

NOTICE OF FILING

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 25/11/2024 8:00:25 AM AEDT
Date Accepted for Filing: 25/11/2024 10:22:51 AM AEDT
File Number: NSD1689/2024
File Title: JOANNE TARNAWSKY v COMMONWEALTH OF AUSTRALIA AS
REPRESENTED BY THE DEPARTMENT OF FINANCE & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 17

Rule 8.05(1)(a)

Statement of claim

No. _____ of 2024

Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

Joanne Tarnawsky

Applicant

The Commonwealth of Australia as represented by the Department of Finance

First Respondent

Richard Marles

Second Respondent

Timothy Gartrell

Third Respondent

A. PARTIES

1. The Applicant, Ms Joanne Tarnawsky (**Ms Tarnawsky**), is a natural person, capable of suing in her own name.
2. The First Respondent, the Commonwealth of Australia, as represented by the Department of Finance (the **Commonwealth**):
 - a. is a national system employer within the meaning of s 14(1)(b) of the *Fair Work Act 2009* (Cth) (the **FW Act**);
 - b. was from 5 August 2021 until 4 November 2024, covered by the *Commonwealth Members of Parliament Staff Enterprise Agreement 2020-23* (the **2020-23 EA**);

Filed on behalf of (name & role of party)	The Applicant, Joanne Tarnawsky
Prepared by (name of person/lawyer)	Michael Bradley
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- c. is from 5 November 2024, covered by the *Commonwealth Members of Parliament Staff Enterprise Agreement 2024-7* (the **2024-27 EA**); and
 - d. is an employer of the Applicant pursuant to ss 3AA and 11(2) of the *Members of Parliament (Staff) Act 1984* (Cth) (the **MOPS Act**).
3. The Second Respondent, Mr Richard Marles (**Mr Marles**), is:
 - a. a member of the House of Representatives in the Parliament of Australia, for the seat of Corio in Victoria;
 - b. the Minister for Defence and Deputy Prime Minister;
 - c. an office-holder within the meaning in the definition in s 3 of the MOPS Act; and
 - d. an employer, on behalf of the Commonwealth, of the Applicant, within the meaning of ss 3AA and 11(2) of the MOPS Act.
4. The Third Respondent, Mr Timothy Gartrell (**Mr Gartrell**), is a natural person, capable of being sued in his own name, and is the Chief of Staff to the Prime Minister, Mr Anthony Albanese.

B. MS TARNAWSKY'S EMPLOYMENT

B.1 The Commonwealth and Mr Marles' powers to employ personal employees

5. At all material times, the MOPS Act provided that, inter alia:
 - a. pursuant to s 11(2), a Minister, on behalf of the Commonwealth, may employ a person, under a written agreement, as a 'personal employee' as defined;
 - b. pursuant to s 12(1), the power conferred by s 11(2) is not exercisable other than in accordance with arrangements approved by the Prime Minister, and the exercise of that power is subject to such conditions as determined by the Prime Minister; and
 - c. pursuant to s 12(2), the Prime Minister may, in writing, determine that a Minister may employ a person, under a written agreement, as a personal employee; and
 - d. pursuant to ss 13(2) and 13(3), the Prime Minister may determine the terms and conditions of employment of a person employed under Part III of the MOPS Act (other than prescribed terms and conditions, as defined in s 13(1) of the MOPS Act).

6. At all material times, persons employed by office-holders under the MOPS Act including Ms Tarnawsky were defined as ‘personal employees’:
 - a. pursuant to cl 67 of the 2020-23 EA, if they were employed under Part III of the MOPS Act and were employed in the positions in Attachment A and Attachment B of the Agreement, including in the position of ‘principal adviser’; and
 - b. pursuant to cl 11 of the 2024-7 EA, if they were employed under Part III of the MOPS Act and by a Minister on behalf of the Commonwealth as a ‘personal employee (Ministerial)’, including in the position of ‘senior adviser’.
7. Pursuant to s 13(1) of the MOPS Act, at all material times, persons employed by office-holders under the MOPS Act including Ms Tarnawsky were subject to the terms and conditions of employment including as set out in the agreement under which the person was employed, any fair work instruments, within the meaning of the FW Act, that apply to the person, and any determinations of the Prime Minister as contemplated by ss 13(2)-(3).

B.2 Ms Tarnawsky’s employment by the Commonwealth and Mr Marles

8. On 1 June 2022, the Governor General swore Mr Marles into the cabinet positions of Deputy Prime Minister and Minister for Defence.
9. On the morning of 1 June 2022, Mr Marles and Ms Tarnawsky met in Mr Marles’ office in Parliament House and had a conversation during which:
 - a. Mr Marles offered the role of his Chief of Staff to Ms Tarnawsky (the **Offer**); and
 - b. Ms Tarnawsky agreed to take the role on an interim basis, subject to her discussing the role with her family and an alternative prospective employer.

Particulars

Conversation between Mr Marles and Ms Tarnawsky at Mr Marles’ office in Parliament House on 1 June 2022. During the conversation, Mr Marles said words to the effect of *“Jo, you are like family. You know me. You know what I need to run an office. You know government”*.

