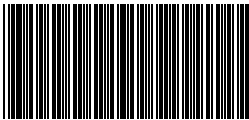


I certify that the Attorney General's written submissions on the notice of motion filed 31 October 2025 are suitable for publication in accordance with paragraph 27 of Practice Note SC CA 01.

Annabel Anderson
Annabel Anderson, Solicitor,
on behalf of Karen Smith, Crown Solicitor, solicitor for the Attorney General



Filed: 4 November 2025 2:07 PM



D000297BNV

Written Submissions

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
List	Court of Appeal
Registry	Supreme Court Sydney
Case number	2025/00396912

TITLE OF PROCEEDINGS

First Applicant	Dale Haines
First Respondent	Attorney General of NSW

FILING DETAILS

Filed for	Attorney General of NSW, Respondent 1
Legal representative	Karen Smith
Legal representative reference	
Telephone	0294749000

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Written Submissions (AGNSW v Haines - Attorney's written submissions on notice of motion.pdf)

[attach.]

ATTORNEY GENERAL FOR NEW SOUTH WALES v DALE HAINES (BHT BARBARA RAMJAN)

**APPELLANT'S SUBMISSIONS ON
RESPONDENT'S NOTICE OF MOTION FILED 31 OCTOBER 2025**

Introduction

- 1 These submissions address [2]-[66] of the respondent's submissions filed on 31 October 2025 (**RS**), which concern the respondent's Notice of Motion seeking to discharge the interim extension order (**IEO**) made by his Honour Justice Kirk on 20 October 2025 on the basis of alleged error.
- 2 Separate submissions in reply have been filed addressing RS, [67]-[126], which concern the respondent's submissions on the substantive appeal.

Notice of Motion

- 3 By Notice of Motion filed on 31 October 2025, the respondent seeks orders discharging the IEO made on 20 October 2025 on the basis that the Court (per Kirk JA) erred by:
 1. Holding (at [24]-[40]) that, pursuant to ss 130 and 131 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (**the Act**), an IEO may be ordered for periods totalling more than 3 months;
 2. Failing to consider whether the jurisdictional preconditions required by s 130(a) were met, in that:
 - (i) Mr Haines was no longer subject to a limiting term; and
 - (ii) Mr Haines was no longer subject to an "extension order" (as that term is defined in s 3(1) of the Act; and
 3. Ordering a (further) IEO which extended beyond 24 October 2025.

Respondent's Submissions

- 4 The Respondent submits that Kirk JA erred in four respects.

- 5 First, it is submitted by the respondent that the analysis of Kirk JA failed to give sufficient primacy to the plain words of ss 131(2) (RS, [15.1]).
- 6 Secondly, it is said that Kirk JA failed to consider whether the legislative criteria for an IEO were made out. The respondent contends that he was not subject to a “limiting term” or an “extension order”, as those terms are defined in the legislation, at the time that Kirk JA made the order (RS, [15.2]).
- 7 Thirdly, the respondent submits that Kirk JA considered context too narrowly. The respondent says that the Court was required to consider the process by which a defendant becomes a forensic patient (including the fact that this is the result of a judicial order) and the punitive nature of forensic patient status, which would have led the Court to conclude that it was unlikely Parliament would have intended orders to be extended in the way advocated for by the appellant (RS, [15.3])).
- 8 Fourthly, the respondent contends that Kirk JA gave “undue primacy” in interpreting the legislation to the facts of this particular matter, insofar as he took into account time pressures which were the product of delay on the part of the appellant (RS, [15.4]).
- 9 Each of these submissions is addressed in turn below.

Kirk JA failed to give sufficient primacy to the plain words of ss 131(2)

- 10 In response to RS, [16] – [23], the appellant relies on the entirety of its written submissions (dated 17 October 2025) which were before Kirk JA on the interlocutory application. Those submissions are set out at **Annexure A**. Particular reference is drawn to [17]–[21] of those submissions.

The respondent was not subject to a “limiting term” or an “extension order” at the time Kirk JA made the order

- 11 The respondent submits that the statutory preconditions in ss 130(a) were not met because the respondent was not subject to a “limiting term” or an “extension order” at the time the IEO was made (RS, [52]–[66]).
- 12 The appellant accepts that the respondent was not then subject to a “limiting term” as defined (RS, [56]–[58]).

