure “HF-1” to the affidavit of Heike Fabig affirmed on 21 March 2022, be approved pursuant to rule 9.70(1) of the *Federal Court Rules 2011* (Cth).
2. Pursuant to s 37AF of the *Federal Court of Australia Act 1976* (Cth) (**Act**), on the ground of s 37AG(1)(a) of the Act, until further order, the affidavit of Heike Fabig affirmed on 21 March 2022 including Annexures “HF-1” and “HF-2”:
  - a. subject to clause 7.2 of Annexure “HF-1” to the affidavit of Heike Fabig affirmed on 21 March 2022, must be treated as confidential to the parties to this proceeding with access restricted to:
    - i. the Court;
    - ii. the applicant and the applicant’s legal representatives; and
    - iii. the respondent and its legal representatives; and
  - b. must not be available for public inspection, disclosed in open Court or disclosed in the open part of any Court transcript.



3. Both the email sent by the applicant's legal representatives to Justice Farrell's associate on 24 March 2022 attaching annexure "HF-2" and annexure "HF-2" must not be uploaded to the the Court's electronic court file without leave of a Judge of this Court.
4. The proceedings be dismissed.
5. There be no order as to costs.

**IN MAKING THE CONSENT ORDERS, THE COURT NOTES THAT:**

- A. The affidavit of Heike Fabig affirmed on 21 March 2022 has been filed with the Court with annexure "HF-2" redacted from it and with the respondent's consent, annexure "HF-2" was not served on the respondent.
- B. Annexure "HF-2" is a written opinion of Chris Ronalds SC and Renae Kumar of counsel dated 14 March 2022 explaining the reasons why, in their opinion, the Agreement is in the applicant's best interests (**confidential opinion**).
- C. The parties have provided joint submissions dated 22 March 2022 in support of the Court approving the Agreement.
- D. In deciding whether or not to approve a settlement under r 9.70 of the *Federal Court Rules* for the purpose of making it binding on an applicant under a legal disability, the Court must be satisfied that the settlement is in the best interests of the applicant or beneficial to their interests: see *Lewis v The State of Victoria (Department of Education and Training)* [2019] FCA 714 at [12] (Kenny J) and the cases there cited. This, in turn, requires the Court to consider the relative advantages and disadvantages of the litigation continuing: *Murrell v Mansfield Autism Statewide Services* [2020] FCA 943 at [17] (Mortimer J).
- E. Justice Farrell is satisfied that the opinion of Ms Ronalds SC and Ms Kumar meets the requirement of r 9.71(2)(c) that the opinion provided to the Court be from an "independent" lawyer, notwithstanding that they have acted for the applicant in these proceedings. Justice Farrell adopts the reasoning of Judges of this Court in proceedings involving a minor with a disability: see *Wade v State of Victoria (No 2)* [2012] FCA 1080 at [9] (Bromberg J), *Lewis v The State of Victoria (Department of Education and Training)* at [13]-[14]; and *Hartigan-Dunn v State of Victoria (Department of Education and Early Childhood Development)* [2019] FCA 1146 at [7] (Davies J).



F. Justice Farrell is satisfied that the Agreement is in the best interests of the applicant and ought to be approved. Justice Farrell has taken into account the particular incidents of this case and matters of the kind discussed in *Tsirigotis v State of Victoria (Department of Education and Training)* [2020] FCA 1771 at [12]-[13] (Anastassiou J).

Date that entry is stamped: 12 April 2022

*Sia Lagos*  
Registrar