

**Affidavit**

No. NSD 580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**  
Applicant

**Commonwealth of Australia**  
First Respondent

**Peter Slipper**  
Second Respondent

Affidavit of: Michael Daniel Harmer  
Address: Level 28, St Martins Tower, 31 Market Street, Sydney, NSW  
Occupation: Solicitor  
Date: 2 October 2012

**Contents**

Document number	Details	Paragraph	Page
MDH 9	Transcript of hearing on 23 July 2012	1	7
MDH 10	Transcript of hearing on 17 August 2012	2	10
MDH 11	Email (8.35am 22 August 2012) and letter from Maurice Blackburn to Associate	3a	13
MDH 12	Email (9.46am 22 August 2012) from Harmers Workplace Lawyers to Maurice Blackburn	3b	17

Filed on behalf of James Ashby, **Applicant**  
**HARMERS WORKPLACE LAWYERS**

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[Form approved 01/08/2011]



Document number	Details	Paragraph	Page
MDH 13	Email (10.02am 22 August 2012) from Associate to Maurice Blackburn	3c	20
MDH 14	Email (10.45am 22 August 2012) from Maurice Blackburn to Associate	3d	23
MDH 15	Letter from Harmers Workplace Lawyers to Maurice Blackburn dated 27 August 2012	3e	27
MDH 16	Emails from Harmers Workplace Lawyers to Maurice Blackburn dated 31 August 2012	3f	33
MDH 17	Letter and attachment from Maurice Blackburn to Harmers Workplace Lawyers dated 18 September 2012	3g	36
MDH 18	Letter from Harmers Workplace Lawyers to Peter Slipper dated 19 September 2012	3h	40
MDH 19	Email and attachment from Peter Slipper to Harmers Workplace Lawyers dated 25 September 2012	3i	44
MDH 20	Letter from Peter Slipper to Harmers Workplace Lawyers dated 25 September 2012	3j	48
MDH 21	Letter from Harmers Workplace Lawyers to Peter Slipper dated 26 September 2012	3k	51
MDH 22	Email and attachment from Peter Slipper to Harmers Workplace lawyers dated 26 September 2012	3l	54
MDH 23	Series of emails from Harmers Workplace Lawyers to Peter Slipper (providing electronic copy of Applicant's court book) dated 27 September 2012	3m	60
MDH 24	Letter from Harmers Workplace Lawyers to Peter Slipper dated 27 September 2012	3n	66
MDH 25	Email from Harmers Workplace Lawyers to Peter Slipper dated 27 September 2012	3o	71
MDH 26	Letter from Harmers Workplace Lawyers to Peter Slipper dated 27 September 2012	3p	73
MDH 27	Email from Harmers Workplace Lawyers to Peter Slipper dated 1 October 2012	3q	75
MDH 28	Attorney General's Statement dated 28 September 2012	7	77
MDH 29	Article in The Sydney Morning Herald 'Albanese defends Roxon's Ashby comments' 1 October 2012	7	79

Document number	Details	Paragraph	Page
MDH 30	Article in the Daily Telegraph ' <i>Only the Lawyers are winning in the Slipper Ashby case</i> ' 30 September 2012	7	81
MDH 31	' <i>Absent Speaker's \$173k Spending Spree</i> ' by Anna Caldwell and Steven Scott dated 27 September 2012	9	83

I, Michael Daniel Harmer of Level 28, St Martins Tower, 31 Market Street, Sydney, NSW affirm as follows:

1. I was present in court on 23 July 2012 when his Honour fixed this part heard matter for final determination today and said (at T75):

*"... I will hear it until it finishes then and if it's not finished in two days, I will continue to hear it and I don't care about anyone's convenience, I will finish the hearing. So, I will fix it for 2 October."*

Annexed to the affidavit and marked **MDH 9** is an extract from the transcript dated 23 July 2012.

2. The hearing date was re-confirmed on 17 August 2012, when the second respondent (**Speaker**) was represented by Senior and Junior Counsel and when his Honour made reference (at T25) to: (a) this case already having taken an "inordinate amount of time"; and (b) that his Honour had "set four days aside in October to hear [the part heard applications]".

Annexed to the affidavit and marked **MDH 10** is an extract from the transcript dated 17 August 2012.

3. After 17 August 2012 and prior to receiving a communication requesting an adjournment of the part heard matter at 4:15pm yesterday (a public holiday in Sydney), I have had the following communications with the Speaker and his former legal representatives:

- a. On 22 August 2012 a letter from Maurice Blackburn sent to the Associate requesting that the Court vary the Order for Indemnity Costs against the Speaker made on 2 October 2012. Annexed to the affidavit and marked **MDH 11** is a copy of that letter.

- b. On 22 August 2012 an email from Harmers Workplace Lawyers (**Harmers**) to the Associate and Maurice Blackburn advising that the applicant was opposed to the Speaker's application and any such application should be made by way of an interlocutory application. Annexed to the affidavit and marked **MDH 12** is a copy of that email.

- c. On 22 August 2012 an email from the Associate to Maurice Blackburn, Harmers and the first respondent's solicitors advising that the Speaker should make the appropriate interlocutory application. Annexed to the affidavit and marked **MDH 13** is a copy of that email.

- d. On 22 August 2012 an email from Maurice Blackburn sent to the Associate confirming that the Speaker would file and serve the 'necessary



am. Harmer

application'. Annexed to the affidavit and marked **MDH 14** is a copy of that email.

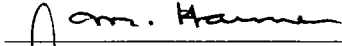

- e. On 27 August 2012 a letter from Harmers to Maurice Blackburn advising that in the applicant's view any application for the Orders made on 17 August to be set aside was misconceived. Annexed to the affidavit and marked **MDH 15** is a copy of that letter.
- f. On 31 August 2012 Harmers, by way of email served the Speaker with the evidence and submissions the applicant proposed to rely on at the hearing commencing 2 October 2012. Annexed and marked **MDH 16** are copies of those emails.
- g. On 18 September 2012 Harmers received service by way of email of a notice advising Maurice Blackburn were ceasing to act for the Speaker. Annexed to the affidavit and marked **MDH 17** is a copy of the notice and covering letter.
- h. On 19 September 2012, a letter from Harmers to the Speaker providing him with key court documentation and also advising him (amongst other things) that the applicant would oppose any application for adjournment of the part heard hearing due to recommence on 2 October 2012. Annexed to the affidavit and marked **MDH 18** is a copy of that letter.
- i. On 25 September 2012 Harmers received service by way of email of a notice of change of address by the Speaker dated 24 September 2012. Annexed to the affidavit and marked **MDH 19** is a copy of the notice and covering email.
- j. On 25 September 2012 Harmers received a letter dated 24 September 2012 from the Speaker advising he objected to the applicant's Notice to Produce directed to him dated 10 September 2012. Annexed to the affidavit and marked **MDH 20** is a copy of that letter.
- k. On 26 September 2012 a letter from Harmers to the Speaker responding to his letter objecting to the applicant's Notice to Produce. Annexed to the affidavit and marked **MDH 21** is a copy of that letter.
- l. On 26 September 2012 at 5.05pm, Harmers received service by way of email of an Interlocutory Application dated 30 August 2012 (drafted and signed by Maurice Blackburn) seeking the Indemnity Cost Order of 17 August 2012 be vacated. Annexed to the affidavit and marked **MDH 22** is a copy of that email and its attachment.
- m. On 27 September 2012 an electronic copy of the Applicant's Court Book was emailed to the Speaker in accordance with Order 9 of the Orders dated 23 July 2012. Annexed to the affidavit and marked **MDH 23** is a copy of those emails.
- n. On 27 September 2012 a letter from Harmers to the Speaker advising him that the claims between applicant and the first respondent had settled but the proceeding as against the Speaker remained alive and the applicant would oppose any application for an adjournment by the Speaker. Annexed to the affidavit and marked **MDH 24** is a copy of that letter.
- o. On 27 September 2012 an email from Harmers to the Speaker forwarding him the email that had been sent to the Associate advising that the claims between the applicant and the first respondent had settled. Annexed to the affidavit and marked **MDH 25** is a copy of that email and its attachment.
- p. On 28 September 2012 a hard copy of the Court book was couriered to the Speaker. Annexed to the affidavit and marked **MDH 26** is a copy of the covering letter.
- q. On 1 October 2012 an email from Harmers to the Speaker advising him that the applicant did not agree to his application for adjournment. Annexed to the affidavit and marked **MDH 27** is a copy of that email.

4. In relation to the communication referred to in paragraph 3(k) above, no explanation has been provided as to why the applicant was served with the further interlocutory application was filed on 30 August 2012 (one day late) contrary to the Court's direction and why it was only served on the applicant at the last moment (in purported compliance with the *Federal Court Rules*).
5. As has previously been made plain, the applicant opposes any delay in determining the allegation made by the Speaker that the applicant, in combination with others, has engaged in an abuse of process. Apart from the fact that the hearing of the application has commenced and is part heard and that to adjourn would be contrary to the case management objectives set out in Part VB of the *Federal Court of Australia Act 1976* (Cth), this is for (at least) eight reasons.
6. First, the allegation made in the Speaker's amended points of claim was foreshadowed as long ago as 18 May 2012 and involves very serious allegations not only against the applicant but also against third parties including Karen Doane, Mal Brough, Steve Lewis, Anthony McLellan, me (and my employees).
7. Secondly, although allegations of abuse of process are being discontinued by the Commonwealth, allegations of improper conduct by the applicant continue to be repeated and publicised widely including by the first law officer of the Commonwealth, the Attorney-General (on Friday) and a senior Commonwealth minister (yesterday). Annexed to the affidavit and marked **MDH 28** is a copy of the Attorney General's Statement in relation to the *James Ashby v Commonwealth matter* dated 28 September 2012. Annexed to the affidavit and marked **MDH 29** is a copy of the article appearing in The Sydney Morning Herald on 1 October 2012 titled '*Albanese defends Roxon's Ashby comments*'. Annexed to the affidavit and marked **MDH 30** is a copy of the article appearing in the Daily Telegraph on 30 September 2012 titled '*Only the Lawyers are winning in the Slipper Ashby case*' by Samantha Maiden.
8. Thirdly, I have instructed Senior and Junior Counsel and my employees to prepare for a contested hearing today and I am aware they have worked to prepare for the hearing of the part heard application on a contested basis. I am responsible for Counsel's fees of this preparation. I am informed if the application is adjourned today, Senior Counsel, who has appeared at all times during this proceeding for the applicant, has very limited availability for the balance of the year due to pre-existing commitments. Additionally, following a requirement that he be available for cross-examination, Mr Russell QC (a witness to be called by the applicant) has made arrangements to be present in court if needed today.
9. Fourthly, I am unaware of any reason why the Speaker cannot be present in Court today. I am aware the Speaker continues to perform his official duties. Annexed hereto and marked **MDH 31** is a copy of the article titled '*Absent Speaker's \$173k Spending Spree*' by Anna Caldwell and Steven Scott dated 27 September 2012 which appeared in several national newspapers.
10. Fifthly, I am instructed and believe that at all times the applicant has been prepared to mediate a resolution of his substantive claim against the Speaker (as suggested by the applicant prior to the first return date of the application) but the applicant does not propose to engage voluntarily in mediation of the dispute while he (and those that represent him) are the subject of an extant application