- 13 The appellant also accepts that the respondent was then subject to an IEO under s 130, and not an extension order under s 121 (RS, [65]).
- 14 However, contrary to the position of the respondent, the appellant submits that the expression “existing extension order” (as that term appears in ss 130(a)) must necessarily include IEOs made under s 130, as well as extension orders made pursuant to s 121.
- 15 That conclusion follows from the text, structure and purpose of the Act, as identified by Kirk JA at [32]-[36], [40], including:
- (1) the statutory purpose of enabling the Supreme Court to have a meaningful and workable period in which to consider and determine an extension application;
 - (2) the need to preserve the statutory right of appeal, which would otherwise be rendered ineffective; and
 - (3) the conferral of remittal powers on this Court, which would be unworkable if time had already expired.
- 16 The definitions of “extension order” and “interim extension order” as those terms are defined in s 3(1) of the Act do not preclude this construction. This is because, as a general principle of statutory interpretation, definitions will apply unless a contrary intention appears.¹
- 17 Importantly, a contrary intention need not be directly expressed. A contrary intention “may be inferred from a particular provision if, were the definition to be applied, the provisions of or the procedure established by the section would not appropriately work”: *Deputy Commissioner of Taxation (NSW) v Mutton* (1988) 12 NSWLR 104 at 108 (per Mahoney JA).² A similar principle is reflected in s 6 of the *Interpretation Act 1987* (NSW), which provides:

6 Definitions to be read in context

Definitions that occur in an Act or instrument apply to the construction of the Act or instrument except in so far as the context or subject-matter otherwise indicates or requires.

¹ Perry Herzfeld and Thomas Prince, *Interpretation* (Lawbook Co, 3rd ed, 2024), 57-58.

² See also *Interpretation Act 1987* (NSW), s 6.

Kirk JA considered context too narrowly, and failed to sufficiently take into account the punitive nature of the regime

18 The appellant does not accept the respondent’s contention that the regime governing the extension of forensic patient status is punitive in character. As explained in the appellant’s submissions in reply on the substantive appeal at [7]-[9], the scheme has a protective rather than punitive purpose.

19 Furthermore, even if the regime were properly characterised as punitive, that characterisation would not diminish the Court’s obligation to give close regard to the serious implications for individual liberty inherent in the making of an extension order. That duty would remain whether the legislative scheme is characterised as being “punitive” or “protective”. It follows that nothing turns on the respondent’s submissions at RS, [25]-[29], [74] or changes the proper construction of ss 130-131.

Kirk JA gave “undue primacy” to the facts of this particular matter, insofar as he took into account time pressures that were the product of delay on the part of the appellant

20 The respondent places considerable emphasis on its assertion that the appellant’s steps in these proceedings were delayed. The respondent’s complaint in this regard is misplaced. There is no suggestion that the appellant failed to take relevant steps within the statutory time limits. The time taken to prepare and determine these matters reflects the seriousness of the liberty interests at stake. This is also illustrated by the fact that his Honour Justice Coleman required from 1 September to 26 September 2025 to deliver judgment at first instance.

21 Even if the appellant had been in a position to file an appeal immediately after 26 September 2025 (which, for various reasons, the appellant could not do), there would still have been only a very limited window within which the Court could hear both the appeal and any possible remittal. Such proceedings would have needed to be determined within the original three-month period (i.e., by 24 October 2025). That is precisely the point made at [36] of Kirk JA’s reasons. It is not the case that his Honour should have adopted an alternative approach for the purpose of penalising the appellant for any perceived procedural delay. The proper question is what construction best gives effect to the text, context and purpose of the Act. That is the construction adopted by Kirk JA.

Conclusion

- 22 For the reasons stated above, in addition to the reasons set out in the appellant's written submissions dated 17 October 2025, the appellant submits that the IEO granted by Kirk JA on 20 October 2025 should not be discharged.

A handwritten signature in blue ink, reading "Paul Coady". The signature is stylized with a large, looped 'P' and a cursive 'Coady'.

Paul Coady SC
Maurice Byers Chambers

A handwritten signature in black ink, reading "Claire Palmer". The signature is written in a cursive, flowing style.

Claire Palmer
Sixth Floor Selborne Chambers

4 November 2025

ANNEXURE A

ATTORNEY GENERAL FOR NEW SOUTH WALES v DALE HAINES (BHT BARBARA RAMJAN)

APPELLANT'S SUBMISSIONS

Introduction

- 1 On 26 September 2025, his Honour Justice Coleman dismissed the Attorney General's application to extend the status of a forensic patient, Mr Dale Haines (**Respondent**), under Part 6 of the *Mental Health and Cognitive Impairment Forensic Patients Act 2020* (**the Act**): *Attorney-General for New South Wales v Dale Haines (BHT Barbara Ramjan) (Final)* [2025] NSWSC 1117 (**Judgment**).
- 2 The Attorney General is appealing that decision. However, the appeal may be stymied because by the time it is heard and determined, the Supreme Court may have lost jurisdiction to make any consequential orders in the event of success.
- 3 This is because once the Respondent's status as a forensic patient expires on 24 October 2025, the Respondent would no longer be a "forensic patient" for the purposes of s 122(1) of the Act.¹ For that reason, the appeal is urgent.

