



Form 33
Rule 16.32

Defence

No. **WAD 121 of 2025**

Federal Court of Australia
District Registry: Western Australia
Division: General

LINDA KAREN REYNOLDS

Applicant

COMMONWEALTH OF AUSTRALIA

First Respondent

HWL Ebsworth Lawyers

Second Respondent

Procedural

- A. In this Defence to the Applicant's Re-Amended Statement of Claim filed on 12 November 2025, the Second Respondent:
- (a) will use the headings used in the Re-Amended Statement of Claim (**Amended Statement of Claim**) for convenience only. The use of those headings is not an admission; and
 - (b) will use the terms defined in the Amended Statement of Claim, unless those terms are otherwise defined in this Defence to the Amended Statement of Claim (**Defence**).
- B. Without waiving any legal professional privilege or without putting in issue the content of any privileged communication, where the Second Respondent refers to or identifies

Filed on behalf of (name & role of party) HWL Ebsworth Lawyers, Second Respondent
Prepared by (name of person/lawyer) Alexander Boyd Haslam, Solicitor
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(include state and postcode)

[Form approved 01/08/2011]

correspondence sent under its hand, it does so only to identify documents relied upon or quoted by the Applicant. The documents speak for themselves. The Second Respondent does not adopt, plead to, or otherwise put in issue the substance of any privileged instruction or advice.

Parties

1. The Second Respondent admits paragraph 1 of the Amended Statement of Claim.
2. The Second Respondent admits paragraph 2 of the Amended Statement of Claim.
3. In answer to paragraph 3 of the Amended Statement of Claim, the Second Respondent:
 - (a) admits subparagraphs 3.1 and 3.2;
 - (b) denies subparagraph 3.3 and says that at all material times, the Second Respondent was exclusively retained by, and acted on instructions from the Commonwealth only;
 - (c) says further that at all material times, the solicitors representing the Applicant in defence of the Claim were Clayton Utz; and
 - (d) otherwise denies the paragraph.

Background

4. The Second Respondent admits paragraph 4 of the Amended Statement of Claim.
5. The Second Respondent admits paragraph 5 of the Amended Statement of Claim.
6. The Second Respondent admits paragraph 6 of the Amended Statement of Claim.
7. The Second Respondent admits paragraph 7 of the Amended Statement of Claim.
8. The Second Respondent admits paragraph 8 of the Amended Statement of Claim.
- 8A. In answer to paragraph 8A of the Amended Statement of Claim, the Second Respondent:
 - (a) refers to the letter from Senator the Honourable Simon Birmingham to the Applicant dated 22 March 2022 as if it was set out in full herein;
 - (b) admits that, by that letter, Senator Birmingham communicated an approval of an application by the Applicant under section 85(1)(a)-(c) of the *Parliamentary Resources Regulations 2017* (Cth) (**PBR Regulations**) for the Commonwealth to pay the costs of:

- (i) the Applicant's legal representation in relation to potential legal proceedings against the Applicant insofar as they related to her conduct whilst carrying out her ministerial duties;
- (ii) other costs associated with those proceedings;
- (iii) any damages or costs that may be awarded;
- (iv) any reasonable amount payable in any settlement of those proceedings;

(PBR Approval);

- (c) says further that Senator Birmingham likewise communicated approval of an application by Senator Michaelia Cash (**Senator Cash**) under section 85(1)(a)-(c) of the PBR Regulations in relation to her costs associated with Ms Higgins' claims; and
- (d) otherwise admits the paragraph.

8B. In answer to paragraph 8B of the Amended Statement of Claim, the Second Respondent:

- (a) repeats paragraph 8A of this Defence; and
- (b) otherwise admits the paragraph.

9. In answer to paragraph 9 of the Amended Statement of Claim, the Second Respondent:

- (a) says that pursuant to section 16B of the *Limitation Act 1985* (ACT), the statutory limitation period within which Ms Higgins could commence proceedings in relation to her common law negligence (personal injury) claims expired on 23 March 2022;
- (b) says further that Ms Higgins' failure to commence proceedings by that date did not, of itself, operate as an absolute bar to the commencement of proceedings, and any proceedings issued would have been liable to a limitation defence, which the Applicant would have been entitled to plead; and
- (c) otherwise denies the paragraph.

