

District Registry: New South Wales

Division: Fair Work

**JAMES HUNTER ASHBY**

Applicant

**COMMONWEALTH OF AUSTRALIA and another according to the Schedule**

First Respondent

**Second Respondent's Amended Points of Claim**

**Relevant persons**

1. The Second Respondent is the Federal Member for Fisher in the State of Queensland, was, from 24 November 2011, appointed to the position of Speaker of the House of Representatives and has, since that time, sat as an independent Member of Parliament (**Slipper**).
2. The Applicant (**Ashby**) is employed by the First Respondent (**the Commonwealth**) as a member of Slipper's staff, having commenced such employment on or about 10 December 2011.
3. At all material times Karen Doane was, and is, employed by the Commonwealth as a member of Slipper's staff (**Doane**).
4. Malcolm Brough (**Brough**):
  - (a) is a former Federal Member for Longman in the State of Queensland;
  - (b) is currently the Chairman of the Liberal National Party of Queensland (**LNP**) Fisher Federal Divisional Council;
  - (c) since at least mid 2011, has publicly declared an intention to stand against Slipper for pre-selection as the LNP candidate for Fisher at the next federal election;

Filed on behalf of	Mr Peter Slipper, the Second Respondent		
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- (d) on or about 14 June 2012 confirmed that he will seek pre-selection as the LNP candidate for election as the member for Fisher at the next federal election.
5. At all material times Steve Lewis was, and is, a journalist employed by News Limited (**Lewis**).
  6. At all material times Anthony McClellan was, and is, a public relations or media adviser and provides strategic media management service through an organisation known as AMC Media (**McClellan**).
  7. At all material times Mark McArdle was, and is, the LNP Member for Caloundra, and is, and since 3 April 2012 has been, the Queensland Minister for Energy and Water Supply (**McArdle**).
  8. At all material times Bruce McIver was, and is, the President of the LNP (**McIver**).
  9. At all material times Michael Harmer (**Harmer**) was, and is, the Chair of Harmers Workplace Lawyers (**Harmers**), which represents Ashby in these proceedings.
  10. This proceeding is an abuse of the Court's process because:
    - (a) the predominant purpose of Ashby's conduct in bringing this proceeding against Slipper, in combination with Doane, Brough, Lewis, McClellan, Harmer and/or Harmers, was
      - (i) to vilify Slipper;
      - (ii) to expose Slipper to opprobrium and scandal;
      - (iii) to bring Slipper into disrepute; and/or
      - (iv) to destroy or seriously damage Slipper's reputation and standing, and his political position and career;in order to advance the political interests of the LNP and/or Brough, and by those means to enhance or promote Ashby's and Doane's prospects of advancement or preferment within, or at the hands of, the LNP;

- (b) this proceeding was commenced and prosecuted in a manner that is seriously and unfairly burdensome, prejudicial and damaging to Slipper, or is productive of serious and unjustified trouble and harassment, in that:
- (i) no steps of any kind had been taken by Ashby to raise or resolve any dispute with Slipper prior to the dissemination of the allegations made in the proceeding by means of the publication of the Originating Application;
  - (ii) the allegations that were set out in the Originating Application were disseminated to the media for publication before any notice of those allegations was given to Slipper and at a time when, to the knowledge of Ashby, Slipper's capacity to respond to the media reports of those allegations was substantially inhibited because he was overseas;
  - (iii) Ashby abandoned some of those allegations after they had been widely reported in the media
  - (iv) the proceeding is vexatious and fails to disclose a reasonable cause of action against Slipper; and
  - (v) in the alternative to (iv), the claims made against Slipper in the proceeding are manifestly weak, and the damage that Ashby's claims to have suffered is illusory or trivial, both absolutely and relative to the damage inflicted on Slipper as a consequence of the commencement of the proceeding and the manner in which it has been prosecuted; and
- (c) for the reasons given in (a) and (b), this proceeding was commenced and prosecuted in a manner that:
- (i) brings the administration of justice into disrepute; and
  - (ii) used the processes of the Court as an instrument in a calculated and orchestrated political and public relations campaign which had as its objects the purposes referred to in (a);

in connection with which Slipper relies upon the facts and matters referred to hereafter in these points of claim.

