



Federal Court of Australia  
District Registry: New South Wales  
Division: General

No: NSD1908/2016

**GAVIN SMITH** and others named in the schedule  
Applicant

**COMMONWEALTH OF AUSTRALIA (DEPARTMENT OF DEFENCE)**  
Respondent

### **ORDER**

**REGISTRAR:** REGISTRAR NG

**DATE OF ORDER:** 9 August 2017

**WHERE MADE:** Sydney

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

1. The two bundles of documents produced in response to the subpoena addressed to The Proper Officer, Greater Bank Limited ACN 087 651 956 be assigned the following packet numbers:
  - 1.1. (S6) – the bundle marked “Greater Bank Limited documents over which a claim of confidentiality is made”.
2. Until further order or agreement between the parties (and Greater Bank Limited), leave be granted to the solicitors for the parties to access and uplift for the purposes of inspection and copying, the documents referred to in Order 1.1, being (S6) - the bundle marked “Greater Bank Limited documents over which a claim of confidentiality is made”, on the following conditions:
  - 2.1. access to the documents in the packet be restricted to the solicitors for the Respondent and their instructing officers, the solicitors for the Applicants and their instructing officers at IMF Bentham Limited, counsel and/or experts engaged by the parties, and/or any document management firm instructed by the parties’ solicitors
  - 2.2. the packet not leave the custody of the solicitors for the Respondent and their instructing officers, the solicitors for the Applicants and their instructing officers



at IMF Bentham Limited, or counsel and/or experts engaged by the parties, and/or any document management firm instructed by the parties' solicitors, and

- 2.3. the packet be returned to the Registry in the same condition and packaging as when uplifted no later than 7 days after the documents are uplifted.

**Jacobs Group (Australia) Pty Ltd- (S9)**

3. Leave be granted to the solicitors for the Respondent to have first access to (and to uplift) the documents produced on 9 August 2017 in response to the Subpoena addressed to The Proper Officer, Jacobs Group (Australia) Pty Ltd ACN 001 024 095 (the **Jacobs Subpoena**) (S9) until 4.30pm on 23 August 2017.
4. By 4.30pm on 23 August 2017:
  - 4.1. the solicitors for the Respondent notify the solicitors for the Applicants of any confidentiality or privilege claims made over any documents produced in response to the Jacobs Subpoena on 9 August 2017 not already produced in response to that subpoena on 12 July 2017, with such notification to identify:
    - 4.1.1. each document in relation to which a full claim of confidentiality or privilege is made
    - 4.1.2. each document in relation to which a partial claim of confidentiality or privilege is made, and
    - 4.1.3. in respect of each document in relation to which a full or partial claim of confidentiality or privilege is made, the basis upon which that claim is made, and
  - 4.2. the solicitors for the Respondent provide the Court with:
    - 4.2.1. a redacted copy of each document produced in response to the Jacobs Subpoena on 9 August 2017 not already produced in response to that subpoena on 12 July 2017, in relation to which a partial claim for confidentiality or privilege is made, and
    - 4.2.2. a separate envelope containing all documents produced in response to the Jacobs Subpoena on 9 August 2017 not already produced in response to that subpoena on 12 July 2017, in relation to which a full claim of confidentiality or privilege is made.
5. The solicitors for the Respondent return the documents produced in response to the Jacobs Subpoena on 9 August 2017 to the Registry by 4.30pm on 23 August 2017.
6. Leave be granted to the solicitors for the Applicants to access and uplift for the purposes of inspection and copying:



- 6.1. the documents produced in response to the Jacobs Subpoena on 9 August 2017 in respect of which no confidentiality or privilege claims have been made in accordance with Order 5, and
- 6.2. any redacted copies of documents produced in response to the Jacobs Subpoena in respect of which partial claims of confidentiality and/or privilege have been made in accordance with Order 5, from 9am on 24 August 2017.

**WSP Australia Pty Limited (S7)**

7. Leave be granted to the solicitors for the Respondent to have first access to (and to uplift) the documents produced in response to the Subpoena addressed to The Proper Officer, WSP Australia Pty Limited ACN 078 004 798 (the **WSP Subpoena**) (S7), being packet number S7, until 4.30pm on 6 September 2017.
8. By 4.30pm on 6 September 2017:
  - 8.1. the solicitors for the Respondent notify the solicitors for the Applicants of any confidentiality or privilege claims made over the documents produced in response to the WSP Subpoena, with such notification to identify:
    - 8.1.1. each document in relation to which a full claim of confidentiality or privilege is made
    - 8.1.2. each document in relation to which a partial claim of confidentiality or privilege is made, and
    - 8.1.3. in respect of each document in relation to which a full or partial claim of confidentiality or privilege is made, the basis upon which that claim is made, and
  - 8.2. the solicitors for the Respondent provide the Court with:
    - 8.2.1. a redacted copy of each document produced in response to the WSP Subpoena in relation to which a partial claim for confidentiality or privilege is made, and
    - 8.2.2. a separate envelope containing all documents produced in response the WSP Subpoena in relation to which a full claim of confidentiality or privilege is made.
9. The solicitors for the Respondent return the documents produced in response to the WSP Subpoena to the Registry by 4.30pm on 6 September 2017.
10. Leave be granted to the solicitors for the Applicants to access and uplift for the purposes of inspection and copying:



- 10.1. the documents produced in response to the WSP Subpoena in respect of which no confidentiality or privilege claims have been made in accordance with Order 9, and
  - 10.2. any redacted copies of documents produced in response to the WSP Subpoena in respect of which partial claims of confidentiality and/or privilege have been made in accordance with Order 9, from 9.30 am on 7 September 2017.
11. The GHD Subpoena be stood over to 9:30am on Wednesday, 6 September 2017 at the Law Courts Building, Queens Square, Sydney.

