

NOTICE OF FILING

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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.



Defence of the Second 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 Second 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 Second Respondent cross-refers to responses to the paragraphs in the defence of the First Respondent where relevant to his defence.

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;
- (c) by admitting, not admitting, or denying a paragraph (or sub-paragraph), the Second 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;

Filed on behalf of (name & role of party)	<u>Mr Richard Marles (Second Respondent)</u>		
Prepared by (name of person/lawyer)	<u>Elissa Speight</u>		
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- (d) consistent with rr 16.02(3) and 16.07(1) of the *Federal Court Rules 2011* (Cth), the Second Respondent pleads to allegations of fact and points of law arising on allegations of fact, but does not plead to bare assertions of law; and
- (e) the Second Respondent does not plead to allegations that are not referable to or not pleaded against him, other than to respond as to whether he had any knowledge of the factual matters alleged in the paragraph.

1. The Second Respondent admits paragraph 1.
2. The Second Respondent does not plead to paragraph 2 as it makes no allegation referable to or against him.
3. As to paragraph 3, the Second Respondent:
 - a. admits sub-paragraphs 3(a)-(c) and says the Second Respondent:
 - i. is not an employee of the Commonwealth;
 - ii. was elected to the House of Representatives for Corio, Victoria, in 2007 and re-elected in 2010, 2013, 2016, 2019 and 2022;
 - iii. has held and continues to hold a number of ministerial appointments, including:
 - i. Deputy Prime Minister from 23 May 2022 and continuing.
 - ii. Cabinet Minister from 23 May 2022 and continuing.
 - iii. Minister for Defence from 1 June 2022 and continuing.
 - b. the Second Respondent denies sub-paragraph 3(d) and says he 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 Second Respondent does not plead to paragraph 4 as it makes no allegation referable to or against him.
5. The Second Respondent does not plead to the assertion of law in paragraph 5.
6. As to paragraph 6, the Second 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 at all material times has been, a 'personal employee (Ministerial)' under s 3 of the MOPS Act; and
 - 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. In response to paragraph 7, the Second 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. In response to paragraph 8, the Second Respondent repeats his response at paragraph 3.a above and otherwise denies the paragraph.
9. As to paragraph 9, the Second Respondent:
- a. admits he offered the role of his Chief of Staff to the Applicant; and
 - b. otherwise does not know and cannot admit the paragraph.
10. The Second Respondent admits paragraph 10.
11. As to paragraph 11, the Second Respondent:
- a. admits he met the Applicant in his office at Parliament House and during meeting, the Applicant verbally accepted the Offer and signed a contract on the same day; and
 - b. with respect to the balance of sub-paragraphs 11(b) and 11(c):

- i. the sub-paragraphs are vague and embarrassing in a pleading and liable to be struck out; and
 - ii. under cover of the objection above, denies the sub-paragraphs.
12. As to paragraph 12, the Second Respondent:
 - a. admits that he, on behalf of the Commonwealth and the Applicant, entered into the Contract on 8 June 2022;
 - b. refers to and repeats his response at paragraph 26.b below;
 - c. says the role described in the Contract was "Principal Adviser"; and
 - d. otherwise denies paragraph.
13. As to paragraph 13, the Second Respondent:
 - a. refers to and repeats his response at paragraph 26.b below;
 - b. admits paragraph 13 and relies on the terms of the Contract for their full force and effect.
14. As to paragraph 14, the Second 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 Second Respondent does not plead to the assertion of law in paragraph 15.
16. The Second Respondent refers to and adopts paragraph 16 of the First Respondent's defence.
17. The Second Respondent refers to and adopts paragraph 17 of the First Respondent's defence.
18. The Second Respondent refers to and adopts paragraph 18 of the First Respondent's defence.
19. The Second 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 Second Respondent does not plead to the assertion of law in paragraph 20.
21. As to paragraph 21, the Second Respondent:

- a. admits sub-paragraph 21(a);
 - b. denies sub-paragraph 21(b) and says he 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 his response at paragraphs 3.b and 21.b above; and
 - ii. otherwise denies the sub-paragraph.
22. As to paragraph 22, the Second Respondent:
- a. in relation to sub-paragraph 22(a), admits 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 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 matters pleaded.
23. The Second Respondent does not plead to the assertion of law in paragraph 23.
24. The Second Respondent does not plead to the assertion of law in paragraph 24.
25. The Second Respondent refers to and adopts paragraph 25 of the defence of the First Respondent.
26. As to paragraph 26, the Second Respondent:
- a. denies that the Applicant commenced her role as Chief of Staff to the Second Respondent on 8 June 2024;
 - b. says she commenced on or around 8 June 2022;
 - c. in answer to sub-paragraphs 26(a) – (f), says the Applicant describes some aspects of the work required to be done by a Chief of Staff in his office, but denies the Applicant has provided an accurate description of the role and says further she did not perform all of the matters described in those paragraphs;
 - d. says the Applicant's strengths were engaging with senior public servants and the department;