**The period prior to Ashby's employment on Slipper's staff**

11. Ashby commenced providing media management services to Slipper in or about mid 2011.
12. From at least on or about 10 October 2011 Ashby:
  - (a) encouraged or induced Slipper to believe that they were friends, and to act towards Ashby as though they were friends;
  - (b) encouraged or induced Slipper to believe that Ashby supported Slipper politically;
  - (c) encouraged or induced Slipper to believe that Ashby opposed Brough politically, and wished to assist Slipper to resist any political challenge by Brough;
  - (d) encouraged or induced Slipper to believe that Ashby only had Slipper's interests at heart;
  - (e) frankly discussed his homosexuality with Slipper;
  - (f) engaged Slipper in light-hearted banter, that occasionally included sexual comments.

**Particulars**

At present Slipper intends to rely on Short Message Service messages and iPhone Chat messages (**text messages**) between Slipper and Ashby, and between Ashby and other persons including Slipper's wife Inge (**Inge**), set out in a spreadsheet extracting all text messages from Ashby's iPhone as contained in annexure RDM-3 to the affidavit of Rodney David McKemmish sworn on 24 April 2012 (**the spreadsheet**), and in particular, on the following text messages identified by reference to the number assigned to each message on the spreadsheet:

- 10056 and 10057 between Ashby and Slipper dated 10 October 2011,
- 10081 and 10086 from Ashby to Slipper dated 10 October 2011,
- 10183-10199 between Ashby and Slipper dated 11 October 2011,

- 10316-10323 between Ashby and Slipper dated 13 October 2011,
- 10376-10382 between Ashby and Slipper dated 13 October 2011,
- 10420-10427 and 10435-10436 between Ashby and Slipper dated 14 October 2011,
- 10428-10434 between Slipper and another person dated 14 October 2011,
- 11080-11090 between Ashby and Slipper dated 25 October 2011,
- 11241-11254 between Ashby and Slipper dated 28 October 2011,
- 11444-11445 between Ashby and Slipper dated 3 November 2011,
- 11584-11586 between Ashby and Slipper dated 7 November 2011,
- 11590-11592 between Ashby and another person dated 7 November 2011,
- 11935 from Ashby to Slipper dated 19 November 2011,
- 12054, 12072 and 12080-12081 between Ashby and Slipper dated 24 November 2011,
- 12107-12108 from Ashby to Slipper dated 25 November 2011,
- 12095-12096 and 12109-12110 between Ashby and Inge dated 25 November 2011, and
- 12193-12199 between Ashby and Slipper dated 4 December 2011,

#### **10 December 2011 to 2 February 2011**

13. On or about 10 December 2011 Ashby attended Slipper's home for dinner with Slipper and Inge during which Ashby accepted an offer of the employment referred to in paragraph 2.
14. For the whole of the period from 10 December 2011 until 20 April 2012 Ashby continued to conduct himself towards Slipper in the manner described in paragraph 12, encouraged and induced Slipper to believe that he was loyal to Slipper and

committed to serving, promoting and advancing Slipper's political career, and gradually introduced into his exchanges with Slipper occasional ribald language and sexual innuendo.

### Particulars

At present Slipper intends to rely on text messages between Slipper and Ashby set out in the spreadsheet, and in particular, on the following text messages identified by reference to the number assigned to each message on the spreadsheet:

- 12447-12466 and 12468-12469 between Ashby and Slipper dated 27 December 2011 in which Ashby tells Slipper "I'm going to smack u! Arhhhhhhh", "Lenny use to call me the lovable CUNT at Gowinta cause I knew how to play the game", "You're cruising for a bruising" and "Cool. Let's fuck them up the arse instead.";
- 12776 from Ashby to Slipper in which Ashby refers to Slipper as "U big softy";
- 12868-12873 and 12880-12883 between Ashby and Slipper dated 14 January 2012;
- 12994-12995, 12999-13000, 13013-13014 between Ashby and Slipper dated 20 January 2012;
- 13055-13057 between Ashby and Slipper dated 21 January 2012;
- 13084-13085 from Ashby to Slipper dated 22 January 2012;
- 13122 from Ashby to Slipper dated 22 January 2012 in which Ashby states "we're here for u mate";
- 13135 from Ashby to Slipper dated 23 January 2012 in which Ashby states "I can near bet my nuts you'll be harassed over it tonight.";
- 13375-13379 between Ashby and Slipper dated 31 January 2012;
- 14242-14292 between Ashby and Slipper dated 26 February 2012 in which Ashby tells Slipper: "I have made it clear to u before that I have

