

NOTICE OF FILING

Details 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 Third 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 Third 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 Third Respondent cross-refers to responses to the paragraphs in the defence of the First Respondent dated 23 December 2024 (the **First Respondent's Defence**) 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 Third 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 Timothy Gartrell (Third Respondent)</u>		
Prepared by (name of person/lawyer)	<u>Elissa Speight</u>		
Law firm (if applicable)	<u>Ashurst</u>		
Tel	<u>02 6234 4056</u>	Fax	
Email	<u>Elissa.Speight@ashurst.com</u>		
Address for service (include state and postcode)	<u>Ashurst Australia, Level 9, Civic Quarter, 68 Northbourne Avenue, Canberra, ACT 2601, Australia</u>		

- (d) consistent with rr 16.02(3) and 16.07(1) of the *Federal Court Rules 2011* (Cth), the Third 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 Third 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 Third Respondent admits paragraph 1.
 2. The Third Respondent does not plead to paragraph 2 as it makes no allegation referable to or against him.
 3. The Third Respondent does not plead to paragraph 3 as it makes no allegation referable to or against him.
 4. The Third Respondent admits paragraph 4 and further says:
 - a. in June 2019, he was appointed the Chief of Staff to the (then) leader of the opposition (who is now the Prime Minister);
 - b. from 23 May 2022, he was appointed the Chief of Staff to the Prime Minister; and
 - c. is employed by the Prime Minister, on behalf of the First Respondent, under s 11(2) of the MOPS Act.
 5. The Third Respondent does not plead to the assertion of law in paragraph 5.
 6. The Third Respondent does not plead to paragraph 6 as it makes no allegation referable to or against him.
 7. The Third Respondent does not plead to paragraph 7 as it makes no allegation referable to or against him.
 8. The Third Respondent does not plead to paragraph 8 as it makes no allegation referable to or against him.
 9. The Third Respondent does not plead to paragraph 9 as it makes no allegation referable to or against him.
 10. The Third Respondent does not plead to paragraph 10 as it makes no allegation referable to or against him.
 11. The Third Respondent does not plead to paragraph 11 as it makes no allegation referable to or against him.
 12. The Third Respondent does not plead to paragraph 12 as it makes no allegation referable to or against him.

13. The Third Respondent does not plead to paragraph 13 as it makes no allegation referable to or against him.
14. The Third Respondent does not plead to paragraph 14 as it makes no allegation referable to or against him.
15. The Third Respondent does not plead to the assertion of law in paragraph 15.
16. The Third Respondent does not plead to paragraph 16 as it makes no allegation referable to or against him.
17. As to paragraph 17, the Third Respondent denies the paragraph and relies on the terms of the 2020-2023 EA and the 2024-2027 EA for their full force and effect.
18. As to paragraph 18, the Third Respondent admits that the 2024-2027 EA includes terms to the effect stated in paragraph 18.a 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 Third Respondent does not plead to the assertion of law in paragraph 19.
20. The Third Respondent does not plead to the assertion of law in paragraph 20.
21. The Third Respondent does not plead to the assertion of law in paragraph 21.
22. The Third Respondent does not plead to the assertion of law in paragraph 22.
23. The Third Respondent does not plead to the assertion of law in paragraph 23.
24. The Third Respondent does not plead to the assertion of law in paragraph 24.
25. The Third Respondent refers to and adopts paragraph 25 of the First Respondent's Defence.
26. As to paragraph 26, the Third Respondent:
 - a. says he is familiar with the usual roles and responsibilities of Chiefs of Staff to Government Ministers;
 - b. does not know and cannot admit the content of the "role of Chief of Staff to Mr Marles" described in the paragraph, or whether the Applicant "performed" all of the matters described in sub-paragraphs 26.a to 26.e; and
 - c. otherwise does not know and cannot admit the paragraph and further says that the paragraph makes no allegation referable to or against him.
27. As to paragraph 27, the Third 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 who are the colleagues referred to in the paragraph and cannot respond to the allegation; and
 - c. under cover of the objections above, does not know and cannot admit paragraph 27 and further says that the paragraph makes no allegation referable to or against him.
28. As to paragraph 28, the Third Respondent:
- a. says the paragraph is vague and embarrassing in a pleading and liable to be struck out; and
 - b. under cover of that objection, 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 Third Respondent:
- a. says the paragraph is vague and embarrassing in a pleading and liable to be struck out; and
 - b. under cover of that objection, does not know and cannot admit the paragraph and further says that the paragraph makes no allegation referable to or against him.
30. The Third Respondent does not know and cannot admit paragraph 30 and further says that the paragraph makes no allegation referable to or against him.
31. As to paragraph 31, the Third Respondent:
- a. says the paragraph is vague and embarrassing in a pleading and liable to be struck out; and
 - b. under cover of that objection does not know and cannot admit the paragraph and further says that the paragraph makes no allegation referable to or against him.
32. The Third Respondent does not know and cannot admit paragraph 32, and further says that the paragraph makes no allegation referable to or against him.
33. The Third Respondent does not know and cannot admit paragraph 33 and further says that it makes no allegation referable to or against him.
34. The Third Respondent does not know and cannot admit paragraph 34 and further says that the paragraph makes no allegation referable to or against him.
35. The Third Respondent does not know and cannot admit paragraph 35 and further says it makes no allegation referable to or against him.

