

Filed pursuant to leave granted by the Court on 29 July 2016

Form 3A (version 7)
UCPR 6.2

SECOND FURTHER AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General (Representative Proceedings)
Registry	Sydney
Case number	2016/00045027

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:SC:140673
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 Exemplary damages.
- 3 Aggravated damages.
- 4 Interest pursuant to section 100 of the *Civil Procedure Act 2005* (New South Wales).
- 5 Costs.
- 6 Interest on costs.
- 7 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 0 below; and, or alternatively
 - ii. the Defendant's negligent advice as pleaded in paragraph 21 below;
 - 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 24 June 2016.

(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:

- (a) the draft Training Contract provided to the Plaintiff by the Defendant, and the draft Group Members Contracts provided to the Group Members by the Defendant; and, or alternatively
- (b) the Training Contract and the Group Member Contracts.

12A By reason of the Contractual Representation, the Plaintiff and the Group Members assumed that each Training Contract and Group Member Contract was a legally binding agreement and binding upon the Defendant.

12B By making the Contractual Representation, the Defendant induced the Plaintiff and the Group Members to adopt the assumption that each Training Contract and Group Member Contract was a legally binding agreement and binding upon the Defendant.

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, and it was reasonable in the circumstances for the Plaintiff and the Group Members to rely on the Contractual Representation in this manner.

13A The Defendant, by making the Contractual Representation, knew or intended the Plaintiff and the Group Members to so act.

13B The Plaintiff and the Group Members will suffer detriment if the assumption induced by the Defendant is not fulfilled.

13C The Defendant failed to act to avoid the Plaintiff and Group Members suffering such detriment by fulfilling the assumption or otherwise.

14 In the premises pleaded above, it would be unconscionable for the Defendant to renege 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.

15A Further or in the alternative to paragraphs 12 to 14 above:

- a. the Plaintiff and the Defendant in the Training Contract, and the Group Members and the Defendant in the Group Member Contracts, have adopted an assumption that each of the Training Contracts and Group Member Contracts were legally binding agreements and binding upon the Defendant;
- b. the Plaintiff and the Defendant, and the Group Members and the Defendant, have entered into each of the Training Contract and the Group Member Contracts and conducted their relationships on the basis of that mutual assumption;
- c. each party knew or intended the other to act on that basis; and
- d. departure from the assumption will cause the Plaintiff and the Group Members detriment.

15 In the premises pleaded at paragraphs 12 to 14 above, and, or alternatively, paragraph 15A 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 of 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 partly in writing and partly oral.

To the extent that it was in writing:

- (i) it was contained in the Defence Force webpage or webpages. That webpage is, or those webpages are, in the possession of the Defendant. Further particulars will be provided following discovery from the Defendant;
- (ii) it was contained in the draft Training Contract provided to the Plaintiff and the draft Group Member Contracts provided to the Group Members.

To the extent that it was oral:

- (iii) it was made orally to some or all of the Group Members by Navy recruiters prior to those Group Members enlisting in the Navy, including at the time of pre-enlistment aptitude testing conducted by the Navy;
- (iv) it was made orally to the Plaintiff and some or all of the Group Members by Navy personnel such as Recruit School instructors during the Navy's Recruit School, including in one-on-one discussions, and including prior to 'Day 64', being the day on which new recruits can elect to discharge from the Navy;
- (v) it was made orally to the Plaintiff and some or all of the Group Members in a training presentation by Mr Ty Palmer and the Officer in Charge of the Engineering Faculty on the first day of the Navy's Initial Technical Training.

- 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, remaining in the Navy following Day 64 being the date when new recruits can elect to discharge from the Navy, entering into the Training Contract and Group Member Contracts 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.

Deceit

23A Further or in the alternative, in the event that the Training Contract and the Group Member Contracts, are not binding on the parties in accordance with their terms (which is denied):

- a. by making the Contractual Representation pleaded at paragraph 12 above, the Defendant engaged in conduct which was false and untrue, by representing 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 when that was not the case;

Particulars

The Contractual Representation was made in writing in the Training Contract and the Group Member Training Contracts by Ty Palmer, Manager Competency Management Cell Training Authority Engineering (CMC TA-ENG) on behalf of the Defendant.

