

NOTICE OF FILING

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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.



Defence of the First Respondent

No. NSD 1689 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work

Joanne Tarnawsky

Applicant

Commonwealth of Australia as represented by the Department of Finance

First Respondent

Richard Marles

Second Respondent

Timothy Gartrell

Third Respondent

This defence is filed on behalf of the First Respondent in response to the Applicant's statement of claim filed on 25 November 2024.

In respect of certain paragraphs of the statement of claim identified below, the First Respondent cross-refers to responses to the paragraphs in the defences of the Second Respondent dated 23 December 2024 (the **Second Respondent's Defence**) and Third Respondent dated 23 December 2024 (the **Third Respondent's Defence**) and adopts the admissions, non-admissions and denials (as applicable) of the Second Respondent and Third Respondent respectively.

Unless otherwise indicated:

- (a) capitalised terms have the same meanings as in the statement of claim;
- (b) references to paragraphs (or sub-paragraphs) refer to paragraphs (or sub-paragraphs) of the statement of claim;

Filed on behalf of (name & role of party)	The Commonwealth of Australia as represented by the Department of Finance (First Respondent)
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- (c) by admitting, not admitting, or denying a paragraph (or sub-paragraph), the First Respondent is admitting, not admitting or denying (as the case may be) every fact alleged in that paragraph (or sub-paragraph) of the statement of claim; and
 - (d) consistent with rr 16.02(3) and 16.07(1) of the *Federal Court Rules 2011* (Cth), the First Respondent pleads to allegations of fact and points of law arising on allegations of fact, but does not plead to bare assertions of law.
1. The First Respondent admits paragraph 1.
 2. As to paragraph 2, the First Respondent:
 - a. admits sub-paragraphs 2(a)-(c);
 - b. denies sub-paragraph 2(d) and says the First Respondent is the Applicant's employer pursuant to s 11(2) (and not s 3AA) of the MOPS Act;
 - c. says the MOPS Act empowers the Second Respondent, on behalf of the First Respondent, to:
 - i. employ the Applicant pursuant to s 11(2) of the MOPS Act to assist him to carry out his duties as an office-holder; and
 - ii. to manage her day-to-day employment;
 - d. says the First Respondent administers the employment framework for staff employed under the MOPS Act and, through the Parliamentary Workplace Support Service, provides human resources support to parliamentarians, office-holders and their staff employed under the MOPS Act.
 3. As to paragraph 3, the First Respondent:
 - a. admits sub-paragraphs 3(a)-(c) and says the Second Respondent is not an employee of the First Respondent;
 - b. denies sub-paragraph 3(d) and:
 - i. refers to and repeats its response at paragraph 2 above; and
 - ii. says the Second Respondent is, on behalf of the First Respondent, the employing individual of the Applicant pursuant to s 3AA of the MOPS Act but is not the Applicant's employer pursuant to s 11(2) of the MOPS Act.
 4. The First Respondent admits paragraph 4 and says the Third Respondent is employed by the Prime Minister, on behalf of the First Respondent, under s 11(2) of the MOPS Act.
 5. The First Respondent does not plead to the assertion of law in paragraph 5.

6. As to paragraph 6, the First Respondent:
 - a. admits:
 - i. the Applicant was a 'personal employee' as defined in clause 67 of the 2020-23 EA from commencement of her employment on 1 June 2022 until 4 November 2024 when the 2020-23 EA ceased operation (**former EA period**);
 - ii. the Applicant was classified as 'principal adviser' under clause 16 and Attachment A of the 2020-23 EA during the former EA period;
 - iii. the Applicant has been a 'personal employee' as defined in clause 11 of the 2024-27 EA since the 2024-27 EA commenced operation on 5 November 2024 (**new EA period**);
 - iv. the Applicant is classified as 'senior adviser' under clause 22 and Attachment A of the 2024-27 EA in the new EA period;
 - v. the Applicant is, and since 8 June 2022 has been, a 'personal employee (Ministerial)' under s 3 of the MOPS Act;
 - vi. as a 'personal employee (Ministerial)' under s 3 of the MOPS Act, the Applicant's employment will terminate automatically on the occurrence of the events described in s 14(1) of the MOPS Act, including where the Second Respondent ceases to be a parliamentarian, changes ministerial portfolio, or ceases to hold a ministerial office (subject to any determination by the Prime Minister under s 15 of the MOPS Act); and
 - b. otherwise denies the paragraph.
7. As to paragraph 7, the First Respondent:
 - a. admits the terms and conditions of employment of the Applicant include those derived from the sources set out in s 13(1) of the MOPS Act; and
 - b. otherwise denies the paragraph.
8. As to paragraph 8, the First Respondent:
 - a. refers to and repeats its response at paragraph 3.a above;
 - b. says the Second Respondent was appointed as Deputy Prime Minister on 23 May 2022 and as Minister for Defence on 1 June 2022; and
 - c. otherwise denies the paragraph.
9. As to paragraph 9, the First Respondent refers to and adopts the response at paragraph 9 of the Second Respondent's Defence.