10. In answer to paragraph 10 of the Amended Statement of Claim, the Second Respondent:

- (a) repeats paragraph 9 of this Defence;
- (b) refers to the email from the Applicant's solicitor, Ashley Tsacalos of Clayton Utz to Ms Higgins' solicitor, Noor Blumer of Blumers dated 24 March 2022 as if it was set out in full herein;

- (c) admits that, by that email, the Applicant, through her solicitors Clayton Utz, agreed that it would not press any limitation defence in respect of Ms Higgins' claims, provided that proceedings were commenced on or before 30 June 2022;
 - (d) says further that, from at least 21 December 2021, the Applicant was aware that Ms Higgins wished to seek to resolve her claims by way of mediation prior to the commencement of any proceedings; and
 - (e) otherwise admits the paragraph.
11. In answer to paragraph 11 of the Amended Statement of Claim, the Second Respondent:
- (a) refers to the letter from Ms Higgins' solicitors, Blumers to the Applicant's solicitors, Clayton Utz enclosing draft proceedings dated 29 March 2022 as if it was set out in full herein;
 - (b) admits that the draft proceedings enclosed with that correspondence contained the matters described in paragraph 11 of the Amended Statement of Claim; and
 - (c) otherwise admits the paragraph.
12. The Second Respondent does not know and therefore cannot admit paragraph 12 of the Amended Statement of Claim.
- 13A. In answer to paragraph 13A of the Amended Statement of Claim, the Second Respondent:
- (a) admits that a Labor Government was elected on 21 May 2022;
 - (b) says that the allegation is irrelevant and immaterial to any cause of action pleaded against the Second Respondent; and
 - (c) otherwise admits the paragraph.
13. In answer to paragraph 13 of the Amended Statement of Claim, the Second Respondent:
- (a) refers to the email from Ms Higgins' solicitor, Noor Blumer of Blumers to the Applicant's solicitor, Ashley Tsacalos of Clayton Utz, and the solicitor for Senator Cash, Christie Miller of Clayton Utz, dated 8 June 2022 as if it was set out in full herein;
 - (b) admits that, by that email the Applicant was notified that a mediation had been scheduled for 16 August 2022; and
 - (c) otherwise admits the paragraph.

14. In answer to paragraph 14 of the Amended Statement of Claim, the Second Respondent:
- (a) refers to the letter it sent, on instructions from the Commonwealth to the Applicant's solicitors, Clayton Utz dated 28 June 2022 (**28 June 2022 Letter**) as if it was set out in full herein; and
 - (b) otherwise admits the paragraph.
15. In answer to paragraph 15 of the Amended Statement of Claim, the Second Respondent:
- (a) refers to the 28 June 2022 Letter as if it was set out in full herein;
 - (b) says that 28 June 2022 Letter speaks for itself; and
 - (c) otherwise admits the paragraph.
16. In answer to paragraph 16 of the Amended Statement of Claim, the Second Respondent:
- (a) refers to the letter from the Applicant's solicitors, Clayton Utz to the Second Respondent on behalf of the Commonwealth dated 25 July 2022 as if it was set out in full herein (**25 July 2022 Letter**);
 - (b) admits that, by the 25 July 2022 Letter, the Applicant conveyed that she did not wish to participate in mediation until after the conclusion of the criminal proceedings in *R v Lehmann* (**Criminal Proceedings**); and
 - (c) otherwise denies the paragraph.
17. In answer to paragraph 17 of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraphs 9 ,10 and 16 of this Defence;
 - (b) refers to the email from Ms Higgins' solicitor, Noor Blumer of Blumers to the Applicant's solicitor, Ashley Tsacalos of Clayton Utz dated 15 August 2022 as if it was set out in full herein;
 - (c) admits that, by that email:
 - (i) the Applicant was notified that the mediation previously listed for 16 August 2022 was rescheduled to 13 December 2022, being after the conclusion of the Criminal Proceedings;
 - (ii) a request was made of the Applicant to not press a limitation defence provided Ms Higgins' commenced proceedings before 28 February 2023; and