- b. the Defendant made the Contractual Representation recklessly without caring whether it was true or false;

Particulars

- (i) The individual who made the Contractual Representation on behalf of the Defendant recklessly without caring whether it was true or false was Ty Palmer, Manager Competency Management Cell Training Authority Engineering (CMC TA-ENG)
- (ii) It can be inferred that Mr Palmer took no steps to ascertain the truth or otherwise of the Contractual Representation and did not care whether it was true or not, notwithstanding that it was recorded in a document entitled Training Contract, notwithstanding that Mr Palmer signed that document on behalf of the Defendant and notwithstanding that Mr Palmer

caused the document to be furnished to the Plaintiff and the Group Members for their signature.

- (iii) The Plaintiff is not in a position to provide further particulars until after discovery and reserves the right to do so.

~~This knowledge can be inferred from the Defendant's conduct in now denying that the Training Contract and the Group Member Contracts are in fact legally binding in accordance with their terms, and in now contending that no legally binding agreement on the terms of those contracts was capable of being made at the time the Defendant made the Contractual Representation.~~

- c. the Defendant made the Contractual Representation with the intention that the Plaintiff and the Group Members should act upon that representation by entering into the Training Contract and the Group Member Contracts and fulfil their obligations thereunder;

Particulars

- (i) The individual who had the intention on behalf of the Defendant was Ty Palmer, Manager Competency Management Cell Training Authority Engineering (CMC TA-ENG).
- (ii) The intention is inferred from the content of the Contractual Representation, the fact that it was recorded in a document entitled Training Contract, and the fact that Mr Palmer signed that document on behalf of the Defendant and caused the document to be furnished to the Plaintiff and the Group Members for their signature.
- (iii) The Plaintiff is not in a position to provide further particulars until after discovery and reserves the right to do so.

- d. the Plaintiff and some or all of the Group Members relied upon and were induced by the Contractual Representation to enter into the Training Contract and fulfil their obligations thereunder, and in doing so the Plaintiff altered his position in a manner affecting his interests, and some or all of the Group Members altered their positions in a manner affecting their interests; and

- e. in the premises, the Plaintiff and some or all of the Group Members have suffered loss and damage by reason of the Defendant's deceit.

Particulars

The Plaintiff and Group Members claim the losses directly flowing from the Defendant's deceit. Further particulars will be provided prior to trial.

Exemplary and aggravated damages

23B In the premises, the Defendant has consciously engaged in conduct in contumelious disregard of the rights of the Plaintiff and the Group Members, and the Plaintiff and some or all of the Group Members are entitled to exemplary damages.

Particulars

- (a1) The Defendant has so acted in respect of the Contractual Representation through its officer Mr Ty Palmer, and in respect of the Training Representation through Mr Ty Palmer, the Officer in Charge of the Engineering Faculty and Recruit School instructors as particularised in paragraph 18. The Plaintiff is not in a position to provide further particulars until after discovery and reserves the right to do so.
- (a) The Plaintiff and some or all of the Group Members are entitled to such damages in circumstances where the Defendant has made the negligent misrepresentations pleaded at paragraphs 18 to 23 above, and in particular has made the Training Representation to the Plaintiff and some or all of the Group Members in circumstances where:
- a. the Defendant was aware or ought to have been aware that it had a special competence and position in relation to the Plaintiff and the Group Members;
 - b. the Defendant was aware or ought to have been aware that the Plaintiff and the Group Members would rely on the information and advice as pleaded in paragraph 18 provided to them by the Defendant;
 - c. the Plaintiff and some or all of the Group Members did in fact rely on that information and advice (being the information and advice pleaded in paragraph 18), to enlist in the Navy, remain in the Navy following Day 64 being the date when new recruits can elect to discharge from the Navy, enter into the Training Contract and Group Member Contracts and, or alternatively, fulfil their obligations under the Training Contract and Group Member Contracts;
 - d. the Defendant was aware or ought to have been aware that the Plaintiff and some or all of the Group Members

were likely to suffer loss or damage or detriment if the Training Representation was incorrect or made without reasonable grounds;