36. The Third Respondent does not know and cannot admit paragraph 36 and further says that it makes no allegation referable to or against him.
37. As to paragraph 37, the Third Respondent:
- a. admits the Second Respondent spoke to the Third Respondent on the evening of 29 April 2024; and
 - b. otherwise denies the paragraph.
38. As to paragraph 38, the Third Respondent:
- a. admits he did not inform the Applicant of the conversation he had with the Second Respondent as referred to in paragraph 37 above or seek to prevent the Second Respondent proceeding with the foreshadowed discussion with the Applicant;
 - b. says he does not exercise any managerial responsibility with respect to the Applicant but has adopted a leadership, coordination and pastoral care approach across all Chiefs of Staff and has provided the Applicant with regular advice and support in her role as Second Respondent's Chief of Staff; and
 - c. otherwise denies the paragraph.
39. As to paragraph 39, the Third 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 39.a above:
 - i. refers to and repeats his response at paragraph 38.b above; and
 - ii. says that from 30 April 2024, the Third Respondent has been supporting the Applicant in liaising with the Second Respondent as to arrangements for her to take time to explore alternative employment opportunities and assisting her to pursue alternative employment opportunities.
40. As to paragraph 40, the Third Respondent:
- a. admits the Second Respondent and Applicant had a discussion on 30 April 2024; and
 - b. otherwise does not know and cannot admit the paragraph and further says that it makes no allegation referable to or against him.
41. As to paragraph 41, the Third 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, does not know and cannot admit the paragraph, and further says it makes no allegation referable to or against him.
42. As to paragraph 42, the Third 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, does not the know and cannot admit the paragraph, and further says that it makes no allegation referable to or against him.
43. The Third Respondent does not know and cannot admit paragraph 43 and further says that it makes no allegation referable to or against him.
44. As to paragraph 44, the Third 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. admits the Applicant had further conversations with the Second and Third Respondents on 30 April 2024;
 - ii. in relation to sub-paragraph 44(a), admits the Applicant told the Third Respondent that she may need to return to the role for weeks or months until she could secure alternative employment of sufficient seniority and pay;
 - iii. in relation to sub-paragraph 44(b), admits the Third Respondent and the Applicant discussed the Applicant's need for privacy, confidentiality and dignity in departing the role, support in finding a new job and difficulties in the Applicant's home situation;
 - iv. in relation to sub-paragraph 44(c), admits there was an agreement for members of the Second Respondent's office to be informed that the Applicant was experiencing issues at home and would be commencing personal leave, and says that the personal leave was to be based around health advice from her doctors;
 - v. admits the Third Respondent and the Applicant had conversations at the locations and times particularised; and

