

## NOTICE OF MOTION

### COURT DETAILS

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

### TITLE OF PROCEEDINGS

Plaintiff	<b>Clayton William Searle</b>
Defendant	<b>Commonwealth of Australia</b>

### FILING DETAILS

Person seeking orders	<b>Clayton William Searle</b> , plaintiff
Legal representative	Stewart Alan Levitt, Levitt Robinson Solicitors
Legal representative reference	SAL:SXC:140673
Contact name and telephone	Stephanie Carmichael, (02) 9286 3133
Contact email	scarcmiahel@levittrobinson.com

### PERSON AFFECTED BY ORDERS SOUGHT

**Commonwealth of Australia, Defendant**

### HEARING DETAILS

This motion is listed on 9 June 2017.

**ORDERS SOUGHT**

- 1 An Order, pursuant to Rule 21.2 of the *Uniform Civil Procedure Rules 2005*, that the defendant give discovery of documents within the categories of documents annexed hereto and marked "A".
- 2 An Order that the defendant serve a verified list of documents on or before 7 July 2017 or such other date as the Court deems fit.
- 3 Costs.
- 4 Such further or other orders as the Court deems fit.

**SIGNATURE**

Signature of legal representative

Capacity

Date of signature



Plaintiff's Solicitor

19 May 2017

*by his partner.*

**NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT**

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

**REGISTRY ADDRESS**

Street address

Law Courts Building, Queens Square  
184 Phillip Street  
SYDNEY NSW 2000

Postal address

GPO Box 3  
SYDNEY NSW 2001

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1300 679 272

## Annexure A

1. All documents recording or evidencing all communications between the plaintiff and the Navy from January 2010 to December 2015.
2. All personnel records or files maintained by the Navy in relation to the plaintiff, including but not limited to any enlistment records, records relating to his training while in the Navy (including any documents regarding his progress against any training plan or assessment process), payment of his salary, or provision of other entitlements to him.
3. All documents recording or evidencing Navy marketing, advertising, recruitment or promotional materials, or information materials including sheets, packs or booklets, in the period from January 2010 to April 2011, which related in whole or in part to the Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme, including but not limited to:
  - a. any webpages, including any 'Defence Force' or 'Defence Jobs' webpage or webpages, and including all versions of such webpages during the period;
  - b. any such materials used by Navy recruitment personnel or representatives, including materials made available at recruitment events, and distributed to persons who had indicated an interest and/or an intention to undertake the Certificate IV and/or training for the role of Marine Technician.
4. All documents recording or evidencing any methods, protocols, guidelines, procedures, or policies for recruitment by the Navy of sailors to undertake training to achieve Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme in the period from January 2010 to January 2011, where such documents specifically refer to the Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme.
5. All documents generated by or on behalf of the Navy, including information materials including sheets, packs or booklets which refer to the Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme, and which were provided to:
  - a. representatives of the Navy attending recruitment or pre-enlistment events;
  - b. representatives of the Navy who participated in Recruit School;

- c. representatives of the Navy who responded to any enquiries made to the Navy about the Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme, including representatives who responded to any calls made to the phone number 13 19 01,

to assist those persons in discussions with potential recruits or persons who had not yet commenced in the Navy or new recruits, in the period from January 2010 to April 2011.

6. In relation to the Certificate IV training commenced by the Plaintiff, all documents evidencing or recording or otherwise referring to:
  - a. methods, protocols, guidelines, procedures, or policies for the provision of that training to the Plaintiff;
  - b. any training plan for that training;
  - c. any such training plan being lodged with any government authority;
  - d. how, to the extent there was no training plan, the Navy otherwise proposed to provide that Certificate IV training to the Plaintiff, including the courses, work, facilities, on the job training, and persons who would provide that training;
  - e. the proposed assessment process for the Plaintiff to obtain a Certificate IV;
  - f. how the Certificate IV training provided by the Navy complied with the nationally approved qualification scheme with National Qualification Code MEM40105, and how the training was directed at the Plaintiff attaining the skill and knowledge required by the Approved Scheme;
  - g. the names and designations of all officers, employees, agents, agencies or consultants of the Commonwealth or the Navy tasked with providing training and assessment to the Plaintiff.
7. For the Navy Recruit School commencing in January 2011, all documents (including but not limited to emails to sailors, emails between Recruit School personnel, presentation slides, presentation notes, speaking notes, information sheets, packs or booklets) evidencing or recording any information communicated to or otherwise provided to sailors regarding:
  - a. the Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme; and/or
  - b. the length of time in which sailors would or might be eligible to receive any trade qualification.

