

DEFENCE TO AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court Supreme Court of NSW
Division Common Law
List General
Registry Sydney
Case number 2015/00310264

TITLE OF PROCEEDINGS

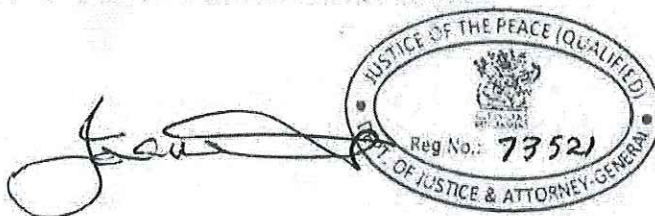
Plaintiff **LAURENCE KELVIN EADES**
First Defendant **ENDEAVOUR ENERGY (ABN 59 253 130 878)**
Second Defendant **ASPLUNDH TREE EXPERT (AUSTRALIA) PTY LTD
(ABN 83 055 140 424)**
Third Defendant **PINNACLE CAREER DEVELOPMENT PTY LTD
(ABN 73 115 138 326)**

FILING DETAILS

Filed for **Pinnacle Career Development Pty Ltd, the Third Defendant**
Filed in relation to Plaintiff's Claim
Legal representative Sean O'Connor, Wotton + Kearney
Legal representative reference SOC 7356 MKH
Contact name and telephone Mark Hughes
02 8273 9900
Contact email Sean.O'Connor@wottonkearney.com.au

PLEADINGS AND PARTICULARS

- 1 The Third Defendant (hereafter referred to as **Pinnacle**) admits paragraph 1 of the Amended Statement of Claim (**ASOC**).
- 2 Pinnacle admits paragraph 2 of the ASOC.
- 3 As to paragraph 3 of the ASOC, Pinnacle:
 - a. notes the description and identification used by the Plaintiff;
 - b. admits that a fire started in the Mt Victoria area on 17 October 2013; and
 - c. does not know and does not admit the origin of the fire.
- 4 As to paragraph 4 of the ASOC, Pinnacle:



- a. repeats the matters pleaded in answer to paragraph 3 of the ASOC;
- b. admits that the proceedings are brought on behalf of persons identified by reference to the circumstances identified in paragraphs 4.1 to 4.4 of the ASOC; and
- c. does not know and does not admit the existence of the losses identified, nor any persons within the categories described in paragraphs 4.1 to 4.4 of the ASOC;

5 As to paragraph 5 of the ASOC, Pinnacle:

- a. repeats the matters pleaded in response to paragraph 4 of the ASOC; and
- b. otherwise does not know and does not admit paragraph 5 of the ASOC.

6 Pinnacle admits paragraph 6 of the ASOC.

7 As to paragraph 7 of the ASOC, Pinnacle:

- a. admits the matters pleaded in paragraph 7.1;
- b. does not know and does not admit paragraph 7.2; and
- c. does not know and does not admit paragraph 7.3.

7A Pinnacle admits paragraph 7A of the ASOC.

7B Pinnacle admits paragraph 7B of the ASOC.

8 As to paragraph 8 of the ASOC, Pinnacle:

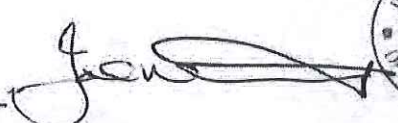
- a. admits the matters pleaded;
- b. says that s.8 of the ESC Act (as defined) also provides for other statutory objectives other than those identified by the Plaintiff; and
- c. will, at any hearing in these proceedings, rely on the terms of the section to its full force and effect.

9 Pinnacle admits paragraph 9 of the ASOC.

10 Pinnacle admits paragraph 10 of the ASOC.

11 As to paragraph 11 of the ASOC, Pinnacle:

- a. will, at any hearing of these proceedings, refer to any rely upon the terms of the ES Act (as defined in the ASOC), including sections 45, 48 and 54-56, and



other applicable legislation to identify the powers and functions of the First Defendant; and

b. otherwise does not admit the matters pleaded therein.

12 Pinnacle does not admit the matters pleaded in paragraph 12 of the ASOC.

13 As to paragraph 13 of the ASOC, Pinnacle:

a. repeats the matters pleaded in answer to paragraph 7.2 of the ASOC; and

b. admits that the First Defendant used power lines, including power lines at Mt Victoria, to conduct electricity;

c. admits that unintended discharges of electricity may lead to the consequences identified in 13.3.1 – 13.3.3;

d. does not admit the balance of the matters pleaded therein.