- (d) otherwise admits the paragraph.
18. In answer to paragraph 18 of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraph 17 of this Defence;
 - (b) refers to the email from the Applicant's solicitor, Ashley Tsacalos of Clayton Utz to Ms Higgins' solicitor, Noor Blumer of Blumers dated 27 September 2022 as if it was set out in full herein;
 - (c) denies the Applicant's characterisation that the Applicant '*extended the limitation period*' and says that, to the extent relevant, any agreement or position concerning limitation is confined to the terms of the identified correspondence; and
 - (d) otherwise denies the paragraph.
19. In answer to paragraph 19 of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraphs 9, 10, and 16 to 18 of this Defence;
 - (b) refers to emails between Ms Higgins' solicitor, Noor Blumer of Blumers and the Applicant's solicitor, Ashley Tsacalos of Clayton Utz dated 28 September 2022, 29 November 2022 and 2 December 2022 as if set out in full herein;
 - (c) denies the Applicant's characterisation, summaries or reasons attributed to those communications; and
 - (d) otherwise denies the paragraph.
- 19A. In answer to paragraph 19A of the Amended Statement of Claim, the Second Respondent:
- (a) refers to the letter from Ms Higgin's solicitors, Blumers to the Second Respondent on behalf of the Commonwealth dated 6 December 2022 as if it was set out in full herein; and
 - (b) otherwise does not know and therefore cannot admit the paragraph.
- 19B. In answer to paragraph 19B of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraph 19A of this Defence; and
 - (b) otherwise does not know and therefore cannot admit the paragraph.
20. In answer to paragraph 20 of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraphs 8A, 9 and 17 to 19 of this Defence;

- (b) refers to the letter it sent on instructions from the Commonwealth to the Applicant's solicitors, Clayton Utz dated 6 December 2022 as if it was set out in full herein (**6 December 2022 Letter**);
- (c) admits that the 6 December 2022 Letter stated:
 - (i) that the Commonwealth had elected to assume control of the Applicant's defence pursuant to section 89 of the PBR Regulations;
 - (ii) that the Applicant was required, pursuant to section 90 of the PBR Regulations to assist the Commonwealth in the exercise of that control, including by not attending the mediation, refraining from public comment, and maintaining confidentiality;
- (d) denies the Applicant's characterisation of the effect or operation of the PBR Regulations, and says their proper construction and legal consequences are matters for the Court; and
- (e) otherwise denies the paragraph.

20A. In answer to paragraph 20A of the Amended Statement of Claim, the Second Respondent:

- (a) repeats paragraph 20 of this Defence;
- (b) refers to the PBR Regulations, which speak for themselves, and denies the Applicant's characterisation of their effect;
- (c) says that, at all material times, the Second Respondent acted solely on instructions from the Commonwealth and is not in a position to plead to, and does not know and therefore cannot admit, any allegation concerning the Commonwealth's decision-making in exercising its control under the PBR Regulations; and
- (d) otherwise denies the paragraph.

20B. In answer to paragraph 20B of the Amended Statement of Claim, the Second Respondent:

- (a) refers to the 6 December 2022 Letter as if it was set out in full herein;
- (b) admits the quotation from the 6 December 2022 Letter;
- (c) does not know and therefore cannot admit any alleged '*purpose*' or motivation attributed to the Commonwealth and is not in a position to plead to any matters concerning the Commonwealth's internal deliberations; and
- (d) otherwise denies the paragraph.

- 20C. In answer to paragraph 20C of the Amended Statement of Claim, the Second Respondent:
- (a) refers to the 6 December 2022 Letter as if it was set out in full herein;
 - (b) denies the Applicant's allegation that the omission of logistical details '*prevented*' her attendance at the mediation, and says the Second Respondent is not in a position to plead to, and does not know and therefore cannot admit any decisions, arrangements or internal deliberations of the Commonwealth in relation to the mediation; and
 - (c) otherwise denies the paragraph.
- 20D. In answer to paragraph 20D of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraph 8A of this Defence;
 - (b) refers to the PBR Regulations and the PBR Approval;
 - (c) denies the Applicant's characterisation that, by reason of those matters, the Commonwealth thereby owed the Applicant duties as alleged in the Amended Statement of Claim;
 - (d) says that, insofar as the Second Respondent is concerned, it acted solely on the instructions of the Commonwealth and owed no fiduciary or common law duty to the Applicant; and
 - (e) otherwise denies the paragraph.
21. In answer to paragraph 21 of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraphs 14 and 20 to 20D of this Defence;
 - (b) says that:
 - (i) the Applicant pleads in her own Amended Statement of Claim that at all material times she was separately represented by Ashley Tsacalos of Clayton Utz in relation to Ms Higgins' claims;
 - (ii) at all material times, the Applicant had the ability to obtain legal advice from her solicitors, Clayton Utz in relation to the Commonwealth's entitlement and election to assume control of her defence under the PBR Regulations, and any options available to her in relation to the PBR Approval, including the option of defending the claims autonomously;
 - (c) refers to the 28 June 2022 Letter as if it was set out in full herein; and

- (d) otherwise denies the paragraph, including any suggestion that the Second Respondent acted other than on instructions of the Commonwealth or provided legal advice to the Applicant.

