

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application - Form 15 - Rule 8.01(1)
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 10:22:48 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
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



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.



Originating application

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

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing: [Registry will insert time and date]

Place: Federal Court of Australia, 184 Phillip St, Queens Square, Sydney NSW 2000

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable].

Filed on behalf of (name & role of party) The Applicant, Joanne Tarnawsky
Prepared by (name of person/lawyer) Michael Bradley
Law firm (if applicable) Marque Lawyers
Tel (02) 8216 3000 Tel (02) 8216 3000
Email michaelb@marquelawyers.com.au; laureng@marquelawyers.com.au; ellien@marquelawyers.com.au
Address for service Level 4, 343 George St, Sydney NSW 2000
(include state and postcode)



Date: 25 November 2024

Signed by an officer acting with the authority
of the District Registrar



Details of claim

On the grounds stated in the accompanying statement of claim, the Applicant claims:

As against the Commonwealth:

Adverse action for making complaint or inquiry relating to employment

1. A declaration pursuant to s 21 of the *Federal Court of Australia 1976 Act* (Cth) (**FCA Act**), and s 545(1) of the *Fair Work Act 2009* (Cth) (**FW Act**) that the Commonwealth contravened s 340 of the FW Act by altering the position of the Applicant to her prejudice because the Applicant had a workplace right, being to make complaints and inquiries in relation to her employment pursuant to s 341(1)(c)(ii) of the FW Act.
2. A declaration pursuant to s 21 of the FCA Act, and s 545(1) of the FW Act that the Commonwealth contravened s 340 of the FW Act by altering the position of the Applicant to her prejudice because the Applicant had a workplace right, being to make complaints and inquiries in relation to her employment pursuant to cl 66 of the *Commonwealth Members of Parliament Staff Enterprise Agreement 2020–23* (the **2020-23 EA**).
3. A declaration pursuant to s 21 of the FCA Act, and s 545(1) of the FW Act that the Commonwealth contravened s 340 of the FW Act by altering the position of the Applicant to her prejudice because the Applicant had a workplace right, being to make complaints and inquiries in relation to her employment pursuant to s 6 of the *Members of Parliament (Staff) Act 1984* (Cth) (**MOPS Act**).

Adverse action for entitlement to initiate or participate in a process under a workplace instrument

4. A declaration pursuant to s 21 of the FCA Act, and s 545(1) of the FW Act that the Commonwealth contravened s 340 of the FW Act by altering the position of the Applicant to her prejudice because the Applicant was entitled to initiate or participate in a process under a workplace instrument, being Part 6-4B of the FW Act, and therefore had a workplace right.
5. A declaration pursuant to s 21 of the FCA Act, and s 545(1) of the FW Act that the Commonwealth contravened s 340 of the FW Act by altering the position of the Applicant to her prejudice because the Applicant was entitled to initiate or participate in a process under a workplace instrument, being cl 66 of the 2020-23 EA and, and therefore had a workplace right.

Adverse action for entitlement to benefit of workplace instrument

6. A declaration pursuant to s 21 of the FCA Act, and s 545(1) of the FW Act that the Commonwealth contravened s 340 of the FW Act by altering the position of the Applicant



to her prejudice because the Applicant had the benefit of a workplace instrument, being s 19 and / or s 20 of the *Work Health and Safety Act 2011* (Cth), and therefore had a workplace right.

7. A declaration pursuant to s 21 of the FCA Act, and s 545(1) of the FW Act that the Commonwealth contravened s 340 of the FW Act by altering the position of the Applicant to her prejudice because the Applicant had the benefit of a workplace instrument, being s 6 of the MOPS Act, and therefore had a workplace right.
8. A declaration pursuant to s 21 of the FCA Act, and s 545(1) of the FW Act that the Commonwealth contravened s 340 of the FW Act by altering the position of the Applicant to her prejudice because the Applicant had the benefit of a workplace instrument, being cl 66 of the 2020-3 EA, and therefore had a workplace right.

Serious contravention

9. A declaration pursuant to s 21 of the FCA Act and s 545(1) of the FW Act that the Commonwealth's contravention of s 340 of the FW Act was a serious contravention within the meaning of s 557A of the FW Act.

Orders sought

10. An order pursuant to s 545 of the FW Act that the Commonwealth pay compensation to the Applicant for the loss suffered by her because of the contraventions described in paragraphs 1 to 9 above.
11. An order pursuant to s 547 of the FW Act for interest on any amount ordered to be paid to the Applicant under paragraph 10 above.
12. An order pursuant to s 546(1) of the FW Act that the Commonwealth pay pecuniary penalties for the contraventions of the FW Act described in paragraphs 1 to 9 above.
13. An order pursuant to s 546(3) of the FW Act that any penalty ordered by the Court pursuant to s 546(1) be paid to the Applicant.
14. Any other orders as the Court considers appropriate.

As against Mr Marles

Accessorial Liability for adverse action

15. A declaration pursuant to s 21 of the FCA Act, and s 545(1) of the FW Act, that Mr Marles was involved, within the meaning of s 550(2)(a) and s 550(2)(c), in the Commonwealth's contraventions of s 340 of the FW Act in paragraphs 1 to 9 above.



Orders sought

16. An order pursuant to s 545 of the FW Act that Mr Marles pay compensation to the Applicant for the loss suffered by her because of the contravention described in paragraph 15 above.
17. An order pursuant to s 547 of the FW Act for interest on any amount ordered to be paid to the Applicant under paragraph 16 above.
18. An order pursuant to s 546(1) of the FW Act that Mr Marles pay pecuniary penalties for the contravention of the FW Act described in paragraph 15 above.
19. An order pursuant to s 546(3) of the FW Act that any penalty ordered by the Court pursuant to s 546(1) be paid to the Applicant.
20. Any other orders as the Court considers appropriate.

As against Mr Gartrell

Accessorial Liability for adverse action

21. A declaration pursuant to s 21 of the FCA Act, and s 545(1) of the FW Act, that Mr Gartrell was involved, within the meaning of s 550(2)(a) and s 550(2)(c), in the Commonwealth's contraventions of s 340 of the FW Act in paragraphs 1 to 9 above.

Orders sought

22. An order pursuant to s 545 of the FW Act that Mr Gartrell pay compensation to the Applicant for the loss suffered by her because of the contravention described in paragraph 21 above.
23. An order pursuant to s 547 of the FW Act for interest on any amount ordered to be paid to the Applicant under paragraph 22 above.
24. An order pursuant to s 546(1) of the FW Act that Mr Gartrell pay pecuniary penalties for the contravention of the FW Act described in paragraph 21 above.
25. An order pursuant to s 546(3) of the FW Act that any penalty ordered by the Court pursuant to s 546(1) be paid to the Applicant.
26. Any other orders as the Court considers appropriate.

**Applicant's address**

The Applicant's address for service is:

Place: Level 4, 343 George Street, Sydney NSW 2000

Email: michaelb@marquelawyers.com; laureng@marquelawyers.com;
ellien@marquelawyers.com

The Applicant's address is 263 Budgen Avenue Fadden ACT 2904

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 25 November 2024

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

Signed by Michael Bradley
Solicitor for the Applicant