

HIS HONOUR:

There are some things that I want to say so it is probably convenient I say them now in relation to the break we are going to have and then we can get on to these matters. I said 25 earlier on in the proceedings that I thought it might be useful to have a break for a week, and I think there are a number of reasons for that. We have now been sitting for 29 hearing days, which is a fairly significant block of time, even allowing for the odd days that the court has not sat.

I think there is, as I indicated, another reason why the break might be useful. Before getting to that, I want to make it clear that anything I say does not reflect any conclusions or much less final conclusions on any issues, whether of fact or law, that arise in the proceedings or may be the subject of dispute between the parties.

Nonetheless, it is not possible for anybody to sit through hearing days and some 20 days of evidence without forming some tentative views on certain issues. Obviously from my perspective any tentative views may change depending upon the further course of the trial, in particular further evidence and submissions.

Just as I have formed some tentative views on some matters, no doubt counsel representing the various parties have formed their own views, tentative views, on some matters. They will doubtless also be looking at those matters from their different perspectives. Even so, I would have thought that enough has transpired for counsel and the legal representatives generally to form some at least preliminary views about some of the issues that are at stake in these proceedings.

I am very conscious, as I am sure are all the legal representatives, that thus far it has only been the applicants' case that has been subject to the scrutiny of cross-examination. This, as yet, has not happened in relation to the many witnesses to be called on behalf of the various respondents. Although it is the 29th day of the hearing, we have only completed the second witness.

I am also very conscious, as I am sure all counsel are as well, of the adage that the case of an applicant can appear most vulnerable during or at the conclusion of cross-examination of the applicants' witnesses.

As I have said, it is also necessary to bear in mind that after all of this time we have completed the evidence of only two witnesses. Their evidence perhaps goes mostly to the forms of relief claimed by the applicants, although of course a good deal of their evidence has been directed to issues of liability in relation to the various respondents and to establishing the pleaded causes of action against the respondents.

I am obviously not going to say anything about issues of credit that could not be and have not been resolved at this stage. But after about 20 days of evidence all parties will have had the opportunity to ascertain whether the evidence of Mr Gammell and Mr Stokes has in all respects supported the pleaded claims for relief. As I am sure they are well aware, the applicants and their legal advisers need to take into account that expert evidence, no matter how detailed and how experienced the source, is only as forensically effective as the validity of the assumptions underlying that evidence. In other words, an expert must act upon factual assumptions, and the validity of those assumptions will depend upon

factual findings that are made in consequence of the evidence given by lay witnesses.

Equally, the respondents have to bear in mind that their witnesses have not yet been subjected to cross-examination. The liability of the various respondents and each of them will obviously enough depend upon the totality of the evidence, whether documentary or oral.

It is clear enough that a vast amount of money has been spent on this case. To many people in the broader community it will be a source of surprise, if not concern, that so many resources can be devoted to a single piece of litigation. It is also clear that, unless it is resolved or the issues substantially narrowed, a further vast amount of money will be spent. If the proceedings can be resolved or the issues substantially narrowed, there will obviously be very large overall cost savings to the parties.

Perhaps more importantly, all parties need to recognise that among the range of possible outcomes in this case is a result that does not necessarily constitute a "win" for any or at least most of the parties. It is obvious enough that the costs associated with prolonged and hard-fought litigation are not merely financial in character but can include other forms of detriment to the parties and to the witnesses who have to give evidence.

I want to invite all the parties over the week or so of the recess to give careful consideration to their respective positions with a view to determining whether there may be room for compromise in the proceedings, or at least whether the issues can be narrowed.

I would also like the parties to give consideration to whether, without holding up the conduct of the litigation, there might be value in a further mediation. I realise that the last mediation apparently was not successful, but the parties now have a good deal more material and experience to work with. An experienced and skilled mediator with the parties' consent can peruse the pleadings, the principle documents in evidence and the relevant portions of the transcript, subject of course to the qualifications that I have already mentioned, in order to assist the mediation process.

Given the potential length of these proceedings - again I repeat that in the 29th day we have finished the second of some 50-odd witnesses - there is no reason in principle, I wouldn't have thought, why the January break, assuming the proceedings are still on foot, could not be used to explore the possibilities further if nothing substantial can be achieved in the meantime.

I appreciate that this is major, vigorously-contested litigation. But there are many very large cases which do settle, even well after the commencement of the trial. A willingness to enter into negotiations, and I am directing this to all parties in the proceedings, is not a sign of weakness in litigation and in any event cannot prejudice the outcome of litigation if it proceeds to finality. I want all parties to give close consideration to what I have said.

I will assist, consistently with the proper discharge of judicial functions, so far as I reasonably can in the endeavours to which I have referred. I'd also wish to reserve the possibility of directing the parties or some of the parties to undertake mediation pursuant to the powers of compulsion conferred on me by the Federal

Court of Australia Act 1976. In particular, I want to give consideration to directing the applicants and the AFL and the applicants and the NRL and the ARL to engage in mediation. Obviously I will not make any directions about that without giving the parties an opportunity to 10 make whatever submissions they see fit on that topic.

They are the matters that I want to put to the parties. I invite the parties to give appropriate consideration to what I have said. We can re-visit those matters, or some of them, when the proceedings resume on Monday week.