8. For the Initial Technical Training undertaken by the plaintiff, all documents (including but not limited to emails to sailors, emails between Recruit School personnel, presentation slides, presentation notes, speaking notes, information sheets or information packs) evidencing or recording any information communicated to or otherwise provided to sailors regarding:
  - a. the Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme; and/or
  - b. the document entitled 'Training Contract' which was provided to sailors and which certain sailors signed on 20 June 2011;
  - c. the reason or reasons why the sailors were being provided with a 'Training Contract';
  - d. the contents and/or the effect of the Training Contract; and/or
  - e. the length of time in which sailors would or might be eligible to receive any trade qualification.
  
9. In relation to the document entitled 'Training Contract' provided by the Navy to the plaintiff during Initial Technical Training and signed by the plaintiff on 20 June 2011, all documents evidencing or recording (including but not limited to all emails sent to or received by Mr Ty Palmer or other persons in the Navy's Engineering Faculty):
  - a. the process by which the Navy made the decision to provide sailors such as the Plaintiff with a document of that nature for signature;
  - b. the Navy's decision to provide sailors with a document of that nature; and/or
  - c. the Navy's reason or reasons for providing sailors with a document of that nature.
  
10. In relation to the letter from Rear Admiral Uzzell to sailors dated 13 June 2014 with title 'The MT2010 Career Scheme':
  - a. all documents evidencing or recording the 'conflicting information concerning the introduction of the MT2010 career scheme policy' which had been identified by the Navy, which is referred to at paragraph 2 of that letter (including but not limited to all documents evidencing or recording correspondence sent or received by Competency Management Cell staff at HMAS Cerberus regarding the 'conflicting information concerning the introduction of the MT2010 career scheme policy' referred to at paragraph 2 of that letter);

b. all documents evidencing or recording the basis upon which the letter asserts that the 'verbal advice' described at paragraph 3 of the letter:

i. was provided; and

ii. 'should have' indicated to sailors the things referred to in the fourth sentence in paragraph 3 of the letter,

(including but not limited to all documents evidencing or recording correspondence sent or received by Competency Management Cell staff at HMAS Cerberus regarding the 'verbal advice' described at paragraph 3 of the letter);

c. all documents evidencing or recording the consultation between Defence and 'relevant bodies, including State Training Authorities' described at paragraph 5 of the letter, including such consultation both before the letter and after the letter;

d. all documents evidencing or recording the basis for the assertion in the letter at paragraph 6 that Certificate III Electrical Fitter training is considered more beneficial than the Certificate IV;

e. all drafts of the Rear Admiral Uzzell's letter, and all emails sent or received by Navy personnel attaching drafts of the letter;

f. all emails sent or received by Rear Admiral Uzzell in relation to the Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme and/or the communications sent to sailors on 13 June 2014 in the period from 1 April 2014 to 14 June 2014.

11. In relation to the notice with subject 'MT2010 Certificate IV Contracts' provided to sailors on or about 14 June 2014 or 15 June 2014:

a. all documents evidencing or recording the reasons for or basis upon which the notice stated at paragraph 2 that the Certificate IV 'is not able to be achieved within the agreed 48 months';

b. all documents evidencing or recording the consultation with state training authorities referred to at paragraph 3 of the notice;

c. all documents evidencing or recording the decision-making process, and the decision, to suspend the Certificate IV contracts referred to at paragraph 3 of the Notice;

d. all drafts of the notice, and all emails sent or received by Navy personnel attaching drafts of the notice.