10. As to paragraph 10, the First Respondent refers to and adopts the response at paragraph 10 of the Second Respondent's Defence.
11. As to paragraph 11, the First Respondent refers to and adopts the response at paragraph 11 of the Second Respondent's Defence.
12. As to paragraph 12, the First Respondent:
 - a. admits that, on 8 June 2022, the Second Respondent, on behalf of the First Respondent, and the Applicant, entered into the Contract pursuant to s 13 of the MOPS Act as it applied prior the amendments made by the *Members of Parliament (Staff) Amendment Act 2023*, and is taken to be an agreement made under s 11(2) of the MOPS Act since those amendments took effect;
 - b. refers to and repeats its response at paragraph 26.b below;
 - c. says the role described in the Contract was 'Principal Adviser'; and
 - d. otherwise denies the paragraph.
13. As to paragraph 13, the First Respondent:
 - a. refers to and repeats its response at paragraph 26.b below;
 - b. otherwise admits paragraph 13 and relies on the terms of the Contract for their full force and effect.
14. As to paragraph 14, the First Respondent:
 - a. admits it is an implied term of the Contract that the First Respondent, as the Applicant's employer, take reasonable care to provide the Applicant with a safe place of work and a safe system of work;
 - b. otherwise denies the paragraph; and
 - c. says the implied terms of the Contract also include the Applicant's duty of fidelity and good faith.
15. The First Respondent does not plead to the assertion of law in paragraph 15.
16. As to paragraph 16, the First Respondent:
 - a. admits the 2020-2023 EA covered and applied to the Applicant for the former EA period; and
 - b. admits the 2024-2027 EA has covered and applied to the Applicant in the new EA period;
 - c. says the reference to 'Minister' in the 2020-2023 EA and the 2024-2027 EA refers to the Minister authorised by the Prime Minister as having responsibility for

determining the conditions of employees employed under the MOPS Act and includes his or her delegate. The Second Respondent was not the 'Minister' for the purpose of the 2020-2023 EA and the 2024-2027 EA; and

- d. otherwise denies the paragraph.
17. As to paragraph 17, the First Respondent denies the paragraph, and relies on the terms of the 2020-2024 EA and the 2024-2027 EA for their full force and effect.
 18. As to paragraph 18, the First Respondent admits that the 2024-2027 EA includes terms to the effect stated in paragraph 18a. and 18.b, but otherwise denies the paragraph and relies on the terms of the 2024-2027 EA for their full force and effect.
 19. The First Respondent admits paragraph 19 and says if notice is given it must be in writing and specify the ground or grounds relied on.
 20. The First Respondent denies paragraph 20 and says that s 6 of the MOPS Act establishes principles rather than entitlements and rights.
 21. As to paragraph 21, the First Respondent:
 - a. admits sub-paragraph 21(a);
 - b. denies sub-paragraph 21(b) and says that the Second Respondent is an 'officer' of the Commonwealth for the purposes of the WHS Act only in relation to his responsibilities engaging and managing staff under the MOPS Act as part of the Commonwealth's undertaking of providing support for the functioning of the Parliament, and not in his ministerial capacity;
 - c. in relation to subparagraph 21(c):
 - i. refers to and repeats paragraphs 2.b and 3.b and 21.b above; and
 - ii. otherwise denies the sub-paragraph.
 22. As to paragraph 22, the First Respondent:
 - a. in relation to sub-paragraph 22(a), admits that the First Respondent has a duty to the Applicant pursuant to s 19(1) of the WHS Act to ensure, so far as is reasonably practicable, the health and safety of the Applicant while at work;
 - b. in relation to sub-paragraph 22(b), says that the First Respondent's duty to the Applicant pursuant to s 20 of the WHS Act is to ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to her health and safety; and
 - c. otherwise denies the paragraph.

