

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 7/04/2022 3:48:41 PM ACST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

|                  |   |
|------------------|---|
| Document Lodged: | Statement of Claim - Form 17 - Rule 8.06(1)(a)                      |
| File Number:     | SAD76/2020  |
| File Title:      | AARON FURNELL & ORS v SHAHIN ENTERPRISES PTY LTD ACN<br>008 150 543 |
| Registry:        | SOUTH AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA               |



Dated: 8/04/2022 2:02:51 PM ACST

A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

### Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



## Statement of cross-claim

No. SAD76 of 2020

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

**Aaron Furnell** and others named in the Schedule  
Applicants

**Shahin Enterprises Pty Ltd** ACN 008 150 543  
Respondent

**Shahin Enterprises Pty Ltd** ACN 008 150 543  
Cross-claimant

**Dylan Mark Garwood** and another named in the Schedule  
Cross-respondents

### Parties

1. The First Respondent and Cross-claimant Shahin Enterprises Pty Ltd ACN 008 150 543 (**SEPL**):
  - 1.1. was and is a duly incorporated company pursuant to the *Corporations Act 2001*;
  - 1.2. was and is able to sue and be sued in its corporate name and style;
  - 1.3. operated a business at all times material to these proceedings under the name and style of On The Run (**OTR**) which was comprised of numerous sites from which, variously, fuel, convenience stores and quick service restaurants operated;
  - 1.4. employed the Cross-respondents at the times and in the positions set out further below.
2. The First Cross-respondent, Dylan Mark Garwood:
  - 2.1. is a natural person capable of being sued in his own name;

|                              |   |     |                |
|------------------------------|---|-----|----------------|
| Filed on behalf of           | The Respondent and Cross-Claimant, Shahin Enterprises Pty Ltd |     |                |
| Prepared by                  | Thomas Alexander Griffith                                     |     |                |
| Law firm                     | Piper Alderman  |     |                |
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| <b>Address for service</b>   | Level 16, 70 Franklin Street, Adelaide SA 5000                |     |                |
| (include state and postcode) |   |     |                |

- 2.2. was employed by SEPL in the period October 2010 to 23 January 2018;
  - 2.3. was employed as a Trainee Area Manager during the period 5 January 2015 to 23 November 2015 pursuant to the terms of a contract of employment dated 29 December 2014;
  - 2.4. was the manager of SEPL's Ceduna OTR store in the period 23 November 2015 to 15 February 2017;
  - 2.5. was employed as an Area Manager pursuant to the terms of a contract dated on or about 15 February 2017 up until his resignation on 23 January 2018.
3. The Second Cross-respondent, Laura Madeline D'Cruz:
- 3.1. is a natural person capable of being sued in her own name;
  - 3.2. was employed by SEPL in the period 13 January 2013 to 10 June 2015 and subsequently 19 April 2016 to 7 March 2018;
  - 3.3. was the manager of SEPL's West Terrace OTR store in the period 9 April 2014 to 10 June 2015;
  - 3.4. was the manager of SEPL's Fullarton OTR store in the period 19 April 2016 to 9 February 2017 and from 10 October 2016 to 9 February 2017 was temporarily assigned the position of Trainee Area Manager;
  - 3.5. was employed as a Trainee Area Manager Central during the period 9 February 2017 to 31 May 2017 pursuant to the terms of a contract of employment dated on or about 9 February 2017.

### **Claim against SEPL**

4. In the Second Further Amended Statement of Claim filed on 17 March 2022 in this action by Aaron Furnell and others named in the Schedule (**Second FASOC**) a copy of which will be served on the Cross-respondents contemporaneously with this document, the Applicants make certain allegations against SEPL. SEPL adopts the definitions used in the Second FASOC for the purpose of this cross-claim (unless otherwise provided).
5. It is alleged in paragraph 8 of the Second FASOC (which is denied by SEPL) that the claim is commenced as a representative proceeding on behalf of persons alleged to be Group 1 Members namely:
  - 5.1. on behalf of current and former non-salaried employees of the Respondent who, at any time during the Collective Agreement Period and Modern Award Period:
    - (i) were employed in the positions of:
      - (1) console operator;