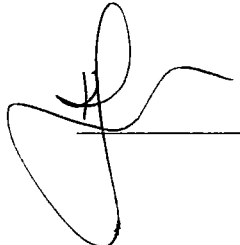
that he, in combination with others, have engaged in conduct which (a) is a serious abuse of the processes of the Court and (b) may amount (if true) to criminal conduct (as previously alleged by the Speaker). In my judgment, there is no prospect whatever of any resolution of this proceeding against the Speaker at mediation while the allegation of abuse of process continues to be publicly asserted and has not been heard and dismissed.

11. Sixthly, I consider the allegations of abuse of process of the Speaker as made in the amended points of claim to be unreasonable and hopeless (in the sense that they are unable to be sustained on the evidence); in these circumstances, it is futile to defer the resolution of the interlocutory application.
12. Seventhly, I am informed and believe that the lack of progress in resolving this whole proceeding (either by final hearing or other resolution) is causing the applicant great anxiety and stress. On my instructions, the substantive proceedings cannot be resolved until the abuse application is determined.
13. Eighthly, the allegations made against my professional conduct by the Speaker have caused and are causing me distress and I want them resolved as soon as possible.

AFFIRMED at Sydney  
On 2 October 2012  
Signature of deponent   
Before me:   
Name of witness KAREN JONES  
Address of witness Level 28 St Martin's Tower, 31 Market Street, Sydney  
Capacity of witness Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 #I saw the face of the deponent.
2. #I have confirmed the deponent's identity using the following identification document: Driver's Licence

Signature of witness 

**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-9** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*Karen Jones*  
.....

Name

Solicitor

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ABN 72 110 028 825

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## TRANSCRIPT OF PROCEEDINGS

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O/N H-100501

**FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES REGISTRY**

**RARES J**

**No. NSD 580 of 2012**

**JAMES HUNTER ASHBY**

**and**

**COMMONWEALTH OF AUSTRALIA and ANOTHER**

**SYDNEY**

**9.33 AM, MONDAY, 23 JULY 2012**

**MR M.B.J. LEE SC appears with MS J.M. McDONALD for the applicant  
MR J.W.K. BURNSIDE QC appears with MS RICHARDS for the 1st respondent  
MR I. NEIL SC appears with MR D. CHIN for the 2nd respondent**

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MR NEIL: Sorry, your Honour, I could - - -

HIS HONOUR: 2 October?

5 MR NEIL: I could probably also – sorry, your Honour, to be doing this – the first week of October, I could probably also - - -

HIS HONOUR: Well, 2 October, that week, because the 1<sup>st</sup> is a public holiday.

10 MR NEIL: Yes.

HIS HONOUR: All right. 2 October.

MR LEE: Yes, your Honour. I can manage – make some arrangements.

15

HIS HONOUR: And I will hear it until it – I will hear it until it finishes then and if it's not finished in two days, I will continue to hear it and I don't care about anyone's convenience, I will finish the hearing. So, I will fix it for 2 October. Now, so - - -

20 MR NEIL: It might be somewhat more leisurely than working back as from that date, your Honour.

HIS HONOUR: Yes. Well, why don't I put it in for directions and you can have your notices to produce and everything returnable on 17 August.

25

MR NEIL: 7 August?

HIS HONOUR: 17. 1, 7, August.

30 MR LEE: Well, can I suggest, your Honour, perhaps it might be – it might be better to defer the directions hearing to say – if it's going to be on 2 October, the further directions hearing for, say, the 31<sup>st</sup>, because then your Honour - - -

35 HIS HONOUR: Well, I won't be here then, Mr Lee. I will be here on 17 August - - -

MR LEE: Or the 7<sup>th</sup>?

40 HIS HONOUR: I'm going on leave on 25 August for three weeks and I will not be in the country, so.

MR LEE: That causes – that causes what might be described as a logistical difficulty, your Honour.

45 HIS HONOUR: All right. Well – now, when can – you can serve the section 78B notices by tomorrow? All right.

**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-10** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES* .....

Name

Solicitor

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ABN 72 110 028 825

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**TRANSCRIPT OF PROCEEDINGS**

---

O/N H-121568

**FEDERAL COURT OF AUSTRALIA**

**NEW SOUTH WALES REGISTRY**

**RARES J**

**No. NSD 580 of 2012**

**JAMES HUNTER ASHBY**

**and**

**COMMONWEALTH OF AUSTRALIA and ANOTHER**

**SYDNEY**

**9.46 AM, FRIDAY, 17 AUGUST 2012**

**MR M.B.J. LEE SC appears with MS FRANCOIS for the applicant  
MS RICHARDS appears for the 1<sup>st</sup> respondent  
MR I. NEIL SC appears with MR D. CHIN for the 2<sup>nd</sup> respondent**

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the applicant's claim that claims damages for breach of contract on the basis that it is extinguished by section 44 of the Safety, Rehabilitation and Compensation Act. We need the information the subject of the notice to produce to make that assessment.

5 HIS HONOUR: Yes.

MS RICHARDS: If privilege is to be claimed - - -

10 HIS HONOUR: Well, I will deal with those spectres when and if I need to. I don't need to do it now.

MS RICHARDS: No.

15 HIS HONOUR: All right. What else is there, because there are other people who want to use the court besides your clients. I don't say that facetiously, Mr Lee. This case has taken an inordinate amount of court time.

MR LEE: I don't disagree with that, your Honour.

20 HIS HONOUR: And I have set four days aside in October to hear it and all I'm hearing is an application that the case not be heard. I haven't even got to hearing the case, if there is one, to go forward.

25 MR LEE: It is not meant facetiously on my part either, your Honour. We came here on the first directions day and wanted to hear it.

HIS HONOUR: Well, there are issues that have to be resolved, Mr Lee. It is my job. All right. Is there anything else? All right.

30

**MATTER ADJOURNED at 10.47am ACCORDINGLY**

**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-11** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES* .....

Name

Solicitor

## Cesar Abood

---

**From:** Siobhan Keating [SKeating@mauriceblackburn.com.au]  
**Sent:** Wednesday, 22 August 2012 8:35 AM  
**To:** 'Associate RaresJ'  
**Cc:** Michael Harmer; Karen Jones; 'Mann, Catherine'; 'O'Donovan, Damien'  
**Subject:** Ashby v the Cth and Anor (NSD580/2012)  
**Importance:** High  
**Attachments:** Ltr to Associate to Rares J.pdf

Dear Associate

Please find attached our correspondence of today's date.

This e-mail, with its attachment, has been copied to the other parties.

Regards



We fight for fair

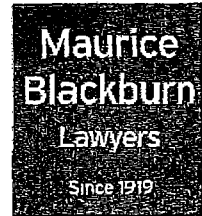
**Siobhan Keating** | Special Counsel

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22 August 2012

Abbey Burke  
Associate to Justice Rares  
Federal Court of Australia  
Level 17, Commonwealth Law Courts Building  
Queens Square  
SYDNEY NSW 2000

By Email: [associate.raresj@fedcourt.gov.au](mailto:associate.raresj@fedcourt.gov.au)

Dear Associate,

Re: **Ashby v the Commonwealth & Anor**  
**NSD 580/2012**

We refer to the above and to the Order made by his Honour on Friday, 17 August 2012.

That Order requires, inter alia, that the Second Respondent pay the costs of the Second Respondent's interlocutory application of 13 August 2012 on an indemnity basis. We understand that that the Order has not yet been entered.

We respectfully request that His Honour exercise the power conferred by rule 39.04 of the Federal Court Rules 2011 and vary the Order such that the costs of the Second Respondents application are reserved, with argument to be heard on a date to be fixed.

The practical effect of the costs provisions of the *Fair Work Act 2009* (Cth) (**FW Act**) is that there is no 'ordinary course' in relation to the question of costs on interlocutory applications. In the writer's experience, the question of costs in circumstances where s.570 of the FW Act applies is ordinarily dealt with on notice and with appropriate arrangements for the presentation of evidence and informed submissions, including by reference to relevant authority.

As the Second Respondent did not have notice that costs would be dealt with on 23 August 2012 (or indeed that any question of costs would arise) he had no proper opportunity to put evidence, informed submissions or relevant authority before the Court as to the application of s.570 of the FW Act to the circumstances of this case. We are instructed that, had the opportunity existed, the Second Respondent would have put a number of matters to the Court by way of affidavit in relation to the question of costs.



Maurice Blackburn Offices in Victoria, New South Wales, Queensland, Australian Capital Territory and Western Australia  
[mauriceblackburn.com.au](http://mauriceblackburn.com.au)

In our respectful view, the transcript identifies that the Second Respondent did not have a proper opportunity to put informed submissions and any relevant evidence before the Court and was not able to fully ventilate the matters that might bear on the question of costs. In that regard, we draw your attention to paragraphs 40 through 45 of page 16 of the transcript and paragraphs 15 through 30 of page 17 of the transcript of the hearing of Friday 17 August 2012.

