

AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General (Representative Proceedings)
Registry	Sydney
Case number	2016/

TITLE OF PROCEEDINGS

Plaintiff	Clayton William Searle
Defendant	Commonwealth of Australia

FILING DETAILS

Filed for	Clayton William Searle , plaintiff
Legal representative	Stewart Alan Levitt, Levitt Robinson Solicitors
Legal representative reference	SAL:90390
Contact name and telephone	(02) 9286 3133
Contact email	slevitt@levittrobinson.com

TYPE OF CLAIM

Contractual dispute (common law)

These proceedings are listed for an initial case conference at 9:00am on the Wednesday after the expiration of 42 days following the filing of the originating process.

RELIEF CLAIMED

- 1 Damages.
- 2 Interest pursuant to section 100 of the *Civil Procedure Act 2005* (New South Wales).
- 3 Costs.
- 4 Interest on costs.
- 5 Such further or other order as the Court thinks fit.

PLEADINGS AND PARTICULARS

Introduction

- 1 The Plaintiff commences these proceedings as representative proceedings pursuant to Part 10 of the *Civil Procedure Act 2005* (New South Wales).
 - 2 This proceeding is commenced by the Plaintiff on his own behalf and as representing all persons who:
 - a. were enlisted in the Royal Australian Navy, being a part of the Australian Defence Forces and an emanation of the Defendant (hereinafter referred to as the **Navy**);
 - b. entered into a training contract to achieve a Certificate IV in Engineering with National Qualification Code MEM40105 (**Certificate IV**) between September 2010 and October 2012; and
 - c. suffered loss and damage as a result of:
 - i. the Defendant's breach of contract as pleaded in paragraph 16 below; and, or alternatively
 - ii. the Defendant's negligent advice as pleaded in paragraph 21 below; and
 - d. have not settled their claims the subject of these proceedings; and
 - e. have entered into a litigation funding agreement with Galactic Litigation Partners LLC and Levitt Robinson Solicitors as at the date of commencement of this proceeding.
- (The persons whom the Plaintiff represents in these proceedings will be referred to independently of the Plaintiff as the "**Group Members**").

- 3 The Certificate IV qualification was a nationally approved training scheme (“the **Approved Scheme**”) with National Qualification Code MEM40105 and was approved under the applicable legislation in each State and Territory, including being approved by the Victorian Skills Commission on 14 January 2009 in accordance with section 5.5.2 of the *Education And Training Reform Act 2006* (Victoria) (the **Act**), and registered under Part 4.6 of the Act.
- 4 The Approved Scheme set out, inter alia:
- a. the nature and syllabus of the Approved Scheme and the course of study, instruction and practical or workplace training comprising the content of the Approved Scheme; and
 - b. the standards of skill and knowledge required adequately to perform the activities or tasks of the vocation which are to be obtained by an apprentice undertaking the training scheme.
- 5 The Navy was a registered education and training organisation (**RTO**) registered and approved under the applicable legislation in each State and Territory, including under Part 4.3 of the Act to deliver the Certificate IV course of study and instruction under the Approved Scheme.

Contractual terms and breach of contract

- 6 The Plaintiff entered into a training contract with the Defendant for the Certificate IV qualification and with the Defendant as the RTO with a commencement date of 4 April 2011 and a completion date of 2 April 2015 (“**the Training Contract**”)

Particulars

The contract was in writing and executed by the parties and dated 20 June 2011.

- 7 The Training Contract was lodged with and approved by the Workplace Relations Commission pursuant to section 5.5.12 of the Act and the Plaintiff was registered as an apprentice with Registration Number 41198622 pursuant to section 5.5.23 of the Act.
- 8 The Group Members between September 2010 and October 2012 each entered into a separate training contract with the Defendant for the Certificate IV qualification and with the Defendant as the RTO (“**the Group Member Contracts**”)
- 9 The Group Member Contracts were lodged with and approved by the relevant authority pursuant to and under the applicable legislation of a State and Territory.
- 10 The following were terms of the Training Contract and the Group Member Contracts:

- a. the parties to the contract are the Defendant and the Plaintiff or Group Member;
- b. the Defendant was an employer and the Plaintiff or Group Member was an employee;
- c. the qualification being undertaken is Certificate IV;
- d. the nominal term is 48 months;
- e. the apprenticeship is to be full time;
- f. the name of the registered training organisation is the Navy;
- g. the Defendant will negotiate and sign with the Plaintiff or Group Member a Training Plan with the Navy as RTO as required by the relevant State or Territory Training Authority;
- h. the Defendant will employ and train the Plaintiff or Group Member as agreed in the Training Plan and ensure the Plaintiff or Group Member understands the choices that he or she has regarding the training;
- i. the Defendant will provide the appropriate facilities and experienced people to facilitate the training and supervise the Plaintiff or Group Member while at work, in accordance with the Training Plan;
- j. the Defendant will make sure the Plaintiff or Group Member receives on-the-job training and assessment in accordance with the Training Plan;
- k. the Defendant will provide work that is relevant and appropriate to the vocation, being engineering, and also the achievement of the Certificate IV;
- l. the Defendant will release the Plaintiff or Group Member from work and pay the appropriate wages to attend any training and assessments specified in the Training Plan;
- m. the Defendant will work with the Navy as the RTO and the Plaintiff or Group Member to make sure the Defendant follows the Training Plan, keeps training records up to date, and monitors and supports the Plaintiff or Group Member's progress;
- n. the Defendant will let the relevant State or Territory Training Authority and the Navy as RTO know within five working days (or when the local State or Territory legislation requires, if this different) if the training contract has become jeopardised;

- o. the Defendant will meet all legal requirements regarding the Plaintiff or Group Member, including but not limited to occupational health and safety requirements and payments of wages and conditions under the relevant employment arrangements;
- p. in signing the training contract the Defendant is bound by the legislation in each State or Territory in which the training contract is to be registered and the Defendant understands that the training contract is legally binding in accordance with the written terms set out therein and the legislation in which the training contract is to be registered; and
- q. by reasons of the express terms set out in paragraphs (o) and (p) above, the terms of the legislation in which the training contract is to be registered which is binding on the Defendant were incorporated as terms of the contract.

Particulars

The terms were in writing contained in the signed contracts.

11 In the premises pleaded at paragraph 10q above, the following obligations which were imposed on the Defendant by the legislation in each State or Territory in which the training contract was registered, including by ss 5.5.8, 5.5.13 and Schedule 4 of the Act, were incorporated into the Training Contract and the Group Member Contracts:

- a. the Defendant must ensure that the Plaintiff or Group Member was trained in accordance with the Approved Scheme;
- b. the Defendant must allow the Plaintiff or Group Member to comply with the Approved Scheme without hindrance if that scheme or any part of that scheme is conducted during normal working hours;
- c. the Defendant must during the duration of the training contract provide a level of supervision that is in accordance with that agreement and the Approved Scheme;
- d. training provided by the Defendant must be directed at enabling the Plaintiff or Group Member to attain the standards of skill and knowledge required by the Approved Scheme to be attained by the Plaintiff or Group Member; and
- e. the Defendant must arrange for the Plaintiff or Group Member to be enrolled in a vocational education and training course provided by an RTO, as required by the Approved Scheme, within 3 months after the date of commencement of the training contract;

- f. the Defendant must arrange for a training plan to be signed by the Defendant (as employer and RTO) and the Plaintiff or Group Member;
- g. the Defendant must arrange for a copy of a training plan as referred to in (f) to be lodged with the relevant authority under the applicable State and Territory legislation (in Victoria, the Victorian Skills Commission) or a person or body nominated or an approved training agent for the purposes of the applicable legislation, within 3 months after the date of commencement of a training contract.

12 Further, or in the alternative, the Defendant represented to the Plaintiff and the Group Members that the Training Contract and the Group Member Contracts were binding on the parties in accordance with their terms ("**the Contractual Representation**").

Particulars

The Contractual Representation was in writing and was in the Training Contract and the Group Member Contracts.

- 13 In reliance on the Contractual Representation, the Plaintiff and the Group Members entered into the Training Contract and the Group Member Contracts and fulfilled their obligations thereunder.
- 14 In the premises pleaded above, it would be unconscionable for the Defendant to resile from the assumption engendered by it that each of the Training Contract and the Group Member Contracts was a legally binding agreement and binding upon the Defendant.
- 15 In the premises pleaded above, the Defendant is estopped from denying that the Training Contract and the Group Member Contracts are legally binding agreements in accordance with their terms.
- 16 In breach of contract with the Plaintiff and the Group Members, the Defendant:
- a. failed to provide a Training Plan as required (whether as employer or as RTO);
 - b. failed to take steps (whether as employer or as RTO) to provide any of the training that would be required to enable the Plaintiff and the Group Members to obtain the Certificate IV;
 - c. failed to provide appropriate facilities and experienced people to facilitate the training and supervise the Plaintiff and Group Members while at work in