14 As to paragraph 14 of the ASOC, Pinnacle

a. admits the existence of the type of risks described in paragraphs 14.1 – 14.9;

b. admits that the consequences described in paragraphs 14.10 - 14.12 could arise from a fire ignited by actuation of one or more of the risks identified in 14.1 – 14.9; and

c. does not admit the balance of the matters pleaded therein.

15 As to paragraph 15 of the ASOC, Pinnacle:

a. says that persons who:

i. were present in;

ii. owned or had an interest in real or personal property located in; or

iii. carried on business in

a fire affected area were potentially subject to the impact of a fire;

b. other than the named plaintiff, does not know of any such persons; and

c. otherwise does not admit the matters pleaded therein.

16 As to paragraph 16 of the ASOC, Pinnacle:

a. repeats the matters pleaded in answer to paragraph 4 of the ASOC;



- b. does not admit that there were persons likely to suffer mental injury, psychiatric injury or nervous shock as a result of the death of or injury to persons within the Mount Victoria class (as defined); and
 - c. otherwise admits the matters pleaded therein.
- 17 Pinnacle does not admit paragraph 17 of the ASOC.
- 18 As to paragraph 18 of the ASOC, Pinnacle:
- a. says that the Mt Victoria area is in a bushfire prone area;
 - b. says that there are a number of trees in the vicinity of the driveway of 80-92 Mt Victoria Road including Eucalyptus trees; and
 - c. otherwise does not admit the matters pleaded therein.
- 19 Pinnacle does not know and does not admit paragraph 19 of the ASOC.
- 20 As to paragraph 20 of the ASOC, Pinnacle:
- a. admits paragraph 20.1;
 - b. does not know and does not admit the balance of the matters pleaded.
- 21 Pinnacle does not admit paragraph 21 of the ASOC.
- 22 Pinnacle admits paragraph 22 of the ASOC.
- 23 As to paragraph 23 of the ASOC, Pinnacle:
- a. admits that the First Defendant published the Endeavour Energy Network Management Plan 2011 – 2013;
 - b. will, at any hearing in these proceedings refer to and rely upon the terms of:
 - i. the Plan referred to in 23a; and
 - ii. the ES Regulation (as defined) including clauses 8 to 12 thereof for their full force and effect; and
 - c. otherwise does not admit the matters pleaded therein.
- 24 As to paragraph 24 of the ASOC, Pinnacle:
- a. will, at any hearing of these proceedings refer to and rely on the terms the Primary Documentation (as defined); and
 - b. otherwise does not admit the matters pleaded therein.



- 25 Pinnacle admits paragraph 25 of the ASOC.
- 26 As to paragraph 26 of the ASOC, Pinnacle:
- a. will, at any hearing of these proceedings refer to and rely on the terms the Primary Documentation (as defined), including MMI 0001 and MMI 0013;
 - b. otherwise does not admit the matters pleaded therein.
- 27 As to paragraph 27 of the ASOC, Pinnacle:
- a. will, at any hearing of these proceedings refer to and rely on the terms the Primary Documentation (as defined) including MMI 0001 and MMI 0013 and the Network Management Plan;
 - b. otherwise does not admit the matters pleaded therein.
- 28 Pinnacle admits paragraph 28 of the ASOC.
- 29 Pinnacle admits paragraph 29 of the ASOC.
- 30 As to paragraph 30 of the ASOC, Pinnacle:
- a. will, at any hearing of these proceedings refer to and rely on the terms the Network Management Plan, Primary Documentation (as defined), including and MMI 0013;
 - b. otherwise does not admit the matters pleaded therein..
- 31 Pinnacle does not admit paragraph 31 of the ASOC.
- 32 Pinnacle does not admit paragraph 32 of the ASOC.
- 33 Pinnacle does not know and does not admit paragraph 33 of the ASOC.
- 34 Pinnacle does not admit paragraph 34 of the ASOC.
- 35 Pinnacle admits paragraph 35 of the ASOC.
- 36 As to paragraph 36 of the ASOC, Pinnacle:
- a. will, at any hearing of these proceedings refer to and rely on the terms the contract entered into between the First Defendant and Asplundh; and
 - b. otherwise does not admit the matters pleaded therein.
- 37 As to paragraph 37 of the ASOC, Pinnacle will:



- a. at any Hearing in these Proceedings, refer to and rely on the terms of the Asplundh Contract to its full force and effect; and
- b. otherwise does not admit the matters pleaded therein.