**Newcastle Permanent Building Society Limited and Maitland Mutual Building Society Limited (S5) and (S8)**

12. Leave be granted to the solicitors for the parties to access and uplift for the purposes of inspection and copying the documents produced in accordance with the Subpoenas addressed to:
- 12.1. The Proper Officer, Newcastle Permanent Building Society Limited ACN 087 651 992 (S5), and
  - 12.2. The Proper Officer, Maitland Mutual Building Society Limited ACN 087 651 983, (S8).

**SMEC Australia Pty Ltd (S2)**

13. The subpoena addressed to The Proper Officer, SMEC Australia Pty Ltd ACN 065 475 149 (the **SMEC Subpoena**) be stood over to 9.30am on Wednesday 23 August 2017 at the Law Courts Building, Queens Square, Sydney.
14. The time by which the solicitors for the Respondent are to:
- 14.1. notify the solicitors for the Applicants of any confidentiality or privilege claims made over the documents produced on 12 July 2017 in response to the SMEC Subpoena, and
  - 14.2. provide the Court with:
    - 14.2.1. a redacted copy of each document produced on 12 July 2017 in response to the SMEC Subpoena in relation to which a partial claim for confidentiality or privilege is made, and
    - 14.2.2. separate envelopes containing all documents produced on 12 July 2017 in response to the SMEC Subpoena in relation to which a full claim of confidentiality or privilege is made,

be EXTENDED to 4.30pm on 6 September 2017.



15. The time by which the solicitors for the Respondent are to return the documents produced on 12 July 2017 in response to the SMEC Subpoena to the Registry be EXTENDED to 4.30pm on 6 September 2017.
16. The time from which leave be granted to the solicitors for the Applicants to access and uplift for the purposes of inspection and copying:
  - 16.1. the documents produced on 12 July 2017 in response to the SMEC Subpoena in respect of which no confidentiality / privilege claims have been made in accordance with Order 15, and
  - 16.2. any redacted copies of documents produced on 12 July 2017 in response to the SMEC Subpoena in respect of which partial claims of confidentiality / privilege have been made in accordance with Order 15,be EXTENDED to 9am on 7 September 2017.
17. The date by which any notice of objection in relation to the documents produced in response to the SMEC Subpoena or any application to set aside that subpoena be filed, be EXTENDED to 23 August 2017.

#### **NSW Environment Protection Authority**

18. The subpoena addressed to The Proper Officer, New South Wales Environmental Protection Authority (the **NSW EPA Subpoena**) be stood over to 9.30am on Wednesday 23 August 2017 at the Law Courts Building, Queens Square, Sydney.
19. The date by which any notice of objection in relation to the documents produced in response to the NSW EPA Subpoena or any application to set aside that subpoena be filed, be EXTENDED to 23 August 2017.

#### **Coffey International Limited**

20. The subpoena addressed to The Proper Officer, Coffey International Limited ACN 003 835 112 (the **Coffey Subpoena**) be stood over to 9.30am on Wednesday 6 September 2017 at the Law Courts Building, Queens Square, Sydney.
21. The date by which any notice of objection in relation to the documents produced in response to the Coffey Subpoena or any application to set aside that subpoena be filed, be EXTENDED to 6 September 2017.

#### **National Australia Bank**

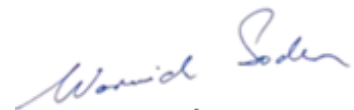
22. The subpoena addressed to The Proper Officer, National Australia Bank Limited ACN 004 044 937 be stood over to 9.30am on Wednesday 16 August 2017 at the Law Courts Building, Queens Square, Sydney



### **General**

23. Leave pursuant to Orders 4, 7, 8, 11, 13 and 17 to access and uplift documents is granted on the following conditions:
  - 23.1. if original documents rather than copies have been produced, the solicitor provides to the Registry a letter of consent from the person to whom the subpoena is addressed,
  - 23.2. documents be returned to the Registry in the same condition as when uplifted, and
  - 23.3. documents be returned promptly and, in any event, when an officer of the Registry so requests.
24. On completion of this matter, the Registrar may return to the addressee of any subpoena any document without giving the issuing party any further notice.

**Date that entry is stamped: 9 August 2017**

  
Registrar

Subsection 35A (5) of the *Federal Court of Australia Act 1976* (the *Act*) provides that a party to proceedings in which a Registrar has exercised any of the powers of the Court under subsection 35A (1) of the Act may, within the time prescribed by the Rules of Court, or within any further time allowed in accordance with the Rules of Court, apply to the Court to review that exercise of power.

Rule 3.11 provides that a party may apply to the Court under subsection 35A (5) of the Act for review of the exercise of a power of the Court by a Registrar and that any application must be made within 21 days after the day on which the power was exercised. A party seeking a review can apply to the Court to dispense with any requirement of the Rules (Rule1.34).



**Schedule**

No: NSD1908/2016

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Second Applicant	KIM SMITH
Third Applicant	ANN AND LINDSAY CLOUT SMSF PTY LTD ACN 154 516 006
Fourth Applicant	ANN CLOUT
Fifth Applicant	LINDSAY CLOUT
Sixth Applicant	JOHN ARTHUR HEWITT
Seventh Applicant	CHANTEL WALKER
Eighth Applicant	MARSHALLS TRANSPORT PTY LTD
Ninth Applicant	NICHOLAS MARSHALL
Tenth Applicant	MELISSA MARSHALL