- (2) driveway attendant; or
- (3) roadhouse (food) attendant,

Pursuant to the Customer Service CA during the Collective Agreement Period and the Award during the Modern Award Period,

5.2. were directed verbally from time to time, to:

- (1) arrive at work, ~~be available to perform work and perform work~~ 10 minutes prior to the start of their scheduled shift (**Pre-Shift Work**);
- (2) stay at work, be available to perform work and perform work after the completion of their scheduled shift (**Post-Shift Work**); and/or
- (3) work through their shifts without taking a meal break by attending to customers during this period or being available during this period (either by being the only rostered employee and directed to attend any customers throughout their shift, or being directed from time to time while on a meal break to serve customers) to attend to customers without being given additional time for a meal break, despite their shifts scheduling such a break and a period of 30 minutes of their shifts being treated as an unpaid meal break (**Meal Break Work**);

5.3. were not paid their entitlements in the Collective Agreement Period arising from the Customer Service CA in respect of the Pre-Shift Work, Post-Shift Work and/or Meal Break Work;

5.4. were not paid their entitlements in the Modern Award Period arising from the Award in respect of the Pre-Shift Work, Post-Shift Work and/or Meal Break Work; and

5.5. have not, as at the date of commencement of this proceeding, commenced proceedings against the Respondent in respect of the non-payment or underpayment of their full entitlements for the Pre-Shift Work, Post-Shift Work and/or Meal Break Work.

6. It is alleged in paragraphs 15A, 20A and 22A of the Second FASOC that Group 1 Members were verbally directed to undertake pre-shift, meal break and post-shift work (as defined) for which they were not paid by, inter alia:

6.1. the North Region Area Manager, Dylan Garwood, who was engaged to supervise the following On The Run stores from December 2014 until December 2015:

- (i) Port Lincoln Store;
- (ii) Port Pirie Store;
- (iii) Whyalla Store;
- (iv) Angle Vale Store;
- (v) Two Wells Store;
- (vi) Kadina Store;
- (vii) Evanston Store; and
- (viii) Clare Store;

6.2. the Central Region Area Manager, Dylan Garwood, who was engaged to supervise the following On The Run stores from February 2017 until January 2018:

- (i) Largs Bay Military Road Store;
- (ii) Flinders Park Store;
- (iii) Underdale Store;
- (iv) Fulham Gardens Store;
- (v) Fulham Store;
- (vi) Kurralta Park Store;
- (vii) Harbour Town Store;
- (viii) West Beach Store;
- (ix) Seaton Store;
- (x) Hilton Store;
- (xi) Woodville Park Store; and
- (xii) David Terrace Store.

6.3. Laura D'Cruz, a trainee Area Manager, who was engaged to supervise the following On The Run stores from September 2016 until April 2017:

- (i) the Kent Town Store;
- (ii) the Erindale Store;
- (iii) the Evandale Store;
- (iv) the Kensington Store;
- (v) the Tranmere Store;

- (vi) the Stepney Store;
- (vii) the North Terrace Store;
- (viii) the Pulteney Street Store;
- (ix) the Norwood Store; and
- (x) the Fullarton Store;

6.4. persons who are allegedly Group 3 members who were directed by Mr Garwood and Ms D'Cruz respectively to direct alleged Group 1 members.

7. At paragraph 31P of the Second FASOC (which is denied by SEPL) it is alleged that the contraventions of the *Fair Work Act 2009* in respect of Group 1 Members were serious contraventions within the meaning of section 557A that were engaged in by SEPL knowingly such knowledge being, inter alia, that of Mr Garwood and Ms D'Cruz.