your best interest at heart", "I would not bring you into disrepute thru my actions. If I felt my actions would have an impact on u or the speakers role I would resign. I am proud of the fact I took on this role against all advice from the LNP", "I am more than loyal", "We are all working for your re election", "I have no respect for Mal Brough and never will", "I would not put myself or you in a position of question", "I have never been dishonest with you Peter. My core values from a young working age has always included complete honesty. I don't hide things on a professional basis from u. If mistakes or decisions are made I will always man up and tell u. I would tell anyone. I am a grown man who's worked in positions of integrity for many years. I will not alter my professionalism now that I work sideline to a politician. Karen and I have only one priority, your office and future political career. You know how hard we work on that. I have not let you down once. U don't want an office of weak staff like Richard. I'm strong and u knew full well my relationship (good and bad) with the LNP. I see the good and bad in them for sure. Don't let the party or the haters detract from the good work youre achieving. Stay true to course and you'll run a very strong race in 18 months. Independence means u don't have to watch your back. Just look forward and never backwards", and "No need for any further angst. I will consult with u on any future requests for assistance from outsiders".

15. At all material times on and from 1 February 2012, after Ashby alleges that Slipper directed him to make future contact with Slipper through another member of Slipper's staff (being Tim Knapp) in paragraph 17(d)(i) of the Statement of Claim served by Ashby on 15 May 2012 (**the Statement of Claim**), Ashby continued to communicate directly with Slipper, and was not required to contact Slipper indirectly through Tim Knapp or any other person.

#### **Particulars**

At present Slipper intends to rely on text messages between Slipper and Ashby set out in the spreadsheet from 1 February 2012 and in particular, on the following text message identified by reference to the number assigned to each message on the spreadsheet: 13451-13459 between Ashby and Slipper dated 1 February 2012.

## **2 February 2012 to 20 April 2012**

16. From at least 2 February 2012, Ashby's conduct towards Slipper, as set out in paragraph 14, was duplicitous and deceitful.
17. On or about 2 February Ashby met secretly with McArdle and discussed with McArdle Ashby's plans to make allegations against Slipper to the effect later made in the Originating Application, conduct which Ashby deliberately concealed from Slipper.

### **Particulars**

At present Slipper intends to rely on the following text messages between Ashby and McArdle set out in the spreadsheet and identified by reference to the number assigned to each message on the spreadsheet:

- 13460-13462 between Ashby and McArdle dated 2 February 2012,
- 14902 from Ashby to McArdle dated 26 March 2012.

18. From at least 2 February 2012 Ashby had conceived or begun to consider commencing the proceedings in the knowledge that such action would inflict damage against Slipper and empower Slipper's political opponents including Brough and/or the LNP, conduct which Ashby deliberately concealed from Slipper.

### **Particulars**

At present Slipper intends to rely on the following text messages between Ashby and McArdle, and Ashby and another person, set out in the spreadsheet and identified by reference to the number assigned to each message on the spreadsheet:

- 13505-13506 between Ashby and another person named 'Tania' dated 4 February 2012, in which Tania advised Ashby to "pass the text forward in hard copy only to Mark - let him move it forward. Backup phone, delete messages, put in safe and let it be. A smoking gun usually means someone has already been shot! Don't let it be you – please", and Ashby states that "It will empower someone else definitely",



- 14902 from Ashby to McArdle dated 26 March 2012 in which Ashby states that "I've decided to press ahead with what I spoke to u about some weeks ago".
19. On or about 26 February 2012 Ashby and Slipper exchanged text messages in which Slipper raised with Ashby his actions in supporting an LNP candidate in the Queensland elections, and in which Ashby duplicitously and deceitfully reiterated his loyalty to Slipper.

### **Particulars**

At present Slipper intends to rely on text messages between Slipper and Ashby set out in the spreadsheet, and in particular, on the following text message identified by reference to the number assigned to each message on the spreadsheet:

- 14242-14292 between Ashby and Slipper dated 26 February 2012 in which Ashby tells Slipper: "I have made it clear to u before that I have your best interest at heart", "I would not bring you into disrepute thru my actions. If I felt my actions would have an impact on u or the speakers role I would resign. I am proud of the fact I took on this role against all advice from the LNP", "I am more than loyal", "We are all working for your re election", "I have no respect for Mal Brough and never will", "I would not put myself or you in a position of question", "I have never been dishonest with you Peter. My core values from a young working age has always included complete honesty. I don't hide things on a professional basis from u. If mistakes or decisions are made I will always man up and tell u. I would tell anyone. I am a grown man who's worked in positions of integrity for many years. I will not alter my professionalism now that I work sideline to a politician. Karen and I have only one priority, your office and future political career. You know how hard we work on that. I have not let you down once. U don't want an office of weak staff like Richard. I'm strong and u knew full well my relationship (good and bad) with the LNP. I see the good and bad in them for sure. Don't let the party or the haters detract from the good work youre achieving. Stay true to course and you'll run a very strong race in 18 months. Independence means u don't have to watch your back. Just look forward and never backwards", and "No need for any

further angst. I will consult with u on any future requests for assistance from outsiders”.