Orders sought

- 4 The Attorney-General seeks the following orders:
 - (1) A new interim extension order pursuant to s 130 of the Act extending the Respondent's status as a forensic patient so as to allow the Court adequate time to consider and determine the appeal,or, in the alternative,
 - (2) An order that the appeal be expedited.

¹ In *Attorney General of New South Wales v WB* [2020] NSWCA 7, Basten JA indicated (at [52]) that if an interim extension order was not made and the defendant's limiting term expired with the consequence that he ceased to be a forensic patient, the Court could not make a final extension order after the expiration of the limiting term. Macfalan JA expressed agreement with Basten JA on this point ([58]-[59]), albeit Leeming JA expressed a different view.

- 5 Order (1) raises an issue that appears not to have been squarely considered in prior authority and will require consideration of Part 6 of the Act, entitled “Extension of status as forensic patient”.

Does the Act confer jurisdiction on the Court of Appeal to make a further, or new, interim extension order pursuant to section 130?

- 6 The issue that is raised by Order 1 can best be summarised as follows:

The Supreme Court is empowered by s 121 of the Act to make orders extending a person’s status as a forensic patient. Under s 130 of the Act, the Court may, in certain circumstances, make an interim extension order, but such an order is limited to a period of three months by s 131(2). In the present case, the existing interim extension order will expire before the appeal can be heard and determined.

Issue for the Court: *Does the Act confer jurisdiction on the Court of Appeal of the Supreme Court to make a further, or new, interim extension order pursuant to s 130 in those circumstances?*

- 7 The Attorney-General submits that the answer to this question is yes. In this situation, the application to the Court of Appeal can be characterised as separate, new “proceedings on an application for an extension order,” as those words are used in the chapeau of s 130.

- 8 The scope of the term “proceeding” is somewhat variable. It may refer to a step in an action before a Court, or it may be treated as synonymous with the action or equivalent to the word “action”: *Pryor v City Offices Co* (1883) 10 QBD 504 at 507-508. “A ‘proceeding’, used broadly ..., is merely some method permitted by law for moving a Court or judicial officer to some authorized act, or some act of the Court or judicial officer”: *Cheney v Spooner* (1929) 41 CLR 532 at 536-537. It has been said that anything that precedes the final judgment or order is a “proceeding” in the action: *Blake v Summersby* [1889] WN 39.

An appeal is a separate and independent process

- 9 Overall, however, the authorities make clear that an appeal is not a mere continuation of the original proceedings, but a separate and independent process. This has been recognised in the decisions listed below:

- (a) in *Distinctive FX9 v Statewide Developments* [2012] NSWCA 393, her Honour Beazley JA stated that, “the provisions of the Civil Procedure Act and the UCPR make it apparent that an appeal is a new proceeding. The proceeding is brought in a different court, namely, the Court of Appeal. Fresh originating process is required. Orders are made in the proceedings on the appeal, albeit that the orders may impact upon the orders made at first instance” (at [11]);
- (b) in *Taouk v Assure (NSW) Pty Ltd* [2019] NSWCA 224, the Court (Macfarlan and Payne JJA, Emmett AJA) stated that “appeals to the Court of Appeal are to be treated as proceedings separate from those at first instance” (for the purposes of ss 471B and 500(2) of the Corporations Act) (at [3]);
- (c) in *Keynes Capital Global v Guo (No 2)* [2020] NSWCA 336, in which the Court (Bell P, Meagher and Payne JJA) presumed that an appeal (and an application for leave to appeal) constitute new and separate proceedings from proceedings at first instance (at [9]);
- (d) in *Diveva v Nominal Defendant* [2013] NSWCA 325, in which Gleeson JA stated that the “appeal is not the ‘same’ proceedings as the proceedings below. The appeal is a separate proceeding” (at [90]); and
- (e) *Commonwealth v CFMEU* (2003) 129 FCR 271, in which the Court (Black CJ, Tamberlin and Sunberg JJ) stated that the Commonwealth’s claim for public interest immunity and its subsequent application for leave to appeal and the appeal itself should be characterised as separate proceedings (at [8]).

10 This interpretation of s 130 finds further support in the language of ss 135(6). That sub-section provides that if the Court of Appeal remits a matter to the Supreme Court for decision after an appeal is made, the Court of Appeal may make an interim order revoking or varying an extension order the subject of the appeal. Although expressed in terms of revocation or variation, the provision should be read broadly to encompass circumstances in which the Court of Appeal itself makes a new interim extension order to preserve the status quo pending remitter.

- 11 Such a construction is consistent with the evident purpose of the section - to ensure that the appellate process is not rendered nugatory by the expiry of the relevant order while the appeal is on foot.