21A. In answer to paragraph 21A of the Amended Statement of Claim, the Second Respondent:

- (a) repeats paragraphs 20, 20A and 21 of the Defence;
- (b) refers to sections 85, 87, 89–92 of the PBR Regulations and says those provisions speak for themselves;
- (c) denies the Applicant's characterisation of the legal consequences of any alleged non-compliance with those provisions; and
- (d) otherwise denies the paragraph.

21B. In answer to paragraph 21B of the Amended Statement of Claim, the Second Respondent:

- (a) repeats paragraphs 9, 10, 17 to 19 and 20 of this Defence;
- (b) refers to the letter it sent on instructions from the Commonwealth to Ms Higgins' solicitors, Blumers dated 7 December 2022 as if it was set out in full herein (**7 December 2022 Letter**);
- (c) denies the statements quoted from the 7 December 2022 Letter bear the meaning, interpretation or effect alleged by the Applicant, and denies any allegation that the Second Respondent acted other than on instructions from the Commonwealth;
- (d) denies any allegation that the Second Respondent independently extended, agreed to extend, or waived any limitation period; and
- (e) otherwise denies the paragraph.

21C. In answer to paragraph 21C of the Amended Statement of Claim, the Second Respondent:

- (a) repeats paragraph 21B of this Defence;
- (b) refers to the 7 December 2022 Letter as if it was set out in full herein;
- (c) says that:
 - (i) the Commonwealth's election to assume control of the Applicant's defence was made pursuant to section 89 of the PBR Regulations and was not contingent upon the date on which notice of that election was communicated;

- (ii) while the Commonwealth maintained control of the Applicant's defence, it was entitled to indicate the position it would adopt concerning limitation on behalf of those defences;
 - (iii) any statement in the 7 December 2022 Letter regarding the limitation period was made on instructions and did not constitute the Second Respondent independently conferring, extending or waiving any limitation period;
 - (iv) upon or after 6 December 2022, the Applicant could have elected to forgo the PBR Approval and conduct her defence autonomously, including to take any position on the limitation period;
 - (v) the Second Respondent received no notice prior to mediation that the Applicant had made such an election; and
- (d) otherwise denies the paragraph.
22. The Second Respondent does not know and therefore cannot admit paragraph 22 of the Amended Statement of Claim.
23. In answer to paragraph 23 of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraph 20 of this Defence;
 - (b) refers to the letter from the Applicant's solicitors, Clayton Utz, to the Second Respondent on behalf of the Commonwealth dated 9 December 2022 as if it was set out in full herein (**9 December 2022 Letter**);
 - (c) denies the Applicant's construction of sections 89–91 of the PBR Regulations and says that the proper construction and legal consequences of those provisions are matters for the Court;
 - (d) says that the provisions of the PBR Regulations do not prevent the Applicant from acting in her own interests, but set out conditions associated with taxpayer-funded legal assistance, including (without limitation):
 - (i) the Commonwealth's entitlement to assume control of the defence once assistance is granted (s 89);
 - (ii) the Applicant's obligation to assist the Commonwealth in the exercise of that control (s 90); and
 - (iii) the ability of the approving Minister to impose conditions on the approval (s 91);

- (e) says further that, at all material times, the Second Respondent acted solely on instructions of the Commonwealth;
 - (f) denies that the statements quoted from the 28 June 2022 Letter bear the meaning or effect alleged by the Applicant; and
 - (g) otherwise denies the paragraph.
24. In answer to paragraph 24 of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraphs 20 and 23 of this Defence;
 - (b) refers to the 6 December 2022 Letter and the 9 December 2022 Letter as if set out in full herein;
 - (c) says that subparagraphs 24.1 to 24.3 do not accurately paraphrase the 9 December 2022 Letter; and
 - (d) otherwise denies the paragraph.
- 24A. In answer to paragraph 24A of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraphs 20 to 20C, 21 to 21A, 21C and 24 of this Defence;
 - (b) admits subparagraphs 24A.1 to 24A.3 on its behalf only;
 - (c) denies subparagraphs 24A.4 and 24A.5;
 - (d) says that at all material times, the Second Respondent acted solely on instructions of the Commonwealth;
 - (e) says further that:
 - (i) at all material times, the Applicant was represented by Clayton Utz and did not require the Commonwealth's '*permission*' to forgo the legal assistance under the PBR Approval and defend Ms Higgins' claims autonomously;
 - (ii) after being notified on 6 December 2022 that the Commonwealth had assumed control of her defence, the Applicant did not inform the Second Respondent at any time prior to the mediation that she wished to forgo the legal assistance under the PBR Approval and defend the claims autonomously; and
 - (f) otherwise denies the paragraph.

