



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

No: NSD1908/2016

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

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

### **ORDER**

**REGISTRAR:** REGISTRAR CHO  
**DATE OF ORDER:** 25 July 2017  
**WHERE MADE:** Sydney (In Chambers)

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

1. The subpoena addressed to The Proper Officer, New South Wales Environment Protection Authority be stood over to 9.30 am on Wednesday, 9 August 2017 at the Law Courts Building, Queens Square, Sydney.
2. The subpoena addressed to The Proper Officer, Australian Laboratory Services Pty Ltd ACN 009 936 029 be stood over to 9.30 am on Wednesday, 9 August 2017 at the Law Courts Building, Queens Square, Sydney.
3. The subpoena addressed to the The Proper Officer, GHD Pty Ltd ACN 008 488 373 be stood over to 9.30 am on Wednesday, 9 August 2017 at the Law Courts Building, Queens Square, Sydney.
4. The subpoena addressed to the The Proper Officer, WSP Australia Pty Limited ACN 078 004 798 be stood over to 9.30 am on Wednesday, 9 August 2017 at the Law Courts Building, Queens Square, Sydney.
5. The time that the Respondent be granted leave to have first access to (and to uplift) the documents produced in response to the subpoenas addressed to:
  - 5.1. The Proper Officer, SMEC Australia Pty Ltd ACN 065 475 149 (the **SMEC Subpoena**)



5.2. The Proper Officer, Jacobs Group (Australia) Pty Ltd ACN 001 024 095 (the **Jacobs Subpoena**),

be extended to 4.30pm on 23 August 2017.

5A The SMEC Subpoena and Jacobs Subpoena be stood over to 9:30am on Wednesday, 9 August 2017 at the Law Courts Building, Queens Square, Sydney.

6. The time by which the solicitors for the Respondent are to:

6.1. 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/or the Jacobs Subpoena, with such notification to identify:

6.1.1. each document in relation to which a full claim of confidentiality or privilege is made

6.1.2. each document in relation to which a partial claim of confidentiality or privilege is made, and

6.1.3. 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

6.2. provide the Court with:

6.2.1. a redacted copy of each document produced on 12 July 2017 in response to the SMEC Subpoena and/or the Jacobs Subpoena in relation to which a partial claim for confidentiality or privilege is made, and

6.2.2. separate envelopes containing all documents produced on 12 July 2017 in response the SMEC Subpoena and/or the Jacobs Subpoena in relation to which a full claim of confidentiality or privilege is made,

be extended to 4.30pm on 23 August 2017.

7. 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 and the Jacobs Subpoena to the Registry be extended to 4.30pm on 23 August 2017.

8. The time from which leave be granted to the solicitors for the Applicants to access and uplift for the purposes of inspection and copying:

8.1. the documents produced on 12 July 2017 in response to the SMEC Subpoena and the Jacobs Subpoena in respect of which no confidentiality / privilege claims have been made in accordance with Order 6, and




8.2. any redacted copies of documents produced on 12 July 2017 in response to the SMEC Subpoena and the Jacobs Subpoena in respect of which partial claims of confidentiality and/or privilege have been made in accordance with Order 6,

be extended to 9am on 24 August 2017.

9. Any notice of objection in relation to the documents produced in response to the SMEC Subpoena and the Jacobs Subpoena or any application to set aside that subpoena be filed by 9 August 2017.

**Date that entry is stamped: 25 July 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 (Rule 1.34).



**Schedule**

No: NSD1908/2016

Federal Court of Australia  
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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