- e. says she did not take a leading role in providing strategic, media and political advice in his office; and
 - f. says the Applicant's primary responsibility was to manage and supervise the staff in his office on a day to day basis, mitigate everyday problems and maintain a harmonious, efficient and functioning office in which all staff could perform their specific roles and responsibilities and work effectively as a team to support him to discharge his Ministerial and parliamentary duties.
27. As to paragraph 27, the Second Respondent:
- a. says the sub-paragraphs are vague and embarrassing in a pleading and liable to be struck out;
 - b. says he does not know the identities of the individuals described as 'Ms Tarnawsky's colleagues' in the paragraph and cannot respond to the allegation;
 - c. under cover of the objections above:
 - i. admits the Second Respondent praised the Applicant when she accomplished particular tasks and when she performed well in the areas of her strengths;
 - ii. says in respect of the Applicant's reference to 'performance reviews' and 'feedback', he does not know what reviews or feedback the Applicant is referring to and cannot admit the allegation;
 - iii. says there were no formal performance reviews conducted by him with the Applicant during her employment as his Chief of Staff; and
 - iv. otherwise does not know and cannot admit the paragraph.
28. As to paragraph 28, the Second Respondent:
- a. says the paragraph is vague and embarrassing in a pleading and liable to be struck out;
 - b. under cover of the objection above:
 - i. says Ms Hanns was and is employed by the Second Respondent, on behalf of the First Respondent, pursuant to s 11(2) of the MOPS Act as a Media Director, and has worked for the Second Respondent since the 2019 election;
 - ii. says Ms Hanns was and is a member of the Second Respondent's senior staff;

- iii. says he did not observe Ms Hanns engage in conduct or 'an escalating course of conduct' which the Applicant alleges amounted to bullying and harassment;
- iv. says the Applicant did not raise with him in or around May 2023 any allegation about conduct or 'an escalating course of conduct' by Ms Hanns described as bullying and harassment; and
- v. otherwise does not know and cannot admit the paragraph and further says that the paragraph makes no allegation referable to or against him.

29. As to paragraph 29, the Second 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,
 - i. says he had about 20 or so members of staff in his office from early 2024;
 - ii. says he did not observe any member of his staff engage in conduct or 'an escalating course of conduct' which the Applicant alleges amounted to bullying and harassment;
 - iii. says the Applicant did not raise with him in early 2024 any allegation about a course of conduct by other members of his staff described as bullying and harassment; and
 - iv. does not know and cannot admit the paragraph and further says that the paragraph makes no allegation referable to or against him.

30. As to paragraph 30, the Second Respondent admits:

- a. that on 22 April 2024, the Applicant departed Australia with the Second Respondent, and other members of his staff;
- b. some members of his staff, including the Applicant, and other Australian officials accompanied the Second Respondent to undertake a week of official Ministerial business, with a program comprising of official meetings and engagements across a number of countries between 22 April and 29 April 2024 (**April overseas engagements**); and
- c. says the April overseas engagements were organised on a tight and demanding schedule. It was a demanding and challenging time for all the staff, officials and himself, including ensuring the arrangements and safety of all to enter Ukraine, during a time of war; and

- d. says he relied on the Applicant to perform her responsibilities as his Chief of Staff to support, manage and coordinate the staff and officials travelling as part of the April overseas engagements.
31. As to paragraph 31, the Second 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, the Second Respondent repeats paragraphs 28 and 29 above and 35 below;
- c. under cover of the objection above, says:
- i. the Applicant did not raise with him at any time prior to departing for the April overseas engagements that she had any concerns about travelling with his staff or other Australian officials;
 - ii. the Applicant did not request any particular arrangements be put in place for her when working with the Second Respondent's staff during the April overseas engagements;
 - iii. he did not observe any conduct of the kind that could properly or fairly be described as:
 1. bullying;
 2. harassment; and/or
 3. *'continued course of conduct... which amounted to bullying and harassment'*

from Ms Hanns or his other staff members during the April overseas engagements;
- d. under cover of the objection above, otherwise does not know and cannot admit the paragraph and further says the paragraph makes no allegation referable to or against him.
32. The Second Respondent admits paragraph 32 and says he did not travel with the Applicant alone. The Second Respondent's staff and other members of the delegation also travelled on the return flight.
33. As to paragraph 33, the Second Respondent:
- a. admits the Second Respondent received a lengthy message via Signal from the Applicant on 29 April 2024;
- b. relies on the content of the Signal message for its full force and effect; and

