



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: 14 February 2018

WHERE MADE: Sydney

THE COURT ORDERS THAT: **Initial Trial**

1. An initial trial of the Applicants' claims in proceedings NSD 1908/2016 (the **Smith proceedings**) be provisionally fixed for hearing at the same time as the initial trial set down (in separate orders) in proceeding NSD1155/ 2017 (Bradley James Hudson & ors v Commonwealth) (the **Hudson proceedings**), in the following periods:
 - a. 12 August 2019 to 30 August 2019;
 - b. 2 September 2019 to 18 October 2019; and
 - c. 4 November 2019 to 15 November 2019.
2. The Applicants to notify the Respondent of any proposed additional sample group members whose claim is to be determined at the initial trial by **30 May 2018**.

Discovery

3. Any document discovered in these proceedings to be taken as discovered in the Hudson proceedings.
4. Any document discovered in the Hudson proceedings to be taken as discovered in these proceedings.
5. Documents discovered in the Hudson proceedings not already discovered in these proceedings are to be discovered to the Applicants in these proceedings at the time of discovery in the Hudson proceedings.



Further discovery

6. Order 1 of the orders made on 27 November 2017 be amended to include a further tranche of discovery (Tranche 6), and such further discovery is to be given by the Respondent serving, by 4pm on **2 March 2018**, a further 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 6.
7. The Respondent is to write to the Applicants' solicitors by **2 March 2018** providing details of further proposed discovery by the Respondent, including a description of the number of documents remaining to be discovered, the expected timing of the Respondent's further discovery tranche and a timetable for discovery of those documents.

Evidence

8. The Applicants to notify the Respondent of the types of experts they propose to engage and the issues to which that evidence will be directed by **29 March 2018**.
9. The Applicants file and serve any lay evidence and any expert evidence on which they intend to rely by **31 August 2018**.
10. The Respondent file and serve any lay evidence and any expert evidence on which it intends to rely by **28 February 2019**.
11. The Applicants file and serve any lay evidence in reply and any expert evidence in reply on which they intend to rely by **30 May 2019**.

Mediation

12. The parties participate in a mediation which will take place on or before **31 December 2018**.
13. Each party to nominate a proposed mediator by no later than **14 March 2018**.
14. The parties to use reasonable endeavours to reach agreement on a mediator by no later than **29 March 2018** and, in the absence of agreement by that date, the parties are to notify the Associate to Jagot J of the parties' failure to reach agreement on a mediator, and the mediator(s) proposed by each party, in order for a mediator to be nominated by Jagot J.
15. The parties agree to appoint an agreed mediator (or a mediator nominated by Jagot J) by no later than **13 April 2018**, with any further orders relating to that mediation (including the exchange of mediation position papers) to be agreed between the parties or, in the absence of agreement, to be determined by Jagot J.



Case Management

16. The proceedings be listed for a case management hearing at 9:15am on **13 July 2018**.
17. The costs of the Applicants' Interlocutory Application filed on 9 November 2017 be the parties' costs in the cause.
18. The Applicants' Interlocutory Application filed on 9 November 2017 be dismissed.
19. Each party has liberty to apply on 2 days' notice.

Date that entry is stamped: 28 February 2018

Warrick Soden
Registrar



Schedule

No: NSD1908/2016

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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 |