24B. The Second Respondent admits paragraph 24B of the Amended Statement of Claim.

- 24C. The Second Respondent admits paragraph 24C of the Amended Statement of Claim.
- 24D. In answer to paragraph 24D of the Amended Statement of Claim, the Second Respondent:
- (a) refers to the letter it sent, on instructions from the Commonwealth to Ms Higgins' solicitors, Blumers dated 10 December 2022 as if it was set out in full herein (**10 December 2022 Letter**); and
 - (b) otherwise does not know and therefore cannot admit the paragraph.
- 24E. In answer to paragraph 24E of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraph 24D of this Defence;
 - (b) says that, after the Commonwealth assumed control of the Applicant's defence on 6 December 2022 pursuant to the PBR Regulations, decisions as to what information would be provided to the Applicant or her solicitors concerning the New Material or any new claims were matters for the Commonwealth, and the Second Respondent acted solely on the Commonwealth's instructions; and
 - (c) otherwise does not know and therefore cannot admit the paragraph.
25. In answer to paragraph 25 of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraph 24A of this Defence;
 - (b) admits that a mediation occurred on 13 December 2022 between the Commonwealth and Ms Higgins, which resulted in the execution of a Deed of Settlement and Release (**Deed**) resolving potential claims arising from Ms Higgins' employment and the Incident;
 - (c) says that:
 - (i) the Deed expressly stated that the settlement was without any admission of liability by any party, including the Applicant or Senator Cash;
 - (ii) the Deed subsequently became publicly available in the course of the Federal Court proceedings in *Lehrmann v Network Ten Pty Ltd*;
 - (iii) refers to the full public statement of the National Anti-Corruption Commission dated 12 June 2025 (**NACC Statement**), which stated that the Commonwealth acted on '*departmental advice*', '*legal advice*' and that '*there was a meaningful prospect of liability*'; and
 - (d) otherwise denies the paragraph.

26. The Second Respondent does not know and therefore cannot admit paragraph 26 of the Amended Statement of Claim.
27. The Second Respondent admits paragraph 27 of the Amended Statement of Claim.
28. In answer to paragraph 28 of the Amended Statement of Claim, the Second Respondent:
- (a) refers to the letter it sent, on instructions from the Commonwealth to the Applicant's solicitors, Clayton Utz dated 16 December 2022 as if it was set out in full herein (**16 December 2022 Letter**);
 - (b) admits that the 16 December 2022 Letter stated that the Deed included a release in favour of the Applicant, protecting her from all claims made by Ms Higgins within the scope of the settlement, and further stated that the terms of the Deed were confidential at Ms Higgins' request, which prevented the Commonwealth from providing a copy of the Deed to the Applicant; and
 - (c) otherwise admits the paragraph.
- 29A. In answer to paragraph 29A of the Amended Statement of Claim, the Second Defendant:
- (a) repeats paragraphs 23 and 28 of this Defence;
 - (b) refers to the email from the Applicant's solicitor, Ashley Tsacalos of Clayton Utz, to the Second Respondent on behalf of the Commonwealth dated 21 December 2022 as if it was set out in full herein; and
 - (c) otherwise admits the paragraph.
- 29B. In answer to paragraph 29B of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraph 29A of this Defence;
 - (b) refers to the letter it sent on instructions from the Commonwealth to the Applicant's solicitors, Clayton Utz dated 7 February 2023 as if it was set out in full herein (**7 February 2023 Letter**);
 - (c) says that, prior to the 7 February 2023 Letter, the Applicant had been informed by the letter dated 16 December 2022 that the settlement terms were confidential at Ms Higgins' request and that the Commonwealth was not in a position to provide a copy of the Deed;

- (d) admits that the 7 February 2023 Letter stated that the settlement had resolved all claims, that a release and indemnity applied to the Applicant, and that the Applicant had been informed of the scope of that release in the 16 December 2022 Letter;
 - (e) says further that, in those circumstances, acting on instructions from the Commonwealth, there was no requirement to provide any further response to the 9 December 2022 Letter; and
 - (f) otherwise denies the paragraph.
29. The Second Respondent admits paragraph 29 of the Amended Statement of Claim.
- 30A. The Second Respondent admits paragraph 30A of the Amended Statement of Claim.
30. In answer to paragraph 30 of the Amended Statement of Claim, the Second Respondent:
- (a) refers to the Trial Judgment and the Deed as set out in full herein;
 - (b) admits that the statements quoted in the paragraph were made in the Trial Judgment but says that the matters alleged are not material to any cause of action pleaded against the Second Respondent; and
 - (c) otherwise admits the paragraph.