38 As to paragraph 38 of the ASOC, Pinnacle:

- a. admits that it entered into a written agreement with the First Defendant entitled Services Agreement – 1523/12C Vegetation Management Maintenance and Audit Northern and Central dated on or about 20 July 2012; and
- b. will, at any Hearing in these Proceedings, rely on the terms and conditions of the Pinnacle Contract to their full force and effect.

39 As to paragraph 39 of the ASOC, Pinnacle:

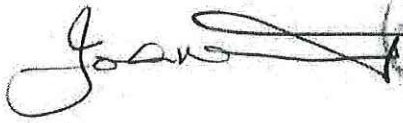

- a. says that it was required to provide:
 - i. vegetation management services, including scoping tree clearances and required trimming, to vegetation along the First Defendant's overhead network;
 - ii. audit trimming services carried out by other contractors, including Asplundh;
- b. will, at any hearing in these Proceedings, rely on the terms of the Pinnacle Contract to its full force and effect; and
- c. otherwise does not admit the matters pleaded therein.

40 As to paragraph 40 of the ASOC, Pinnacle:

- a. says that it was a term of the technical specifications annexed to the contract that it would comply with all legislative, environmental and occupational health and safety standards;
- b. says that it was a term of the technical specifications annexed to the Pinnacle Contract that all of Pinnacle's staff, and any subcontractors, were fully trained, qualified and authorised prior to commencing work;
- c. will, at any Hearing in these Proceedings, rely on the terms of the Pinnacle Contract, including all annexures, attachments and appendices (however displayed) to their full force and effect; and



- d. otherwise does not admit the matters pleaded therein.
- 41 As to paragraph 41 of the ASOC, Pinnacle:
- a. refers to and repeats the matters pleaded in answer to paragraph 26 of the ASOC;
 - b. will, at any Hearing in these Proceedings, refer to and rely upon the terms and conditions of the Pinnacle Contract, including the terms of NMI0013, as provided to it by Endeavour at the time of entering the Pinnacle Contract; and
 - c. otherwise does not admit the balance of the matters pleaded therein.
- 42 As to paragraph 42 of the ASOC, Pinnacle:
- a. does not know and does not admit matters pleaded in paragraph 42.1;
 - b. repeats the matters pleaded in answer to paragraph 41 above; and
 - c. otherwise does not admit the matters pleaded therein.
- 43 As to paragraph 43 of the ASOC, Pinnacle:
- a. admits that the First Defendant entered into a written contract with Heli-Aust entitled Services Agreement 1515/11C;
 - b. will, as necessary, refer to and rely upon the terms of the contract between the First Defendant and Heli-Aust to its full force and effect;
 - c. otherwise does not admit the matters pleaded therein.
- 44 As to paragraph 44 of the ASOC, Pinnacle:
- a. admits that the First Defendant entered into a written contract with Osborne Aviation Services Pty Ltd on or about 29 April 2013;
 - b. will, at any Hearing in these Proceedings, refer to and rely upon the terms and conditions of the said contract to their full force and effect, as necessary; and
 - c. otherwise does not admit the matters pleaded therein.
- 45 As to paragraph 45 of the ASOC, Pinnacle:
- a. repeats the matters pleaded in answer to paragraph 44 of the ASOC; and
 - b. otherwise does not admit the matters pleaded therein.
- 46 As to paragraph 46 of the ASOC, Pinnacle:



- a. admits that the First Defendant entered into a written contract with Active Tree Services, reference no. 6383/12C, effective from 16 May 2013;
- b. will, at any Hearing in these Proceedings, as necessary, refer to and rely upon the terms and conditions of such contract to their full force and effect; and
- c. otherwise does not admit the matters pleaded therein.

47 As to paragraph 47 of the ASOC, Pinnacle:

- a. repeats the matters pleaded in answer to paragraph 46 of the ASOC; and
- b. otherwise does not admit the matters pleaded therein.



48 Pinnacle does know and does not admit the matters pleaded in paragraph 48 of the ASOC.

49 As to paragraph 49 of the ASOC, Pinnacle:

- a. says that, in the period from November 2012 to February 2013, it performed services for the First Defendant, including in the Mount Victoria area and along Mount York Road comprising:
 - i. vegetation management services, including scoping tree clearances and required trimming, to vegetation along the First Defendant's overhead network;
 - ii. audit trimming services carried out by other contractors, including Asplundh; and
- b. otherwise does not know and does not admit the matters pleaded therein.