10. Ms Tarnawsky was not provided with a position description which set out the duties and responsibilities involved in the Chief of Staff role.
11. On or around 8 June 2022, being around one week after the Offer was made, Mr Marles and Ms Tarnawsky met in Mr Marles’ office in Parliament House and had a conversation during which:

- a. Ms Tarnawsky verbally accepted the Offer;
 - b. Ms Tarnawsky then expressed concern that her friendship with Mr Marles may be impacted by the intensity of the role. Mr Marles responded with words to the effect of “*that would never happen*”; and
 - c. Ms Tarnawsky then suggested she and Mr Marles meet to discuss her performance in the role once every six months. Mr Marles responded with words to the effect of “*No. You just keep going until you can’t do it anymore and then just come and let me know*”.
12. On 8 June 2022, Mr Marles, on behalf of the Commonwealth, and Ms Tarnawsky entered into a contract of employment where Mr Marles agreed, on behalf of the Commonwealth, to employ Ms Tarnawsky in the role of Chief of Staff (the **Contract**).

Particulars

The Contract of employment was in writing and comprised a contract of employment signed by Ms Tarnawsky and Mr Marles in counterparts on 8 June 2022. A copy of this Contract is in the possession of the Applicant and may be provided upon request.

B.2.1 Terms of the Contract

13. The express terms of the Contract, relevantly, include that:
- a. Ms Tarnawsky’s employment commenced on 1 June 2022;
 - b. Ms Tarnawsky was employed in the classification of ‘Principal Adviser’;
 - c. Ms Tarnawsky was employed on a full-time ongoing basis; and
 - d. Ms Tarnawsky was to be paid a salary of \$270,710;

Particulars

The terms at paragraphs (a) to (d) above were contained on page 1 of the Contract dated 8 June 2022.

- e. Ms Tarnawsky’s terms and conditions of employment included those set out in the Contract, the 2020-23 EA (and the superseding 2024-27 EA), and were also subject to any determination made by the Prime Minister or Special Minister of State under the MOPS Act.

Particulars

Clause 4 of the Contract dated 8 June 2022.

14. Further, it is an implied term of the Contract that the Commonwealth and Mr Marles would provide Ms Tarnawsky with a safe workplace.

Particulars

The term is implied by law.

B.2.2 Terms of the 2020-23 EA and 2024-7 EA

15. The 2020-23 EA and the 2024-27 EA are enterprise agreements made under Part 2-4 of the FW Act.
16. The 2020-23 EA and the 2024-27 EA at all material times cover and apply to:
 - a. Ms Tarnawsky; and
 - b. Mr Marles on behalf of the Commonwealth.

Particulars

Clause 2 of the 2020-23 EA provided that it covered (a) the Minister on behalf of the Commonwealth and (b) persons employed under Part III and Part IV of the MOPS Act, at the classifications listed in Attachments A, B and C of the 2020-23 EA. Ms Tarnawsky was employed under Part III of the MOPS Act, at the classification of Principal Adviser, which is contained in Attachment A of the 2020-23 EA.

Clause 2 of the 2024-27 EA provided that it covered (a) the Minister on behalf of the Commonwealth of Australia, and (b) the persons employed under the MOPS Act, at the classifications listed in Attachments A, B and C of the 2024-7 EA. Ms Tarnawsky is employed under Part III of the MOPS Act, at the classification of Senior Advisor, which is contained in Attachment A of the 2024-27 EA.

17. The terms of the 2020-23 EA and the 2024-27 EA prescribe terms applicable:
 - a. for the prevention and resolution of disputes of matters arising under the EA; and
 - b. for the termination of employment of persons employed under the EA.

Particulars

Part I and cl 66 of the 2020-3 EA, and Part I and cl 77 of the 2024-27 EA.

18. The terms of the 2024-27 EA, relevantly, also include that:
 - a. the Commonwealth values a safe, respectful and inclusive workplace free from physical and psychological harm, harassment, discrimination and bullying; and
 - b. the WHS Act applies in relation to employment under the MOPS Act.

Particulars

Clauses 67.1 and 70.1 of the 2024-27 EA.

B.2.3 Terms of the MOPS Act

19. Pursuant to s 16 of the MOPS Act, Ms Tarnawsky's employment can be terminated on notice by Mr Marles.
20. Pursuant to the employment principles set under s 6 of the MOPS Act, Ms Tarnawsky is entitled to a workplace, inter alia:
 - a. safe and free from all forms of bullying and harassment; and
 - b. which facilitates consultation with employees about matters that affect the workplace.

B.2.4 Terms of the WHS Act

21. At all material times, the WHS Act:
 - a. pursuant to s 5, applied to the Commonwealth as a 'person conducting a business or undertaking';
 - b. pursuant to s 247(3), applied to Mr Marles, in his capacity as a Member of the House of Representatives, in respect of the business or undertaking of the Commonwealth constituted by the provision by the Commonwealth of support for the functioning of Parliament; and
 - c. pursuant to s 5, applied to the Commonwealth and Mr Marles' relationship with Ms Tarnawsky as an employee of each.
22. At all material times, the WHS Act provided that the Commonwealth and Mr Marles owe Ms Tarnawsky a duty of care to ensure, so far as is reasonably practicable:
 - a. pursuant to s 19, her health and safety while engaged at work; and

- b. pursuant to s 20, that her health and safety at work was not put at risk from work carried out as part of the conduct of the business or undertaking,

where pursuant to s 3, Ms Tarnawsky's 'health' includes her psychological health.