- c. under cover of the objection above, otherwise denies the paragraph.
45. The Third Respondent does not know and cannot admit paragraph 45 and further says it makes no allegation referable to or against him.
46. As to paragraph 46, the Third 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 46.a above, the Third Respondent denies the paragraph.
47. The Third Respondent does not know and cannot admit paragraph 47 and further says it makes no allegation referable to or against him.
48. The Third Respondent does not know and cannot admit paragraph 48 and further says it makes no allegation referable to or against him.
49. As to paragraph 49, the Third Respondent does not know and cannot admit the paragraph.
50. As to paragraph 50:
- a. the Third Respondent does not know and cannot admit whether he had a conversation with the Applicant on 9 May 2024, but says that it is probable he did have a conversation with her on or around that date;
 - b. admits on or around that date, the Applicant requested to temporarily return to work;
 - c. says on or around that date, the Third Respondent discussed with the Applicant arrangements for her return to work, including suggesting that it would be helpful if the Applicant set out what she proposed in relation to her return to work so that the Third Respondent could discuss her proposal with the Second Respondent;
 - d. further says the Applicant described her reasons for seeking to return to work in a Signal message to the Third Respondent on 11 May 2024; and
 - e. otherwise denies the paragraph.

Particulars

Copy of Signal message sent from the Applicant to the Third Respondent
on 11 May 2024.

51. The Third Respondent admits paragraph 51 and says:

- a. the proposal was discussed with the Applicant via Signal messages on 11 and 12 May 2024 and a telephone call on 12 May 2024;
- b. the Applicant put her proposal in Signal messages sent to the Third Respondent on 11 May 2024; and
- c. the Third Respondent informed the Applicant of the Second Respondent's response to the Applicant's proposal by Signal message on 12 May 2024 as described in paragraph 52 below.

52. As to paragraph 52, the Third Respondent:

- a. admits he conveyed to the Applicant via Signal message on 12 May 2024 that the Second Respondent agreed the following:
 - i. the Applicant to have agency in her story about leaving;
 - ii. the Applicant to be around the office during budget week noting this will assist her to network with prospective employers during the budget events; and
 - iii. the Applicant should not be made to feel unwelcome and the workplace needs to be safe for everyone, and
- b. otherwise denies the paragraph.

Particulars

Copy of Signal message sent from the Third Respondent to the Applicant on 12 May 2024.

53. As to paragraph 53, the Third Respondent:

- a. denies the paragraph; and
- b. refers to and repeats his response at paragraph 52 above.

54. As to paragraph 54, the Third Respondent admits that on 16 May 2024 he met with the Applicant and Second Respondent at Parliament House and:

- a. in relation to sub-paragraph 54(a):
 - i. admits the Applicant said words to the effect that she would take a few weeks' leave to pursue alternative employment but that she intended to return to the Second Respondent's office thereafter; and
 - ii. otherwise denies the sub-paragraph.
- b. denies sub-paragraph 54(b) and says the Second Respondent stated the Applicant should take as much time as she needed to find alternative

employment but did not specify approximately “half a year” nor refer to that period as being “off the books”; and

- c. denies sub-paragraph 54(c) and refers to and repeats his response at 54.b above.
55. The Third Respondent does not know and cannot admit paragraph 55 and further says that it makes no allegation referable to or against him.
 56. The Third Respondent does not know and cannot admit paragraph 56 and further says it makes no allegation referable to or against him.
 57. As to paragraph 57, the Third Respondent:
 - a. says on 20 June 2024 he had a missed call from the Applicant at 9.02am and he returned her call at around 9.06am;
 - b. says during their phone call the Third Respondent said to the Applicant words to the effect that she needed to come to terms with the fact that it was unlikely she would ever return to work in the Second Respondent's office; and
 - c. otherwise denies the paragraph.
 58. The Third Respondent does not know and cannot admit paragraph 58 and further says it makes no allegation referable to or against him.
 59. As to paragraph 59, the Third Respondent:
 - a. admits he met with the Applicant and Ms Brent in his office on or around 28 June 2024, but does not know and cannot admit whether the exact date of this meeting was 28 June 2024;
 - b. denies sub-paragraph 59(a) and says the Third Respondent informed the Applicant that a secondment to the Office of Staff Support was available to the Applicant to commence on 1 July 2024 and continue until 30 September 2024 and he recommended that she take it;
 - c. as to sub-paragraph 59(b):
 - i. does not know and cannot admit whether the Applicant informed the Third Respondent, at this meeting, that she had ceased receiving team emails or that her ability to view the details of appointments in the Second Respondent's diary was restricted;
 - ii. admits the Applicant informed the Third Respondent, at this meeting, that her dog pictures had been removed from the shared pet wall in the