20. Ashby decided to commence the proceedings on or about 26 March 2012, a decision that he deliberately concealed from Slipper.

#### **Particulars**

At present Slipper intends to rely on the following text messages between Ashby and McArdle set out in the spreadsheet and identified by reference to the number assigned to each message on the spreadsheet:

- 14902 from Ashby to McArdle dated 26 March 2012 in which Ashby states that "I've decided to press ahead with what I spoke to u about some weeks ago".

21. From at least about 29 March Ashby unlawfully communicated and sent extracts of the diary kept by or on behalf of Slipper in connection with the performance of his duties as a member of Parliament and as Speaker of the House of Representatives to Brough, knowing that the material so communicated would be used in an attempt to inflict damage on Slipper and, thereby to promote the interests of Brough and the LNP at Slipper's expense. Ashby deliberately concealed this conduct from Slipper.

#### **Particulars**

At present Slipper intends to rely on the following text messages between Ashby and Brough set out in the spreadsheet and identified by reference to the number assigned to each message on the spreadsheet:

- 15021-15023 between Ashby and Brough as follows:

Brough: Can that be emailed James it is hard to read

Mal.brough2@bigpond.com

Ashby: Done. Coming thru in minutes

Brough: Thanks

Ashby: Will need to get daily print outs tomorrow with greater detail.

22. On or about 29 March 2012, Ashby and Doane exchanged SMS messages in which Ashby states that "we've been chosen to take this journey for some bizarre reason", and Doane states that "I need to secure my deal or will need to work a plan B".

#### Particulars

At present Slipper intends to rely on the following text messages between Ashby and Doane set out in the spreadsheet and identified by reference to the number assigned to each message on the spreadsheet:

- 15001 and 15010 between Ashby and Doane dated 29 March 2012.

23. On or about 30 March 2012 Ashby and Doane met with a person named 'Jackie'.

#### Particulars

At present Slipper intends to rely on the following text messages between Ashby and Doane set out in the spreadsheet and identified by reference to the number assigned to each message on the spreadsheet:

- 15006-15013, 15015-15016 between Ashby and Doane dated 29 March 2012.

24. On or about 30 March 2012 Ashby and Doane exchanged SMS messages as follows:

Doane: I hear ya.... I encourage you to contact Murray ( Marie&#xD83D;&#xDE09;. You need to keep everyone onside and have options. Not sure if State will be your future, or that you'll want it to be, so the more options the better. I really want the Sports portfolios that is my passion and I know it on many levels so I would be perfect ( even if I do say so myself) when you get to it, please send thru Jackie's email info. I'll cc you into anything. Chat soon &#xD83D;&#xDE0F;

Doane: Howdy, you awake? Just got a text that state staffing isn't the decision of the minister... Do you think Jackie has influence? I would think yes?!?&#xD83D;&#xDE01;

- Ashby: Hmm interesting. I had no idea of that rule... I bet the likes of Jacki and Bruce McIver have some influence. Jacki is definitely a key player in the party these days. To arrange a lawyer for \$1 of that caliber is a big thing in my mind.
- Doane: Agreed. It is also due to the barrister's ties to the LNP and the way this will tip the govt to Mal's and the LNP's advantage. Definitely a good move for us to meet with him so he gets to know us other than w the black mark from being w Peter!!
- Doane: Hope I've said thank you enough????!! I am really appreciative James
- Ashby: Yeah I totally agree. We are fixing the black mark &#xD83D;&#xDE09; you don't have to thank me Karen. I think we're equally supportive for one another. We compliment one another nicely. I'm very pleased u have been on board even though we've both been thru so much shit.
- Doane: I'm counting down the days; it makes it easier &#xD83D;&#xDE0C;. BTW- please shot me his email so I can send thru an updated CV this weekend. &#xD83D;&#xDE4F;&#xD83D;&#xDE4F; for a great position w decent \$\$
- Ashby: Mal.brough1@bigpond.com
- Doane: Coolio. I have to send one to Andrew as well. Are you/have you already given him yours? I know you've said you don't do resumes &#xD83D;&#xDE1C;
- Ashby: Lol I will have to put something together over the weekend. I haven't written a resume, so I better get learning ☺
- Doane: Happy to help if u like?! Google CV/resume templates as that will help, it did for me. Off to sleep, chat on the weekend &#xD83D;&#xDCA4;
- Ashby: Sounds great. Night.