B.2.5 Terms of the FW Act

- 23. At all material times, Part 6-4B of the FW Act provided a mechanism to deal with, and offer protection to, employees in relation to the harm caused by workplace bullying.
- 24. At all material times, s 341 of the FW Act provided that an employee has a workplace right where, inter alia:
 - a. the person is entitled to the benefit of, or has a role or responsibility under, a workplace law, workplace instrument or order made by an industrial body;
 - b. the person is able to initiate, or participate in, a process or proceedings under a workplace law or workplace instrument, or
 - c. the person is able to make a complaint or inquiry in relation to his or her employment.
- 25. At all material times, Ms Tarnawsky has been entitled to the benefit of the following workplace laws, instruments, or process or proceedings under workplace law or instruments, and thereby had a workplace right/s within the meaning of s 341(1)(a) of the FW Act:
 - a. Ms Tarnawsky's entitlement to make a complaint or inquiry in relation to her employment;

Particulars

Ms Tarnawsky was able to make inquiries and complaints to Mr Marles and the Commonwealth in relation to her employment both as an ordinary incident of her employment by Mr Marles on behalf of the Commonwealth, and pursuant to s 341(1)(c) of the FW Act, cl 66 of the 2020-23 EA, cl 77 of the 2024-27 EA, and / or s 6 of the MOPS Act.

- b. Ms Tarnawsky's entitlement to implement a process to resolve disputes, including disputes relating to bullying and harassment.

Particulars

Ms Tarnawsky was entitled to apply to the Fair Work Commission for an order to stop the bullying pursuant to pt 6-4B of the FW Act, and was entitled to participate in discussions about disputes with her employing Member pursuant to cl 66.3 of the 2020-23 EA and / or cl 77.4 of the 2024-27 EA.

- c. Ms Tarnawsky's entitlement to a safe workplace, including a workplace free from psychosocial hazards such as bullying.

Particulars

Ms Tarnawsky was entitled to a safe workplace as an implied term to the Contract, and to a safe workplace free from bullying and harassment by pt 6-4B of the FW Act, ss 19, 20 of the WHS Act, s 6 of the MOPS Act, and / or cl 67 of the 2024-7 EA.

C. Events during Ms Tarnawsky's employment

26. From 8 June 2024 to 30 April 2024, Ms Tarnawsky performed the role of Chief of Staff to Mr Marles, a role which involved:
 - a. providing strategic leadership of Mr Marles' staff employed to assist him fulfil his duties as Deputy Prime Minister and Minister for Defence (and, in the Prime Minister's absence, as Acting Prime Minister), which comprised of a team of over 20 persons;
 - b. managing Mr Marles' staff resources and processes in managing policy work, sensitive intelligence, strategic programming, governance requirements, media communications, recruitment, Mr Marles' diary management, Mr Marles' international and domestic travel, and political, electorate, industry and departmental engagement;
 - c. engaging with the Prime Minister's office, other Ministers and their offices, Departmental Secretaries, military chiefs, and intelligence agencies to manage complex and sensitive national security issues;
 - d. meeting with ambassadors, senior industry and business representatives, senior Defence personnel, and parliamentary stakeholders with or on behalf of Mr Marles;
 - e. ensuring Mr Marles was provided with high quality, expert, and timely advice on priority issues, and appropriately briefed to make critical decisions; and

- f. ensuring Mr Marles' priorities were understood, pursued and implemented, steering Mr Marles and his team through day-to-day office management, and mitigating everyday problems.
27. Throughout this period, Ms Tarnawsky's colleagues, including Mr Marles, provided her with:
- a. regular praise for her high performance of this role; and
 - b. no negative performance reviews or feedback that she was underperforming in the role or not meeting expectations.

Particulars

For example, Mr Marles regularly praised Ms Tarnawsky's work, usually in private discussions and also in conversation with third parties and group settings, and often in the context of acknowledging that it was the best office Mr Marles had ever worked in, and he praised Ms Tarnawsky by acknowledging "*that's all you, Jo*". Mr Marles also passed on complimentary messages from various stakeholders and noted he had never received such positive feedback from so many people, again acknowledging "*that's all you, Jo*".

Ms Tarnawsky has also been highly sought after as a mentor for other chiefs of staff, and has been described by Minister Pat Conroy as "*one of the people who hold the government together*" and by former Chief of the Defence Force Angus Campbell as "*the best chief of staff*".

During her secondment to the Office of Staff Support, Ms Tarnawsky was also tasked with drafting a best practice guide to the role of being a Chief of Staff.

C.1 Experience of bullying and harassment

28. From in or around May 2023, Ms Tarnawsky was subject to an escalating course of conduct from a senior staff member also employed by Mr Marles as Director of Media, Ms Kate Hanns (**Ms Hanns**), which amounted to bullying and harassment.