- accordance with the required Training Plan (which was never provided) and so as to allow the Plaintiff and Group Members to obtain the Certificate IV;
- d. failed to make sure that the Plaintiff and the Group Members received on the job training and assessment in accordance with the required Training Plan (which was never provided) so as to allow the Plaintiff and the Group Members to obtain the Certificate IV;
 - e. failed to provide work that was relevant and appropriate to the vocation and so as to allow the Plaintiff and Group Members to achieve the Certificate IV;
 - f. failed to release the Plaintiff and Group Members from work and pay the appropriate wages to attend relevant training and assessments specified in the required Training Plan (which was never provided) so as to allow the Plaintiff and Group Members to achieve the Certificate IV;
 - g. failed to work with the Plaintiff and Group Members to make sure that a relevant Training Plan was in place and was followed to ensure that training records were kept and were kept up to date and to monitor and support the Plaintiff's and the Group Members' progress so as to obtain the Certificate IV;
 - h. failed to prepare a Training Plan indicating the arrangements by which the training was to be provided, and failed to take all reasonable steps in accordance with such a Training Plan to enable the Plaintiff and the Group Members to receive the work based component of the required training, in particular by providing all necessary facilities and opportunities to acquire the competencies of the vocation concerned and obtain the Certificate IV;
 - i. failed to ensure that the Plaintiff or Group Members were trained in accordance with the Approved Scheme;
 - j. failed to allow the Plaintiff or Group Member to comply with the Approved Scheme without hindrance as that scheme or a part of that scheme was to be conducted during normal working hours;
 - k. failed during the duration of the Training Contract and the Group Member Contracts to provide a level of supervision that was in accordance with those agreements and the Approved Scheme;
 - l. failed to provide training directed at enabling the Plaintiff or Group Member to attain the standards of skill and knowledge required by the Approved Scheme to be attained by the Plaintiff or Group Member;

- m. did not arrange for the Plaintiff or Group Member to be enrolled in a vocational education and training course provided by an RTO, as required by the Approved Scheme, within 3 months after the date of commencement of the Training Contract or Group Member Contracts;
- n. did not arrange for a training plan, to be signed by the Defendant (as employer and RTO) and the Plaintiff or Group Members;
- o. did not arrange for a copy of a training plan as referred to in (n) to be lodged with the relevant authority under the applicable State and Territory legislation or a person or body otherwise nominated or an approved training agent for the purposes of the applicable legislation, within 3 months after the date of commencement of the Training Contract or the Group Member Contracts;
- p. evinced an intention in June 2014 no longer to be bound by the Training Contract or Group Member Contracts by announcing that the Plaintiff and the Group Members would not be, and could not be, obtaining the Certificate IV at the end of the contract; and
- q. failed to let the relevant State or Territory Training Authority and the Navy as RTO know within five working days (or when the local State or Territory legislation required, if this was different) that the Training Contract or the Group Member Contracts had become jeopardised including by reason of the matters referred to above.

17 By reason of the said breaches of the Training Contract and the Group Member Contracts, the Plaintiff and Group Members have suffered loss and damage.

Particulars

The Plaintiff has spent four years in the Navy and has not obtained the Certificate IV qualification which otherwise would have been obtained had the Defendant performed the contract.

The Plaintiff has now left the Navy and is seeking alternative employment but does not have the benefit of seeking employment with the Certificate IV qualification. He has thereby lost the opportunity to be employed and remunerated as a person with the Certificate IV qualification.

The Group Members have also spent time in the Navy without achieving a Certificate IV or receiving relevant training towards a Certificate IV, and they also have lost the opportunity to be employed

and remunerated as a person with the Certificate IV qualification at the end of the four year period.

Negligent misrepresentation

- 18 The Defendant prior to execution of the Training Contract and Group Member Contracts represented to the Plaintiff and the Group Members that pursuant to the Training Contract and the Group Member Contracts whilst enlisted in the Navy the Plaintiff and the Group Members would be provided with training so as to enable him or her to obtain a Certificate IV within 48 months and, thereby, impliedly represented that the Defendant had a reasonable basis for making this representation ("**the Training Representation**").

Particulars

The Training Representation was in writing and contained in the Defence Force webpage and was contained in the draft Training Contract and the Group Member Contracts provided to the Plaintiff and the Group Members.

