



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

No: NSD1908/2016
NSD1155/2017
NSD1388/2018

GAVIN SMITH and others named in the schedule
Applicants

COMMONWEALTH OF AUSTRALIA (DEPARTMENT OF DEFENCE)
Respondent

BRADLEY JAMES HUDSON and others named in the schedule
Applicants

COMMONWEALTH OF AUSTRALIA
Respondent

KIRSTY BARTLETT and another named in the schedule
Applicants

COMMONWEALTH OF AUSTRALIA
Respondent

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 6 May 2019

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. The trial dates listed in order 1 made by Jagot J on 14 February 2018 in the Smith proceedings and Hudson proceedings as amended on 9 October 2018, and order 1 of the orders of Jagot J in the Bartlett proceeding on 9 October 2018, be vacated.

Case management conference before Registrar Farrell

2. Pursuant to s 33ZF and/or s 37P of the Federal Court of Australia Act 1976 (Cth) (**Act**), junior counsel who are to appear at the initial trials of the Smith, Hudson and Bartlett proceedings (**Proceedings**) (and a solicitor instructing junior counsel) attend a case



management conference (**CMC**) to be conducted by Registrar Farrell at a time and date to be fixed by the Registrar with the CMC to be conducted on or by 17 May 2019.

3. At the CMC, consistently with the obligations of the parties (s 37N(1) of the Act) and the lawyers for the parties (s 37(2)), the parties are to attempt to identify:
 - a. agreed contested issues to be determined at the initial trial in the fields of: (i) chemistry; (ii) environmental medicine (toxicology); (iii) remediation; (iv) contamination sampling; (v) hydrogeology (including groundwater modelling); (vi) hydrology (including surface water modelling); (vii) land valuation; (viii) business valuation; and (ix) psychiatry, with a view to agreeing upon a revised version of the Expert Issues Table served by the respondent on 24 April 2019 (**Expert Issues**);
 - b. appropriate process and questions for inquiry and report by a referee so as to provide for references to be conducted by a referee or referees addressing as many of the Expert Issues as practicable;
 - c. in the event a reference is proposed to be conducted by an expert in a field of specialised knowledge: (i) the identity of any appropriate referee; and (ii) the identity of appropriate independent junior counsel to assist any referee; and
 - d. if the parties require, the procedure to be adopted to facilitate the resolution of the interlocutory application of the applicants in the Hudson proceeding dated 24 April 2019.

Case management hearings before Justice Lee

4. The Proceedings be listed for a further case management hearing (**CMH**) before Lee J at 9.30am on a date to be fixed by Registrar Farrell.
5. The parties provide a document to the Associate to Justice Lee no less than 48 hours prior to the CMH outlining each issue to be resolved on an interlocutory basis prior to the commencement of the initial trials and submissions on how those issues are to be resolved (or for any issue that the party considers should not be resolved at the CMH, on the appropriate process to resolve each issue).
6. The parties provide submissions to the Associate to Justice Lee no less than 48 hours prior to the CMH on the matters to be determined at the initial trial, including an estimate of time required to determine those matters, and an explanation as to why the parties consider that estimate to be appropriate by reference to the evidence filed or to be tendered.



7. The Proceedings be provisionally listed for hearing before Lee J for the adoption of any referee reports at 10.15am on 11, 12 and 13 December 2019.

Orders in the Smith proceedings

8. Order 2.4 of the Orders dated 19 March 2019 be varied as follows:

The respondent is to file and serve any supplementary expert report of Dr Julian Parmegiani on which it intends to rely by 4pm on 5 June 2019

9. Order 3 of the Orders dated 19 March 2019 be varied as follows:

Pursuant to s 37P of the Federal Court of Australia Act 1976 (Cth) and FCR 1.32 and 5.04, each of the applicants and sample group members attend a medical examination with Dr Julian Parmegiani on or before 29 May 2019.

10. Order 1 of the Orders dated 3 April 2019 is varied to allow for the filing and service of any additional lay evidence on which the respondent intends to rely by 4pm on 15 April 2019.

11. Order 2 of the Orders dated 3 April 2019 regarding the service of the respondent's expert evidence is varied as follows to allow for the respondent having served:

- a. the expert report of Mr Darren Lyons by 8 April 2019
- b. the expert report of Mr Will Minchin by 12 April 2019, and
- c. the expert report of Dr Ian Ross by 15 April 2019.

12. Any expert evidence of Associate Professor Anthony Fletcher filed in NSD 1155/2017 (*Bradley James Hudson & Ors v Commonwealth*) is to be taken as filed in these proceedings.

13. Order 1 of the orders made on 27 November 2017, 18 April 2018, 25 January 2019 and 28 February 2019, be amended to provide for the respondent to supplement its discovery by delivering further tranches of documents. Such further discovery is to be given by the respondent serving on 31 May 2019, 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 13.



Orders in Hudson proceedings

14. The time of compliance for Order 5 of the orders made on 19 March 2019, in respect of the report of Mr Ian Ross only, be extended to 4.00pm on 19 April 2019.

Orders in Bartlett proceedings

15. Order 9 of the order made by Jagot J on 9 October 2018 be amended to state:

“The respondent give discovery of the agreed categories, with discovery to be given in tranches as follows:

a. Tranche 1, on 30 November 2018;

b. Tranche 2, on 1 February 2019;

c. Tranche 3, on 29 March 2019; ~~and~~


d. Tranche 4 (~~to be the final tranche~~), on 17 May 2019.; and

e. Tranche 5, together with an affidavit verifying the respondent’s list of documents in accordance with rules 20.17(4) and 20.22 of the Federal Court Rules 2011, on 17 June 2019.”

16. Prior to the CMC, the respondent is to provide the applicants with an estimate in writing of the date by which the respondent’s expert evidence in the fields of hydrology and hydrogeology (**Hydrology/Hydrogeology Evidence**) will be filed and served.

17. An order pursuant to s 35A of the Act that, at the CMC, the Registrar may exercise the power to make orders for the service of the respondent’s Hydrology/Hydrogeology Evidence.

Date that entry is stamped: 6 May 2019


Registrar



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

No: NSD1155/2017

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

Second Applicant	SHARYN DANELLE HUDSON
Third Applicant	MEATIES PTY LTD (ACN 113 651 755) AS TRUSTEE FOR THE BSTS UNIT TRUST
Interested Person	BANK OF QUEENSLAND



No: NSD1388/2018

Federal Court of Australia
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Second Applicant ANTHONY CRAIG BARTLETT