We therefore respectfully request that His Honour vary the Order such that the question of costs in relation to the Second Respondent's interlocutory application of 13 August 2012 be reserved, with the question to be determined on a date to be fixed. The course we propose will remedy any prejudice caused to our client, without causing prejudice to either the Applicant or the First Respondent. Such an approach would also be consistent with the approach adopted in relation to the First Respondent's application for the costs of its interlocutory application also made on 17 August 2012.

We respectfully request that His Honour give urgent attention to this request.

We confirm that this letter has been copied to the other parties.

If you have any questions in relation to the above, please do not hesitate to contact the writer.

Yours faithfully



**Siobhan Keating**  
**Special Counsel**  
**Employment & Industrial Law Section**  
**MAURICE BLACKBURN**



**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-12** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES* .....

Name

Solicitor

**Cesar Abood**

---

**From:** Karen Jones [karen.jones@harmers.com.au]  
**Sent:** Wednesday, 22 August 2012 9:46 AM  
**To:** Siobhan Keating; Associate RaresJ  
**Cc:** Michael Harmer; Mann, Catherine; O'Donovan, Damien  
**Subject:** RE: Ashby v the Cth and Anor (NSD580/2012) [HWL-HARMERS.FID775611]

Dear Associate

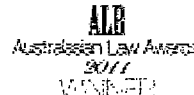
We refer to the email to you this morning (below) from the Second Respondent, of which we had no prior notice.

The Application is opposed. If any application is to be made (and the submission of the applicant will be it ought not be entertained), it should be done in an orthodox way by interlocutory application and in open Court.

Kind regards

Karen Jones  
Senior Associate & Team Leader

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ALB Australasian Law Awards Winner 2006, 2007, 2008, 2009, 2010 & 2011

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**From:** Siobhan Keating [mailto:SKeating@mauriceblackburn.com.au]  
**Sent:** Wednesday, 22 August 2012 8:35 AM  
**To:** 'Associate RaresJ'  
**Cc:** Michael Harmer; Karen Jones; 'Mann, Catherine'; 'O'Donovan, Damien'  
**Subject:** Ashby v the Cth and Anor (NSD580/2012)  
**Importance:** High

Dear Associate

Please find attached our correspondence of today's date.

This e-mail, with its attachment, has been copied to the other parties.

Regards



**Siobhan Keating | Special Counsel**

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**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-13** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES* .....

Name

Solicitor

**Cesar Abood**

---

**From:** Associate RaresJ [Associate.RaresJ@fedcourt.gov.au]  
**Sent:** Wednesday, 22 August 2012 10:02 AM  
**To:** Karen Jones; Siobhan Keating; Michael Harmer; Mann, Catherine; O'Donovan, Damien  
**Cc:** Margreet Shehata  
**Subject:** RE: Ashby v the Cth and Anor (NSD580/2012) [HWL-HARMERS.FID775611]  
**Attachments:** Ltr to Associate to Rares J.PDF

Dear parties,

I refer to the second respondent's request below regarding his Honour's costs order of 17 August 2012.

Justice Rares advises that the second respondent may make an interlocutory application in respect of this request on or before 29 August 2012.

Any such application will be returnable before Rares J on 2 October 2012.

Kind regards,

**Abbey Burke**  
**Associate to Justice Rares**  
Federal Court of Australia  
[associate.raresj@fedcourt.gov.au](mailto:associate.raresj@fedcourt.gov.au)  
Phone (02) 9230-8491  
[www.fedcourt.gov.au](http://www.fedcourt.gov.au)

---

**From:** Karen Jones [mailto:karen.jones@harmers.com.au]  
**Sent:** Wednesday, 22 August 2012 9:46 AM  
**To:** Siobhan Keating; Associate RaresJ  
**Cc:** Michael Harmer; Mann, Catherine; O'Donovan, Damien  
**Subject:** RE: Ashby v the Cth and Anor (NSD580/2012) [HWL-HARMERS.FID775611]

Dear Associate

We refer to the email to you this morning (below) from the Second Respondent, of which we had no prior notice.

The Application is opposed. If any application is to be made (and the submission of the applicant will be it ought not be entertained), it should be done in an orthodox way by interlocutory application and in open Court.  
Kind regards

Karen Jones  
Senior Associate & Team Leader


**M** +61 400 670 224 | **D** +61 2 9993 8518 | **T** +61 2 9267 4322 | **F** +61 2 9264 4295  
**E** [karen.jones@harmers.com.au](mailto:karen.jones@harmers.com.au) | **W** [www.harmers.com.au](http://www.harmers.com.au)  
**A** Level 28, St Martins Tower, 31 Market Street, Sydney NSW 2000



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ALB Australasian Law Awards Winner 2006, 2007, 2008, 2009, 2010 & 2011

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e-mail in error, please immediately notify us by telephone at +61 (02) 9267 4322 or +61 (03) 9612 2300 or +61 (07) 3016 8000 or by reply e-mail to the sender. You must destroy the original transmission and its contents. You will be reimbursed for reasonable costs incurred in notifying us.

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---

**From:** Siobhan Keating [mailto:SKeating@mauriceblackburn.com.au]  
**Sent:** Wednesday, 22 August 2012 8:35 AM  
**To:** 'Associate RaresJ'  
**Cc:** Michael Harmer; Karen Jones; 'Mann, Catherine'; 'O'Donovan, Damien'  
**Subject:** Ashby v the Cth and Anor (NSD580/2012)  
**Importance:** High

Dear Associate

Please find attached our correspondence of today's date.

This e-mail, with its attachment, has been copied to the other parties.

Regards



**Siobhan Keating** | Special Counsel

Maurice Blackburn Pty Limited  
Level 10, 456 Lonsdale Street, Melbourne VIC 3000  
T (03) 9605 2756 F (03) 9258 9613  
[SKeating@mauriceblackburn.com.au](mailto:SKeating@mauriceblackburn.com.au) | <http://www.mauriceblackburn.com.au>



www.fightforfair.com

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**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-14** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES* .....

Name

Solicitor

## Cesar Abood

---

**From:** Siobhan Keating [SKeating@mauriceblackburn.com.au]  
**Sent:** Wednesday, 22 August 2012 10:45 AM  
**To:** 'Associate RaresJ'; Karen Jones; Michael Harmer; Mann, Catherine; O'Donovan, Damien  
**Cc:** Margreet Shehata  
**Subject:** RE: Ashby v the Cth and Anor (NSD580/2012) [HWL-HARMERS.FID775611]

Dear Associate

Many thanks for the e-mail. We will file and serve the necessary application.

Regards



**Siobhan Keating | Special Counsel**

Maurice Blackburn Pty Limited  
Level 10, 456 Lonsdale Street, Melbourne VIC 3000  
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Dear parties,

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Any such application will be returnable before Rares J on 2 October 2012.

Kind regards,

**Abbey Burke**  
**Associate to Justice Rares**  
Federal Court of Australia  
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Phone (02) 9230-8491  
[www.fedcourt.gov.au](http://www.fedcourt.gov.au)

---

**From:** Karen Jones [mailto:karen.jones@harmers.com.au]

28/09/2012



**Sent:** Wednesday, 22 August 2012 9:46 AM  
**To:** Siobhan Keating; Associate RaresJ  
**Cc:** Michael Harmer; Mann, Catherine; O'Donovan, Damien  
**Subject:** RE: Ashby v the Cth and Anor (NSD580/2012) [HWL-HARMERS.FID775611]

Dear Associate

We refer to the email to you this morning (below) from the Second Respondent, of which we had no prior notice.

The Application is opposed. If any application is to be made (and the submission of the applicant will be it ought not be entertained), it should be done in an orthodox way by interlocutory application and in open Court. Kind regards

Karen Jones  
Senior Associate & Team Leader

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**Subject:** Ashby v the Cth and Anor (NSD580/2012)  
**Importance:** High

Dear Associate

Please find attached our correspondence of today's date.

This e-mail, with its attachment, has been copied to the other parties.

Regards



**Siobhan Keating** | Special Counsel

Maurice Blackburn Pty Limited  
Level 10, 456 Lonsdale Street, Melbourne VIC 3000  
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[SKeating@mauriceblackburn.com.au](mailto:SKeating@mauriceblackburn.com.au) | <http://www.mauriceblackburn.com.au>



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**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-15** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KARON JONES* .....

Name

Solicitor

- Change Management
- Industrial Relations
- Employment
- Occupational Health & Safety
- Human Rights & Equal Opportunity
- Legal Risk Management

Our ref: GKR:BDB:KLJ:20121209  
Please reply to: Sydney Office

27 August 2012

Maurice Blackburn  
Level 10, 456 Lonsdale Street  
MELBOURNE VIC 3000

**Copy to:**  
Australian Government Solicitor  
50 Blackall St  
BARTON ACT 2600

**Attention: Siobhan Keating /  
Josh Bornstein**

**Attention: Sarah Wright /  
Catherine Mann**

**By email: [skeating@mauriceblackburn.com.au](mailto:skeating@mauriceblackburn.com.au);  
[jbornstein@mauriceblackburn.com.au](mailto:jbornstein@mauriceblackburn.com.au)**

**By email: [sarah.wright@ags.gov.au](mailto:sarah.wright@ags.gov.au)  
[catherine.mann@ags.gov.au](mailto:catherine.mann@ags.gov.au)**

Dear Colleagues

## **JAMES ASHBY V COMMONWEALTH OF AUSTRALIA & ANOR (NSD580/2012)**

We refer to your letter to the Associate to his Honour Justice Rares on 22 August 2012 and to the reply from his Honour's chambers.

We note that the letter constituted an application that his Honour exercise the power said to be conferred by rule 39.04 of the *Federal Court Rules 2011* to vary an order such that the costs of the second respondent's interlocutory application are reserved, with argument to be heard on a date to be fixed. The order was said in your letter to be "*that the Second Respondent pay the costs of the Second Respondent's interlocutory application of 13 August 2012 on an indemnity basis*".