First Respondent's duty to take reasonable care

31. DELETED.
- 31A. The Second Respondent does not know and therefore cannot admit paragraph 31A of the Amended Statement of Claim.
- 31B. The Second Respondent does not know and therefore cannot admit paragraph 31B of the Amended Statement of Claim.
- 31C. The Second Respondent does not know and therefore cannot admit paragraph 31C of the Amended Statement of Claim.
- 31D. The Second Respondent does not know and therefore cannot admit paragraph 31D of the Amended Statement of Claim.

First Respondent's Breach

- 31E. The Second Respondent does not know and cannot admit paragraph 31E of the Amended Statement of Claim.

Second Respondent's Fiduciary Duties

32. In answer to paragraph 32 of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraphs 20 to 22 of this Defence;
 - (b) says that:
 - (i) it was retained exclusively by the Commonwealth and acted solely on instructions from its client, the Commonwealth;
 - (ii) at all material times the Applicant was represented by Clayton Utz;
 - (iii) any communications from the Second Respondent to the Applicant or her solicitors were for the purpose of conveying the Commonwealth's position or instructions and not for the purpose of advising the Applicant;
 - (iv) the PBR Regulations governed the Commonwealth's assumption of conduct and the Applicant's obligations of assistance, and do not create or contemplate a solicitor-client relationship between the Applicant and the Second Respondent;
 - (c) denies that it owed any fiduciary or common law duties to the Applicant and says it did not, by words or conduct, assume responsibility to act for or advise the Applicant and no relationship of proximity arose giving rise to any such duty;

Particulars – No Retainer/ No Proximity

- (i) The Second Respondent had no retainer with the Applicant;
 - (ii) The Second Respondent rendered no invoices to the Applicant;
 - (iii) The Second Respondent provided no legal advice to the Applicant;
 - (iv) The Second Respondent received no instructions from the Applicant; and
 - (v) The Second Respondent at all times acted on instructions of the Commonwealth only; and
- (d) says further that it would be inconsistent and impermissible for the Second Respondent, as solicitor for the Commonwealth, to owe fiduciary duties to the Applicant that required preferring the Applicant's interests over those of its client, the Commonwealth; and
- (e) otherwise denies the paragraph.

33. DELETED.
34. In answer to paragraph 34 of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraph 32 of this Defence;
 - (b) denies any allegation that the Second Respondent acted independently of the Commonwealth and says that it acted solely as solicitor on instructions from its client, the Commonwealth;
 - (c) says that:
 - (i) the Commonwealth's election to assume control of the Applicant's defence was made pursuant to section 89 of the PBR Regulations following the grant of the PBR Approval;
 - (ii) the PBR Regulations provide a statutory framework under which the Commonwealth may assume control of legal proceedings for Ministers and office-holders receiving legal assistance;
 - (iii) the Commonwealth's assumption of control of the Applicant's defence occurred as part of the operation of the PBR framework following the grant of assistance, and not as a discretionary condition imposed by the approving Minister;
 - (iv) following the Commonwealth's assumption of control, the conduct of the Applicant's defence, the Commonwealth's own defence, and the defence of Senator Cash was directed by the Commonwealth, including any position the Commonwealth indicated it would adopt concerning reliance on any limitation defence;
 - (v) the Second Respondent was retained exclusively by the Commonwealth and not by the Applicant;

Particulars – No Retainer/ No Proximity

- (A) The Second Respondent had no retainer with the Applicant;
- (B) The Second Respondent rendered no invoices to the Applicant;
- (C) The Second Respondent provided no legal advice to the Applicant;
- (D) The Second Respondent received no instructions from the Applicant; and

- (E) The Second Respondent at all times acted on instructions of the Commonwealth only;
- (vi) at all material times, the Applicant was separately represented by Clayton Utz and had the ability to obtain advice as to whether to forgo the PBR Approval and defend the claims autonomously;
- (vii) the Commonwealth had the ability to settle claims made against it and it directed the conduct of the mediation and settlement process;
- (viii) unless the Applicant withdrew from the PBR Approval, the mediation proceeded without her attendance because the Commonwealth had assumed control of her defence pursuant to section 89 of the PBR Regulations;
- (d) refers to the NACC Statement which stated that the Commonwealth acted on '*departmental advice*', '*legal advice*' and that '*there was a meaningful prospect of liability*';
- (e) says further to the extent the Applicant alleges that the Second Respondent owed or breached any fiduciary duties while acting on instructions from the Commonwealth, such allegation is untenable because it would require the Second Respondent to act in conflict with its duty to its client, the Commonwealth, and no basis exists in statute, contract, or equity for imposing such a duty; and
- (f) otherwise denies the paragraph.