### Particulars

At present Slipper intends to rely on the following text messages between Ashby and Doane set out in the spreadsheet and identified by reference to the number assigned to each message on the spreadsheet:

- 15049-15061 between Ashby and Doane dated 30 March 2012.

25. It is to be inferred from the facts and matters set out in paragraphs 22, 23 and 24 that:
- Jackie was associated with the LNP,
  - Ashby and Doane discussed with Jackie obtaining assistance from the LNP including by arranging and paying for legal representation for Ashby to commence the proceeding; and
  - Ashby and Doane had conceived and were executing a plan that, by Ashby commencing the proceeding against Slipper, they would erase the “black mark” of their association with Slipper, and secure preferment for themselves within or by the hand of the LNP (**the plan**).
26. Ashby and Doane deliberately concealed the plan and their conduct in executing the plan from Slipper at all times until the commencement of proceedings.
27. On or about 1 April 2012 Ashby and Doane exchange SMS messages as follows:
- Doane: Howdy! Could you please send thru Mal's mobile again? I want to text after I send thru my CV. Hope you had a good weekend ☺
- Doane: Muchos gracias mi amigo &#xD83D;&#xDC68;
- Ashby: Which is your private number? I can't differentiate between your private and work numbers. I want to ensure I only send texts to your private phone. &#xD83D;&#xDE0A;
- Doane: 0448 404 555 is my private numba &#xD83D;&#xDC78;
- Doane: The email for Mal doesn't seem to work. I have: Mal.brough1@bigpond.com . Do you have something different?
- Ashby: Whoops it's Mal.brough2@bigpond.com sorry bout that. My fault.

### Particulars

At present Slipper intends to rely on the following text messages between Ashby and Doane set out in the spreadsheet and identified by reference to the number assigned to each message on the spreadsheet:

- 15094-15102 between Ashby and Doane dated 1 April 2012.

28. It is to be inferred from the facts and matters set out in the preceding paragraph that Brough was a party to the plan to secure preferment for Ashby and Doane within or by the hand of the LNP.

29. On or about 1 April 2012 Doane sent her resume to Brough pursuant to the plan.

### Particulars

At present Slipper intends to rely on the following text message between Ashby and Doane set out in the spreadsheet and identified by reference to the number assigned to each message on the spreadsheet:

- 15124 from Ashby to Doane dated 2 April 2012.

30. On or about 2 April 2012 Ashby and Doane exchange SMS messages as follows:

Doane: I want to balance your harassment charge with one of my own. He is demeaning, aggressive and w his bcc's unprofessional at the very least. However I don't want to diminish your claim in any way. As you said last night, both claims may strengthen the case. I might look for a lawyer myself if we don't have contact soon.

Ashby: Yeah I will contact Mal again today. Failing that I will make contact with someone myself as well.

Doane: Mal did email me confirming he forwarded my CV and received confirmation that I should receive a call in the next day or two. He also said if I wasn't successful to contact him again. Great result

Ashby: Excellent. I'm pleased u have put that resume out so soon.

Doane: Let me know if you want so help putting yours together. I had my amazing friend help me as I was like you !

Ashby: Yeah I'd really like that. U let me know when it suits u and we'll do it over a home cooked dinner at mine if u like.

### **Particulars**

At present Slipper intends to rely on the following text messages between Ashby and Doane set out in the spreadsheet and identified by reference to the number assigned to each message on the spreadsheet:

- 15124-15127 from Ashby to Doane dated 2 April 2012.

31. From on or about 2 April 2012 Ashby was in communication with Lewis with a view to assisting Lewis in his inquiries into Slipper's alleged misuse of travel entitlements, and with the object of inflicting damage on Slipper, conduct which Ashby deliberately concealed from Slipper at all times until the commencement of proceedings. In the course of those communications, on or about 9 April 2012 Ashby unlawfully communicated and sent, or caused to be communicated or sent, extracts of Slipper's private diary to Lewis knowing that to do so was contrary to Slipper's interests.

### **Particulars**

At present Slipper intends to rely on the text messages and telephone records between Ashby and Lewis and Doane set out in the spreadsheet, and in particular, on the following text messages identified by reference to the number assigned to each message on the spreadsheet

- 15176 from Lewis to Ashby dated 4 April 2012 in which Lewis stated that "We will get him!!",
- 15223-15224 between Ashby and Lewis dated 6 April 2012,
- 15233-15235 between Ashby and Doane dated 6 April 2012,
- 15265 (between Lewis and Ashby) and 15274 (between Ashby and Doane) dated 9 April 2012.

