



Appendix C – Federal Court Order

Order NOT
Entered

**IN THE FEDERAL COURT OF AUSTRALIA
AUSTRALIAN CAPITAL TERRITORY DISTRICT REGISTRY
GENERAL DIVISION**

No: **(P)ACD16/2009**

JANE ALICE MARGARET WOLFE
Applicant

STEPHEN GUMLEY
First Respondent

LYNELLE BRIGGS
Second Respondent

COMMONWEALTH OF AUSTRALIA
Third Respondent

ORDER

JUDGE: Justice Stone

DATE OF ORDER: 8 April 2010

WHERE MADE: Canberra

THE COURT NOTES THAT:

The respondents' concession that the decision of the first respondent made on 16 March 2009 and the decision of the second respondent made on 13 March 2009 are each vitiated by jurisdictional error in that the applicant was denied procedural fairness as pleaded in paragraphs 66A, 66B and 66C of the Further Amended Statement of Claim.

BY CONSENT THE COURT ORDERS THAT:

The application be allowed only to the extent that:

The decision of the first respondent made on 16 March 2009, as delegate of the powers of the Secretary of the Department of Defence under section 29 of the Public Service Act 1999, being the decision to terminate the employment of the applicant, be set aside with effect from 16 March 2009 and the matter be referred to the Secretary of the Department of Defence for further consideration of the matter, in accordance with law, by the Secretary, or a delegate of the Secretary other than the first or second respondent.

The decision of the second respondent made on 13 March 2009, in the exercise of her powers under section 38 of the *Public Service Act 1999* in her then capacity as the Public Service Commissioner, being the decision to issue a certificate under section 38 of the Public Service Act 1999 in respect of the termination of the employment of the applicant, be quashed and the matter be referred to the Public Service Commissioner for further consideration, in accordance with law, by the Commissioner or a delegate of the Commissioner other than the first or second respondent.

The third respondent pay the applicant's costs as agreed or taxed.

The applicant shall have leave to otherwise discontinue the proceedings, noting the applicant's undertaking that:

She will forthwith discontinue the proceedings accordingly, and will

Not commence fresh proceedings for the same or substantially the same, causes of action set out in the Amended Application and the Further Amended Statement of Claim, including in relation to paragraphs 3, 6, 7, 8, 9 and 10 in Part A of the Amended Application.

1.

Date that entry is stamped:

Deputy District Registrar