We make the following points:

1. The letter was an un-notified substantive *ex parte* communication to the Court. While we understand that parties, from to time, can communicate on non-contentious matters and on logistical matters with his Honour's chambers, the communication went beyond those range of communications which are appropriate to have been made

---

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BRISBANE  
Suite 16 Level 10  
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Brisbane QLD 4000  
Phone: (07) 3016 8000  
Fax: (07) 3016 8001  
Email: [brisbane@harmers.com.au](mailto:brisbane@harmers.com.au)

without notice and permission. Leaving aside the terms of relevant professional rules prohibiting such communications by barristers or solicitors, the position of the Court has been made plain: as was noted by Perram J in *Porter v Australian Prudential Regulations Authority* [2009] FCA 1148 at [20]: “...it is important to record that communications with a judge’s chambers which the other parties do not know of, or have not approved of, are improper and should not occur”. If your client wished to raise the matter, a draft of the letter should have been provided to the other parties and permission should have been sought for the communication to take place. Absent that permission, the appropriate course would have been to seek to exercise the liberty to restore the matter to the list. We would be grateful for you to ensure that such an unauthorised *ex parte* communication not occur in the future.

2. Your letter misstates, in an important respect, the terms of the orders made. As recorded in the transcript (T20), they were as follows:
  - a. Grant leave to the second respondent to amend his amended points of claim filed on 26 June 2012 by deleting the word “unlawfully” wherever it appears in paragraphs 21 and 31;
  - b. Order the second respondent to pay the applicant’s costs on an indemnity basis of and occasioned by the amendment and his interlocutory application filed 13 August 2012.
3. The foreshadowed application is, with respect, wholly misconceived. The transcript records a number of matters. *First*, your client was represented by Senior and Junior Counsel instructed by your firm and had every opportunity to be heard (T16.20 - 20.12), a matter to which we return below. *Secondly*, our client had, in correspondence before the Court, expressly reserved his position in relation to arguing costs on the amendment application (Applicant’s Bundle page 6). *Thirdly*, no evidence was read on the application by your client and no application was made for any adjournment to adduce such evidence; the only application made (but not persisted in) was for an adjournment to put before the Court written submissions, which was refused (T17.4 – 17.25). *Fourthly*, his Honour made plain he wished to deal with the issue of costs that day and proceeded to do so without any evidence on the question of costs being adduced that day by placing material before the Court. (T17.24 – 20.1). *Fifthly*, and most importantly, your client, through his Senior Counsel, put argument to his Honour after specific reference was made to the applicability of section 570(2)(b) of the *Fair Work Act* (T17.10); in this context, after matters as to unreasonableness were canvassed, the following exchange occurred (T18, 19-20):

*MR NEIL: Could your Honour excuse me for one moment?*

*MR LEE: I can tell your Honour I’ve got instructions if it’s on that basis, and given my friend’s unconditional withdrawal not only for this application but the proceedings, we will consent to the amendment on that basis, subject [scil. to that order) for costs.*

*MR NEIL: I'm sorry, your Honour, is it convenient for your Honour just if we could have one moment?*

\*\*\*\*\*

*HIS HONOUR: Yes. Mr Neil.*

*MR NEIL: Very well. I'm just asking for some instructions at the moment, your Honour, but I won't ask your Honour to wait for them to come.*

*HIS HONOUR: All right.*

*MR NEIL: I would urge your Honour not to make any order for costs and I would urge your Honour in the alternative not to make the order for costs on an indemnity basis. It is not correct to characterise the present application as one that is not attended by any explanation. The explanation is obvious. I've given the explanation.*

*HIS HONOUR: Well, the explanation is after what was threatened to happen happened, you decided, having closed your case, you didn't want to persist with it.*

*MR NEIL: Well, what was threatened to happen is not what – what eventually happened was not all that was threatened to happen. What we were faced with - -*

*HIS HONOUR: What eventually happened had a lot of other things and to the extent that the costs involve all the other things and that's still going on, that's all well and good. I'm talking about costs thrown away by reason of your amendment.*

*MR NEIL: That's - - -*

*HIS HONOUR: You want to make an amendment, you chose to run this point, you should pay the costs in any event. But it seems to me that in light of your doing this after you've closed your case, knowing that this was on the cards, it's unreasonable of you not to have told your case before we started the hearing.*

*MR NEIL: Your Honour has my submissions. (emphasis added)*

4. A review of the transcript reveals that it was only after your client's representative had completed his submissions (without any application to lead evidence) that the Court dealt with the matter.
5. The reagitation of the issue of costs is not open and to file an interlocutory application seeking such relief would, in our view, constitute (in the narrow sense) an abuse of process and must be dismissed. In particular, as you are aware, the power to reopen judgments and vacate orders after a contested hearing is extremely limited. In *Autodesk Inc v Dyason (No 2)* (1993) 176 CLR 300, Mason CJ explained the circumstances in which the power may be exercised as follows (at 301):

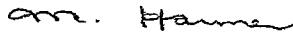
“... the public interest in the finality of litigation will not preclude the exceptional step of reviewing or rehearing an issue when a court has good reason to consider that, in its earlier judgment, it has proceeded on a misapprehension as to the facts or the law. ... However, it must be emphasised that the jurisdiction is not to be exercised for the purpose of reagitating arguments already considered by the court; nor is it to be exercised simply because the party seeking a rehearing has failed to present the argument in all its aspects or as well as it might have been put. What must emerge, in order to enliven the exercise of the jurisdiction, is that the court has apparently proceeded according to some misapprehension of the facts or the relevant law and that this misapprehension cannot be attributed solely to the neglect or default of the party seeking the rehearing. The purpose of the jurisdiction is not to provide a backdoor method by which unsuccessful litigants can seek to reargue their cases.”

(See also *Wentworth v Wentworth* [1999] NSWSC 638 at [6] per Santow J; *R v Nitin Giri (No. 2)* [2001] NSWCCA 234 at [17] per Heydon JA).

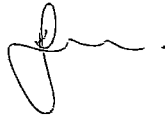
6. None of these necessary features are present in this case. In the light of the facts and authority the application to reagitate the costs issue is hopeless. There was no misapprehension of the law or of the facts. What is clear is that his Honour's order was based upon a factual finding that your client behaved unreasonably within the meaning of the section (T20.1 and see earlier at T17.16 and T17.35 to 18.2). If an application is filed, we will submit it is an abuse, is unreasonable and that the indemnity costs order made should be extended to cover all costs associated with the proposed reagitation of the issue.
7. Moreover, we note that his Honour exercised a judicial discretion to allow your client to amend only after we had indicated our consent on the basis that a costs order was made in the terms subsequently made (T18.6). If the costs order is sought to be disturbed, we consider that it must necessarily follow that the discretion must be re-exercised in relation to the amendment. After finding your client's conduct was relevantly unreasonable, as is usual on such applications, his Honour made plain the “cost” of the amendment was the costs order made. Your client, in accordance with the way his Honour dealt with the matter, cannot have the indulgence without paying the price of the indulgence – the orders (as recorded in paragraph 2 above) were made together and they stand or fall together.
8. Accordingly, in the event an interlocutory application is filed seeking to set aside the cost order and if this application is, contrary to our submissions, entertained, we put you on notice we will ask his Honour to re-determine the amendment application and oppose any amendment. If the amendment application is thereafter refused, we will proceed to run the case on the pleadings prior to the determination of the original application to amend. We expressly put you on notice that you should be prepared to meet our client's positive case as pleaded in the points of reply on 2 October 2012 and both respondents should ensure that they have in Court all materials in answer to the notices to produce filed. We will also be re-notifying those of the Attorneys-General who expressed an interest in the issue or who had not yet responded prior to your client's application to amend to note that there is a possibility the issue may still be argued to obviate the necessity for any adjournment.

Please ensure that this letter is placed before the Court in any affidavit filed in support of any application your client proposes to make.

Yours faithfully  
**HARMERS WORKPLACE LAWYERS**



**Michael Harmer**



**Karen Jones**



**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**


Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-16** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

 KAREN JONES  
Name

Solicitor

**Karen Jones**

---

**From:** Karen Jones [karen.jones@harmers.com.au]  
**Sent:** Friday, 31 August 2012 6:12 PM  
**To:** Mann, Catherine; Wright, Sarah; SKeating@mauriceblackburn.com.au;  
JBornstein@mauriceblackburn.com.au  
**Cc:** Ashby Team  
**Subject:** Ashby v Commonwealth of Australia & Anor 580/2012 Email 1 of 2 [HWL-  
HARMERS.FID775611]  
**Attachments:** signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif

Dear Colleagues

Please find **attached** the Applicant's submissions which have been filed today. An affidavit of Michael Harmer will follow in a separate email. We will serve a sealed copy once returned from the Court.

Kind regards

Karen Jones  
Senior Associate & Team Leader


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E karen.jones@harmers.com.au | W [www.harmers.com.au](http://www.harmers.com.au)  
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**Sent:** Friday, 31 August 2012 6:13 PM  
**To:** Mann, Catherine; Wright, Sarah; SKeating@mauriceblackburn.com.au;  
JBornstein@mauriceblackburn.com.au  
**Cc:** Ashby Team  
**Subject:** Ashby v Commonwealth of Australia & Anor 580/2012 Email 2 of 2 [HWL-  
HARMERS.FID775611]  
**Attachments:** signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif;  
signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif

Dear Colleagues

Please find **attached** Michael Harmer's affidavit together with annexures.

Kind regards

Karen Jones  
Senior Associate & Team Leader

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No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

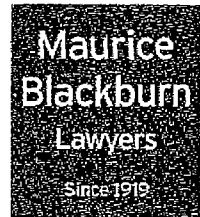
This is the annexure marked **MDH-17** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KARLYN JONES* .....

Name

Solicitor



Our Ref: KF/3049909  
T: (03) 9605 2831  
F: (03) 9258 9613  
E: KFarouque@mauriceblackburn.com.au

18 September 2012

Mr Michael Harmer  
Harmers Workplace Lawyers  
Level 26, St Martin's Tower  
31 Market Street  
SYDNEY NSW 2000

By Email: Michael.Harmer@harmers.com.au

Maurice Blackburn Pty Limited  
ABN 21 105 657 949

Level 10  
456 Lonsdale Street  
Melbourne VIC 3000

P.O. Box 523  
Melbourne VIC 3001

DX 466 Melbourne

T (03) 9605 2700  
F (03) 9258 9600

Dear Practitioner

Re: **James Ashby v. Commonwealth of Australia & Anor**  
**NSD 580/2012**

We refer to the above matter.

We herewith enclose by way of service, Notice of Ceasing to Act filed with the court today on behalf of the Second Respondent in this matter.