32. On or about 10 April 2012 Ashby was absent from work on sick leave. Ashby falsely informed Slipper and Slipper's office that he was unable to attend work because he was sick. Ashby did so in order to deliberately conceal from Slipper that in fact Ashby was travelling to Sydney to stay at a hotel paid for by News Limited and to meet with

Lewis and Harmers, including in connection with the commencement of the proceeding.

### Particulars

At present Slipper intends to rely on the following emails and text messages between Ashby and other persons—Deane, including those set out in the spreadsheet and identified by reference to the number assigned to each message on the spreadsheet:

- On 10 April 2012, Ashby sent Slipper an email stating: “I visited the doctor and they’ve insisted I have 2 weeks off. I am really concerned with my health at the moment and they’re even more so. I will make sure Michelle gets a copy of the doctors certificate this week. I will ask Will to drop it in on his way past if possible. I’ll be in touch.”
  - 15283 and 15285 from Slipper to Ashby dated 10 April 2012,
  - 15288-15289, 15292-15293, 15296-15297, 15301-15302, 15303-15305 between Ashby and Lewis dated 10 April 2012 in which Lewis states “I will sort out payment” and “Just tell hotel to book u in again and News will sort”.
  - 3074 (Chat message) from Ashby to another person in which Ashby states “Lots going on. Just a quick note to say its all about to erupt. Stories likely to start coming out in Thursday’s paper. Sexual harassment case likely to come out next week. Legal team meeting me in Sydney at 8pm pro bono.”
  - 15322, 15332-15335, 15337-15339 between Slipper and Ashby dated 12 April 2012 in which, in response to an inquiry by Slipper as to the state of Ashby’s health, Ashby told Slipper that he was “Pissing blood. Lots of it. Not well”, and that he was having tests because “Don’t want to risk anything serious”.
33. On or about 10 April 2012 Harmers advised Ashby that he should have security measures in place to protect him from threats to his safety or life in connection with the commencement of the proceeding, a proposition which was manifestly nonsensical.



### Particulars

At present Slipper intends to rely on the following text message between Ashby and another person set out in the spreadsheet and identified by reference to the number assigned to each message on the spreadsheet:

- 15326 from Ashby to another person dated 11 April 2012.

34. On or about 12 April 2012 Harmers procured ~~for~~ McClellan to manage Ashby's contact with the media, including Lewis, or otherwise recommended that Ashby procure the services of McClellan in this regard.

### Particulars

At present Slipper intends to rely on the following text message between Ashby and Doane and McClellan and Lewis set out in the spreadsheet and identified by reference to the number assigned to each message on the spreadsheet:

- 15346, 15348-15350, 15355 between Ashby and Lewis dated 12 April 2012,
- 15340, 15344-15345 from Ashby to Doane dated 12 April 2012,
- 3148, 3150-3154 and 3158-3159 (Chat messages) between McClellan and Ashby dated 12 April 2012.

### The manner in which the proceeding was commenced

35. On 16 April 2012 a number of newspaper articles were published in Lewis' name containing allegations of excessive travel expenses incurred by Slipper.
36. The Originating Application under the Fair Work Act 2009 (**the Originating Application**) was filed in the NSW District Registry of the Federal Court of Australia on 20 April 2012.
37. At 3.54pm on Friday 20 April 2012, Slipper received an email from Harmers notifying him that the Originating Application had been filed.
38. The email referred to in the preceding paragraph was the first time Slipper had received any notice of the allegations contained in the Originating Application.