Second Respondent's Negligence

35. In answer to paragraph 35 of the Amended Statement of Claim, the Second Respondent:

- (a) repeats paragraphs 32 and 34 of this Defence;
- (b) denies the Second Respondent owed any duty of care to the Applicant, including any duty to exercise reasonable care and skill, and says that it did not, by words or conduct, assume responsibility to act for or advise the Applicant, because:
 - (i) the Second Respondent was retained exclusively by the Commonwealth and acted solely on the Commonwealth's instructions;
 - (ii) there was no retainer, instructions, or advisory relationship between the Second Respondent and the Applicant;

Particulars – No Retainer

- (A) The Second Respondent had no retainer with the Applicant;
 - (B) The Second Respondent rendered no invoices to the Applicant;
 - (C) The Second Respondent provided no legal advice to the Applicant;
 - (D) The Second Respondent received no instructions from the Applicant; and
 - (E) The Second Respondent at all times acted on instructions of the Commonwealth only;
- (c) says further that, at all material times, the Applicant was represented by Clayton Utz and had the ability to obtain independent legal advice regarding:
- (i) the operation of section 89 of the PBR Regulations and the Commonwealth's assumption of control of her defence;
 - (ii) the conditions of the PBR Approval;
 - (iii) any option to forgo that approval and defend the claims autonomously; and
- (d) otherwise denies the paragraph.
36. In answer to paragraph 36 of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraphs 32, 34 and 35 of this Defence;
 - (b) denies that the Second Respondent breached any duty to the Applicant or failed to exercise reasonable care and skill;
 - (c) says that all conduct identified by the Applicant as constituting '*breach*' comprised of acts undertaken by the Second Respondent on instructions of its client, the Commonwealth, after the Commonwealth had assumed control of the Applicant's defence under section 89 of the PBR Regulations; and
 - (d) otherwise denies the paragraph.
37. In answer to paragraph 37 of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraphs 32, 34 to 36 of this Defence; and
 - (b) otherwise denies the paragraph.

CAUSATION

38. In answer to paragraph 38 and the whole of the Amended Statement of Claim, the Second Respondent:
- (a) repeats paragraphs 31, 31E, 32, 34 and 36 of this Defence;
 - (b) says that, in the event that it is found to have owed and breached (which is denied) the obligations said to exist as pleaded in the Amended Statement of Claim, then;
 - (c) the Applicant has failed to establish that any such breaches were a necessary condition of the occurrence of the harm alleged within the meaning of section 5C(a) of the *Civil Liability Act 2002 (WA)* (**CLA**);
 - (d) any such breaches were not a necessary condition of the harm alleged within the meaning of Section 5C(a) of the CLA;
 - (e) further or alternatively, it is not appropriate for the scope of the Second Respondent's liability to extend to the harm alleged within the meaning of section 5C(b) of the CLA;

Particulars

- (i) The Applicant was informed (including by the 6 December 2022 Letter) that, pursuant to section 90 of the PBR Regulations, she was required to assist the Commonwealth in the exercise of its control and, in that context, not attend the mediation. There is no factual basis to suggest that the Applicant relied on, or reasonably expected, the Second Respondent to protect or represent her interests at the mediation;
- (ii) At all material times, the Applicant was represented by Clayton Utz. She had access to independent legal advice and could have opted out of the PBR Approval at any time, including after receipt of the 6 December 2022 Letter. Had she done so, no releases would have been sought in the Deed in the Applicant's favour, and the Applicant would have been able to defend Ms Higgins' claims against her autonomously;
- (iii) The Commonwealth made the decision to settle the claims and to exclude the Applicant from the mediation. This decision was made independently of the Second Respondent. The Second Respondent's role was not determinative. Had the Second Respondent ceased to act on the basis that it was in conflict (which is denied), the mediation would have proceeded in the same way that it did. Nothing flows from any breach;