Particulars

This course of conduct from Ms Hanns included:

- i. routinely not responding to or acknowledging messages from Ms Tarnawsky, undermining her authority as Chief of Staff;
- ii. belittling and criticising Ms Tarnawsky in front of other staff, including within Ms Tarnawsky's earshot or within group settings such as in team meetings or in the DPMO Senior Leaders group chat on the 'Signal' encrypted messaging mobile application;
- iii. withholding information from Ms Tarnawsky which was required for the routine performance of her role, such as communications information or leave arrangements;
- iv. isolating Ms Tarnawsky from team interactions, activities and social events; and
- v. treating Ms Tarnawsky in an abrasive, hostile and exclusionary manner which was not directed at Mr Marles or other team members.

29. From early 2024, Ms Tarnawsky also experienced bullying conduct from other members of Mr Marles' staff.

Particulars

For example, a senior member of Mr Marles' staff excluded Ms Tarnawsky from information and discussion on significant issues required for the routine performance of Ms Tarnawsky's role and undermined her authority as Chief of Staff.

Further particulars of the individuals involved and their actions will be provided on request.

30. On 22 April 2024, Ms Tarnawsky departed Australia with Mr Marles to undertake a week-long series of official visits to multiple countries.

Particulars

Ms Tarnawsky and Mr Marles travelled to the United Arab Emirates, Canakkale in Turkey, Warsaw and Rzeszow in Poland, and Lviv in Ukraine, travelling by plane and / or car, and were accompanied by other members of Mr Marles' staff including Ms Hanns, along with other Commonwealth employees. During that trip, Ms Tarnawsky worked under immense pressure to work around last-minute itinerary changes to ensure the expense to taxpayers and risk to staff was justified, of what would otherwise have been a "\$350k war zone coffee".

31. Between 22 to 29 April 2024, Ms Tarnawsky was subject to a continued course of conduct from Ms Hanns, and at times by other staff members also employed by Mr Marles, which amounted to bullying and harassment.

Particulars

Further to the particulars at paragraph 28, this course of conduct from Ms Hanns included:

- i. gossiping about Ms Tarnawsky while in close proximity to Ms Tarnawsky and Mr Marles;
- ii. refusing to engage with Ms Tarnawsky on a crisis issue with regard to the Ukraine program and then unreasonably criticising Ms Tarnawsky's remedial efforts;
- iii. excluding Ms Tarnawsky from team outings to which all other staff were invited; and
- iv. excluding Ms Tarnawsky from a team "family" photograph.

C.2 Disclosure of bullying incidents to Mr Marles

32. On or around 27 April 2024, Ms Tarnawsky and Mr Marles departed Poland, to return to Australia, transiting through Bahrain.
33. During the course of those flights, Ms Tarnawsky sent a direct message to Mr Marles on the Signal encrypted mobile messaging application, to inform Mr Marles:
- a. of a bullying incident set out at particular (i) to paragraph 31; and
 - b. that this incident formed part of a regular pattern of bullying as described at paragraphs 28 to 31 (together, **the 29 April complaint**).

Particulars

Copy of Signal message sent from Ms Tarnawsky to Mr Marles, which is in the possession of the Applicant and may be provided upon request. Mr Marles' Signal messages were set to mutually disappear 4 weeks after being sent.

34. On 29 April 2024, while in transit between Bahrain and Australia, at or around 4.42am, Mr Marles responded to Ms Tarnawsky's Signal message to inform her that:
- a. Ms Tarnawsky had done "*amazing*" work to "*pull off the Ukraine visit*";
 - b. Mr Marles did not doubt her concerns and knew "*things are not going well*";

- c. Mr Marles “*valued*” Ms Tarnawsky and the job she had done and that he was “*deeply grateful*”; and
- d. the two should “*chat today properly*” that afternoon.

Particulars

Copy of Signal message sent from Mr Marles to Ms Tarnawsky, which is in the possession of the Applicant and may be provided upon request. Mr Marles’ Signal messages were set to mutually disappear 4 weeks after being sent.

- 35. The flight landed in Melbourne at or around 7.00am. Before disembarking the plane, Mr Marles addressed his staff to provide Ms Tarnawsky with a special acknowledgement for her “*amazing*” work on the trip.
- 36. Later that day, Ms Tarnawsky and Mr Marles agreed to postpone their proposed discussion until 30 April 2024.

Particulars

Copy of Signal messages sent between Mr Marles and Ms Tarnawsky, which are in the possession of the Applicant and may be provided upon request. Mr Marles’ Signal messages were set to mutually disappear 4 weeks after being sent.