- c. otherwise denies the paragraph.
34. As to paragraph 34, the Second Respondent:
- a. admits he responded to the Applicant's Signal message referred to in paragraph 33 above; and
 - b. otherwise denies the paragraph and relies on the content of the Signal message for its full force and effect.
35. As to paragraph 35, the Second Respondent:
- a. does not know and cannot admit the time at which the flight landed in Melbourne; and
 - b. otherwise admits the paragraph.
36. The Second Respondent admits paragraph 36.
37. As to paragraph 37, the Second Respondent:
- a. admits he spoke to the Third Respondent on the evening of 29 April 2024; and:
 - b. otherwise denies the paragraph.
38. The Second Respondent does not know and cannot admit paragraph 38 and further says paragraph makes no allegation referable to or against him.
39. As to paragraph 39, the Second 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:
 - i. refers to and repeats paragraphs 44 to 66 below; and
 - ii. otherwise denies the paragraphs and further says that the paragraph makes no allegation referable to or against him.
40. The Second Respondent admits paragraph 40.
41. As to paragraph 41, the Second Respondent:
- a. says the paragraph is vague and embarrassing in a pleading and liable to be struck out;
 - b. under cover of the objection above, denies the paragraph; and
 - c. under cover of the objection above, says:
 - i. the Second Respondent expressed his concern about ongoing interpersonal issues between the Applicant and other staff in his office;

- ii. the Applicant said she thought she could fix her relationships with the staff other than the relationship with Ms Hanns, which she considered was beyond repair;
 - iii. the Second Respondent told the Applicant that he would not make a choice that resulted in Ms Hanns no longer remaining as his Media Director given the value she had provided to his office. He regarded her as the best media officer in Parliament House;
 - iv. the Second Respondent acknowledged the Applicant had told him that she was considering other employment opportunities and he said he supported her to explore those options. He supported the Applicant to take the time she needed to properly explore the other employment opportunities;
 - v. the Applicant said she would look at her options; and
 - vi. the Second Respondent said he was not standing the Applicant down or terminating her employment but giving her the time and opportunity to decide what she wished to do and for the process to be managed with dignity.
42. As to paragraph 42, the Second 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:
 - i. refers to and repeats his response at paragraph 41 above; and
 - ii. otherwise denies the paragraph.
43. As to paragraph 43, the Second Respondent:
- a. refers to and repeats paragraph 41 above;
 - b. otherwise denies the paragraph; and
 - c. says after the phone call, the Applicant sent a Signal message to the Second Respondent at 12.32pm and relies on the content of the Signal message for its full force and effect.
44. As to paragraph 44, the Second Respondent:
- a. says the paragraph is vague and embarrassing in a pleading and liable to be struck out;
 - b. under cover of the objection above:

- i. denies he had conversations with the Applicant throughout the remainder of the day;
 - ii. admits he exchanged Signal messages with the Applicant after the phone call referred to in paragraph 41 and relies on the content of the Signal messages for their full force and effect; and
 - iii. otherwise does not know and cannot admit the paragraph.
45. As to paragraph 45, the Second Respondent:
 - a. admits the paragraph;
 - b. says the Second Respondent's Signal message was consistent with the Applicant's requested communications about her absence from the workplace; and
 - c. says further in a Signal message she sent to the Second Respondent at 2:00pm, the Applicant thanked the Second Respondent for sending the message.
46. As to paragraph 46, the Second Respondent:
 - a. says the paragraph is a mixture of opinions and conclusions from alleged conversations with either the Second Respondent or the Third Respondent (but not identifiable which) and is therefore vague and embarrassing in a pleading and liable to be struck out; and
 - b. under cover of the objection in above, the Second Respondent denies the paragraph.
47. As to paragraph 47, the Second Respondent:
 - a. does not know and cannot admit the Applicant's state of mind as alleged in paragraph 47.a; and
 - b. otherwise admits paragraph 47.
48. As to paragraph 48, the Second Respondent:
 - a. says he sent the Applicant a text message to arrange to have a coffee approximately one week after 30 April 2024 call, but the Applicant declined this invitation;
 - b. says he understood the Applicant's response to the coffee invitation to mean that the Applicant did not want further direct communications with the Second Respondent;
 - c. says the Third Respondent managed the communications with the Applicant from that point onwards and the Second Respondent's direct communications with the Applicant since this time have been very limited; and
 - d. otherwise does not know and cannot admit the paragraph.