8. It is alleged at paragraph 49 of the Second FASOC (which is denied by SEPL), that the claim is commenced as a representative proceeding on behalf of persons alleged to be Group 3 Members, namely:

8.1. on behalf of current and former employees of the Respondent who, at any time during the Collective Agreement Period and Modern Award Period:

(i) were employed in salaried managerial positions of:

- (1) store manager;
- (2) assistant store manager;
- (3) store manager in training;
- (4) food manager;
- (5) assistant food manager; or
- (6) food manager in training,

pursuant to the Full Time CA in the Collective Agreement Period and the Award during the Modern Award Period,

8.2. were directed verbally from time to time, to perform work in excess of 38 hours per week (**Overtime**);

8.3. were not paid their entitlements arising from the Overtime arising from the Full Time CA in the Collective Agreement Period and Award during the Modern Award Period; and

- 8.4. have not, as at the date of commencement of this proceeding, commenced proceedings against the Respondent in respect of the underpayments of their entitlements relating to the Overtime.
9. It is further alleged in paragraph 61A of the Second FASOC (which is denied by SEPL), that Group 3 Members were verbally directed to perform additional work (overtime hours) outside of their ordinary contracted hours variously before the commencement of their shifts, through meal breaks or at the end of their rostered shifts or additional shifts when required by SEPL for which they were not paid.
10. It is further alleged in paragraph 61A of the Second FASOC, that Group 3 Members were verbally directed to undertake overtime hours (as defined) for which they were not paid by, inter alia:
- 10.1. Dylan Garwood, the North Region Area Manager, engaged to work at the following stores, from December 2014 until December 2015:
- (i) Port Lincoln Store;
  - (ii) Port Pirie Store;
  - (iii) Whyalla Store;
  - (iv) Angle Vale Store;
  - (v) Two Wells Store;
  - (vi) Kadina Store;
  - (vii) Evanston Store; and
  - (viii) Clare Store;
- 10.2. Dylan Garwood, the Central Region Area Manager, engaged to work at the following stores from February 2017 until January 2018:
- (i) Largs Bay Military Road Store;
  - (ii) Flinders Park Store;
  - (iii) Underdale Store;
  - (iv) Fulham Gardens Store;
  - (v) Fulham Store;
  - (vi) Kurralta Park Store;
  - (vii) Harbour Town Store;
  - (viii) West Beach Store;

- (ix) Seaton Store;
- (x) Hilton Store;
- (xi) Woodville Park Store; and
- (xii) David Terrace Store.

10.3. Laura D'Cruz, a trainee Area Manager, engaged to work at the following stores from September 2016 to April 2017:

- (i) the Kent Town Store;
- (ii) the Erindale Store;
- (iii) the Evandale Store;
- (iv) the Kensington Store;
- (v) the Tranmere Store;
- (vi) the Stepney Store;
- (vii) the North Terrace Store;
- (viii) the Pulteney Street Store;
- (ix) the Norwood Store; and
- (x) the Fullarton Store.

11. At paragraph 75N of the Second FASOC (which is denied by SEPL) it is alleged that the contraventions of the *Fair Work Act 2009* in respect of Group 3 Members were serious contraventions within the meaning of section 557A that were engaged in by SEPL knowingly such knowledge being, inter alia, that of Mr Garwood and Ms D'Cruz.
12. It is further alleged in the Second FASOC (and denied by SEPL) that SEPL failed to keep or otherwise kept false and misleading records and that it had actual knowledge of those alleged facts by reason of the matters set out in paragraphs 31N, 31Q, 75L and 75O of the Second FASOC.
13. The Applicants claim in the Second FASOC that SEPL contravened the *Fair Work Act 2009* in relation to the Group 1 and Group 3 Members by reason of which the Applicants seek, inter alia, orders for compensation pursuant to Section 545 of the *Fair Work Act* for loss allegedly suffered by Group 1 and Group 3 Members together with interest on such compensation.

#### **SEPL's Claim against the Cross-respondents**

14. If, which is denied:



- 14.1. SEPL contravened the *Fair Work Act 2009* in respect of the Applicants and Group 1 and Group 3 Members in the manner alleged in paragraphs 4 to 12 above, then;
- 14.2. Mr Garwood and Ms D'Cruz were knowingly concerned in those contraventions if, within the meaning of section 550 of the *Fair Work Act 2009* (which is denied) they gave the verbal directions alleged to have been given to Group 1 and Group 3 Members as set out in the Second FASOC;
- 14.3. Mr Garwood and Ms D'Cruz were knowingly concerned in the contraventions in circumstances where the alleged verbal directions (which are denied) were given:
  - 14.3.1. without the actual or apparent authority of SEPL;
  - 14.3.2. in clear breach of their respective employment agreements and SEPL's policies entitling SEPL to dismiss them.