Preconditions in ss 130(a) and (b) are satisfied

- 12 If it is accepted that appeal proceedings are fresh proceedings captured by s 130, then it will be open to the Court of Appeal to consider whether the preconditions in ss 130(a) and (b) are satisfied by reference to those appeal proceedings.
- 13 As to s 130(a) it must appear that the “limiting term or existing extension order to which the forensic patient is subject” will expire before the proceedings (i.e, the appellate proceedings) are determined. As the application to the Court of Appeal should be treated as a separate application in separate proceedings, the precondition in s 130(a) will be satisfied if the Court of Appeal is presented with a pending appeal, filed before the expiry of an interim extension order made at first instance and if it appears that the interim extension order will expire before the appellate proceedings are determined.
- 14 As to s 130(b), “supporting documentation” refers to the documentation prescribed by s 125 (that is, material that addresses each of the statutory criteria listed in s 127(2), in addition to reports prepared by qualified persons for the purpose of assessing risk). In the context of an appeal, there will not be fresh “supporting documentation” for the appellate proceedings; the “supporting documentation” is the documentation which was relied upon before the Supreme Court at first instance.
- 15 In considering whether the matters alleged in the supporting documentation would, if proved, justify the making of an extension order, the Court of Appeal is not required to undertake a detailed examination of the facts. That evaluative function lies with the Supreme Court at first instance, and the appellate court’s task is confined to determining whether there is a sufficient basis to preserve the subject matter of the appeal or to support the making of an interim order pending its determination. The Attorney-General submits that this approach was adopted by his Honour Justice Leeming in *State of New South Wales v Naaman* [2018] NSWCA 293 (*Naaman*), albeit in the context of the *Terrorism (High Risk Offenders) Act 2017* (NSW).

16 In *Naaman*, his Honour considered that he had jurisdiction to make orders reinstating the interim supervision order on the basis that it was “reasonably arguable that each of the elements that is required in order for an [ISO] to be made under the Act is made out”. His Honour continued, however, that he was not “entirely sure that it [was] necessary for the purposes of this application ... to be so satisfied” but considered it “unnecessary” to express a view on that issue (at [47]).

Section 131(2) is no barrier

17 Section 131(2) of the MHCIFP Act relevantly provides:

An interim extension order made for a period of less than 3 months may be renewed from time to time, but not so as to provide for the extension of the person’s status as a forensic patient under an order of that kind for periods totalling more than 3 months.

18 The Attorney-General recognises that s 131(2) is capable of being interpreted in a manner that creates a single three-month period in which proceedings at first instance, on appeal and on remitter must not lead to the extension of a person’s status for more than three months.

19 The Attorney-General submits that s 131(2) should be read as speaking only to the renewal of interim extension orders in proceedings at first instance. Section 131(2) is expressly concerned not with the making of a separate or fresh interim extension order (as would be the case if the Court of Appeal were to make such an order), but with renewing an interim extension order that is already in force. Understood in this light, the three-month time limit prescribed by s 131(2) applies only to renewed interim extension orders , not to new interim orders made by the Court of Appeal.

20 This construction accords with the protective purposes of the Act and the forensic patient regime generally. Although the Act contains no express statement of objects, its structure and context - especially the provisions in Part 6 concerning public safety, treatment, and supervision - reflect a clear legislative intention to balance the protection of the community with the least-restrictive management of forensic patients. Interpreting s 131(2) as confined to first-instance renewals advances that purpose by ensuring that the appellate process does not

create gaps in the supervisory regime, while still respecting the temporal safeguards built into the hearing of the matter at first instance.

- 21 We do not consider that our interpretation raises the hypothetical spectre of a rolling series of applications capable of deferring a final hearing indefinitely. The Supreme Court retains all its inherent and statutory jurisdiction, save as expressly modified by statute, including the power to prevent an abuse of process. That power would plainly be engaged if the State sought to perpetuate interim orders in a rolling manner to avoid final determination. It follows that the Court could, in an appropriate case, dismiss such proceedings as an abuse of process. Moreover, if the Supreme Court had already determined a final application adversely to the State within the first three-month period, principles of res judicata or issue estoppel might preclude the State from re-agitating the same issues in fresh proceedings at first instance. While those considerations would prevent successive applications below, they are entirely consistent with the availability of an appeal in which a fresh three-month period may operate for the purposes of maintaining an interim extension order pending the appellate court's determination.

Conclusion

- 22 For the reasons stated above, the Attorney-General submits that the Act confers jurisdiction on the Court of Appeal of the Supreme Court to make a further, or new, interim extension order pursuant to s 130 in the circumstances described above.

17 October 2025



Paul Coady SC
Maurice Byers Chambers



Claire Palmer
Sixth Floor Selborne Chambers