12. All documents evidencing or recording the information provided on the 'TA-ENG website' about:
  - a. the Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme; and/or
  - b. the decision to no longer continue with Certificate IV training;
  - c. advice to sailors that they needed to cancel their existing contract and/or vary their existing contract and/or sign a new contract.
13. All documents evidencing or recording (including but not limited to emails sent or received by Navy personnel):
  - a. the decision-making process in relation to, and the decision to, request, require or advise sailors in the MT 2010 Programme that they needed to cancel their existing contract, and/or vary their existing contract, and/or sign a new contract;
  - b. the preparation of documentation to provide to such sailors for those sailors to vary or cancel their existing contract;
  - c. the provision of such documentation to the Plaintiff.
14. In relation to the letter from Rear Admiral Uzzell dated 13 February 2015 with title 'MT 2010 Career Continuum Update':
  - a. all documents, including presentation materials, presentation notes, speaking notes, information sheets and slides used in the series of MT 2010 roadshows in 2014 by Director Training Authority-Engineering, Director Navy Workforce Management, and staff from the Navy Personnel Career Management Agency, referred to in paragraph 2 of the letter;
  - b. all drafts of Rear Admiral Uzzell's letter, and all emails sent or received by Navy personnel attaching drafts of the letter;
  - c. all emails sent or received by Rear Admiral Uzzell in relation to the Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme in the period from 1 December 2014 to 28 February 2015.
15. In relation to the direction by the Deputy Chief of the Navy in March 2012 that an audit be conducted into the MT 2010 Programme:
  - a. a copy of the direction by the Deputy Chief of the Navy;

- b. a copy of all documents provided to the Deputy Chief of the Navy regarding the MT 2010 Programme prior to making that direction;
  - c. a copy of all documents evidencing or recording the decision making process in relation to the making of that direction;
  - d. a copy of any report prepared following that audit or any other document prepared following that audit which contained its findings and/or recommendations;
  - e. a copy of any documents referred to in the audit report which relate to Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme;
  - f. any file notes, memoranda, or correspondence created in the course of or for the purpose of the audit which relate to Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme;
  - g. any documents created or received by the person(s) who carried out the audit and/or authored the audit report during the course of their involvement in the audit, which relate to Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme, including any working files, notes and documents obtained in the course of the audit.
16. In relation to the MT2010 Steering Committee which the Navy established after the audit which had been directed by the Deputy Chief of Navy in March 2012:
- a. all documents evidencing or recording the establishment of that Steering Committee and/or the reasons for the establishment of that Steering Committee;
  - b. all documents recording or evidencing meetings or workings of that Steering Committee, including but not limited to minutes of meetings, meeting agendas, and papers or memoranda or other documents prepared for or by the Steering Committee;
  - c. all documents referred to in minutes of meeting or meeting agendas of that Steering Committee.
17. The following documents in relation to the Defence internal audit report dated September 2013 which is referred to at paragraph 4.50 of the ANAO Report:
- a. a copy of the internal audit report itself;
  - b. all drafts of the audit report;



- c. all correspondence between Defence and the ANAO regarding the Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme, including correspondence in October 2014 referred to at footnote 127 of ANAO report;
  - d. a copy of any documents referred to in the report which relate to Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme;
  - e. any file notes, memoranda, or correspondence created in the course of or for the purpose of the audit which relate to Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme;
  - f. a copy of any documents created or received by the person(s) who carried out the audit and/or authored the audit report during the course of their involvement in the audit, which relate to Certificate IV and/or training for the role of Marine Technician and/or the MT 2010 Programme, including any working files, notes and documents obtained in the course of the audit.
18. Any documents recording or evidencing any analysis, review, investigation, or audit of, or any inquiry into the Navy's failure to deliver training or decision to no longer provide training to or the Navy's inability to provide training to enable sailors to achieve a Certificate IV and/or training for the role of Marine Technician, and/or the MT 2010 Programme, including but not limited to:
- a. any meeting agendas or minutes concerning or referring to any such analysis, review, investigation, audit, or inquiry;
  - b. drafts of any such analysis, review, investigation, audit, or inquiry;
  - c. any such analysis, review, investigation, audit, or inquiry conducted by any internal Navy audit team;
  - d. any file notes, memoranda, or correspondence created in the course of or for the purpose of any such analysis, review, investigation, audit, or inquiry, which relate to the Navy's failure to deliver training or decision to no longer to provide training to enable sailors to achieve a Certificate IV and/or training for the role of Marine Technician, and/or the MT 2010;
- excepting any documents created for the purposes of this proceeding.
19. The Navy's Report on the Strategic Review of Naval Engineering of 12 November 2009, referred to on pages 102 and 103 of the ANAO Report.

20. Any other document of which the Commonwealth (including, for the avoidance of doubt, any external or internal lawyer acting for the Commonwealth) is aware, without conducting searches for the specific purpose of identifying documents responsive to this category only:
  - a. on which the defendant relies or intends to rely;
  - b. which the defendant considers adversely affects its case;
  - c. which the defendant considers supports its case;
  - d. which the defendant considers adversely affects the plaintiff's case; or
  - e. which the defendant considers supports the plaintiff's case.