23. The First Respondent does not plead to the assertion of law in paragraph 23.
24. The First Respondent does not plead to the assertion of law in paragraph 24.
25. As to paragraph 25, the First Respondent:
 - a. in relation to sub-paragraph 25(a):
 - i. admits during the former EA period the Applicant had a workplace right within the meaning of s 341(1)(c) of the FW Act to make a complaint or inquiry in relation to her employment about matters arising under the 2023-23 EA or the National Employment Standards pursuant to cl 66 of the 2020-23 EA;
 - ii. admits during the new EA period the Applicant has a workplace right within the meaning of s 341(1)(c) of the FW Act to make a complaint or inquiry in relation to her employment about matters arising under the 2023-23 EA or the National Employment Standards pursuant to cl 77 of the 2024-2027 EA;
 - iii. says at no time has the Applicant exercised, or proposed to exercise, those rights; and
 - iv. otherwise denies the sub-paragraph;
 - b. in relation to sub-paragraph 25(b):
 - i. admits the Applicant has a workplace right within the meaning of s 341(1)(b) of the FW Act to initiate, or participate in, a process to resolve disputes relating to bullying and harassment pursuant to Part 6-4B of the FW Act;
 - ii. admits during the former EA period the Applicant had a workplace right within the meaning of s 341(1)(b) of the FW Act to initiate, or participate in, a process to resolve disputes relating to matters arising under the 2020-23 EA or the National Employment Standards pursuant to cl 66 of the 2020-23 EA;
 - iii. admits during the new EA period the Applicant has a workplace right within the meaning of s 341(1)(b) of the FW Act to initiate, or participate in, a process to resolve disputes relating to matters arising under the 2024-27 EA or the National Employment Standards pursuant cl 77 of the 2024-27 EA;
 - iv. says at no time has the Applicant exercised, or proposed to exercise, those rights; and

- v. otherwise denies the sub-paragraph.
 - c. in relation to sub-paragraph 25(c):
 - i. admits the Applicant has a workplace right within the meaning of s 341(1)(a) of the FW Act in being entitled to the benefits conferred by ss 19 and 20 of the WHS Act as referred to in paragraph 22 above, cl 67 of 2024-2027 EA during the new EA period, and the implied term of the Contract as referred to in paragraph 14 above; and
 - ii. says at no time has the Applicant exercised, or proposed to exercise, those rights;
 - iii. otherwise denies the sub-paragraph.
26. As to paragraph 26, the First Respondent:
- a. denies the Applicant commenced her role as Chief of Staff to the Second Respondent on 8 June 2024;
 - b. says she commenced on 1 June 2022 although the Contract was signed on 8 June 2022; and
 - c. refers to and adopts the response at paragraph 26 of the Second Respondent's Defence.
27. As to paragraph 27, the First Respondent refers to and adopts the response at paragraph 27 of the Second Respondent's Defence.
28. As to paragraph 28, the First Respondent:
- a. says the paragraph is vague and embarrassing in a pleading and liable to be struck out; and
 - b. under cover of the objection above, denies the paragraph.
29. As to paragraph 29, the First Respondent:
- a. says the paragraph is vague and embarrassing in a pleading and liable to be struck out; and
 - b. under cover of the objection above, denies the paragraph.
30. As to paragraph 30, the First Respondent refers to and adopts the response at paragraph 30 of the Second Respondent's Defence.
31. As to paragraph 31, the First Respondent:
- a. says the paragraph is vague and embarrassing in a pleading and liable to be struck out; and

