



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

JUDGE: JUSTICE JAGOT

DATE OF ORDER: 09 November 2017

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Discovery - Respondent

1. Order 6 of the orders made on 4 April 2017 be amended to include a further and final tranche of discovery by 30 November 2017 (Tranche 4), and further discovery is to be given in accordance with the following orders:
 - (a) By 4:00pm on 31 October 2017, the Respondent to serve a List of Documents pursuant to Rule 20.17 of the Federal Court Rules 2011 (Cth) with respect to the documents produced to the solicitors for the Applicants pursuant to Tranche 3.
 - (b) By 4:00pm on 30 November 2017, the Respondent to serve a List of Documents pursuant to Rule 20.17 of the Federal Court Rules 2011 (Cth) with respect to the documents produced to the solicitors for the Applicants pursuant to Tranche 4.

Further Amended Statement of Claim

2. The Applicants are to serve a proposed Second Further Amended Statement of Claim by no later than 4:00pm on 7 November 2017.
3. The Respondent is to advise the Applicants whether or not it consents to leave being granted for the Applicants to amend their pleading as proposed on or before 13 November 2017.
4. In the event that the Respondent does not consent to leave being granted for the amendment:
 - (a) The Applicants are to file and serve an interlocutory application seeking leave to amend in



the form of the proposed Second Further Amended Statement of Claim, together with any evidence and submissions in support of such application by no later than 4:00pm on 17 November 2017;

- (b) The Respondent is to file and serve any evidence that it wishes to rely on and submissions in respect of the application for leave to amend by no later than 4:00pm on 24 November 2017; and
- (c) The application for leave to amend is to be heard on the date fixed by the Court in Order 9.

Application for hearing of separate questions common to the Smith and Hudson proceedings

- 5. The Applicants in these proceedings (the **Smith proceedings**) and the Applicants in *Bradley James Hudson & Ors v Commonwealth of Australia* (NSD1155/2017) (the **Hudson proceedings**) are to file and serve any interlocutory application seeking that common questions arising in both the Smith proceedings and the Hudson proceedings be heard separately at an initial trial and in advance of other issues in the proceedings (**Proposed Concurrent Hearing Common Questions**), together with any evidence relied on in support thereof, by no later than 4.00pm on 9 November 2017.
- 6. The Applicants in the Smith proceedings and the Hudson proceedings are to file and serve any submissions in support of any application for Proposed Concurrent Hearing Common Questions by no later than 4:00pm on 14 November 2017.
- 7. The Respondent is to file and serve any evidence and submissions in respect of any application for Proposed Concurrent Hearing Common Questions by no later than 4:00pm on 24 November 2017.

Case Management Hearing

- 8. The Smith proceedings and the Hudson proceedings be listed together at 9.00am on 27 November 2017 for further case management in both matters.
- 9. The Smith proceedings and the Hudson proceedings be listed together at 9.30am on 19 December 2017 for:
 - (a) hearing of any application in the Smith proceedings for leave to amend as foreshadowed in Order 4; and/or
 - (b) hearing of any application for Proposed Concurrent Hearing Common Questions; and
 - (c) further case management in both matters.

Liberty to apply

- 10. Each party has liberty to apply on 2 days' notice.



DATE THAT ENTRY IS STAMPED: 9 November 2017

Warrick Soden
Registrar



Schedule

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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
Eighth Applicant	MARSHALLS TRANSPORT PTY LTD
Ninth Applicant	NICHOLAS MARSHALL
Tenth Applicant	MELISSA MARSHALL