#### **Mr Garwood**

- 15. Pursuant to the terms of an Employment Contract between SEPL and the First Cross-respondent Mr Garwood dated 29 December 2014 by which he was appointed a Trainee Area Manager (**Mr Garwood's 2014 Contract**). Mr Garwood's obligations and responsibilities included that he would:
  - 15.1. report to the responsible person specified in Schedule 1 [Regional Manager] or other position as designated by SEPL; (clause 5.4.1)
  - 15.2. act in a professional manner at all times; (clause 5.4.2)
  - 15.3. comply with all of SEPL's policies and procedures, lawful and reasonable instructions that may be issued from time to time; (clause 5.4.6)
  - 15.4. comply with SEPL's policies as varied and issued from time to time. He was required to familiarise himself with all of SEPL's policies as soon as reasonably practicable during the period of the contract, but no later than the cessation of his probationary period; (clauses 5.4.9 and 4.3)
  - 15.5. report immediately any breach or suspected breach by any other person of SEPL's policies, practices or procedures or any act of misconduct of which he became aware; (clause 5.4.10).
- 16. Mr Garwood's 2014 Contract was terminable in circumstances where:
  - 16.1. he committed a fundamental or serious breach of SEPL's policies and practices; (clause 15.1.2)

- 16.2. there was a fundamental or serious breach by him of the Contract; (clause 15.1.3)
- 16.3. there was a failure by him to perform or conduct himself to a satisfactory standard on a consistent basis (clause 15.1.4).
- 17. Pursuant to the Employment Contract between SEPL and Mr Garwood dated 15 February 2017, Mr Garwood was appointed to the position of Area Manager (**Mr Garwood's 2017 Contract**). Mr Garwood's obligations and responsibilities, pursuant to Mr Garwood's 2017 Contract, included that he:
  - 17.1. agreed to obey all reasonable and lawful directions of SEPL; (clause 6.2)
  - 17.2. must act in accordance with SEPL's values, which include the promotion of an inclusive and friendly workplace and the maintenance of supportive and professional relationships with employees and clients; (clause 6.5)
  - 17.3. must at all times use best endeavours to promote SEPL's aims, interest and objectives; (clause 6.6)
  - 17.4. must maintain and enhance the reputation of SEPL's business, and promote SEPL's interest and welfare at all times; (clause 6.7)
  - 17.5. must comply with all work, health and safety legislation (clause 6.8).
- 18. It was an express term of Mr Garwood's 2017 Contract that he must comply with any of SEPL's policies and procedures as varied and communicated to Area Managers from time to time.
- 19. Mr Garwood's 2017 Contract was terminable in circumstances where:
  - 19.1. he committed a serious breach of the Agreement; (clause 24.2.1.1)
  - 19.2. he was guilty of serious or wilful misconduct or wilful neglect relating to the discharge of his duties; (clause 24.2.1.2)
  - 19.3. he did or permitted to be done anything which may, in SEPL's reasonable opinion, detrimentally affect SEPL's reputation and standing (clause 24.2.1.9).
- 20. At all times material to this cross-claim, SEPL's policies and guidance as to the duties of Area Managers was set out in a document entitled "OTR My Guide to Area Management v 9 June 2014". The My Guide to Area Management:
  - 20.1. under the heading "Rostering", set out in relation to the creation of rosters and Area Managers' oversight of that process and the rosters thereby created by Store Managers. At section 2.1(iii), Completing Roster Actuals it is expressly stated:

- 20.1.1. *“Every Area Manager needs to make sure that their sites are completing roster actuals on a daily basis”*
- 20.1.2. *“Roster actuals need to be completed by Site Managers daily to ensure that things do not get missed at the end of the week when they are sent to Payroll for processing.”*
- 20.1.3. *“To complete the roster actuals Sites Managers must use Team Member time books to enter hours against what was posted on the rosters. All actuals entered into the actuals tab must reflect what has been written in the TM’s time book.”*
- 20.1.4. *“Where there is a different time recorded than the rostered shift there must be an explanation of reason why in the employee time book. Depending on what the reason is the Site Manager must speak with the Team Member as continued adjustments will affect the overall hours allocated which may cause the site to overspend on their budgeted hours.”*
- 20.1.5. *“Once all the actuals for the day have been entered, the day complete box must be ticked to finalise those entries.”*
- 20.1.6. *“Each Area Manager is provided with a daily scorecard of Roster Actuals status and figures (Scoreboard Actual to Budget – Week to Date). Use this report to track the compliance of your Site Managers who are completing actuals daily, and how the site is tracking with regards to compliance to the hours budget and the dollar budget.”*
- 20.1.7. *“Where Site Managers fail to complete roster actuals daily a performance management discussion needs to take place outlining the importance of completing roster actuals daily.”*
- 20.2. at section 2.1(v), outlined that rosters must be prepared so as to ensure that all trainees received their minimum hours and contracted employees receive their minimum hours and no Team Members were rostered over 35 hours and the rosters were completed at least two weeks in advance and within the budgeted dollars and hours for the respective stores;
- 20.3. at sections 2.2.1 and 4 respectively, set out that Area Managers were required to undertake site detail days in respect of which:
  - 20.3.1. Area Managers were to encourage Site Managers to bring all of their issues, feedback, concerns and achievements to the table and discuss with their Area Manager;

- 20.3.2. in the course of a site detail day the Area Managers were to use a site visit check list which set out the following tasks:

***“Part 2 Site Detail Day***

...

12. *Review labour control;*
13. *Review and plan appropriate manning based on current team availability and base jobs;*
14. *Review roster manning – are we rostering in line with what the graphs and sales are suggesting and are the site labour costs under control;*

...

***Part 3 Labour***

1. *Review hours to budget planning and budget actuals;*
  2. *Review of hours planned for all trainees in your area;*
  3. *Review of all hours actual for trainees in your area ...*
  4. *Review over 35 hours planned;*
- ...
8. *Review of actual hours used to budget hours. There should be no overspending in hours without the prior consent of an Area Manager. Area Managers can only authorise additional hours to be used when they have received permission from their Senior Area Manager and the additional hours have been loaded into the roster system. Hours control is a core element to managing a budget and must be adhered to at all times.”*

- 20.3.3. Area Managers were required to prepare and send a weekly report to the Office of the Director of Convenience and the Office of the General Manager of the OTR business conducted by SEPL by 6pm each Wednesday, the template for which was set out in the My Guide.

21. Neither pursuant to the terms of his Employment Contracts nor statements of SEPL’s policies and the duties of Area Managers was any actual or ostensible authority conferred

upon Mr Garwood to give directions to Group 1 and Group 3 Members in the manner alleged by the Applicants in the Second FASOC as referred to in paragraphs 4 to 12 above.

22. Further to paragraph 20 above, Mr Garwood was required to report to SEPL's senior management on a weekly basis in relation to the discharge of his duties as a Trainee Area Manager and subsequently Area Manager in the area for which he was responsible including explicitly in relation to matters concerning People, Team Members working at multiple sites, Team Members over 35 hours, roster sign off and fingerprint scanning compliance and appraisals.
23. Mr Garwood submitted 11 weekly reports in the period 1 July 2015 to 4 November 2015 in which he was Trainee Area Manager in the North Region. In none of those reports did he report to senior management of SEPL that he had given directions to Group 1 and Group 3 Members in terms alleged in the Second FASOC or otherwise.