50 As to paragraph 50 of the ASOC, Pinnacle:

- a. undertook an inspection of conductors and vegetation along Mount York Road, including at the driveway to premises at 80-92 Mount York Road;
- b. identified the presence of vegetation inside trimming clearances, but outside safety clearances, between poles 3 and 4 in that location;
- c. admits that it provided scoping data to the First Defendant on or about 12 November 2012;
- d. does not know and does not admit the matters in paragraphs 50.3, 50.4 and 50.5 of the ASOC;



- e. admits paragraph 50.6;
- f. in answer to paragraph 50.7, admits that it provided a further report to Endeavour Energy on or about 17 January 2013 and did not therein note any defects between poles 3 and 4 on Mount York Road; and
- g. otherwise does not admit the matters pleaded therein.

51 Pinnacle does not admit the matters pleaded in paragraph 51 of the ASOC.

52 Pinnacle does not admit the matters pleaded in paragraph 52 of the ASOC.

53 Pinnacle does not admit the matters pleaded in paragraph 53 of the ASOC.

54 Pinnacle does not admit the matters pleaded in paragraph 54 of the ASOC.

55 Pinnacle does not admit the matters pleaded in paragraph 55 of the ASOC.

56 Pinnacle does not admit the matters pleaded in paragraph 56 of the ASOC.

57 Pinnacle does not admit the matters pleaded in paragraph 57 of the ASOC.

58 Pinnacle does not admit the matters pleaded in paragraph 58 of the ASOC.

59 Pinnacle does not admit the matters pleaded in paragraph 59 of the ASOC.

60 Pinnacle does not admit the matters pleaded in paragraph 60 of the ASOC.

61 Pinnacle does not admit the matters pleaded in paragraph 61 of the ASOC.

62 Pinnacle does not admit the matters pleaded in paragraph 62 of the ASOC.

63 Pinnacle does not admit the matters pleaded in paragraph 63 of the ASOC.

64 As to paragraph 64 of the ASOC, Pinnacle:



- a. repeats the matters pleaded in answer to paragraph 13 of the ASOC; and
- b. otherwise does not admit the matters pleaded therein.


65 As to paragraph 65 of the ASOC, Pinnacle:

- a. repeats the matters pleaded in answer to paragraph 14 of the ASOC; and
- b. otherwise does not admit the matters pleaded therein.

66 As to paragraph 66 of the ASOC, Pinnacle:

- a. repeats the matters pleaded in answer to paragraph 7.2 of the ASOC;



- b. admits that it provided services along Mount York Road under the terms of the Pinnacle Contract; and
- c. otherwise does not admit the matters pleaded therein.

67 As to paragraph 67 of the ASOC, Pinnacle:

- a. repeats the matters pleaded in answer to paragraphs 38-40 and 66 of the ASOC;
- b. says that, consistent with its contractual obligations, it had a degree of control over the assessment of vegetation clearances along parts of Endeavour Energy's distribution network, including those parts along Mount York Road;
- c. says that it had a degree of control over the implementation and observance of the requirements of the Pinnacle Contract and the First Defendant's policies and procedures;
- d. says that it had a degree of control over the knowledge, training and experience of those person who carried out services for the First Defendant in the Mount Victoria area, including along Mount York Road; and
- e. otherwise does not admit the matters pleaded therein.

68 As to paragraph 68 of the ASOC, Pinnacle:

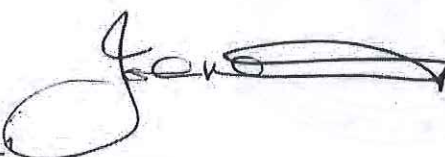


- a. repeats the matters pleaded in answer to paragraph 14 and 65 of the ASOC; and
- b. otherwise does not admit the matters pleaded therein.

69 As to paragraph 69 of the ASOC, Pinnacle:

- a. repeats the matters pleaded in answer to paragraph 14 and 65 of the ASOC; and
- b. denies the matters pleaded in paragraph 69.2 and otherwise does not admit the matters pleaded therein.

70 As to paragraph 70 of the ASOC, Pinnacle:

- a. will, at any Hearing in these Proceedings, rely on the terms of the Pinnacle Contract, including appendices, annexures and attachments (however described) to their full force and effect;

- b. says that, under the terms of the Pinnacle Contract, it had obligations to Endeavour to provide tree management, maintenance and audit services; and
- c. otherwise does not admit the matters pleaded therein.