- 19 At the time of the making of the Training Representation, the Defendant was aware, or ought to have been aware that:
- a. the Plaintiff and Group Members would trust the Defendant's special competence and position to be able to give accurate information and advice the subject of the Training Representation;
 - b. it would be reasonable for the Plaintiff and Group Members to accept and rely upon the information and advice that made up the Training Representation; and
 - c. it was reasonably foreseeable that the Plaintiff and Group Members would likely suffer loss or damage or detriment should the Training Representation be incorrect or be made without reasonable grounds.
- 20 In the premises pleaded above, the Defendant was under a duty of care to ensure that it exercised reasonable care and skill in giving the information or advice that made up the Training Representation.
- 21 In making the Training Representation, the Defendant was in breach of its duty of care in that it failed to exercise reasonable care and skill in making the Training Representation.

Particulars

The Defendant did not have reasonable grounds for the Training Representation in that at the time of the Training Representation:

- (a) Certificate IV did not reflect the relevant Navy career scheme policy at the time;
- (b) a Certificate IV was not reasonably achievable in the 48 month timeframe as:
 - a. no relevant trade course had yet been developed;
 - b. no relevant Training Plan had been developed;
 - c. there had been no commitment made of the required resources, personnel and facilities to enable the relevant trade course and relevant Training Plan to be developed in the time frame.

22 The Plaintiff and the Group Members relied upon the Training Representation in enlisting in the Navy, entering into the Training Contract and fulfilling their obligations under the Training Contract and Group Member Contracts.

23 In the premises pleaded above, the Plaintiff and Group Members have suffered loss and damage by reason of the Defendant's breach of duty of care in making the Training Representation.

Particulars

The Plaintiff and Group Members have lost the opportunity to have pursued alternative training and career pathways that would have afforded them the opportunity to enjoy more remunerative employment or work choices.

Common questions of law or fact

24 The questions of law or fact common to the claims of the Plaintiff and the Group Members in this proceeding are:

- a. whether the Training Contract and the Group Member Contracts contained each of the terms as set out at paragraph 10 above;
- b. whether the obligations as set out at paragraph 11 above were imposed on the Defendant and incorporated into the Training Contract and Group Member Contracts;
- c. whether the Defendant made the Contractual Representation;

- d. whether it would be unconscionable for the Defendant to resile from the assumption engendered by it that each of the Training Contract and the Group Members Contracts was a legally binding agreement and binding upon the Defendant;
- e. whether the Defendant is estopped from denying that the Training Contract and the Group Member Contracts are legally binding agreements in accordance with their terms;
- f. whether the Defendant failed to provide a Training Plan as required (whether as employer or as RTO);
- g. whether the Defendant failed to take steps (whether as employer or as RTO) to provide any of the training that would be required to enable the Plaintiff and the Group Members to obtain the Certificate IV;
- h. whether the Defendant failed to provide appropriate facilities and experienced people to facilitate the training and supervise the Plaintiff and Group Members while at work in accordance with the required Training Plan (which was never provided) and so as to allow the Plaintiff and Group Members to obtain the Certificate IV;
- i. whether the Defendant failed to make sure that the Plaintiff and the Group Members received on the job training and assessment in accordance with the required Training Plan (which was never provided) so as to allow the Plaintiff and the Group Members to obtain the Certificate IV;
- j. whether the Defendant failed to provide work that was relevant and appropriate to the vocation and so as to allow the Plaintiff and Group Members to achieve the Certificate IV;
- k. whether the Defendant failed to release the Plaintiff and Group Members from work and pay the appropriate wages to attend relevant training and assessments specified in the required Training Plan (which was never provided) so as to allow the Plaintiff and Group Members to achieve the Certificate IV;
- l. whether the Defendant failed to work with the Plaintiff and Group Members to make sure that a relevant Training Plan was in place and was followed to ensure that training records were kept and were kept up to date and to monitor and support the Plaintiff's and the Group Members' progress so as to obtain the Certificate IV;

