

DEFENCE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	Common Law General
Registry	Sydney
Case number	2016/45027

TITLE OF PROCEEDINGS

Plaintiff	Clayton William Searle
Defendant	Commonwealth of Australia

FILING DETAILS

Filed for	Commonwealth of Australia, Defendant
Filed in relation to	Further Amended Statement of Claim
Legal representative	Tricia Hobson, Norton Rose Fulbright Australia
Legal representative reference	2836969
Contact name and telephone	Lindsay Houghton (02) 9330 8304
Contact email	lindsay.houghton@nortonrosefulbright.com

PLEADINGS AND PARTICULARS

- 1 The Defendant notes the allegation in paragraph 1 of the Further Amended Statement of Claim (**FASOC**) but does not presently admit that these proceedings ought to proceed as representative proceedings.
- 2 In answer to paragraph 2 of the FASOC the Defendant:
 - (a) admits the allegations in sub-paragraph (d);
 - (b) denies the allegations in sub-paragraphs (b) and (c);
 - (c) does not know and cannot admit the allegations in sub-paragraphs (a) and (e).
- 3 The Defendant does not admit the allegations contained in paragraph 3 of the FASOC.

4 The Defendant does not admit the allegations contained in paragraph 4 of the FASOC.

5 The Defendant admits the allegations contained in paragraph 5 of the FASOC.

6 In answer to paragraph 6 of the FASOC the Defendant:

- (a) denies the allegations contained therein;
- (b) says that the Training Contract was a nullity or invalid or otherwise unenforceable as the Plaintiff had no contractual relationship with the Defendant pursuant to such document or otherwise;
- (c) says that the relationship between the Plaintiff and the Defendant is governed by section 61 of the *Commonwealth of Australia Constitution Act*, the *Defence Act 1903* (Cth) and the regulations promulgated thereunder including regulation 117, all being laws of the Commonwealth; and
- (d) says that the Training Contract cannot establish a relationship of employee and employer between the Plaintiff and the Defendant when there is not one at common law.

7 In answer to paragraph 7 of the FASOC the Defendant:

- (a) denies the validity of the Training Contract and repeats sub-paragraphs 6(b) to 6(d) above; and
- (b) does not admit the balance of the allegations contained therein.

8 In answer to paragraph 8 of the FASOC the Defendant:

- (a) denies the allegations contained therein;
- (b) repeats sub-paragraphs 6(b) to 6(d) above; and
- (c) does not know and cannot admit to the balance of the allegations contained therein as the Defendant is unaware of the identity of the Group Members.

9 The Defendant does not know and cannot admit the allegations in paragraph 9 of the FASOC.

(a) denies the validity of the Training Contracts and repeats sub-paragraphs 6(b) to 6(d) above; and

(b) does not admit the balance of the allegations contained therein and will rely upon the terms of the alleged Training Contract in their entirety as to the interpretation of such terms.

11 In answer to paragraph 11 of the FASOC the Defendant:

(a) denies the validity of the Training Contract and repeats sub-paragraphs 6(b) to 6(d) above; and

(b) does not admit the balance of the allegations contained therein.

12 The Defendant denies the allegations contained in paragraph 12 of the FASOC.

13 The Defendant does not know and cannot admit the allegations contained in paragraph 13 of the FASOC.

14 The Defendant denies the allegations contained in paragraph 14 of the FASOC.

15 The Defendant denies the allegations contained in paragraph 15 of the FASOC and further says, generally, that the pleading of estoppel in paragraphs 12 to 15 is embarrassing and ought to be struck out.

16 In answer to paragraph 16 of the FASOC the Defendant:

(a) denies the validity of the Training Contract and repeats sub-paragraphs 6(b) to 6(d) above; and

(b) denies the allegations pleaded in sub-paragraphs 16(a) to 16(q).

17 The Defendant denies the allegations contained in paragraph 17 of the FASOC.

18 The Defendant does not admit the allegations contained in paragraph 18 of the FASOC.

19 The Defendant denies the allegations contained in paragraph 19 of the FASOC.

20 The Defendant denies the allegations contained in paragraph 20 of the FASOC.

21 The Defendant denies the allegations contained in paragraph 21 of the FASOC.

22 The Defendant does not admit the allegations contained in paragraph 22 of the FASOC.

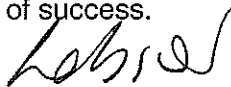
23 The Defendant denies the allegations contained in paragraph 23 of the FASOC.

24 The Defendant denies the allegations contained in paragraph 24 of the FASOC.

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

Solicitor on record

Date of signature

10 June 2016

AFFIDAVIT VERIFYING

Name Commodore Michael James Rothwell AM RAN
 Address Fleet Command Headquarters, Level 3, 14-18 Wylde Street, Potts Point in the State of New South Wales
 Occupation Naval Officer
 Date 10 June 2016

I say on oath/affirm:

- 1 I am a Commodore in the Royal Australian Navy and am authorised to make this affidavit.
- 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 Sydney
 Signature of deponent Michael Rothwell
 Name of witness Edward Lindsay Roux Houghton
 Address of witness Level 18, 225 George Street, Sydney, NSW, 2000
 Capacity of witness Solicitor

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:

NSW Driver License 3488AL
 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.