#### Particulars

|    |  |
|----|--|
| 1. | 1 July 2015 – Email from Dylan Garwood to Gabrielle Chervatin, Chris Hagi, Darryl Cotter and Tanya Hardy   |
|    | Weekly Report (week ending 1 July 2015)  |
| 2. | 8 July 2015 – Email from Dylan Garwood to Gabrielle Chervatin, Chris Hagi, Darryl Cotter and Tanya Hardy   |
|    | Weekly Report (week ending 8 July 2015)  |
| 3. | 16 July 2015 – Email from Dylan Garwood to Gabrielle Chervatin, Chris Hagi, Darryl Cotter and Tanya Hardy  |
|    | Weekly Report (week ending 22 July 2015)   |
| 4. | 22 July 2015 – Email from Dylan Garwood to Gabrielle Chervatin, Chris Hagi, Darryl Cotter and Tanya Hardy  |
|    | Weekly Report (week ending 22 July 2015)   |
| 5. | 29 July 2015 – Email from Dylan Garwood to Gabrielle Chervatin, Chris Hagi, Darryl Cotter and Tanya Hardy  |
|    | Weekly Report (week ending 29 July 2015)   |
| 6. | 5 August 2015 – Email from Dylan Garwood to Gabrielle Chervatin, Chris Hagi, Darryl Cotter and Tanya Hardy |
|    | Weekly Report (week ending 8 August 2015)  |

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| 7.  | 19 August 2015 – Email from Dylan Garwood to Gabrielle Chervatin, Chris Hagi, Darryl Cotter, Kerry Atkinson and Varun Chopra |
|     | Weekly Report (week ending 26 August 2015)   |
| 8.  | 26 August 2015 – Email from Dylan Garwood to Gabrielle Chervatin, Chris Hagi, Darryl Cotter and Kerry Atkinson               |
|     | Weekly Report (week ending 26 August 2015)   |
| 9.  | 30 September 2015 – Email from Dylan Garwood to Gabrielle Chervatin, Chris Hagi, Darryl Cotter and Kerry Atkinson            |
|     | Weekly Report (week ending 30 September 2015)  |
| 10. | 28 October 2015 – Email from Dylan Garwood to Gabrielle Chervatin, Chris Hagi, Darryl Cotter and Kerry Atkinson              |
|     | Weekly Report (week ending 28 October 2015)  |
| 11. | 4 November 2015 – Email from Dylan Garwood to Gabrielle Chervatin, Chris Hagi, Darryl Cotter and Kerry Atkinson              |
|     | Weekly Report (week ending 4 November 2015)  |

24. Mr Garwood submitted 43 weekly reports in the period 21 February 2017 to 17 January 2018 in which he was Area Manager in the Central Region. In none of those reports did he report to senior management of SEPL that he had given directions to Group 1 and Group 3 Members in terms alleged in the Second FASOC or otherwise.

#### Particulars

|    |  |
|----|--|
| 1. | 22 February 2017 – Email from Dylan Garwood to Darryl Cotter, Weekly Reports Inbox and Steve Stamatopoulos |
|    | Weekly Report (week ending 21 February 2017)   |
| 2. | 1 March 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter and Steve Stamatopoulos     |
|    | Weekly Report (week ending 28 February 2017)   |
| 3. | 8 March 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter and Steve Stamatopoulos     |
|    | Weekly Report (week ending 7 March 2017)   |
| 4. | 15 March 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter and Steve Stamatopoulos    |
|    | Weekly Report (week ending 14 March 2017)  |

|     |  |
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| 5.  | 22 March 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter and Steve Stamatopoulos                  |
|     | Weekly Report (week ending 21 March 2017)  |
| 6.  | 29 March 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter and Steve Stamatopoulos                  |
|     | Weekly Report (week ending 28 March 2017)  |
| 7.  | 5 April 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter and Steve Stamatopoulos                   |
|     | Weekly Report (week ending 4 April 2017)   |
| 8.  | 12 April 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, Steve Stamatopoulos and Louise Stephens |
|     | Weekly Report (week ending 11 April 2017)  |
| 9.  | 19 April 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, Steve Stamatopoulos and Louise Stephens |
|     | Weekly Report (week ending 18 April 2017)  |
| 10. | 26 April 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, Steve Stamatopoulos and Louise Stephens |
|     | Weekly Report (week ending 25 April 2017)  |
| 11. | 3 May 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, Steve Stamatopoulos and Louise Stephens    |
|     | Weekly Report (week ending 2 May 2017)   |
| 12. | 17 May 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, Steve Stamatopoulos and Louise Stephens   |
|     | Weekly Report (week ending 16 May 2017)  |
| 13. | 24 May 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, Steve Stamatopoulos and Louise Stephens   |
|     | Weekly Report (week ending 23 May 2017)  |
| 14. | 1 June 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, Steve Stamatopoulos and Louise Stephens   |
|     | Weekly Report (week ending 30 May 2017)  |
| 15. | 7 June 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, Steve Stamatopoulos and Louise Stephens   |
|     | Weekly Report (week ending 6 June 2017)  |
| 16. | 14 June 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, Steve Stamatopoulos and Louise Stephens  |
|     | Weekly Report (week ending 13 June 2017)   |

