



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

No: NSD1908/2016

GAVIN SMITH and others named in the schedule
Applicant

DEPARTMENT OF DEFENCE
Respondent

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 14 June 2019

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Smith, Hudson and Bartlett Proceedings

1. Order 1(c)(i) of the orders made by Lee J on 6 June 2019 be amended by deleting the words “commencing at 9am on 9 August 2019” and inserting the words “commencing on a date and time in August 2019 to be determined by the Facilitator in consultation with Professor Field and Professor Cousins”.
2. Order 1(d) of the orders made by Lee J on 6 June 2019 be amended to read as follows:
 - (a) 1A. An order pursuant to ss 33ZF and/or 37P(2) of the Federal Court of Australia Act 1976 (Cth) (**Act**) and/or the implied power of the Court, that Aditi Rao of Level 22 52 Martin Place, Sydney NSW 2000 be appointed as Facilitator in the proceedings in relation to the Chemistry joint expert conference.
 - (b) 1B. The fees for the Facilitator are, in the first instance, to be paid 50% by the applicants and 50% by the respondent.
3. Orders 5 and 6 of the orders made by Lee J on 6 May 2019 be vacated.
4. The Case Management Hearing listed before Lee J on 18 June 2019 be vacated.
5. The matters be listed for a Case Management Hearing on 6 September 2019 at 10:15am.
6. One week prior to the Case Management Hearing in order 5, the parties are to send to the Associate to Lee J a detailed agenda setting out:



- (a) each party's overview of the proceedings;
- (b) how the expert issues interrelate;
- (c) the extent of the lay evidence the parties will rely upon; and
- (d) the matters to be resolved on an interlocutory basis prior to the commencement of the initial trials of the claims of the named applicants and Sample Group Members, together with a table outlining each party's position on how each issue should be resolved.


Bartlett proceedings

7. The applicants be granted leave to file and serve the report of Dr Frost dated 23 May 2019.
8. The time for compliance with order 15 of the Orders made by Jagot J on 9 October 2018 be extended to 9 August 2019 in respect of the respondent's expert remediation evidence.
9. Order 9 of the order made by Jagot J on 9 October 2018, as amended by the order of Lee J on 6 May 2019, be further 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;
- d. Tranche 4, on 17 May 2019;
- 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 2014, on 17 June 2019; and~~
- f. Tranche 6, 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 29 July 2019.”

Date that entry is stamped: 14 June 2019


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