C.3 Removal from role of Chief of Staff

- 37. On the evening of 29 April 2024, Mr Marles spoke to Mr Gartrell and informed him that he no longer wanted Ms Tarnawsky to perform her role as Chief of Staff.
- 38. Mr Gartrell did not inform Ms Tarnawsky of the conversation with Mr Marles or intervene to prevent Mr Marles acting in the manner he proposed.
- 39. From 29 April 2024, Mr Gartrell acted as pleaded below at paragraphs 44 to 66 to assist Mr Marles in preventing Ms Tarnawsky from performing her role.
- 40. At or around 11.11am on 30 April 2024, Mr Marles called Ms Tarnawsky.
- 41. During that phone call, Ms Tarnawsky informed Mr Marles that, inter alia, she had been attempting to manage the bullying and harassment behaviour on her own, but now sought Mr Marles’ assistance (the **30 April complaint**).
- 42. In response, Mr Marles informed Ms Tarnawsky that, inter alia:

- a. he did not consider Ms Tarnawsky's experience of bullying and harassment to be "*fixable*";
- b. there had been issues with or related to Ms Tarnawsky for "*over a year*", and he wanted to "*finish*" dealing with the issue immediately;
- c. Ms Hanns (being the senior staff member identified at paragraph 28, who Ms Tarnawsky identified as being primarily responsible for the bullying and harassment), meant so much more to Mr Marles than just an important staff member;
- d. Ms Tarnawsky was not to travel to Hawaii with Mr Marles on an official visit, for which she was scheduled to depart on the following day, being 1 May 2024;
- e. Ms Tarnawsky was "*not stood down*", but was directed to take an immediate break from work, and to find alternative employment; and
- f. Ms Tarnawsky could depart the role "*with dignity*" and after taking time to find a suitable job.

Particulars

Conversation between Mr Marles and Ms Tarnawsky via Signal call on 30 April 2024 at 11.11am.

43. During this conversation, Ms Tarnawsky informed Mr Marles, inter alia, that she would try to find alternative employment, but if that was not possible, she would need to return to her role.

Particulars

Conversation between Mr Marles and Ms Tarnawsky via Signal call on 30 April 2024 at 11.11am.

44. Through the remainder of this day, and further to Ms Tarnawsky's call with Mr Marles at 11.11am, Ms Tarnawsky had further conversations with Mr Gartrell and Mr Marles in which it was agreed that:
 - a. Ms Tarnawsky may need to return to the role for weeks or months until she could secure alternative employment of sufficient seniority and pay;
 - b. Ms Tarnawsky reinforced her need for privacy while she searched for alternative employment;

- c. members of Mr Marles' office would be informed that Ms Tarnawsky was experiencing issues at home and needed to commence personal leave.

Particulars

Conversation between Ms Tarnawsky and Mr Gartrell, which took place in Mr Gartrell's office at Parliament House at approximately 12.15pm, and a second conversation between Ms Tarnawsky and Mr Gartrell in the Prime Minister's sitting room at approximately 3.45pm, and during which the two discussed matters including Ms Tarnawsky's need for privacy, confidentiality and dignity in departing the role, support in finding a new job, difficulties in Ms Tarnawsky's home situation, and why Mr Marles' attitude to Ms Tarnawsky had changed so dramatically after she raised her concerns about Ms Hanns' behaviour.

Copies of Signal message between Ms Tarnawsky and Mr Marles at 12.32pm, 1.52pm, 1.58pm, 1.59pm, 2.00pm, 2.24pm, 5.45pm and 5.49pm, which are in the possession of the Applicant and may be provided upon request. Mr Marles' Signal messages were set to mutually disappear 4 weeks after being sent.

C.4 Subsequent treatment of Ms Tarnawsky from 30 April 2024

45. On 30 April 2024, Ms Tarnawsky was informed that Mr Marles had informed Ms Samantha Ferry (**Ms Ferry**, Director of Legal, Governance & Corporate in Mr Marles' team, and also known as Ms Samantha Babic) that she had gone "*home to deal with a family issue*", which would take "*weeks*" to deal with.

Particulars

Copy of Signal message from Mr Marles to Ms Tarnawsky at 2.00pm, which is in the possession of the Applicant and may be provided upon request. Mr Marles' Signal messages were set to mutually disappear 4 weeks after being sent.

46. On 30 April 2024, after ending the call with Mr Marles described at paragraphs 40 to 43, Ms Tarnawsky was informed through conversations with Mr Gartrell and Signal messages exchanged with Mr Marles that at least two people had been informed of Mr Marles' decision that he no longer wanted Ms Tarnawsky to perform her role as Chief of Staff, prior to Mr Marles informing Ms Tarnawsky.

Particulars

Conversation between Ms Tarnawsky and Mr Gartrell, which took place in Mr Gartrell's office at Parliament House at approximately 12.15pm.

Signal message from Mr Marles to Ms Tarnawsky at 1.58pm. Mr Marles' Signal messages were set to mutually disappear 4 weeks after being sent.

Signal message from Ms Tarnawsky to Mr Gartrell at 5.31pm. Mr Gartrell's Signal messages were set to mutually disappear 1 week after being sent.

Conversation between Ms Tarnawsky and Mr Gartrell via Signal call at 5.39pm.

A copy of each Signal message is in the possession of the Applicant and may be provided upon request.