If you have any questions in relation to the above, please contact the writer.

Yours faithfully

*Maurice Blackburn*

Kamal Farouque  
Partner  
Employment & Industrial Law Section  
MAURICE BLACKBURN



Maurice Blackburn Offices in Victoria, New South Wales, Queensland, Australian Capital Territory and Western Australia  
mauriceblackburn.com.au

**Notice of ceasing to act**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**JAMES HUNTER ASHBY**

Applicant

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

First Respondent

Maurice Blackburn Lawyers has ceased to act as lawyer for Peter Slipper, the Second Respondent in the proceeding.

The last known residential or business address of the Second Respondent is 27 Gleneagle Court, Buderim, QLD, 4556.

Date: 18 September 2012

*Maurice Blackburn*

Signed by Kamal Farouque  
Lawyer

Filed on behalf of (name & role of party)	<u>The Second Respondent</u>		
Prepared by (name of person/lawyer)	<u>Kamal Farouque</u>		
Law firm (if applicable)	<u>Maurice Blackburn Lawyers</u>		
Tel	<u>(03) 9605 2700</u>	Fax	<u>(03) 9258 9613</u>
Email	<u>KFarouque@mauriceblackburn.com.au</u>		
Address for service (include state and postcode)	<u>Level 10, 456 Lonsdale Street, Melbourne, Victoria, 3000</u>		

[Form approved 01/08/2011]

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

NSD580 of 2012

**JAMES HUNTER ASHBY**

Applicant

**COMMONWEALTH OF AUSTRALIA**

First Respondent

**PETER SLIPPER**

Second Respondent

**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-18** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES* .....

Name

Solicitor



**Karen Jones**

---

**From:** Karen Jones [karen.jones@harmers.com.au]  
**Sent:** Wednesday, 19 September 2012 11:43 AM  
**To:** Peter.Slipper.MP@aph.gov.au  
**Subject:** Ashby v Commonwealth & Anor NSD 580/2012 Private and Confidential [HWL-HARMERS.FID775611]  
**Attachments:** signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif

Dear Sir

Please see our letter with enclosures **attached**.

If you have any queries, please do not hesitate to contact our office.

Kind regards

Karen Jones  
Senior Associate & Team Leader


M +61 400 670 224 | D +61 2 9993 8518 | T +61 2 9267 4322 | F +61 2 9264 4295  
E karen.jones@harmers.com.au | W [www.harmers.com.au](http://www.harmers.com.au)  
A Level 28, St Martins Tower, 31 Market Street, Sydney NSW 2000



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---

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 Please consider the environment before printing this email.

Our ref: MDH:GKR:BDB:20121209

19 September 2012

The Hon. Peter Slipper  
27 Gleneagle Court  
BUDERIM QLD 4556

**COPY TO**

House of Representatives  
Parliament House  
PO Box 6022  
CANBERRA ACT 2600

By email: [Peter.Slipper.MP@aph.gov.au](mailto:Peter.Slipper.MP@aph.gov.au)

Dear Sir,

**JAMES ASHBY V COMMONWEALTH OF AUSTRALIA & ANOR (NSD580/2012)**

Maurice Blackburn Pty Limited served us yesterday with notification that it has ceased to act for you. We have not been served with a notice of change of solicitor; accordingly, we assume that you are now representing yourself. If that is not correct, please have your new legal representative contact us as soon as possible.

We are not sure of the extent of recent communications you have had with your former solicitors and, for the avoidance of any doubt, we **enclose** for your information:

- the interlocutory application filed on your behalf on 8 June 2012 which is part heard;
- copies of the orders made by the Court which affect you on 23 July 2012 and 17 August 2012; and
- a copy of a notice to produce directed to you requiring you to produce identified documents on 2 October 2012.

As noted above, your interlocutory application is currently part heard. The hearing (which is a concurrent hearing with a similar interlocutory application filed by the Commonwealth) is listed to resume on **2 October 2012 until the hearing is completed**. We put you on notice that the applicant will oppose any application by you for an adjournment of that hearing. If you propose to engage further solicitors, we suggest you do so without delay. In this context, we are not sure whether you have access to your former solicitor's file, but we note that many of the relevant court documents are publicly available from the Federal Court Registry in

---

**MELBOURNE**

Level 2  
417 Collins Street  
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Melbourne VIC 8007  
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Sydney NSW 1230  
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Facsimile: (02) 9264 4295  
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Brisbane QLD 4001  
Telephone: (07) 3016 8000  
Facsimile: (07) 3016 8001  
Email: brisbane@harmers.com.au

[www.harmers.com.au](http://www.harmers.com.au)

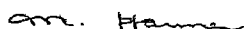
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Sydney and on the Federal Court website:  
[www.fedcourt.gov.au/courtdocuments/ashby\\_cjh.html](http://www.fedcourt.gov.au/courtdocuments/ashby_cjh.html)).

We are also conscious of our obligations under section 37N of the *Federal Court of Australia Act 1976* and should you require any documents, which are not publically available, we will attempt to provide you with them upon appropriate arrangements being made.

Yours faithfully

**HARMERS WORKPLACE LAWYERS**



**Michael Harmer**



**Karen Jones**

**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-19** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES* .....

Name

Solicitor

**Karen Jones**

---

**From:** Slipper, Peter (Private) [slipperp@aph.gov.au]  
**Sent:** Tuesday, 25 September 2012 5:02 PM  
**To:** Michael Harmer  
**Subject:** FW: address for service  
**Attachments:** document.pdf

Form 10  
Rules 5.02; 11.07

### Notice of address for service

No. NSD 580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**JAMES HUNTER ASHBY**

Applicant

**COMMONWEALTH OF AUSTRALIA and another according to schedule**

First Respondent


Peter Neil Slipper of 27 Gleneagle Court, Buderim, QLD, 4556, the Second Respondent gives notice that the Second Respondent's address for service is:

Place: Shops 10A and Shop 10B "Cartwright Centre"

Corner Point Cartwright Drive and the Nicklin Way, Buddina

Email: [slipperp@aph.gov.au](mailto:slipperp@aph.gov.au)

Date: 24 September 2012



Signed by Peter Neil Slipper  
Second Respondent

---

Filed on behalf of (name & role of party)	<u>Mr Peter Slipper, the Second Respondent</u>
Prepared by (name of person/lawyer)	<u>Mr Peter Slipper</u>
Law firm (if applicable)	_____
Tel	_____ Fax _____
Email	<u>slipperp@aph.gov.au</u>
Address for service	<u>Shops 10A &amp; 10B, Corner Point Cartwright Drive and the Nicklin Way, BUDDINA QLD 4575</u>

Federal Court of Australia

NSD580/2012

District Registry: New South Wales

Division: Fair Work

**Schedule**

**JAMES HUNTER ASHBY**  
Applicant

**COMMONWEALTH OF AUSTRALIA**  
First Respondent

**PETER SLIPPER**  
Second Respondent

**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-20** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES* .....

Name

Solicitor



**Karen Jones**

---

**From:** Slipper, Peter (Private) [slipperp@aph.gov.au]  
**Sent:** Tuesday, 25 September 2012 4:53 PM  
**To:** Michael Harmer  
**Subject:** FW: scanned letter  
**Attachments:** letter.pdf



Parliament of Australia

**FEDERAL MEMBER FOR FISHER**  
**SPEAKER OF THE HOUSE OF REPRESENTATIVES**  
**THE HON PETER SLIPPER MP**

Mr Michael Harmer  
Harmers Workplace Lawyers  
Level 28, St Martins Tower  
31 Market Street  
SYDNEY 2000

**BY EMAIL: [michael.harmer@harmers.com.au](mailto:michael.harmer@harmers.com.au)**

Dear Mr Harmer

I refer to your email to my former solicitors serving a Notice to Produce dated 10 September 2012 returnable on 2 October, 2012.

I understand that by an email sent on 24 August 2012, Harmers informed the Associate to the Honourable Justice Rares that it intended to file a Notice to Produce.

I understand that by reply email of the same date the Associate informed Harmers that His Honour declined to agree to the request.

In that email it was noted by the Associate that by Order 5 of the Order made on 23 July 2012, the Court ordered the Applicant to serve any Notice to Produce on or before 25 July 2012, to be returnable on 17 August 2012.

I object to your Notice to Produce dated 10 September 2012 as it has been served out of time.

Yours faithfully

**PETER SLIPPER**

me

24/9/12

Cartwright Centre, Cnr Nicklin Way & Pt Cartwright Drive, Buddina, QLD 4575 – PO Box 1224, Buddina 4575  
Telephone (07) 54444 888 Facsimile (07) 5452 6655

Email: [Peter.Slipper.MP@aph.gov.au](mailto:Peter.Slipper.MP@aph.gov.au) website: [www.peterslippermp.com.au](http://www.peterslippermp.com.au)

**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-21** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES*.....

Name

Solicitor

**Karen Jones**

---

**From:** Brooke Lister  
**Sent:** Wednesday, 26 September 2012 10:10 AM  
**To:** 'slipperp@aph.gov.au'  
**Cc:** 'sarah.wright@ags.gov.au'; 'catherine.mann@ags.gov.au'  
**Subject:** JAMES ASHBY V COMMONWEALTH OF AUSTRALIA & ANOR (NSD580/2012)  
**Attachments:** Letter to P Slipper - 26 September 2012.PDF

Dear Mr Slipper

Please see **attached** letter.

Kind regards

Brooke Lister  
Legal Secretary

D +61 2 9993 8544 | T +61 2 9267 4322 | F +61 2 9264 4295  
E [brooke.lister@harmers.com.au](mailto:brooke.lister@harmers.com.au) | W [www.harmers.com.au](http://www.harmers.com.au)  
A Level 28, St Martins Tower, 31 Market Street, Sydney NSW 2000



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 Please consider the environment before printing this email.