- e. the Training Representation was in fact incorrect and made without reasonable grounds, as particularised at paragraph 21 above; and, or alternatively

(b) in the event that the Training Contract and the Group Member Contracts are not binding on the parties in accordance with their terms (which is denied), the Plaintiff and some or all of the Group Members are entitled to such damages in circumstances where the Defendant has engaged in deceit as pleaded at paragraph 23A above, and in particular by making the Contractual Representation to the Plaintiff and some or all of the Group Members in circumstances where:

- a. the Defendant was aware or ought to have been aware that it had a special competence and position in relation to the Plaintiff and the Group Members;
- b. the Defendant engaged in conduct which was false and untrue;
- c. the Defendant knew that the Contractual Representation was false and untrue, or, in the alternative, it made the Contractual Representation recklessly without caring whether it was true or false;
- d. the Defendant intended that the Plaintiff and the Group Members should act upon that representation by entering into the Training Contract and the Group Member Contracts and fulfil their obligations thereunder;
- e. the Plaintiff and some or all of the Group Members relied upon and were induced by the Contractual Representation to enter into the Training Contract and some or all of the Group Member Contracts and fulfil their obligations thereunder.

23C In the premises, the harm done to the Plaintiff and some or all of the Group Members by the Defendant's conduct as pleaded in paragraphs 18 to 23A was

aggravated by the manner in which it was done, such that the Plaintiff and some or all of the Group Members are entitled to aggravated damages.

Particulars

The harm done is the lost opportunities and losses particularised under paragraph 23 and 23A(e) above. Further particulars will be provided prior to trial.

As to the manner in which the Defendant's conduct was done, the Plaintiff and Group Members repeat the particulars pleaded at paragraph 23B above.

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;

z. whether by making the Contractual Representation, the Defendant engaged in conduct which was deceitful in that the Contractual Representation was false and untrue, the Defendant made it recklessly without caring whether it was true or false, and made it with the intention that the Plaintiff and the Group Members should act upon it;

aa. whether the conduct of the Defendant was such that the Plaintiff and some or all of the Group Members should be entitled to exemplary damages;

bb. whether the conduct of the Defendant was such that the Plaintiff and some or all of the Group Members should be entitled to aggravated damages.

SIGNATURE OF LEGAL REPRESENTATIVE

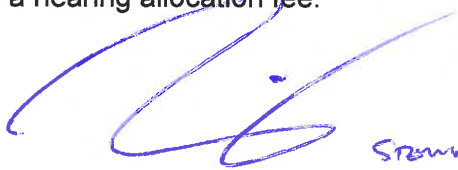
I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

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

Signature

Capacity

Date of signature


 Stewart A. Lovitt
 Solicitor - on - the - Record
 3/8/16.

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

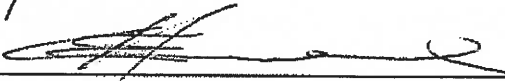
AFFIDAVIT VERIFYING

Name Clayton William Searle
 Address 49 Rachael Close, Rockyview QLD 4701
 Occupation Unemployed
 Date 3.8. 2016

I say on oath:

- 1 I am the plaintiff.
- 2 I believe that the allegations of fact in the Further Amended Statement of Claim are true.

SWORN at Rockhampton.

Signature of deponent 

Name of witness JANICE MILLMAN

Address of witness 6 MURLAY AVE. FRENCHVILLE.

Capacity of witness COMMISSIONER OF DECLARATIONS


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 090 050 468.
 Identification document relied on (may be original or certified copy) †

Signature of witness 

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


J. Millman COEL 4322.
JANICE MILLMAN

[* 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 Stephanie Carmichael
 Address Ground Floor, 162 Goulburn Street,
 East Sydney, NSW 2010

Telephone (02) 9286 3133
 Fax (02) 9283 0005
 Email slevitt@levittrobinson.com
 Electronic service address slevitt@levittrobinson.com

DETAILS ABOUT DEFENDANT**Defendant**

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