- (iv) As to the defamation proceedings commenced by the Applicant against Ms Higgins in 2023 (**Reynolds Defamation Proceedings**), those proceedings arose out of social media posts made by Ms Higgins, two of which were made after the Deed was entered into. It is likely that Ms Higgins would have made those social media posts irrespective of the settlement of her potential claims, given that the disputes between Ms Higgins and the Applicant had arisen in February 2021, following the Applicant's '*lying cow*' comment. It is further likely that Ms Higgins would have made additional public comments had the Commonwealth not settled pursuant to the Deed;
- (v) On 27 August 2025, Justice Tottle of the Supreme Court of Western Australia handed down judgment in the Reynolds Defamation Proceedings: *Reynolds v Higgins* [2025] WASC 34. His Honour found that Ms Higgins' social media post of 4 July 2023 breached an earlier deed entered into in 2021 between Ms Higgins and the Applicant. This demonstrates that the Reynolds' Defamation Proceedings were unrelated to, and not caused by, the settlement captured in the Deed;
- (vi) The Reynolds Defamation Proceedings were otherwise commenced by the Applicant on the basis of legal advice provided to her. That advice will have, or will be taken to have, included advice as to prospects of success, costs and recoverability; and

(f) otherwise denies the paragraph.

39. In answer to paragraph 39 of the Amended Statement of Claim, the Second Respondent:

(a) repeats paragraph 38 of this Defence; and

(b) otherwise denies the paragraph.

Contributory Negligence

40. Further and in the alternative, in answer to the Amended Statement of Claim as a whole, the Second Respondent says that if it is found liable to the Applicant for any loss or damage (which is denied), then such loss or damage was caused and/or contributed by the Applicant's own contributory negligence and the Second Respondent's liability (if any) should be reduced due to the contributory negligence pursuant to sections 5K and 5AK(3)(a) of the CLA.

41. For the purposes of this Defence only, without admission except where already pleaded, the Second Respondent refers to and repeats paragraphs 32, 34 to 37 of the Amended Statement of Claim, which deal with the alleged conduct of Second Respondent.

Particulars

- (a) Repeats particulars 38(i) to (vi) of this Defence.

Proportionate Liability

42. Further, and in the alternative, in answer to the Amended Statement of Claim as a whole, the Second Respondent says that if it is found liable to the Plaintiff for any loss or damage (which is denied), the Amended Statement of Claim against it is an apportionable claim for the purposes of and within the meaning of section 5AI of the CLA.
43. By reason of section 5AK of the CLA, if (which is denied) the Second Respondent is liable to the Applicant in respect of any apportionable claim, the Second Respondent's liability is limited to the proportion of the damage or loss that the Court considers just having regard to the extent of the Second Respondent's responsibility for that damage or loss, and judgment should not be entered against the Second Respondent for more than that amount.

Identity of Concurrent Wrongdoers

The Commonwealth

- (a) On 6 December 2022, the Commonwealth assumed control of the Applicant's defence pursuant to section 89 of the PBR Regulations and thereafter directed the conduct of the mediation and any settlement;
- (b) The Commonwealth required the Applicant not attend the mediation and maintained the confidentiality position regarding the Deed in accordance with section 90 of the PBR Regulations;
- (c) On 7 December 2022, any statement as to the limitation period was made on the Commonwealth's instructions while it controlled the defence;
- (d) On 13 December 2022, the Commonwealth settled the claims at mediation and procured execution of the Deed of Settlement and Release; and
- (e) On 6 December 2022 and 7 February 2023, the Commonwealth communicated the effect of the Deed (including the release in the Applicant's favour) while continuing to maintain the confidentiality position it had adopted.

44. In the premises and in the event of this Honourable Court finding that the Second Respondent is liable to the Applicant for any damage or loss claimed by the Applicant (which is denied), the Second Respondent will contend that its liability is limited to an amount which reflects that proportion of the loss claimed by the Applicant the Court considers just, having regard to the conduct of the Commonwealth as a concurrent wrongdoer and the extent of the Commonwealth's responsibility for the damage and loss.

Date: 6 February 2026

A handwritten signature in blue ink, appearing to read 'A. Haslam', is positioned above a horizontal dotted line.

Signed by Alexander Boyd Haslam
Lawyer for the Second Respondent

This pleading was prepared by Alexander Boyd Haslam, lawyer.

Certificate of lawyer

I Alexander Boyd Haslam certify to the Court that, in relation to the defence filed on behalf of the Second Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 6 February 2026



Signed by Alexander Boyd Haslam
Lawyer for the Second Respondent

NOTICE OF FILING

Details of Filing

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ANOR
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Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.