|     |   |
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| 17. | 21 June 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, Steve Stamatopoulos and Louise Stephens               |
|     | Weekly Report (week ending 20 June 2017)  |
| 18. | 28 June 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, Steve Stamatopoulos, Louise Stephens and James Tilley |
|     | Weekly Report (week ending 27 June 2017)  |
| 19. | 5 July 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens                       |
|     | Weekly Report (week ending 4 July 2017)   |
| 20. | 12 July 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens                      |
|     | Weekly Report (week ending 11 July 2017)  |
| 21. | 19 July 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens                      |
|     | Weekly Report (week ending 18 July 2017)  |
| 22. | 26 July 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens                      |
|     | Weekly Report (week ending 25 July 2017)  |
| 23. | 2 August 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens                     |
|     | Weekly Report (week ending 1 August 2017)   |
| 24. | 9 August 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens                     |
|     | Weekly Report (week ending 8 August 2017)   |
| 25. | 16 August 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens                    |
|     | Weekly Report (week ending 15 August 2017)  |
| 26. | 23 August 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens                    |
|     | Weekly Report (week ending 22 August 2017)  |
| 27. | 30 August 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens                    |
|     | Weekly Report (week ending 29 August 2017)  |
| 28. | 6 September 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens                  |
|     | Weekly Report (week ending 5 September 2017)  |



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| 29. | 13 September 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens |
|     | Weekly Report (week ending 12 September 2017)   |
| 30. | 20 September 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens |
|     | Weekly Report (week ending 19 September 2017)   |
| 31. | 27 September 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens |
|     | Weekly Report (week ending 26 September 2017)   |
| 32. | 4 October 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens    |
|     | Weekly Report (week ending 3 October 2017)  |
| 33. | 11 October 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens   |
|     | Weekly Report (week ending 10 October 2017)   |
| 34. | 18 October 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens   |
|     | Weekly Report (week ending 17 October 2017)   |
| 35. | 15 November 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens  |
|     | Weekly Report (week ending 14 November 2017)  |
| 36. | 22 November 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens  |
|     | Weekly Report (week ending 21 November 2017)  |
| 37. | 29 November 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens  |
|     | Weekly Report (week ending 28 November 2017)  |
| 38. | 6 December 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens   |
|     | Weekly Report (week ending 6 December 2017)   |
| 39. | 13 December 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens  |
|     | Weekly Report (week ending 13 December 2017)  |
| 40. | 27 December 2017 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens  |
|     | Weekly Report(week ending 27 December 2017)   |

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| 41. | 3 January 2018 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens  |
|     | Weekly Report (week ending 3 January 2018)  |
| 42. | 10 January 2018 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens |
|     | Weekly Report (week ending 10 January 2018)   |
| 43. | 17 January 2018 – Email from Dylan Garwood to Weekly Reports Inbox, Darryl Cotter, James Tilley and Louise Stephens |
|     | Weekly Report (week ending 17 January 2018)   |

25. If, which is denied, SEPL contravened the *Fair Work Act 2009* in respect of Group 1 and Group 3 Members, by reason of Mr Garwood's conduct as pleaded in the Second FASOC, then Mr Garwood was knowingly concerned in the contraventions of the *Fair Work Act 2009* and did so without the actual or ostensible authority of SEPL in breach of his employment contract and duties to SEPL by reason of which any losses SEPL will suffer consequent upon compensation being ordered to be paid in these proceedings have been caused or contributed to by the conduct of Mr Garwood.