47. On 1 May 2024, Ms Tarnawsky:
- a. commenced a period of leave, which she understood was to be for a number of weeks; and
 - b. did not travel to Hawaii with Mr Marles.
48. Between 1 to 6 May 2024, Ms Tarnawsky did not receive any communications from Mr Marles.
49. On 8 May 2024, Ms Tarnawsky was informed that:
- a. Mr Marles and Mr Gartrell considered that Ms Tarnawsky should take an alternative role outside of Mr Marles' office with lower status and responsibility; and
 - b. Mr Gartrell had decided that Ms Tarnawsky was restricted from returning to her workspace at Mr Marles' office.

Particulars

Conversation between Ms Joanna Brent (**Ms Brent**, of the Office of Staff Support) and Ms Tarnawsky via Signal call on 8 May 2024.

50. On 9 May 2024, in response to a request from Ms Tarnawsky to temporarily return to work to network during budget week, Mr Gartrell informed Ms Tarnawsky that she should prepare a written proposal to seek permission to do so, along with a plan for next steps which could be provided to Mr Marles.

Particulars

Conversation between Mr Gartrell and Ms Tarnawsky via Signal call on 9 May 2024.

51. Between 11 to 12 May 2024, Ms Tarnawsky and Mr Gartrell discussed Ms Tarnawsky's proposal to temporarily return to work during budget week.
52. Mr Gartrell informed Ms Tarnawsky that this proposal was approved by Mr Marles, and that it was agreed that, inter alia:
 - a. Ms Tarnawsky "*should have agency*" in her "*story about leaving*";
 - b. being at budget week would assist Ms Tarnawsky to network with prospective employers; and
 - c. Ms Tarnawsky was entitled to a safe workplace.
53. Mr Gartrell informed Ms Tarnawsky that her proposal to attend the daily team meetings within Mr Marles' team, and the joint weekly Defence Ministers' offices meeting, was denied.

Particulars

Signal messages between Ms Tarnawsky and Mr Gartrell on 11 to 12 May 2024. Mr Gartrell's Signal messages were set to mutually disappear 1 week after being sent. A copy of these Signal messages is in the possession of the Applicant and may be provided upon request.

54. On 16 May 2024, Ms Tarnawsky met Mr Marles and Mr Gartrell at Parliament House while Ms Tarnawsky was attending for budget week to network with prospective employers, which had been agreed between Mr Marles, Mr Gartrell, and Ms Tarnawsky. During this meeting:
 - a. Ms Tarnawsky informed Mr Marles and Mr Gartrell that she would take leave in an attempt to secure appropriate alternative employment, but that she intended to return to her role as Chief of Staff in mid-June until appropriate alternative employment had been secured;
 - b. Mr Marles informed Ms Tarnawsky that she should take approximately half a year of leave "*off the books*";
 - c. Ms Tarnawsky did not agree to take this amount of leave.

Particulars

Conversation between Mr Marles, Ms Tarnawsky and Mr Gartrell on 16 May 2024 at Parliament House.

55. On 20 May 2024, Ms Tarnawsky submitted a request for personal leave for a four-week period (21 May 2024 to 20 June 2024), which included the words “*DPM and PMO COS have been informed. My current return to work day will be Friday 21 June*”. Ms Tarnawsky’s leave request was approved by Ms Ferry at 3.38pm that day.

Particulars

Email from “wf-batch@sdo.gov.au” to Ms Tarnawsky on 20 May 2024 at 3.38pm; email from Ms Tarnawsky to “reception@pm.gov.au” at 2.01pm.

56. On 21 May 2024, Ms Tarnawsky ceased receiving the daily team email showing Mr Marles’ calendar for the next day, along with other team messages.
57. On 20 June 2024, the day prior to Ms Tarnawsky’s planned return to work in Mr Marles’ office, Mr Gartrell informed Ms Tarnawsky that she could “*never*” return to work in Mr Marles’ office.

Particulars

Conversation between Ms Tarnawsky and Mr Gartrell on 20 June 2024 via Signal call.

58. Also on 20 June 2024, Ms Tarnawsky’s ability to view the details of appointments in Mr Marles’ electronic diary was restricted.
59. On 28 June 2024, Mr Gartrell and Ms Tarnawsky discussed the following matters:
- a. Mr Gartrell informed Ms Tarnawsky that Ms Tarnawsky should take a secondment to the Office of Staff Support;
 - b. Ms Tarnawsky informed Mr Gartrell that she had ceased receiving team emails, that her ability to view the details of appointments in Mr Marles’ electronic diary was restricted, and that her dog pictures had been removed from the office’s shared pet wall; and
 - c. Mr Gartrell informed Ms Tarnawsky that Ms Tarnawsky would have a right of return to her position, and in the meantime an acting Chief of Staff would be installed as a temporary replacement.

Particulars

Conversation between Ms Tarnawsky, Mr Gartrell, and Ms Brent on 28 June 2024 in Mr Gartrell's office at Parliament House.