Second Respondent's office, and says the Third Respondent subsequently became aware that this was not correct; and

- d. as to sub-paragraph 59(c), the Third Respondent admits he informed the Applicant that the Second Respondent would appoint an acting Chief of Staff as a temporary replacement but otherwise denies the sub-paragraph.

60. As to paragraph 60, the Third Respondent:

- a. refers to and adopts paragraphs 60.a and c of the First Respondent's defence; and
- b. otherwise does not know and cannot admit what the solicitors for the Commonwealth informed the Applicant about.

61. As to paragraph 61, the Third Respondent:

- a. says it 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 and further says that the paragraph makes no allegation referable to or against him.

62. As to paragraph 62, the Third Respondent:

- a. does not know and cannot admit the paragraph; and
- b. says the Applicant did attend a meeting of Chiefs of Staff at some point during the period in which she was undertaking the secondment to the Office of Staff Support and this could have been on 13 August 2024.

63. As to paragraph 63, the Third 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 that the paragraph makes no allegation referable to or against him.

64. As to paragraph 64, the Third 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 that the paragraph makes no allegation referable to or against him.

65. The Third 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 Third Respondent:
- a. denies the paragraph;
 - b. refers to and repeats his responses at paragraphs 38.b, 39.b, 44, 51, 52, 54, and 59.a above;
 - c. says 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, including by being a referee for the Applicant; and
 - d. says the Applicant had indicated on or about 11 May 2024 in her Signal message to the Third Respondent that she was "happy to continue to work with [the Third Respondent] on [her] transition arrangements and exit terms".
67. As to paragraph 67, the Third 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 Third Respondent does not know and cannot admit paragraph 68 and further says that the paragraph makes no allegation referable to or against him.
69. The Third Respondent refers to and adopts paragraph 69 of the First Respondent's Defence and further says that the paragraph makes no allegation referable to or against him.
70. As to paragraph 70, the Third 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 Third 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;
 - c. under cover of the objection at paragraph 70.a above, says further the actions taken by the Third Respondent in relation to the Applicant since 30 April 2024 have been done because:

- i. the Applicant agreed to take time to explore other employment opportunities; and
 - ii. the Third Respondent was supporting the Applicant in arrangements to facilitate that, including through the secondment to the Office of Staff Support to undertake important project work within Parliament House which was consistent with the Applicant's wishes, and periods of leave to which the Applicant agreed; and
 - d. under cover of the objection at paragraph 70.a above, refers to and repeats his responses at paragraphs 38.b, 39.b, 44, 51, 52, 54, 59.a 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 Third 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 paragraph 70.b to 70.d above.
72. As to paragraph 72, the Third 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 paragraph 70.b to 70.d above.
73. The Third Respondent does not plead to paragraph 73 as it makes no allegation referable to or against him.
74. The Third Respondent denies paragraph 74 and:
- a. refers to and repeats his responses at paragraph 70.b to 70.d, 71 and 72 above; and
 - b. says that 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 Third Respondent denies paragraph 75 and refers to and repeats his responses at paragraphs 70 – 72 and 74 above.
76. The Third Respondent denies paragraph 76 and:
- a. refers to and repeats his responses at paragraphs 12-75 above; and

b. says that the Third Respondent is not capable of contravening s 340 of the FW Act in relation to the Applicant as the Third Respondent is not the Applicant's employer.

77. The Third Respondent does not plead to paragraph 77 as it makes no allegation referable to or against him.
78. The Third Respondent denies paragraph 78 and repeats and refers to his response at paragraph 76 above.
79. The Third Respondent does not plead to paragraph 79 as it makes no allegation referable to or against him.
80. The Third Respondent does not plead to paragraph 80 as it makes no allegation referable to or against him.
81. The Third Respondent denies paragraph 81.
82. The Third 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 Third 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