- Change Management
- Industrial Relations
- Employment
- Occupational Health & Safety
- Human Rights & Equal Opportunity
- Legal Risk Management

Our ref: MDH:GKR:BDB:20121209

26 September 2012

The Hon Peter Slipper MP  
PO Box 1224  
Buddina QLD 4575

Australian Government Solicitor  
50 Blackall St  
BARTON ACT 2600

**Attention: Sarah Wright / Catherine Mann**

By email: [slipperp@aph.gov.au](mailto:slipperp@aph.gov.au)

By email: [sarah.wright@ags.gov.au](mailto:sarah.wright@ags.gov.au)  
[catherine.mann@ags.gov.au](mailto:catherine.mann@ags.gov.au)

Dear Mr Slipper,

**JAMES ASHBY V COMMONWEALTH OF AUSTRALIA & ANOR (NSD580/2012)**

We refer to your letter of 25 September 2012, which objects to the applicant's Notice to Produce dated 10 September 2012 on the grounds that it was served out of time.

Please note that this Notice to Produce was served under Federal Court Rule 30.28 and not pursuant to the Court Order you have referenced. The notice has been served in accordance with the Federal Court Rules and accordingly you will be required to produce the documents in Court on 2 October 2012.

Yours faithfully

**HARMERS WORKPLACE LAWYERS**

*m. Harmer*

**Michael Harmer**



**Karen Jones**

---

**MELBOURNE**

Level 2  
417 Collins Street  
Melbourne VIC 3000  
PO Box 632 Collins St West  
Melbourne VIC 8007  
Telephone: (03) 9612 2300  
Facsimile: (03) 9612 2301  
Email: [melbourne@harmers.com.au](mailto:melbourne@harmers.com.au)

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Email: [sydney@harmers.com.au](mailto:sydney@harmers.com.au)  
[www.harmers.com.au](http://www.harmers.com.au)

**BRISBANE**

Suite 16, Level 10  
320 Adelaide Street  
Brisbane QLD 4000  
GPO Box 111  
Brisbane QLD 4001  
Telephone: (07) 3016 8000  
Facsimile: (07) 3016 8001  
Email: [brisbane@harmers.com.au](mailto:brisbane@harmers.com.au)

**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-22** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES* .....

Name

Solicitor

**Karen Jones**

---

**From:** Ellis, Michelle (P. Slipper, MP) [Michelle.Ellis@aph.gov.au]  
**Sent:** Wednesday, 26 September 2012 5:05 PM  
**To:** Michael Harmer  
**Subject:** Correspondence from Peter Slipper  
**Attachments:** Interlocutory Application 30.08.12.pdf

Dear Mr Harmer,

RE: NSD580/2012

Please find attached by way of service on you Interlocutory Application filed 30 August 2012.

Kind regards  
**Peter Slipper**

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

**NOTICE OF FILING AND HEARING**

This application was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 30/08/2012.

**DETAILS OF FILING**

**Document Lodged:** Interlocutory Application (Fair Work Schedule 3 Exemption) - Form 35 - Rule 17.01(1)(a)  
**File Number:** NSD580/2012  
**File Title:** James Hunter Ashby v Commonwealth of Australia & Anor  
**District Registry:** NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA  
**Reason for Listing:** Interlocutory Hearing  
**Time and date for hearing:** 02/10/2012, 9:30 AM  
**Place:** Court Room 19E, Level 17 Law Courts Building Queen's Square, Sydney



*Warrick Soden*

**Dated:** 30/08/2012

**Registrar**

**NOTES**

1. This Notice forms part of the application and contains information that might otherwise appear elsewhere in the application. The Notice must be included in the application served on each party to the proceeding.
2. The 'reason for listing' is descriptive and does not limit the issues that might be dealt with, or orders that might be made, at the hearing.





## Interlocutory Application

**Federal Court of Australia**

No: NSD580/2012

District Registry: New South Wales

Division: Fair Work

**JAMES HUNTER ASHBY**  
Applicant

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

To the Applicant

The Second Respondent applies for the interlocutory orders 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.

**Time and date for hearing:** 9:30am on 2 October 2012

**Place:** Level 17, Commonwealth Law Courts Building  
Queens Square  
SYDNEY NSW 2000

The Court ordered that the time for serving this application be abridged to: N/A

Date: 30 August 2012

---

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



**Interlocutory orders sought**

1. That, pursuant to Rule 39.04 of the Federal Court Rules 2011, the Order of the Court of 17 August 2012 that the Second Respondent pay the Applicant's costs on an indemnity basis of and occasioned by the amendment and his interlocutory application filed 13 August 2012 be vacated.
1. Such further or other orders as the Court considers appropriate.

**Service on the Applicant and First Respondent**

It is intended to serve this application on the Applicant and the First Respondent.

Date: 30 August 2012

A handwritten signature in black ink, appearing to read "Siobhan Keating".

---

Signed by Siobhan Keating  
Solicitor for the Second Respondent



Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**NSD580/2012**

**Schedule**

**JAMES HUNTER ASHBY**  
Applicant

**COMMONWEALTH OF AUSTRALIA**  
First Respondent

**PETER SLIPPER**  
Second Respondent

**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-23** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES*.....

Name

Solicitor

**Karen Jones**

---

**From:** Karen Jones [karen.jones@harmers.com.au]  
**Sent:** Thursday, 27 September 2012 8:43 PM  
**To:** Slipper, Peter (Private)  
**Subject:** Ashby v Commonwealth of Australia & Anor NSD 580/2012 Email 1 of 5 [HWL-HARMERS.FID775611]  
**Attachments:** signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif

Dear Mr Slipper

In accordance with the Court Orders made on 23 July 2012, please find **attached** the Court Book containing the applicant's evidence. A hard copy will be sent tomorrow.

Due to the size of this document, we will split the court book up into 5 emails.

Kind regards

Karen Jones  
Senior Associate & Team Leader

M +61 400 670 224 | D +61 2 9993 8518 | T +61 2 9267 4322 | F +61 2 9264 4295  
E karen.jones@harmers.com.au | W [www.harmers.com.au](http://www.harmers.com.au)  
A Level 28, St Martins Tower, 31 Market Street, Sydney NSW 2000



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 Please consider the environment before printing this email.

**Karen Jones**

---

**From:** Karen Jones [karen.jones@harmers.com.au]  
**Sent:** Thursday, 27 September 2012 8:44 PM  
**To:** Slipper, Peter (Private)  
**Subject:** Ashby v Commonwealth of Australia & Anor NSD 580/2012 Email 2 of 5 [HWL-HARMERS.FID775611]  
**Attachments:** signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif

Karen Jones  
Senior Associate & Team Leader

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E karen.jones@harmers.com.au | W www.harmers.com.au  
A Level 28, St Martins Tower, 31 Market Street, Sydney NSW 2000



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**Karen Jones**

---

**From:** Karen Jones [karen.jones@harmers.com.au]  
**Sent:** Thursday, 27 September 2012 8:44 PM  
**To:** Slipper, Peter (Private)  
**Subject:** Ashby v Commonwealth of Australia & Anor NSD 580/2012 Email 3 of 5 [HWL-HARMERS.FID775611]  
**Attachments:** signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif

Karen Jones  
Senior Associate & Team Leader

M +61 400 670 224 | D +61 2 9993 8518 | T +61 2 9267 4322 | F +61 2 9264 4295  
E karen.jones@harmers.com.au | W [www.harmers.com.au](http://www.harmers.com.au)  
A Level 28, St Martins Tower, 31 Market Street, Sydney NSW 2000



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 Please consider the environment before printing this email.

**Karen Jones**

---

**From:** Karen Jones [karen.jones@harmers.com.au]  
**Sent:** Thursday, 27 September 2012 8:44 PM  
**To:** Slipper, Peter (Private)  
**Subject:** Ashby v Commonwealth of Australia & Anor NSD 580/2012 Email 4 of 5 [HWL-HARMERS.FID775611]  
**Attachments:** signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif

Karen Jones  
Senior Associate & Team Leader


M +61 400 670 224 | D +61 2 9993 8518 | T +61 2 9267 4322 | F +61 2 9264 4295  
E karen.jones@harmers.com.au | W www.harmers.com.au  
A Level 28, St Martins Tower, 31 Market Street, Sydney NSW 2000



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ALB Australasian Law Awards Winner 2006, 2007, 2008, 2009, 2010 & 2011

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 Please consider the environment before printing this email.



**Karen Jones**

---

**From:** Karen Jones [karen.jones@harmers.com.au]  
**Sent:** Thursday, 27 September 2012 8:44 PM  
**To:** Slipper, Peter (Private)  
**Subject:** Ashby v Commonwealth of Australia & Anor NSD 580/2012 Email 5 of 5 [HWL-HARMERS.FID775611]  
**Attachments:** signature\_alb\_banner\_2010.gif; signature\_alb\_banner\_2010.gif

Karen Jones  
Senior Associate & Team Leader

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**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-24** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES* .....

Name

Solicitor

**Karen Jones**

---

**From:** Karen Jones  
**Sent:** Thursday, 27 September 2012 10:04 PM  
**To:** 'Slipper, Peter (Private)'  
**Cc:** Michael Harmer  
**Subject:** Ashby v Commonwealth of Australia & Slipper NSD 580/2012  
**Attachments:** Letter toP Slipper 27 September 2012 unresolved proceedings.PDF; Letter to commonwealth 27 sept.PDF

Dear Mr Slipper

Please see our correspondence **attached**

Kind regards

Karen Jones  
Senior Associate & Team Leader

**M** +61 400 670 224 | **D** +61 2 9993 8518 | **T** +61 2 9267 4322 | **F** +61 2 9264 4295  
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# HARMERS

Workplace Lawyers

- Change Management
- Industrial Relations
- Employment
- Occupational Health & Safety
- Human Rights & Equal Opportunity
- Legal Risk Management

Our ref: MDH:GKR:BDB:20121209

27 September 2012

The Hon Peter Slipper MP  
PO Box 1224  
Buddina QLD 4575

By email: [slipperp@aph.gov.au](mailto:slipperp@aph.gov.au)

Dear Mr Slipper,

**JAMES ASHBY V COMMONWEALTH OF AUSTRALIA & ANOR (NSD580/2012)**

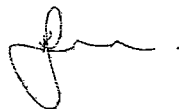
Further to the without prejudice letter sent from the Commonwealth of Australia to our client dated 26 September 2012. We note that you were copied into this correspondence. Accordingly, as a matter of courtesy we **attach** a copy of the reply correspondence sent to the Commonwealth this afternoon.