- b. under cover of the objection above, denies the paragraph.
32. As to paragraph 32, the First Respondent refers to and adopts the response at paragraph 32 of the Second Respondent's Defence.
 33. As to paragraph 33, the First Respondent refers to and adopts the response at paragraph 33 of the Second Respondent's Defence.
 34. As to paragraph 34, the First Respondent refers to and adopts the response at paragraph 34 of the Second Respondent's Defence.
 35. As to paragraph 35, the First Respondent refers to and adopts the response at paragraph 35 of the Second Respondent's Defence.
 36. As to paragraph 36, the First Respondent refers to and adopts the response at paragraph 36 of the Second Respondent's Defence.
 37. As to paragraph 37, the First Respondent refers to and adopts the response at paragraph 37 of the Second Respondent's Defence and Third Respondent's Defence.
 38. As to paragraph 38, the First Respondent refers to and adopts the response at paragraph 38 of the Third Respondent's Defence.
 39. As to paragraph 39, the First Respondent refers to and adopts the response at paragraph 39 of the Second Respondent's Defence and Third Respondent's Defence.
 40. As to paragraph 40, the First Respondent refers to and adopts the response at paragraph 40 of the Second Respondent's Defence.
 41. As to paragraph 41, the First Respondent refers to and adopts the response at paragraph 41 of the Second Respondent's Defence.
 42. As to paragraph 42, the First Respondent refers to and adopts the response at paragraph 42 of the Second Respondent's Defence.
 43. As to paragraph 43, the First Respondent refers to and adopts the response at paragraph 43 of the Second Respondent's Defence.
 44. As to paragraph 44, the First Respondent refers to and adopts the responses at paragraphs 44 of the Second Respondent's Defence and the Third Respondent's Defence.
 45. As to paragraph 45, the First Respondent refers to and adopts the response at paragraph 45 of the Second Respondent's Defence.
 46. As to paragraph 46, the First Respondent refers to and adopts the response at paragraph 46 of the Second Respondent's Defence and Third Respondent's Defence.
 47. As to paragraph 47, the First Respondent:

- a. says the First Respondent holds records which reflect that the Applicant commenced personal leave on 21 May 2024;
 - b. says the Applicant was absent from the workplace between 1 May 2024 and the week commencing 13 May 2024; and
 - c. otherwise refers to and adopts the response at paragraph 47 of the Second Respondent's Defence.
48. As to paragraph 48, the First Respondent refers to and adopts the response at paragraph 48 of the Second Respondent's Defence.
49. As to paragraph 49, the First Respondent:
 - a. denies the paragraph; and
 - b. says Joanna Brent had a conversation with the Applicant, in which she proposed that the Applicant work on a project in the Office of Staff Support as a way of supporting the Applicant.
50. As to paragraph 50, the First Respondent refers to and adopts the response at paragraph 50 of the Third Respondent's Defence.
51. As to paragraph 51, the First Respondent refers to and adopts the response at paragraph 51 of the Third Respondent's Defence.
52. As to paragraph 52, the First Respondent refers to and adopts the response at paragraph 52 of the Third Respondent's Defence.
53. As to paragraph 53, the First Respondent refers to and adopts the response at paragraph 53 of the Third Respondent's Defence.
54. As to paragraph 54, the First Respondent refers to and adopts the responses at paragraphs 54 of the Second Respondent's Defence and the Third Respondent's Defence.
55. The First Respondent admits a request for personal leave commencing 21 May 2024 was approved by the Second Respondent's Acting Chief of Staff on 20 May 2024, but otherwise does not know and cannot admit the paragraph.
56. The First Respondent denies the paragraph, and further says that the Applicant remained a part of the team group messages but stopped receiving daily team emails in accordance with the usual practice when someone in the office takes a longer period of leave or goes on secondment.
57. As to paragraph 57, the First Respondent refers to and adopts the response at paragraph 57 of the Third Respondent's Defence.