71 As to paragraph 71 of the ASOC, Pinnacle:

- a. says that it conducted an inspection of vegetation along the First Defendant's power lines along Mount York Road on or about 12 November 2012;
- b. performed a further audit of trimming services undertaken by Asplundh in or about January 2013;
- c. denies that it inspected power lines in the location described, or at all; and
- d. otherwise does not admit the matters pleaded therein.

72 As to paragraph 72 of the ASOC, Pinnacle:

- a. repeats the matters pleaded in paragraphs 64-71 above; and
- b. otherwise does not admit the matters pleaded therein.

73 As to paragraph 73 of the ASOC, Pinnacle:

- a. repeats the matters pleaded in answer to paragraph 14 of the ASOC and repeats the matters pleaded in answer to paragraphs 64-72 of the ASOC; and
- b. otherwise does not admit the matters pleaded therein.

74 As to paragraph 74 of the ASOC, Pinnacle:

- a. repeats the matters pleaded in answer to paragraphs 18-73 of the ASOC; and
- b. otherwise does not admit the matters pleaded therein.

75 Pinnacle does not admit the matters pleaded in paragraph 75 of the ASOC.

76 Pinnacle does not admit the matters pleaded in paragraph 76 of the ASOC.

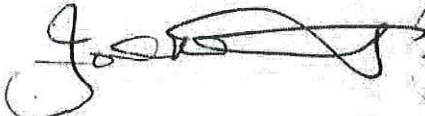

77 Pinnacle does not admit the matters pleaded in paragraph 77 of the ASOC.

78 Pinnacle does not admit the matters pleaded in paragraph 78 of the ASOC.

79 Pinnacle does not admit the matters pleaded in paragraph 79 of the ASOC.

80 Pinnacle does not admit the matters pleaded in paragraph 80 of the ASOC.

81 Pinnacle does not admit the matters pleaded in paragraph 81 of the ASOC.



82 Pinnacle does not admit the matters pleaded in paragraph 82 of the ASOC.

83 Pinnacle does not admit the matters pleaded in paragraph 83 of the ASOC.

84 Pinnacle does not admit the matters pleaded in paragraph 84 of the ASOC.

85 Pinnacle does not admit the matters pleaded in paragraph 85 of the ASOC.

86 Pinnacle does not admit the matters pleaded in paragraph 86 of the ASOC.

87 Pinnacle does not admit the matters pleaded in paragraph 87 of the ASOC.

88 As to paragraph 88 of the ASOC, Pinnacle:

- a. repeats the matters pleaded in paragraphs 14, 18, 19 and 64-72 of the ASOC;
- b. says that services it provided to the First Defendant were provided with due care and skill; and
- c. otherwise does not admit the matters pleaded therein.

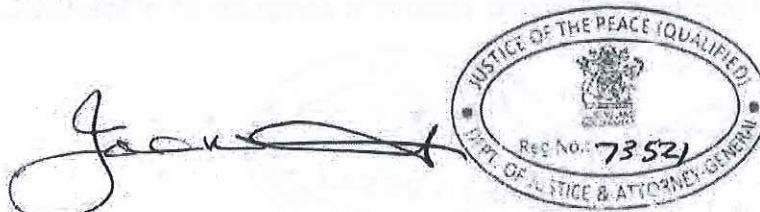
89 As to paragraph 89 of the ASOC, Pinnacle:

- a. says that the services performed by it for the First Defendant along Mount York Road, including in the vicinity of the driveway at 80-92 Mount York Road, were performed by Travis Wyper, who has, and who had at the relevant time, Appropriate Training (as defined);
- b. says that the services provided to the First Defendant were provided with due care and skill; and
- c. otherwise does not admit the matters pleaded therein.

90 As to paragraph 90 of the ASOC, Pinnacle:

- a. repeats the matters pleaded in answer to paragraphs 88 and 89 of the ASOC;
- b. says that the services provided by it to the First Defendant were provided with due care and skill;
- c. says that it identified all relevant hazards and defects within the clearances identified by the First Defendant; and
- d. otherwise denies the matters pleaded therein.

91 Pinnacle does not know and does not admit the matters pleaded in paragraph 91 of the ASOC.



A handwritten signature in black ink, appearing to be a stylized "B", is located at the bottom right of the page.

- a. says that the fire had adverse consequences for some owners or occupiers of property in the area effected by the fire; and
- b. otherwise does not admit the matters pleaded therein.