39. At the time Slipper received the email referred to in the preceding paragraph he was in New York, a fact which was known to Ashby, and which substantially inhibited Slipper's capacity to respond to any of the allegations in the Originating Application.
40. At 7.18pm on Friday 20 April 2012, Slipper received an email from Lewis with the subject heading "Peter – can u pls call me urgently on +61 419 29 22 45", stating "We are running a story involving allegations of sexual harassment – the allegations coming from one of your staff members ... There are also allegations of potential fraud against the Commonwealth, according to court documents. Phone me asap. Steve Lewis".
41. On 20 April 2012, being the same day when the Originating Application was filed, a representative of the Daily Telegraph newspaper applied to the Registry of the Court for access to Court documents in these proceedings, namely the Originating Application, and was granted access to the Originating Application on 20 April 2012. It is to be inferred that, on or before 20 April 2012, the Daily Telegraph newspaper, and Lewis in particular, was informed that the Originating Application would be or had been filed with the Court. At the time of Lewis' e-mail, no request had been made to the NSW District Registry by any person or entity to inspect the Court file in relation to the proceeding, or any document in it. No such request was made until the morning of Monday 23 April 2012. It is to be inferred that a copy of the Originating Application, or information as to its contents, was provided to Lewis by or on behalf of Ashby.
42. Slipper left New York to return to Australia at 6.45pm on 20 April 2012. Upon arriving at Los Angeles airport at 10pm, Slipper was approached by members of the Australian media, including television crews, who questioned him about the proceeding. On arrival at Brisbane airport, Slipper was met by a large number of journalists who questioned him about the proceeding.
43. In the result, it is to be inferred that Ashby and/or McClellan and/or Harmers, or another person acting on Ashby's behalf, informed members of the media, including Lewis, that the Originating Application would be or had been filed with the Court, provided a copy of the Originating Application to members of the media, including Lewis, before it was emailed to Slipper as referred to in paragraph 37.
44. In the alternative to the preceding paragraph, Ashby and/or McClellan and/or Harmers, or another person acting on Ashby's behalf, informed members of the

~~media, including Lewis, that the Originating Application would be or had been filed with the Court, provided a copy of the Originating Application to members of the media, including Lewis, at the same time or soon after (on 20 April 2012) it was emailed to Slipper as referred to in paragraph 37.~~

45. The communication to the media release of fact that the Originating Application had been filed in the Court ~~to the media~~ in the manner referred to in paragraphs 43 or 44 was:

- (a) intended to procure the maximum news coverage of the allegations contained in the Originating Application, including by ensuring or maximising the prospect of those allegations being published in the weekend newspapers in order to reach the widest newspaper readership;
- (b) intended to achieve the object in (a) at a time when, to the knowledge of Ashby, Slipper was overseas and without access to legal advice and was thus substantially inhibited in responding to the media reports of the allegations contained in the Originating Application; and
- (c) pursuant to the objects in (a) and (b), calculated to expose Slipper to the maximum degree of vilification, opprobrium, sensation and scandal, and to cause maximum damage to his reputation, to the political advantage of the LNP and Brough.

46. Ashby did not effect personal service of the Originating Application on Slipper in accordance with the rules of the Court until 15 May 2012, almost four weeks after the proceeding had commenced and the Originating Application had been released to the media, and thereby widely publicised.

### **The abandonment of allegations**

47. The Originating Application comprised a Form 81 and was not supported by a statement of claim or affidavit. It contained allegations of five categories of unlawful conduct by the Respondents as follows:

- (a) allegations of sexual harassment by Slipper against Ashby in the period January 2012 – March 2012 (**Sexual Harassment Allegations**);
- (b) allegations of a sexual relationship between Slipper and another member of his staff in 2003 (**2003 Allegations**);

- (c) allegations of a contravention of section 351 of the FW Act (**s.351 Allegations**);
  - (d) an allegation that the Applicant's contract of employment had been breached (**Breach of Contract Allegation**); and
  - (e) in support of the Breach of Contract Allegation, an allegation that Slipper had fraudulently misused his travel entitlements (**the Criminal Allegations**).
48. As Ashby intended, the allegations referred to in the preceding paragraph received significant national and international media coverage over the weekend of 21 and 22 April 2012, and thereafter.
49. The Originating Application contained the following statement:
- The allegations contained in the Application are supported by sworn/affirmed evidence and, in the case of text messages, by independent forensic Information Technology assessment and report.'
50. Pursuant to an order of the Court on 18 May 2012 Ashby produced the material referred to in the preceding paragraph, namely, an affidavit of James Hunter Ashby; and two affidavits of Rodney McKemmish (**the sworn evidence**).
51. The statement referred to in paragraph 49 was false, in that the 2003 Allegations were not supported by the sworn evidence.
52. On or about 15 May 2012, two days prior to the first directions for the proceeding, Ashby filed the Statement of Claim in which he abandoned the 2003 Allegations and the Criminal Allegations.
53. In the result, by making, providing to the media and subsequently abandoning the allegations referred to in the preceding paragraph Ashby and Harmers intended to expose Slipper to the maximum degree of vilification, opprobrium, sensation and scandal, and to cause maximum damage to his reputation, to the political advantage of the LNP and Brough.

### **Genuine Steps**

54. On 20 April 2012 Ashby filed an Applicant's Genuine Steps Statement in which it was asserted that (1) "The matter is urgent", and (2) "The matter involves aspects of

victimisation. Alerting the Respondents to the matter would only increase the opportunity for victimisation.”