58. The First Respondent admits the Applicant's ability to view the details of the Second Respondent's appointments was restricted when she was on secondment because it was not necessary for her to have access in that period, but otherwise does not know and cannot admit the paragraph.
59. As to paragraph 59, the First Respondent refers to and adopts the response at paragraph 59 of the Third Respondent's Defence.
60. As to paragraph 60, the First Respondent says:
- a. on 24 June 2024, the Applicant sent an email to the Third Respondent with her then solicitor copied in. The email included an attachment being a letter from Snedden Hall and Gallop addressed to the Second Respondent;
 - b. the Parliamentary Workplace Support Service became aware of this letter and solicitors for the Commonwealth were engaged;
 - c. in the following days, there was without prejudice communication between solicitors and a meeting on 27 June 2024;
 - d. on 3 July 2024, Ashurst sent the correspondence referred to in paragraph 60;
 - e. denies sub-paragraph 60(d) and says the correspondence stated that the Applicant 'may visit' the Second Respondent's office and 'should provide' the Second Respondent's Acting Chief of Staff with 'a days' notice before doing so';
 - f. otherwise admits the paragraph; and
 - g. relies on the terms of the email from Ashurst for their full force and effect.

Particulars

Letter from Snedden Hall & Gallop addressed to the Second Respondent dated 24 June 2024 (**SHG Letter**). The First Respondent treats paragraph 6 of the SHG letter as a without prejudice proposal for resolution. Email dated 24 June 2024 from the Applicant, (cc solicitor from Snedden Hall & Gallop) to the Third Respondent attaching the SHG letter.

61. As to paragraph 61, the First Respondent:
- a. says the paragraph is vague and embarrassing in a pleading and liable to be struck out; and
 - b. under cover of the objection in paragraph 61.a above, does not know and cannot admit this paragraph.
62. As to paragraph 62, the First Respondent denies the paragraph and says the Applicant attended the meeting.

63. As to paragraph 63, the First Respondent:
- a. says the paragraph is vague and embarrassing in a pleading and liable to be struck out; and
 - b. under cover of the objection in paragraph 63.a above, does not know and cannot admit this paragraph.
64. As to paragraph 64, the First Respondent:
- a. says the paragraph is vague and embarrassing in a pleading and liable to be struck out;
 - b. under cover of the objection at paragraph 64.a above:
 - i. does not know and cannot admit the paragraph; and
 - ii. says that the Second Respondent's Acting Chief of Staff did not move into the Applicant's office.
65. The First Respondent does not know and cannot admit paragraph 65 and any other inferences the Applicant claims to have made or when.
66. As to paragraph 66, the First Respondent:
- a. denies the paragraph; and
 - b. refers to and adopts the responses at paragraphs 66 of the Second Respondent's Defence and the Third Respondent's Defence.
67. As to paragraph 67, the First Respondent:
- a. does not know and cannot admit what the Applicant felt but denies that it was the result of the conduct alleged in paragraph 66 and refers to and repeats its response at paragraph 66 above; and
 - b. otherwise denies the paragraph.
68. As to paragraph 68 the First Respondent:
- a. admits the Applicant notified the Office of Staff Support that she was experiencing distress and anxiety, and further says that the Applicant reported distress and anxiety arising as a result of matters relating to both her employment and her personal circumstances; and
 - b. denies the Applicant notified the Office of Staff Support that she was experiencing fear that her employment would be terminated; and
 - c. says:

- i. the Applicant was provided with a significant level of support by the Office of Staff Support during this period, including (but not limited to) in response to the communications described at paragraph 68.a; and
- ii. the Applicant also was and continues to be provided with support from the Parliamentary Workplace Support Service.

69. As to paragraph 69, the First Respondent:

- a. denies the 29 April complaint was made as alleged and refers to and repeats its response at paragraph 33 above;
- b. denies the 30 April complaint was made as alleged and refers to and repeats its response at paragraph 41 above;
- c. denies the communications made by the Applicant as described in paragraphs 33 and 41 above, constituted a workplace right, or the exercise of a workplace right, of the kind alleged or particularised in sub-paragraphs 69.a, 69.b or 69.c. or at all, and refers to and repeats its response at paragraph 25 above; and
- d. otherwise denies the paragraph.