49. As to paragraph 49, the Second Respondent does not know and cannot admit the paragraph and further says the paragraph makes no allegation referable to or against him.
50. As to paragraph 50, the Second Respondent does not know and cannot admit the paragraph and further says the paragraph makes no allegation referable to or against him.
51. As to paragraph 51, the Second Respondent:
 - a. says he was aware the Applicant and the Third Respondent discussed the terms of the Applicant's temporary return to work on or around those dates; and
 - b. otherwise does not know and cannot admit the paragraph and further says the paragraph makes no allegation referable to or against him.
52. As to paragraph 52, the Second Respondent:
 - a. does not know and cannot admit the paragraph; and
 - b. says the Third Respondent spoke to him at some time regarding the Applicant's proposal to return to work during budget week and the Second Respondent had approved the proposal subject to some amendments.
53. As to paragraph 53, the Second Respondent does not know and cannot admit the paragraph, and further says the paragraph makes no allegation referable to or against him.
54. As to paragraph 54, the Second Respondent:
 - a. admits:
 - i. he met with the Applicant and the Third Respondent at Parliament House on or around 16 May 2024; and
 - ii. the Applicant said words to the effect that she would try to find alternative employment;
 - b. says that:
 - i. by then, the Third Respondent was managing the relationship with the Applicant;
 - ii. he did not actively participate in the conversation and the Third Respondent did most of the talking during the meeting;
 - iii. the words "off the books" is not an expression he uses and to the extent it is alleged he said those words, he denies the allegation or any inference

if the phrase is used to intend he was suggesting the Applicant take any leave otherwise than that available to her; and

- c. otherwise denies the paragraph.
55. The Second Respondent does not know and cannot admit paragraph 55, and further says the paragraph makes no allegation referable to or against him.
 56. The Second Respondent does not know and cannot admit paragraph 56, and further says the paragraph makes no allegation referable to or against him.
 57. The Second Respondent does not know and cannot admit paragraph 57 and further says that the paragraph makes no allegation referable to or against him.
 58. The Second Respondent does not know and cannot admit paragraph 58, and further says the paragraph makes no allegation referable to or against him.
 59. The Second Respondent does not know and cannot admit paragraph 59 and further says the paragraph makes no allegation referable to or against him.
 60. As to paragraph 60, the Second Respondent does not know and cannot admit what the solicitors for the Commonwealth informed the Applicant about, and further says that the paragraph makes no allegation referable to or against him.
 61. As to paragraph 61, the Second 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, does not know and cannot admit this paragraph and further says the paragraph makes no allegation referable to or against him.
 62. The Second Respondent does not know and cannot admit paragraph 62 and further says the paragraph makes no allegation referable to or against him.
 63. As to paragraph 63, the Second 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 and further says the paragraph makes no allegation referable to or against him.
 64. As to paragraph 64, the Second 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 64.a above, does not know and cannot admit this paragraph and further says the paragraph makes no allegation referable to or against him.
65. The Second Respondent does not know and cannot admit paragraph 65 and what inferences the Applicant claims to have made or when.
66. As to paragraph 66, the Second Respondent:
- a. denies the paragraph;
 - b. refers to his responses at paragraphs 33, 39, 41, 43, 44, 45, 48, 52, 54 and 59 above; and
 - c. says that the Second Respondent with the assistance of the Third Respondent has since 30 April 2024 been supporting the Applicant in arrangements for her to explore and transition to other employment opportunities.
67. As to paragraph 67, the Second 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 his response at paragraph 66 above; and
 - b. otherwise denies the paragraph.
68. The Second Respondent does not know and cannot admit paragraph 68 and further says the paragraph makes no allegation referable to or against him.
69. As to paragraph 69, the Second Respondent:
- a. denies the 29 April complaint was made as alleged and refers to and repeats his response at paragraph 33 above;
 - b. denies the 30 April complaint was made as alleged and refers to and repeats his 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
 - d. otherwise denies the paragraph.
70. As to paragraph 70, the Second 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:

- i. says the Second Respondent's conduct in his 'personal capacity' cannot attract the operation of the FW Act or otherwise operate in any sense relevant to the Applicant's claim;
 - ii. says the Second Respondent did not act to prevent the Applicant from performing her role as Chief of Staff as alleged and he refers to and repeats his response at paragraph 66 above;
 - iii. says the Applicant did not exercise any workplace rights in the relevant sense and he refers to and repeats his response at paragraph 69 above;
- c. under cover of the objection at paragraph 70.a above, says further the actions taken by the Second Respondent in relation to the Applicant on and following 30 April 2024 have been done for the reasons that:
 - i. he expected the Applicant to discharge her responsibilities as Chief of Staff to manage staff relationships;
 - ii. from around mid-2023, the Second Respondent sensed there were some tensions developing in his office between the Applicant and members of his staff, including Ms Hanns;
 - iii. by the end of 2023, the Second Respondent was made aware that there continued to be tensions and interpersonal issues between the Applicant and staff in the office. No one in his office asked him to intervene to address any tensions or address the staff concerns about the Applicant's treatment of them. He hoped the Christmas break may be an opportunity for his staff to have a break and then re-set;
 - iv. from early 2024 up to the time of the April overseas engagement in April 2024, he observed the tensions in the office and was concerned key senior members of his staff, including Ms Hanns, may resign because of tensions in the interpersonal relationships between the Applicant and members of his staff;
 - v. Ms Hanns did not make any complaint to him or ask him to intervene in the working relationship between the Applicant and herself;
 - vi. another staff member told him about her difficulties working with the Applicant, but did not want to make a formal complaint;
 - vii. he continued to expect the Applicant discharge her duties as Chief of Staff in managing and addressing issues, including de-escalating any tension;

- viii. he did not observe any of his staff engage in any form of bullying or harassment to each other;
 - ix. he was aware of the Applicant's personal and family circumstances, and was concerned for her wellbeing and welfare;
 - x. she was under consideration for another employment opportunity she was considering pursuing;
 - xi. the Second Respondent had lost trust and confidence in the Applicant's ability to manage the interpersonal relationships in his office, particularly because of the disparaging views and her comments about other staff;
 - xii. having considered all these matters, the Second Respondent wanted to give the Applicant time and space:
 - 1. to explore the other employment opportunity she referred to and which he believed she wanted to pursue;
 - 2. to deal with the Applicant's family circumstances of which he was aware;
 - 3. to use the support and expertise of the Third Respondent to assist her in a supported and dignified process to consider other employment opportunities;
 - xiii. the Applicant agreed she would take time to explore other employment opportunities, and the Second Respondent with the assistance of the Third Respondent supported the Applicant including through an agreed secondment and periods of leave which were applied for by the Applicant; and
 - d. under cover of the objection at paragraph 70.a above, refers to and repeats his responses at paragraphs 33, 39, 41, 43, 44, 45, 48, 52, 54, 59 and 66 above; and
 - e. under cover of the objection at paragraph 70.a above, otherwise denies the paragraph.
71. As to paragraph 71, the Second 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 his responses at paragraphs 70.b to 70.d above.
72. As to paragraph 72, the Second 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 his responses at paragraphs 70.b to 70.d above.
73. As to paragraph 73, the Second 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 his responses at paragraphs 70.b to 70.d, 71 and 72 above.
74. The Second Respondent does not plead to paragraph 74 as it makes no allegation referable to or against him.
75. The Second Respondent denies paragraph 75 and:
 - a. refers to and repeats his responses at paragraphs 70 – 73 above; and
 - b. says that vicarious liability cannot arise in the absence of an employment relationship and refers to and repeats his response at paragraph 3.a.i. above.
76. The Second Respondent denies paragraph 76 and:
 - a. refers to and repeats his responses at paragraphs 12-75 above; and
 - b. says that the Second Respondent is not capable of contravening s 340 of the FW Act in relation to the Applicant as the Second Respondent is not the Applicant's employer.
77. The Second Respondent denies paragraph 77 and refers to and repeats his responses at paragraphs 37 to 68 above.
78. The Second Respondent does not plead to paragraph 78 as it makes no allegation referable to or against him.
79. The Second Respondent does not plead to paragraph 79 as it makes no allegation referable to or against him.
80. The Second Respondent does not plead to paragraph 80 as it makes no allegation referable to or against him.
81. The Second Respondent denies paragraph 81.
82. The Second Respondent denies paragraph 82 and says that the Applicant is not entitled to any relief at all.

Date: 23 December 2024

A handwritten signature in black ink, appearing to read 'Elissa Speight', is written over a horizontal line. The signature is stylized and somewhat cursive.

Signed by Elissa Speight
Lawyer for the Second Respondent

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 Second 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