55. As Ashby knew or ought to have known, the assertion referred to in the preceding paragraph is false and untenable in that:
- (a) the majority of the impugned conduct is alleged to have occurred on or before 1 February 2012;
  - (b) after the alleged conduct referred to in (a) Ashby remained in the workplace without complaint for a further 6 weeks;
  - (c) no acts of “victimisation” are pleaded or alleged in the Statement of Claim;
  - (d) to the extent that the Statement of Claim alleges adverse action was taken by Slipper directing Ashby to communicate with him through another staff member, any such direction was manifestly never enforced or followed as described in paragraph 15, and Ashby continued to attend for work and perform his duties as usual and without reprisal or recrimination for more than 6 weeks after the alleged unlawful conduct;
  - (e) Ashby manifestly did not regard, and had never regarded himself as being ‘victimised’ by Slipper in any way that required any remedy or correction, urgent or otherwise, in that he engaged in light-hearted mutual banter of a sexual nature with Slipper in the manner described in paragraphs 12 and 14;
  - (f) in the period after 1 February 2012 until the commencement of the proceeding Ashby was engaged in a calculated, duplicitous and deceitful scheme to undermine Slipper to the advantage of the LNP and Brough, and thereby to secure his own prospects of advancement or preferment with the assistance of Slipper’s political opponents, in the manner described in paragraphs 16 to 34; and
  - (g) for the purpose of engaging in the scheme as described in the paragraphs referred to in (f), Ashby took advantage of his continued employment as a member of Slipper’s staff, was grossly disloyal to Slipper, was duplicitous and deceitful in his dealings with Slipper and betrayed the trust and confidence that Slipper had reposed in Ashby and that Ashby had carefully cultivated since mid-2011.

### **Choice of forum**

56. The Statement of Claim substantially consists of the Sexual Harassment Allegations.
57. Ashby made no attempt to utilise the Commonwealth's policy and procedure for complaints about sexual harassment, namely, the "Bullying, Harassment and Workplace Violence Policy and Procedure for MOP(S) Act Employees" which establishes a procedure for employees such as Ashby to make confidential reports of sexual harassment.
58. In addition, if Ashby had genuine complaints (which is denied) then he could have sought redress by lodging a complaint alleging that he had been sexually harassed by Slipper with the Australian Human Rights Commission under the Australian Human Rights Commission Act 1986 (**the AHRC Act**). He did not do so. If he had done so his complaint would have been subject to a process of conciliation involving a compulsory conference to be held in private pursuant to s 46PK of the AHRC Act.
59. Ashby elected not to lodge a complaint referred to in the preceding paragraph or to attempt to resolve his complaints by utilising the Commonwealth's internal procedures referred to in paragraph 57 in order to better achieve the object of exposing Slipper to vilification, opprobrium, sensation and scandal and reputational damage as described in paragraph 45.

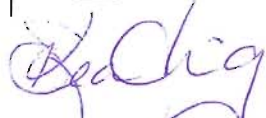
### **No reasonable cause of action**

60. The Statement of Claim fails to disclose a reasonable cause of action against Slipper in that it:
- (a) fails to identify any relevant workplace right within the meaning of s 341 of the Fair Work Act 2009 (**FW Act**);
  - (b) fails to identify any relevant adverse action within the meaning of s 342(1) of the FW Act; and
  - (c) fails to identify any grounds for alleging accessorial liability on the part of Slipper pursuant to s 550 of the FW Act in that it fails to plead that Slipper had actual knowledge of essential facts of the alleged contraventions of the FW Act including: (1) that the relevant conduct caused Ashby detriment, (2) that Slipper treated Ashby differently because of Ashby's sex or sexual preference, (3) that Slipper treated

other employees who were not men or homosexual differently, and (4) that Ashby had or exercised a relevant workplace right.

61. In the alternative to the preceding paragraph, the Statement of Claim discloses a case against Slipper that is so weak that it would be unfairly oppressive to allow Ashby to continue to prosecute the proceeding against Slipper, having regard to all of the facts and matters discussed above.
62. Even if the Statement of Claim disclosed a prima facie cause of action against Slipper (which is denied), any relief that Ashby could in that event have reasonably expected to obtain against Slipper would be illusory or trivial, and out of all reasonable proportion to the damage that the commencement and prosecution of the proceeding was calculated to inflict on Slipper.
63. Slipper may rely on further matters to establish the abuse of process alleged following the return of subpoenas and the exchange of evidence by the parties.

24-26 June 2012



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These points of claim were prepared by Ian Neil SC and David Chin, Counsel for the Second Respondent, on the instructions of the Second Respondent.