70. As to paragraph 70, the First Respondent:

- a. says the paragraph is misconceived, vague and embarrassing in a pleading and liable to be struck out;
- b. under cover of the objection in paragraph 70.a above, says:
 - i. the Second Respondent's conduct in his 'personal capacity' does not come within the jurisdiction of the FW Act or otherwise operate in any sense relevant to the Applicant's claim;
 - ii. neither the Second Respondent nor the Third Respondent acted to prevent the Applicant from performing her role as Chief of Staff as alleged and it refers to and repeats its response at paragraph 66 above;
 - iii. the Applicant did not exercise any workplace rights in the relevant sense and it refers to and repeats its response at paragraph 69 above;
- c. under cover of the objection at paragraph 70.a above, refers to and adopts the responses at paragraphs 70.c of the Second Respondent's Defence and the Third Respondent's Defence as to the reasons for the actions taken by each of them in relation to the Applicant since 30 April 2024; and
- d. under cover of the objection in paragraph 70.a above, denies the paragraph.

71. As to paragraph 71, the First Respondent:

- a. says the paragraph is misconceived, vague and embarrassing in a pleading and liable to be struck out; and
 - b. under cover of the objection in 71.a above, denies the paragraph and refers to and repeats its responses at paragraph 70.b to 70.d above.
72. As to paragraph 72, the First Respondent:
 - a. says the paragraph is misconceived, vague and embarrassing in a pleading and liable to be struck out; and
 - b. under cover of the objection in 72.a above, denies the paragraph and refers to and repeats its responses at paragraph 70.b to 70.d above.
73. As to paragraph 73, the First Respondent:
 - a. says the paragraph is misconceived, vague and embarrassing in a pleading and liable to be struck out; and
 - b. under cover of the objection in 73.a above, denies the paragraph and refers to and repeats its responses at paragraph 70.b to 70.d, 71 and 72 above; and
74. The First Respondent denies paragraph 74 and:
 - a. refers to and repeats its responses at paragraph 70.b to 70.d, 71 and 72 above; and
 - b. says the Third Respondent is not capable of taking adverse action within the meaning of Item 1(c) of the table in s 342(1) and s 342(2) as he is not an employing authority of the Applicant pursuant to s 795 of the FW Act.
75. The First Respondent denies paragraph 75 and refers to and repeats its responses at paragraphs 70 – 74 above.
76. The First Respondent denies paragraph 76 and:
 - a. refers to and repeats its responses at paragraphs 12-75 above; and
 - b. says neither the Second Respondent nor the Third Respondent is capable of contravening s 340 of the FW Act in relation to the Applicant as an employee of the First Respondent as neither of them is her employer.
77. The First Respondent denies paragraph 77 and refers to and repeats its response at paragraph 76 above.
78. The First Respondent denies paragraph 78 and refers to and repeats its response at paragraph 76 above.

79. The First Respondent denies paragraph 79 and refers to and repeats its response at paragraph 69 above.

80. As to paragraph 80, the First Respondent:

a. says the paragraph is vague and embarrassing in a pleading and liable to be struck out as no material facts are pleaded in respect of:

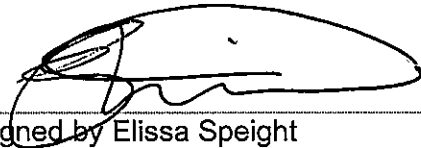
- i. the First Respondent's knowledge of the alleged contravention; or
- ii. the First Respondent's knowledge of a substantial risk that the contravention would occur and, having regard to the circumstances known to the person, it being unjustifiable to take the risk; and

b. under cover of the objection in 80.a above, denies the paragraph.

81. The First Respondent denies paragraph 81.

82. The First Respondent denies paragraph 82 and says that the Applicant is not entitled to any relief at all.

Date: 23 December 2024



Signed by Elissa Speight
Lawyer for the First, Second and Third
Respondents

This pleading was prepared by Elissa Speight, lawyer, with counsel Prue Bindon and Kate Eastman SC.

Certificate of lawyer

I Elissa Speight certify to the Court that, in relation to the defence filed on behalf of the First Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 23 December 2024



Signed by Elissa Speight
Lawyer for the First, Second and Third
Respondents