While the claims between our client and the Commonwealth have now been settled, the proceeding against you has not resolved and remains set down for Interlocutory Argument on 2 October 2012. As indicated to you earlier, our client will oppose any application for an adjournment.

Yours faithfully  
**HARMERS WORKPLACE LAWYERS**

*Mr. Harmer*

**Michael Harmer**



**Karen Jones**

**MELBOURNE**  
Level 2  
417 Collins Street  
Melbourne VIC 3000  
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Melbourne VIC 8007  
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Brisbane QLD 4001  
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Email: [brisbane@harmers.com.au](mailto:brisbane@harmers.com.au)

# HARMERS

Workplace Lawyers

- Industrial Relations
- Employment
- Occupational Health & Safety
- Human Rights & Equal Opportunity
- Change Management
- Legal Risk Management

Our ref: MDH:KZJ:dt:20121209

Please reply to: Sydney office

27 September 2012

Australian Government Solicitor  
50 Blackall St  
BARTON ACT 2600

**Attention: Damien O'Donovan**  
**Catherine Mann**

**By email: [damien.odonovan@ags.gov.au](mailto:damien.odonovan@ags.gov.au)**  
**[catherine.mann@ags.gov.au](mailto:catherine.mann@ags.gov.au)**

Dear Mr O'Donovan

**JAMES ASHBY V COMMONWEALTH OF AUSTRALIA & ANOR (NSD580/2012)**

We refer to your letter of 26 September 2012 sent to us on a "Without Prejudice Save as to Costs" basis (**letter**).

We have taken instructions from our client on the settlement offer to resolve the claim made by Mr Ashby as against the first respondent contained in the letter and advise as follows:

---

#### MELBOURNE

Level 2  
417 Collins Street  
Melbourne VIC 3000  
PO Box 632 Collins St West  
Melbourne VIC 8007  
Telephone: (03) 9612 2300  
Facsimile: (03) 9612 2301  
Email: [melbourne@harmers.com.au](mailto:melbourne@harmers.com.au)

#### SYDNEY

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Sydney NSW 2000  
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Sydney NSW 1230  
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Email: [sydney@harmers.com.au](mailto:sydney@harmers.com.au)  
[www.harmers.com.au](http://www.harmers.com.au)

#### BRISBANE

Suite 16, Level 10  
320 Adelaide Street  
Brisbane QLD 4000  
GPO Box 111  
Brisbane QLD 4001  
Telephone: (07) 3016 8000  
Facsimile: (07) 3016 8001  
Email: [brisbane@harmers.com.au](mailto:brisbane@harmers.com.au)

- 1 Mr Ashby hereby unconditionally accepts the settlement offer as set out in the letter.
- 2 As a consequence, this acceptance resolves the proceedings as against the first respondent.
- 3 Given that the offer contained in the letter has been accepted, this letter of acceptance, together with the terms of the letter, documents the express terms of the agreement between the applicant and the first respondent. No other document to record the agreement is necessary.
- 4 The applicant will prepare short minutes of order, which can be provided to the Court to reflect the orders that ought to be made as a consequence of the settlement of the proceedings as against the first respondent (being the settlement already reached by Mr Ashby's acceptance as contained in this letter).

We anticipate providing the short minutes of order to you tomorrow so that they can be handed up in Court when the interlocutory hearing is listed to commence at 10:15am next Tuesday (and so that the necessary orders can be made prior to the Court recommending the contested hearing of the presently part heard interlocutory application of the second respondent).

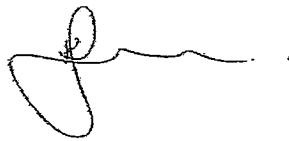
Given you copied Mr Slipper with the letter, we will send a copy of this acceptance to him for his information under separate cover.

Yours faithfully

**HARMERS WORKPLACE LAWYERS**



**Michael Harmer**



**Karen Jones**

**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-25** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES* .....

Name

Solicitor

**Karen Jones**

---

**From:** Karen Jones [karen.jones@harmers.com.au]  
**Sent:** Thursday, 27 September 2012 10:13 PM  
**To:** Slipper, Peter (Private)  
**Cc:** Michael Harmer  
**Subject:** Ashby v Commonwealth of Australia & Slipper NSD 580/2012 [HWL-HARMERS.FID775611]

Dear Mr Slipper

Please see the below email sent to His Honour's Associate this evening:

*Dear Associate*

*As you know, the proceeding Ashby v Commonwealth & Anor (NSD580/2012) is listed before his Honour next Tuesday for the conclusion of the hearing of the part heard interlocutory applications filed by both respondents.*

*This afternoon the proceeding (only as against the first respondent, the Commonwealth), resolved. The proceeding as against the second respondent (the Speaker) has not resolved. The applicant and the first respondent propose that short minutes dealing only with that aspect of the proceeding that has resolved will be provided to the Court on Tuesday, at the commencement of the hearing.*

*I raise this matter (with Mr Burnside QC's permission) so his Honour does not devote any time in anticipation of the hearing dealing with any discrete matters as between Mr Ashby and the Commonwealth.*

*I will ask my solicitors to communicate the content of this communication to the Speaker.*

*Regards*

**MBJ Lee SC | Ground Floor Wentworth Chambers**

Kind regards

Karen Jones  
Senior Associate & Team Leader

**M** +61 400 670 224 | **D** +61 2 9993 8518 | **T** +61 2 9267 4322 | **F** +61 2 9264 4295  
**E** karen.jones@harmers.com.au | **W** www.harmers.com.au  
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**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-26** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*LAREN JONES* .....

Name

Solicitor

# HARMERS

Workplace Lawyers

- Change Management
- Industrial Relations
- Employment
- Occupational Health & Safety
- Human Rights & Equal Opportunity
- Legal Risk Management

Our ref: MDH:GKR:BDB:20121209

27 September 2012

The Hon Peter Slipper MP

Shops 10A and Shop 10B

"Cartwright Centre"

Corner Point Cartwright Drive and the Nicklin  
Way (138 Cartwright Drive)  
Buddina 4575  
Queensland

**By Delivery**

Dear Mr Slipper,

**JAMES ASHBY V COMMONWEALTH OF AUSTRALIA & ANOR (NSD580/2012)**


Pursuant to the Court Orders made on 23 July 2012 please find enclosed the applicant's Court Books (Volume 3 and 4) for the hearing commencing 2 October 2012.

Yours faithfully

**HARMERS WORKPLACE LAWYERS**

*arr. Harmer*

**Michael Harmer**



**Karen Jones**

## MELBOURNE

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Facsimile: (07) 3016 8001  
Email: brisbane@harmers.com.au

**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-27** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONES*  
.....

Name

Solicitor

**Karen Jones**

---

**From:** Karen Jones  
**Sent:** Monday, 1 October 2012 9:25 PM  
**To:** 'slipperp@aph.gov.au'  
**Cc:** Michael Harmer  
**Subject:** Ashby v Commonwealth and Slipper NSD 580/2012 [HWL-HARMERS.FID775611]

Dear Mr Slipper

We refer to your email sent today at 4.15pm advising the Associate that you will not be attending the hearing tomorrow and requesting an adjournment. It is inappropriate for you to be communicating directly with the Court without first notifying us and obtaining permission. In any event, we disagree with the contents of your email.

As we have advised you on several occasions (including out letters of 19 September and 27 September), the applicant will oppose any application for an adjournment and we are instructed to proceed with the hearing tomorrow.

Kind regards

Karen Jones  
Senior Associate & Team Leader

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E karen.jones@harmers.com.au | W [www.harmers.com.au](http://www.harmers.com.au)  
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**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**  
Applicant

**The Commonwealth & Anor**  
Respondents

This is the annexure marked **MDH-28** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JING* .....

Name

Solicitor



**Attorney-General for Australia**

**THE HON NICOLA ROXON MP**

## Statement in relation to the *James Ashby V Commonwealth Matter*

28 September 2012

The Commonwealth has been mindful of its obligations to taxpayers to achieve the most cost effective outcomes for legal proceedings amongst other considerations.

The Commonwealth made clear before the court that it believed this case was an abuse of process and brought for an improper purpose.

This included a range of evidence that is now in the public arena about how Mr Ashby brought this matter before the court.

We don't resile from arguments that we've previously made before the court that the claim was vexatious. However, as Mr Ashby has now withdrawn his claim, our abuse of process claim will be withdrawn as well.

Given the reasons the case was brought forward, it was a lawyers' picnic that could have extended well into next year.

As anyone who has been involved in a settlement will attest to, settlements aren't about who is right or wrong, they are about bringing matters to a speedy conclusion, which the Commonwealth has now achieved.

The case should now be dropped against Mr Slipper as well and the whole matter should be brought to a speedy conclusion in coming days.

**Media Contact:** Attorney-General's Office - 02 6277 7300

**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-29** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.



before me:

*Loren Jones* .....

Name

Solicitor

**smh.com.au**  
**The Sydney Morning Herald**

 [Print this article](#) |  [Close this window](#)

## Albanese defends Roxon's Ashby comments

Neda Vanovac

Published: October 1, 2012 - 12:46PM

Labor frontbencher Anthony Albanese says Attorney-General Nicola Roxon's comments about Peter Slipper's staffer James Ashby were "entirely appropriate".

Advertisement

Mr Ashby is considering a defamation suit against Ms Roxon after she said last week's settlement was "about bringing matters to a speedy conclusion".

She also urged Mr Ashby to drop his case against Mr Slipper.

The federal government will pay Mr Ashby \$50,000 after he alleged it had failed to provide a safe workplace.

But Mr Albanese on Monday denied the settlement indicated his allegations were valid.

"It doesn't imply that at all," he told reporters in Sydney.

"The Commonwealth has a responsibility in terms of taxpayers - already \$730,000, I read in the papers, has been spent (on the case) by the Commonwealth, (which) has responsibilities beyond that."

The federal government has also withdrawn its "abuse of process" case against Mr Ashby.

A spokesman for Mr Ashby attacked Ms Roxon's comments last week, saying they could be read as suggesting that it was Mr Ashby who initiated the withdrawal and settlement.

"The opposite is in fact the situation," he said.