- m. whether the Defendant failed to prepare a Training Plan indicating the arrangements by which the training was to be provided, and failed to take all reasonable steps in accordance with such a Training Plan to enable the Plaintiff and the Group Members to receive the work based component of the required training, in particular by providing all necessary facilities and opportunities to acquire the competencies of the vocation concerned and obtain the Certificate IV;
- n. whether the Defendant failed to ensure that the Plaintiff or Group Members were trained in accordance with the Approved Scheme;
- o. whether the Defendant failed to allow the Plaintiff or Group Member to comply with the Approved Scheme without hindrance as that scheme or a part of that scheme was to be conducted during normal working hours;
- p. whether the Defendant failed during the duration of the Training Contract and the Group Member Contracts to provide a level of supervision that was in accordance with those agreements and the Approved Scheme;
- q. whether the Defendant failed to provide training directed at enabling the Plaintiff or Group Member to attain the standards of skill and knowledge required by the Approved Scheme to be attained by the Plaintiff or Group Member;
- r. whether the Defendant did not arrange for the Plaintiff or Group Member to be enrolled in a vocational education and training course provided by an RTO, as required by the Approved Scheme, within 3 months after the date of commencement of the Training Contract or Group Member Contracts;
- s. whether the Defendant arranged for a training plan, to be signed by the Defendant (as employer and RTO) and each of the Plaintiff or Group Members;
- t. whether the Defendant arranged for a copy of a training plan as referred to in (s) to be lodged with the relevant authority under the applicable State and Territory legislation or a person or body otherwise nominated or an approved training agent for the purposes of that legislation, within 3 months after the date of commencement of the Training Contract or the Group Member Contracts;
- u. whether the Defendant evinced an intention in June 2014 no longer to be bound by the Training Contract or Group Member Contracts by announcing

that the Plaintiff and the Group Members would not be, and could not be, obtaining the Certificate IV at the end of the contract; and

- v. whether the Defendant failed to let the relevant State or Territory Training Authority and the Navy as RTO know within five working days (or when the local State or Territory legislation required, if this was different) that the Training Contract or the Group Member Contracts had become jeopardised
- w. whether the Defendant made the Training Representation;
- x. if the Defendant made the Training Representation, whether at the time of making the Training Representation, the Defendant was under a duty of care to ensure that it exercised reasonable care and skill in giving the information or advice that made up the Training Representation; and
- y. if the Defendant made the Training Representation and was under a duty of care to ensure that it exercised reasonable care and skill in giving the information or advice that made up the Training Representation, whether in making the Training Representation, the Defendant was in breach of its duty of care and skill in that it failed to exercise reasonable care and skill in making the Training Representation.

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 claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor in Charge

Date of signature

1/3/16.

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim, by filing a defence and/or making a cross-claim.**
- 2 If money is claimed, and you believe you owe the money claimed, by:**
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed, by:**
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Law Courts Building, Queens Square 184 Phillip Street SYDNEY NSW 2000
Postal address	GPO Box 3 SYDNEY NSW 2001
Telephone	1300 679 272

AFFIDAVIT VERIFYING

Name Clayton William Searle
 Address 49 Rachael Close, Rockyview QLD 4701
 Occupation Unemployed
 Date 29th February 2016

I say on oath:

- 1 I am the plaintiff.
- 2 I believe that the allegations of fact in the statement of claim are true.

SWORN at 149 BOLSOVER ST ROCKHAMPTON
 Signature of deponent [Signature]
 Name of witness NEALE KRAUSE
 Address of witness 21 MURRAY AVE FRENCHVILLE 4701
 Capacity of witness JP (QUAL).

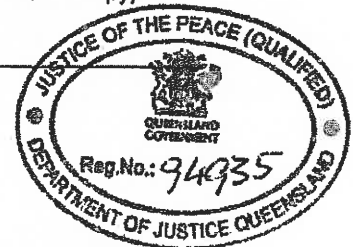
And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document:

DRIVERS LICENCE 090 C50468
 Identification document relied on (may be original or certified copy) †

Signature of witness [Signature]

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



[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

PARTY DETAILS**PARTIES TO THE PROCEEDINGS****Plaintiff**

Clayton William Searle, plaintiff

Defendant

Commonwealth of Australia, defendant

FURTHER DETAILS ABOUT PLAINTIFF**Plaintiff**

Name Clayton William Searle
 Address 49 Rachael Close
 Rockyview QLD 4701
 Australia

Legal representative for plaintiff

Name Stewart Alan Levitt
 Firm Levitt Robinson Lawyers
 Contact solicitor
 Address Ground Floor, 162 Goulburn Street,
 East Sydney, NSW 2010
 Telephone (02) 9286 3133
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DETAILS ABOUT DEFENDANT**Defendant**

Name Commonwealth of Australia
 Address Australian Government Solicitor
 Level 42
 MLC Centre
 19 Martin Place
 SYDNEY NSW 2000