106 Pinnacle does not admit the matters pleaded in paragraph 106 of the ASOC.

107 As to paragraph 107 of the ASOC, Pinnacle:

- a. denies the matters pleaded in paragraph 107.3 of the ASOC; and
- b. otherwise does not admit the matters pleaded therein.

108 As to paragraph 108 of the ASOC, Pinnacle:

- a. admits that the matters identified in paragraphs 108.1 to 108.11 are likely to be in issue in these proceedings;
- b. says that questions as to whether it owed the duty of care as alleged and whether it breached such alleged duty are not necessarily common to the Plaintiff and all group members;
- c. says that, if Pinnacle is liable to the Plaintiff or any group member or members (which is not admitted), the measure of damages will be in issue;
- d. does not know what is meant by the terms of paragraph 108.12 and does not admit that paragraph.

109 In further answer to the claims made against Pinnacle in these proceedings, if contrary to its denials, in the circumstances identified in the ASOC or otherwise, it is found that Pinnacle was responsible or partly responsible for any loss or damage suffered by the Plaintiff or any group member then Pinnacle pleads as follows.

110 For the purposes only of paragraphs 109 to 111c of this defence, and otherwise without admission except to the extent expressly pleaded above:

- a. in respect of the First Defendant, Pinnacle repeats and relies upon the matters pleaded in paragraphs 8 to 14, 15.3.3, 17 to 37, 43 to 48, 53, 73 to 80, 94 to 95, 102 to 106 and 107.1 of the ASOC;
- b. in respect of the Second Defendant, Pinnacle repeats and relies upon the matters pleaded in paragraphs 35 to 37, 54 to 63, 81 to 87, 96-97 and 107.2 of the ASOC.

J. Jones



B

- 111 In the premises, if (which is denied) Pinnacle is liable to the Plaintiff and/or any group member as alleged or at all, then:
- a. the First Defendant and/ or the Second Defendant will have caused the same loss or damage
 - b. the claims made in these proceedings, other than claims in respect of personal injury, are apportionable claims within the meaning of the **Civil Liability Act 2002 (NSW) (CLA)**:
 - c. by reason of the matters pleaded above each of:
 - i. the First Defendant; and
 - ii. the Second Defendant

is a concurrent wrongdoer within the meaning of section 34 of the CLA and Pinnacle's liability (if any) for any loss or damage arising therefrom is to be apportioned accordingly pursuant to section 35 of the CLA.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature

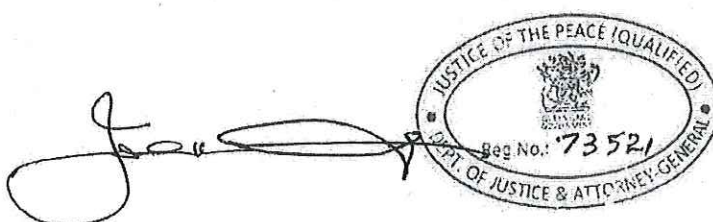


Capacity

Sean O'Connor, Solicitor

Date of signature

15 September 2016




#AFFIDAVIT VERIFYING

Name Travis Wyper
 Address Unit 1/25 Premier Circuit, Warana QLD 4575
 Occupation Arborist
 Date

I say on oath / affirm:

- 1 I am the director of the Third Defendant, Pinnacle Career Developments Pty Ltd. I have personal knowledge of the facts and issues arising in these proceedings and am authorised to make this affidavit on behalf of the Third Defendant.
- 2 I believe that the allegations of fact contained in the defence are true.
- 3 I believe that the allegations of fact that are denied in the defence are untrue.
- 4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

#SWORN #AFFIRMED at

Signature of deponent

[Handwritten Signature] 15/9/16

Name of witness

Address of witness

Capacity of witness

John Kevin Kleinschmidt
 c/o 4017 POST OFFICE BUDERIM
 [#Justice of the peace #Solicitor #Barrister #Commissioner
 for affidavits #Notary public]

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 ~~#I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]~~
~~#I have confirmed the deponent's identity using the following identification document:~~

Drivers Licence Queensland 080489332
 Identification document relied on (may be original or certified copy) †

Signature of witness

[Handwritten Signature]

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.



C/- Justices of the Peace Branch
 Level 6/154 Melbourne Street
 South Brisbane QLD 4101
 Ph: 1300 301 147
 E: jp@justice.qld.gov.au