60. On 3 July 2024, Ms Tarnawsky was informed by the solicitors for the Commonwealth (**Ashurst**) that:
- a. an Acting Chief of Staff had been appointed to assist Mr Marles and “*acting arrangements will continue*”;
 - b. Ms Tarnawsky would “*continue to hold her substantive position as Chief of Staff to the Deputy Prime Minister*”, a position which “*continues and is not effected [sic] by the secondment or the cessation of the secondment*”;
 - c. Ms Tarnawsky's office would remain set up “*as it is*”, subject to being used as an overflow meeting space or office for visiting staff;
 - d. Ms Tarnawsky was only permitted to visit her office if she provided the Acting Chief of Staff with one day's prior notice of her intention to do so; and
 - e. Ms Tarnawsky would not be removed from relevant Signal group chats.

Particulars

Email from Ashurst to SHG Lawyers dated 3 July 2024.

61. Ms Tarnawsky was subsequently informed that the arrangements agreed to by the Commonwealth as described at paragraph 60 were not being complied with, including as described at paragraphs 62 to 64 below.
62. On or around 13 August 2024, Ms Tarnawsky was excluded from a meeting of all Chiefs of Staff.

Particulars

Conversation between Ms Brent and Ms Tarnawsky which took place at the Office of Staff Support on or around 13 August 2024.

63. On 23 August 2024, Ms Tarnawsky was informed that a member of Mr Marles' staff had informed a third party that she no longer worked for Mr Marles.
64. On 23 August 2024, Ms Tarnawsky was informed that the Acting Chief of Staff had moved into Ms Tarnawsky's office, which occurred without notification to Ms Tarnawsky, whose personal belongings remained in the office.

Particulars

Conversation between Ms Tarnawsky and the Chief of Staff to Minister Matt Keogh, Ms Catherine Bergin, on 23 August 2024 at Parliament House.

65. From 12 August 2024 onwards, Ms Tarnawsky inferred from a cessation of activity in Mr Marles' team's usual Signal group chat that, whilst she was not removed from those groups, a new group or groups had been established to circumvent the agreement that she would remain involved.
66. From 30 April 2024 to date, Ms Tarnawsky was not provided with any certainty by Mr Marles, Mr Gartrell, or the Commonwealth as to her role as an employee of Mr Marles or the Commonwealth, including in being:
 - a. excluded from the usual channels of communication with Mr Marles and his team;
 - b. placed on continually extending periods of secondment, personal, annual or miscellaneous leave; and / or
 - c. not being provided with notice of termination by Mr Marles or the Commonwealth.
67. As a result of the conduct described at paragraph 66, which prevented her from performing her role as Chief of Staff, Ms Tarnawsky experienced distress and anxiety, and fear that her employment would be terminated.
68. Ms Tarnawsky notified the Commonwealth, via the Office of Staff Support, that she was experiencing distress and anxiety, or symptoms of either, and / or fear that her employment would be terminated on at least 25 occasions from 5 May 2024 to 25 September 2024.

Particulars

Communications between Ms Tarnawsky and Ms Brent including Signal messages exchanged on 5 May 2024, 7 May 2024, 8 May 2024, 9 May 2024, 10 May 2024, 15 May 2024, 16 May 2024, 23 May 2024, 4 June 2024, 11 June 2024, 12 June 2024, 13 June 2024, 14 June 2024, 20 June 2024, 21 June 2024, 24 June 2024, 1 July 2024, 2 July 2024, 4 July 2024, 8 August 2024, 12 September 2024, 13 September 2024, 17 September 2024, 25 September 2024. Copies of these Signal messages are in the possession of the Applicant and may be provided upon request.

D. BREACH OF GENERAL PROTECTIONS

D.1 Exercise of workplace rights

69. By making the 29 April complaint and / or the 30 April complaint alleged in paragraphs 33 and 41, Ms Tarnawsky had:

- a. a workplace right to make a complaint or inquiry in relation to her employment;

Particulars

Ms Tarnawsky was able to make inquiries and complaints to Mr Marles and the Commonwealth in relation to her employment both as an ordinary incident of her employment by Mr Marles on behalf of the Commonwealth, and pursuant to s 341(1)(c) of the FW Act, cl 66 of the 2020-23 EA, cl 77 of the 2024-27 EA, and / or s 6 of the MOPS Act.

- b. a workplace right being the ability to participate in or initiate a process to ensure a safe workplace and / or resolve workplace disputes under a workplace instrument; and / or

Particulars

Ms Tarnawsky was entitled to implement a process to ensure a safe workplace free from bullying and harassment by pt 6-4B of the FW Act, and / or and to resolve disputes pursuant to cl 66.3 of the 2020-23 EA and cl 77.4 of the 2024-27 EA.

- c. a workplace right being the benefit of a workplace law to expect a safe workplace free from bullying and harassment.

Particulars

Ms Tarnawsky was entitled to a safe workplace as an implied term to the Contract, and to a safe workplace free from bullying and harassment by pt 6-4B of the FW Act, ss 19-20 of the WHS Act, s 6 of the MOPS Act, and / or cl 67 of the 2024-27 EA.

D.2 Adverse action

70. Mr Marles, in his personal capacity and on behalf of the Commonwealth, and / or Mr Gartrell, prevented Ms Tarnawsky from performing her role as Chief of Staff for the reason, or reasons which included the reason, that Ms Tarnawsky had exercised her workplace rights as set out in paragraph 69 above.

