

**IN THE FEDERAL COURT OF AUSTRALIA (FCA)
NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
FAIR WORK DIVISION** **No: NSD580/2012**

NOTICE OF FILING

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 22/06/2012.

DETAILS OF FILING

Document Lodged: Additional Document
File Number: NSD580/2012
File Title: James Hunter Ashby v Commonwealth of Australia & Anor
District Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



★ **Date:** 22/06/2012

Registrar

Warwick Soden

Note

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the document. The Notice must be included in the document served on each party to the proceeding.



POINTS OF CLAIM

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: FAIR WORK

NO NSD 580 OF 2012

JAMES HUNTER ASHBY

Applicant

THE COMMONWEALTH OF AUSTRALIA

and another named in the Schedule
Respondents

1. The first respondent (the **Commonwealth**) seeks an order that judgment be given against the applicant under rule 26.01(1) of the *Federal Court Rules 2011* because the proceeding as against the Commonwealth is:
 - 1.1. an abuse of the process of the Court; and
 - 1.2. a vexatious proceeding.
2. Alternatively, the Commonwealth seeks an order that the proceeding as against it be permanently stayed as an abuse of the process of the Court.

Abuse of process

3. The proceeding as against the Commonwealth is an abuse of the process of the Court because:
 - 3.1. the applicant brought this proceeding for the predominant purpose of damaging the second respondent (**Mr Slipper**) and aiding his political opponents;
 - 3.2. the applicant brought this proceeding for the subsidiary purpose of pursuing collateral benefits for himself and Karen Doane, who is employed by the Commonwealth as a media adviser to Mr Slipper;
 - 3.3. the applicant's predominant and subsidiary purposes are collateral to the legal remedies that he seeks from the Commonwealth in this proceeding;
 - 3.4. the manner in which the applicant began and is conducting the proceeding is unjustifiably oppressive to both respondents; and

Filed on behalf of the First Respondent, the Commonwealth of
Australia

File ref: 12026851

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- 3.5. the manner in which the applicant has invoked the Court's procedures brings the administration of justice into disrepute.

Collateral purpose

4. The proceeding against the Commonwealth is a vehicle for the proceeding against Mr Slipper, and is brought for the predominant purpose of damaging Mr Slipper and aiding his political opponents.
5. The matters on which the Commonwealth relies to establish that the applicant's predominant purpose in bringing this proceeding was to damage Mr Slipper and aid his political opponents include the following:
 - 5.1. Paragraphs 7 to 20 of the statement of claim allege conduct by Mr Slipper between 2 January and 20 March 2012. The applicant took no steps to bring the alleged conduct of Mr Slipper to the attention of the Commonwealth before beginning the proceeding on 20 April 2012.
 - 5.2. There were a number of steps that the applicant could have taken to bring the alleged conduct to the attention of the Commonwealth and have it addressed, without publicity and the associated damage to Mr Slipper's reputation. These included:
 - 5.2.1. Following the Bullying, Harassment and Workplace Violence Policy and Procedure for MOP(S) Act Employees and reporting the alleged incidents of harassment;
 - 5.2.2. Making a complaint to the Ministerial and Parliamentary Services Division of the Commonwealth's Department of Finance (**Department**);
 - 5.2.3. Making a complaint of sexual harassment in contravention of the *Sex Discrimination Act 1984* to the Australian Human Rights Commission, which could then have conciliated the complaint;
 - 5.2.4. Making an application to Fair Work Australia under section 372 of the *Fair Work Act 2009*, to deal with the dispute by conducting a conference;
 - 5.2.5. Referring the matter to the Department under clause 74.4(c) of the Commonwealth Members of Parliament Staff Enterprise Agreement 2010-2012;
 - 5.2.6. Initiating the issue resolution procedure under Part 5, Division 5 of the *Work Health and Safety Act 2011*.
 - 5.3. The applicant took none of these steps.
 - 5.4. Instead, the applicant informed the following people of the alleged conduct of Mr Slipper:

- 5.4.1. in or about early February 2012 – Mark McArdle, Liberal National Party member for Caloundra in the Queensland Parliament, formerly the Queensland Shadow Minister for Health, currently the Queensland Minister for Energy and Water Supply;
- 5.4.2. in or about March and early April 2012 – Malcolm Brough, former Liberal Party member for Longman in the Federal Parliament, current chairman of the Liberal National Party Fisher Federal Divisional Council, and declared candidate for preselection as the Liberal National Party Candidate for Fisher; and
- 5.4.3. in early April 2012 – Steve Lewis, a journalist employed by News Limited.
- 5.5. On or about 29 March 2012 the applicant, with the assistance of Ms Doane, provided copies of extracts from Mr Slipper's private diary to Mr Brough.
- 5.6. In or about early April 2012 the applicant, with the assistance of Ms Doane, provided copies of text messages and extracts from Mr Slipper's private diary to Mr Lewis. The extracts from Mr Slipper's diary were provided to Mr Lewis to assist his inquiries into Mr Slipper's alleged misuse of travel entitlements.
- 5.7. Before beginning this proceeding the applicant engaged a public relations firm, AMC Media.
- 5.8. The originating application filed on 20 April 2012 included a number of serious allegations against the respondents which were not supported by any sworn, admissible evidence, and which were withdrawn before the first directions hearing. These allegations were to the effect that:
 - 5.8.1. Mr Slipper was using his position to pursue relationships with a sexual nature with young male employees;
 - 5.8.2. The Commonwealth knew that Mr Slipper was using his position to pursue relationships of a sexual nature with young male employees;
 - 5.8.3. Both respondents had breached the applicant's contract of employment by involving him in questionable conduct in relation to travel;
 - 5.8.4. Due to the conduct of the respondents the applicant had suffered illness and was seeking medical assistance.
- 5.9. The allegations made in the originating application were reported widely by News Limited outlets from 1.00 am on 21 April 2012. The applicant was the only possible source of the information reported by News Limited.
- 5.10. Since beginning the proceeding, the applicant has refused to particularise any loss or damage suffered by him due to the alleged conduct of the respondents, including the allegation made in the statement of claim that the alleged conduct has caused him anxiety and stress, including physical symptoms.

- 5.11. The Commonwealth may rely on further matters to establish the purpose alleged following the return of subpoenas and the exchange of evidence by the parties.
6. The applicant brought this proceeding for the subsidiary purpose of pursuing collateral benefits for himself and Ms Doane, in the form of:
 - 6.1. employment with Queensland State Ministers, following the election of the Liberal National Party government in Queensland on 24 March 2012; and
 - 6.2. removing the “black mark” that was on them as a result of working for Mr Slipper.
7. The applicant’s predominant and subsidiary purposes alleged in paragraphs 4 to 6 above are collateral to the legal remedies that he seeks from the Commonwealth in this proceeding.

Proceeding unjustifiably oppressive

8. As alleged in paragraph 5.2 above, there were a number of steps that the applicant could have taken to bring the alleged conduct of Mr Slipper to the attention of the Commonwealth and have it addressed, without publicity and the associated damage to Mr Slipper’s reputation, and without involving the respondents in a costly legal proceeding.
9. The applicant did not take any of the alternative steps available to him to have the Commonwealth address Mr Slipper’s alleged conduct and to seek redress for any loss and damage suffered by him.
10. Instead, the applicant began this proceeding in the manner referred to in paragraphs 5.8 and 5.9 above.
11. The manner in which the proceeding was begun and the allegations in the originating application were published was calculated to damage Mr Slipper, as alleged in paragraphs 4 and 5 above.
12. Since beginning the proceeding the applicant has refused to particularise any loss or damage suffered by him due to the alleged conduct of the respondents.
13. The applicant has suffered no loss of income due to the alleged conduct of the respondents.
14. The applicant has withdrawn the allegation made in the originating application that, due to the conduct of the respondents, he has suffered illness and is seeking medical attention.
15. As presently pleaded and particularised, the applicant’s loss and damage is limited to non-economic loss for alleged offence, humiliation, distress, anxiety and stress, and dislocation to life. No illness or injury has been pleaded or particularised.

16. The cost to both respondents of defending this proceeding, and the collateral damage to Mr Slipper's reputation, is out of all proportion to the loss and damage alleged and the remedies sought by the applicant.
17. The manner in which this proceeding was begun and is being conducted is seriously and unfairly burdensome, prejudicial, damaging and unjustifiably oppressive to both respondents.

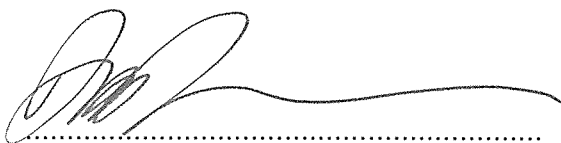
Proceeding brings administration of justice into disrepute

18. The manner in which the applicant invoked the Court's procedures in this proceeding above brings the administration of justice into disrepute. The Commonwealth refers to and repeats the allegations made in paragraphs 5.1, 5.2, 5.3, 5.8 and 5.9 above.

Vexatious proceeding

19. Further or in the alternative, the proceeding is vexatious because it was started and is being conducted in a way to harass, annoy, and cause detriment to both respondents. The Commonwealth refers to and repeats the allegations made in paragraphs 4 to 17 above.
20. Further or in the further alternative, the proceeding is vexatious because it was started and is being conducted for the wrongful purposes identified in paragraphs 4 to 6 above.

Date: 22 June 2012



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Damien O'Donovan
A lawyer employed by
Australian Government Solicitor
Lawyer for the First Respondent

These points of claim were prepared by JWK Burnside and Melinda Richards, counsel for the first respondent.

Schedule

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: FAIR WORK

NO NSD 580 OF 2012

Respondents

Second Respondent

Peter Slipper

Date: 22 June 2012