"It is regrettable that as a result of the attorney-general's conduct, Mr Ashby is now forced to consider his position in relation to commencing defamation, victimisation and contempt-of-court proceedings."

Mr Albanese defended the remarks.

"The attorney-general has made it very clear that she doesn't resile from any of the statements that have been made on this issue, and nor do I," he said.

Mr Ashby's sexual harassment case against Mr Slipper will continue on Tuesday.

*This story was found at: <http://news.smh.com.au/breaking-news-national/albanese-defends-roxons-ashby-comments-20121001-26uom.html>*



**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-30** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

.....

Name

Solicitor

Morecombe and the bungled, fatal ransom kidnapping of Graeme Thorne, the little Bondi schoolboy whose parents had won the Lotto in 1960.

It's amazing how some crime stories capture the nation's interest and others just don't.

I've often thought, while scanning a story about someone who's been missing for several months or years: 'Why haven't we heard about this before? Why isn't this a bigger story?'

I guess part of the reason for this is the ability to relate.

When the victim of a crime is someone we might all know — someone ordinary, unconnected to gangs or drugs or the dangerous side of life — we're almost compelled to take an interest.

...warily powerful mental reflex. You hear about a crime or misadventure and immediately grasp for an explanation — someone or something to blame — because the alternative is just too horrendous to contemplate.

A mother backs over her child in the driveway — well, she should have bought a car with a reversing sensor.

Someone's killed crossing the road — surely they were crossing against the lights.

A house is burgled — why didn't they have bars on the windows, or a back-to-base alarm?

I think it must be our self-protection mechanism. None of us wants to imagine crime that is utterly random and unpreventable.

None of us enjoys the feeling of vulnerable proximity; the honest

...husband whom was waiting. Now we know Tom Meagher's wait will never end.

But Jill Meagher could have been me. She could have been any one of our girlfriends or our daughters or sisters.

This woman's vanishing — and what we now know was her rape and murder — has truly captivated the nation.

I've heard people talking about it from aeroplanes to the local park.

Everyone knows the details — she worked at the ABC. She was one of those vibrant dark-haired Irish girls who love a drink. She was lively and she was beautiful.

On her last night alive, she had dinner with colleagues and drinks with a male friend who offered to escort her home.

She refused, insisting that she'd be fine to walk alone the short and familiar route back to her flat where

# Only the lawyers are winning in the Slipper-Ashby case

Bob Carr reckoned he was more rehearsed than a kabuki actor. When a staffer working for Speaker Peter Slipper cried sexual harassment, the Foreign Minister compared the staffer, 33-year-old openly gay man James Ashby, to a painted Japanese dancer.

Needless to say, you wouldn't get away with such a slur if Mr Ashby was a woman. But it's good money, this bad kabuki business — especially for lawyers. So far taxpayers have spent \$730,000 on lawyers for the case, with further bills still to come.

On Friday, Mr Ashby scored a \$50,000 payout to settle his claims against the Commonwealth.

Mr Ashby had alleged the Commonwealth failed to provide a safe working environment.

The Commonwealth argues it gave him \$50,000 to go away.

The settlement involves no admissions on the part of the Commonwealth. But it does include an



## SAMANTHA MAIDEN

agreement that all MPs undergo sexual harassment awareness training.

Attorney-General Nicola Roxon was quick to put out a press statement, simultaneously arguing the deal included no admissions on the part of the Commonwealth and urging Mr Slipper and Mr Ashby to cut a deal when the case resumes this week.

Mr Ashby's case against Mr Slipper has not been resolved.

The \$50,000 is small change compared to the money lawyers will make from the case.

As the case continues, Mr Slipper is continuing to draw a salary of about \$1000 a day for his job as Speaker.

He hasn't been seen in Question Time since April but has pocketed about \$175,000.

Mr Ashby and another staffer, Karen Doane, continue to get their pay packets of about \$120,000 a year.

The sexual harassment case against Mr Slipper continues and is due to be heard this week.

The Gillard government is bullish that the judge will now essentially

force a settlement and the sexual harassment case will go away. That will leave just the Australian Federal Police investigation into claims Mr Slipper misused Cabcharge vouchers.

If that is resolved in Mr Slipper's favour, the Gillard government continues to argue it sees no barrier to him resuming the Speaker's chair.

Mr Ashby's supporters counter that the pressure on Mr Slipper to settle this legal case quickly will be enormous, to prevent his mounting legal bills.

This is the dilemma facing Mr Slipper this weekend. Should he cut his losses and pay Mr Ashby go-away money, too? Or will the Federal Court step in and order all parties to cut a deal this week.

What's important to understand about this civil case in the Federal Court is that the Commonwealth's and Mr Slipper's claims that the sexual harassment allegations were an abuse of process were being heard first.

That is, the Federal Court is yet to examine the substantive allegations of sexual harassment. It is considering the question of whether Mr Ashby cooked up his case with political enemies to destroy his boss.

As soon as Mr Ashby sued for sexual harassment, the Commonwealth and Mr Slipper

...I am lucky enough to be able to say the paranoia has always turned out to be just that.

When my missing people have shown up, I fall upon them in a mixture of gratitude and relief and white-hot fury.

"Thank God you are OK — how dare you do this to me?"

For Tom Meagher, all that is left now is certainty.

He now knows what happened to his wife.

He doubtless knows that many people thought — however fleetingly — that he might have done it himself.

I hope he also comes to know that, for all Australians, Jill Meagher's death is a reminder that random, horrific crimes do happen.

I feel guilty for having wondered if Tom Meagher was a killer.

I hope a few others do, as well.

None of us can explain or blame this one away.

counter-sued for abuse of process. Friday's \$50,000 settlement means the Commonwealth has dropped out of the game.

Mr Ashby's lawyers also agreed to drop all claims against the Commonwealth including, funnily enough, the Human Rights and Equal Opportunity Commission complaint that Senator Carr's kabuki comments represented an abuse of Mr Ashby's human rights.

The worrying thing for taxpayers is the longer this case runs and the longer the legal bills mount, the bigger the incentive there is for Mr Slipper to continue drawing his \$1000 a day salary as Speaker. He needs the cash to pay his legal bills.

The only financial loser in this sorry saga is the acting Speaker Anna Burke, who doesn't earn one cent extra for the dubious honour of presiding over Question Time.

» sam.maiden@news.com.au

Daily Telegraph 30.9.12

**Annexure Certificate**

No. NSD580 of 2012

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**James Hunter Ashby**

Applicant

**The Commonwealth & Anor**

Respondents

This is the annexure marked **MDH-31** produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 2 October 2012.

before me:

*KAREN JONG* .....

Name

Solicitor

# thetelegraph.com.au

NET Syndicated QLD News

## Absent Speaker Peter Slipper's \$173K spending spree on entertainment and travel expenses

- by: *Anna Caldwell, Steven Scott*
- From: *News Limited Network*
- September 27, 2012 12:00AM



The Speaker of the House of Representatives Peter Slipper hasn't been in the chair for 189 days. Picture: Gary Ramage  
Source: The Courier-Mail

**HAS** been 189 days since he last set foot in the Parliament, but stood-aside speaker Peter Slipper has racked up \$173,000 for entertaining a stream of dignitaries and travelling to four overseas countries.

It comes as the Speaker prepares for another international trip leading a delegation of federal politicians to an Inter-Parliamentary Union meeting in Canada and Argentina next month.

Mr Slipper has found himself representing the Australian Parliament to the world, welcoming at least nine international delegations to Canberra with formal hospitality and bilateral discussions in between his taxpayer-funded overseas trips.

While he stood aside from his role in the Chamber, he remains Speaker of Parliament and is required to perform other duties associated with the position.

The role is being privately questioned by some MPs, who say it is embarrassing for the scandal-plagued Speaker to represent Australia.

Some Labor MPs say they fear Mr Slipper may be perceived by other countries as a representative of the government while he leads delegations - the former LNP member is the first Speaker who is not a member of the party in power.

The controversial MP has retained all the trappings of one of Parliament's highest offices since he stood aside over sexual harassment and fraud allegations, and continues to earn almost \$1000 a day without performing the role's key function - to govern the Parliament.

The salary is 75 per cent more than that of a backbencher.

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Mr Slipper - who refutes the claims against him - stood aside from his role in April and last presided over the Parliament in March, before a parliamentary break.

When questioned by News Limited about his activities since standing aside, Mr Slipper's office did not respond, referring the inquiry to Parliament's International and Community Relations Office.

In July, Mr Slipper visited Jordan, Cyprus, Lebanon and Israel on an 18-day taxpayer funded trip.

In two weeks, he will lead a 14-day delegation to Canada and Argentina.

Labor's Dick Adams and Ursula Stephens and the Liberal's Patrick Secker and Sue Boyce will join him on the trip.

The group has already met in Mr Slipper's office to plan the event.

But sources from both sides of politics have raised concerns about Mr Slipper's role in leading the delegation while he is still stood aside from the Parliament.

"I'm embarrassed," one member of the delegation said.

"It's a bit awkward that he's representing the Parliament in this way."

While acknowledging Mr Slipper had welcomed other formal delegations in Australia, a member of the delegation said "when he's overseas he's something of a free agent in a way he's not when he's here."

Since standing aside, the Speaker has also entertained visitors and delegates from nine countries to Parliament house.

The meetings see the Speaker host an "official function" to formally welcome the delegation to the Australian Parliament.

A spokesman for the International and Community Relations Office said the meetings involved discussing the bilateral relationship between Australia and the visiting country, parliamentary matters and further opportunities to develop the parliamentary relationship.

Mr Slipper's case returns to court in early October.

## The face of the Parliament

### Slipper overseas:

**July:** Jordan, Cyprus, Lebanon and Israel - 18 days.

**October:**

Canada (Quebec City) - six days

Argentina - seven days

### Slipper in Australia:

**May:**

- hosted official delegation from the Association of Southeast Asian Nations

- hosted official delegation from the Republic of Iraq

**June:**

- hosted official delegation from Italy

- hosted official delegation from Thailand

**August:**

- hosted official delegation from Ireland

- hosted official delegation from the United Kingdom

- hosted official delegation from Seychelles National Assembly

- hosted official delegation from Laos

- hosted official delegation from the Republic of the Union of Myanmar in August 2012

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