Particulars

The Applicant also relies on the presumption in s 361 of the FW Act and the inferences to be drawn from the matters referred to in (a) and (b).

71. Mr Marles, in his personal capacity and on behalf of the Commonwealth, and / or Mr Gartrell, caused or facilitated Ms Tarnawsky's non-ongoing secondment to the Office of Staff Support for the reason, or reasons which included the reason, that Ms Tarnawsky had exercised her workplace rights as set out in paragraph 69 above.

Particulars

The Applicant also relies on the presumption in s 361 of the FW Act and the inferences to be drawn from the matters referred to in (a) and (b).

72. Mr Marles, in his personal capacity and on behalf of the Commonwealth, and / or Mr Gartrell, caused or facilitated Ms Tarnawsky to be placed on periods of personal or miscellaneous leave from 1 May 2024 to date for the reason, or reasons which included the reason, that Ms Tarnawsky had exercised her workplace rights as set out in paragraph 69 above.

Particulars

The Applicant also relies on the presumption in s 361 of the FW Act and the inferences to be drawn from the matters referred to in (a) and (b).

73. Further, by reason of the matters set out in paragraphs 70 to 72 above, Mr Marles, in his personal capacity and on behalf of the Commonwealth, took adverse action against Ms Tarnawsky within the meaning of Item 1(c) of the table in s 342(1) and s 342(2) of the FW Act.

Particulars

The alteration of Ms Tarnawsky's position was to her prejudice, because it rendered Ms Tarnawsky's employment uncertain and insecure as a result of Mr Marles' adverse action and left her with no substantive role to perform.

The Applicant also relies on the presumption in s 361 of the FW Act and the inferences to be drawn from the matters referred to in (a) and (b).

74. Further, by reason of the matters set out in paragraphs 70 to 72 above, Mr Gartrell took adverse action against Ms Tarnawsky within the meaning of Item 1(c) of the table in s 342(1) and s 342(2) of the FW Act.

Particulars

The alteration of Ms Tarnawsky's position was to her prejudice, because it rendered Ms Tarnawsky's employment uncertain and insecure as a result of Mr Gartrell's adverse action and left her with no substantive role to perform.

The Applicant also relies on the presumption in s 361 of the FW Act and the inferences to be drawn from the matters referred to in (a) and (b).

75. The conduct of Mr Marles and Mr Gartrell as pleaded in paragraphs 70 to 72 above, is taken to be the conduct of the Commonwealth by operation of s 793 of the FW Act, and the common law principles of vicarious liability.
76. By reason of the matters set out in paragraphs 12 to 75 above, Mr Marles, Mr Gartrell and the Commonwealth contravened s 340 of the FW Act.

Particulars

The Applicant relies on s 793 of the FW Act and the common law principles of vicarious liability.

77. By reason of the matters referred to in paragraphs 3 and 37 to 68, Mr Marles was, within the meaning in ss 550(2)(a) and (c) of the FW Act, a person involved in the contravention by the Commonwealth of s 340 of the FW Act.
78. By reason of the matters referred to in paragraphs 4 and 39 to 68, Mr Gartrell was, within the meaning in ss 550(2)(a) and (c) of the FW Act, a person involved in the contravention by the Commonwealth of s 340 of the FW Act.
79. At all material times, by reason of the matters in paragraphs 5 to 7 above, the Commonwealth knew that Ms Tarnawsky was entitled to the workplace rights described at paragraph 69 above.
80. By reason of the matters referred to in paragraph 79 above, the Commonwealth's contravention of s 340 is a serious contravention within the meaning in ss 539 and 577A of the FW Act.

E. LOSS AND DAMAGE

81. By reason of:

- a. the Commonwealth's contraventions of the FW Act, as alleged in paragraphs 70, 71, 72, 73, 74, 75, 76 and 80;
- b. Mr Marles' contraventions of the FW Act, as alleged in paragraphs 70, 71, 72, 73, 75, 76 and 77; and / or
- c. Mr Gartrell's contraventions of the FW Act, as alleged in paragraphs 70, 71, 72, 74, 75, 76 and 78,

Ms Tarnawsky has suffered loss and damage.

Particulars of loss and damage

Ms Tarnawsky has suffered the following loss and damage:

- i. Medical and treatment expenses for the adverse health effects of the contraventions.
- ii. General damage in the form of hurt, distress and humiliation suffered by Ms Tarnawsky because of the contraventions.
- iii. General damage in the form of reputational damage suffered by Ms Tarnawsky because of the contraventions.

Further particulars of loss and damage will be provided before trial.

82. The Applicant accordingly seeks the relief set out in the Originating Application filed with this Statement of Claim.

Date: 25 November 2024



Signed by Michael Bradley

Solicitor for the Applicant

This pleading was prepared by Michael Bradley, solicitor, and Rebecca Davern, of counsel.

Certificate of lawyer

I, Michael Bradley, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 25 November 2024

A handwritten signature in black ink, appearing to be 'MB', with a long horizontal flourish extending to the right.

Signed by Michael Bradley

Solicitor for the Applicant