#### **Ms D'Cruz**

26. Pursuant to an Employment Contract between SEPL and Ms D'Cruz dated on or about 9 February 2017, the Second Cross-respondent Ms D'Cruz was appointed to the position of Trainee Area Manager (**Ms D'Cruz 2017 Contract**). Ms D'Cruz's obligations and responsibilities included that she:
- 26.1. agreed to obey all reasonable and lawful directions of the Employer; (clause 6.2)
  - 26.2. must act in accordance with SEPL's values, which include the promotion of an inclusive and friendly workplace and the maintenance of supportive and professional relationships with employees and clients; (clause 6.5)
  - 26.3. must at all times use best endeavours to promote SEPL's aims, interest and objectives; (clause 6.6)
  - 26.4. must maintain and enhance the reputation of SEPL's business, and promote SEPL's interest and welfare at all times; (clause 6.7)
  - 26.5. must comply with all work, health and safety legislation (clause 6.8).
27. It was an express term of Ms D'Cruz's 2017 Contract that she must comply with any of SEPL's policies and procedures as varied and communicated to Area Managers from time to time.

28. Ms D'Cruz's 2017 Contract was terminable in circumstances where:
- 28.1. she committed a serious breach of the Agreement; (clause 24.2.1.1)
  - 28.2. she was guilty of serious or wilful misconduct or wilful neglect relating to the discharge of her duties; (clause 24.2.1.2)
  - 28.3. she did, or permitted to be done, anything which may, in SEPL's reasonable opinion, detrimentally affect SEPL's reputation and standing; (clause 24.2.1.9)
29. SEPL repeats paragraph 20 above.
30. Neither pursuant to the terms of her Employment Contract nor statements of SEPL's policies and the duties of Area Managers was any actual or ostensible authority conferred upon Ms D'Cruz to give directions to Group 1 and Group 3 Members in the manner alleged by the Applicants in the Second FASOC as referred to in paragraphs 4 to 12 above.
31. Further to paragraph 20 above, Ms D'Cruz was required to report to SEPL's senior management on a weekly basis in relation to the discharge of her duties as a Trainee Area Manager including explicitly in relation to matters concerning People, Team Members working at multiple sites, Team Members over 35 hours, roster sign off and fingerprint scanning compliance and appraisals.
32. Ms D'Cruz submitted 22 reports in the period 18 October 2016 to 20 March 2017 in which she was respectively a Trainee Area Manager in the Central Region. In none of those reports did she report to senior management of SEPL that she had given directions to Group 1 and Group 3 Members in terms alleged in the Second FASOC or otherwise.

#### Particulars

|    |  |
|----|--|
| 1. | 19 October 2016 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos |
|    | Weekly Report (week ending 18 October 2016)  |
| 2. | 26 October 2016 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos |
|    | Weekly Report (week ending 25 October 2016)  |
| 3. | 2 November 2016 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos |
|    | Weekly Report (week ending 1 November 2016)  |
| 4. | 9 November 2016 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos |
|    | Weekly Report (week ending 8 November 2016)  |

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| 5.  | 16 November 2016 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos |
|     | Weekly Report (week ending 15 November 2016)  |
| 6.  | 23 November 2016 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos |
|     | Weekly Report (week ending 22 November 2016)  |
| 7.  | 30 November 2016 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos |
|     | Weekly Report (week ending 29 November 2016)  |
| 8.  | 7 December 2016 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos  |
|     | Weekly Report (week ending 6 December 2016)   |
| 9.  | 14 December 2016 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos |
|     | Weekly Report (week ending 13 December 2016)  |
| 10. | 21 December 2016 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos |
|     | Weekly Report (week ending 20 December 2016)  |
| 11. | 28 December 2016 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos |
|     | Weekly Report (week ending 27 December 2016)  |
| 12. | 4 January 2017 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos   |
|     | Weekly Report (week ending 3 January 2017)  |
| 13. | 11 January 2017 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos  |
|     | Weekly Report (week ending 10 January 2017)   |
| 14. | 18 January 2017 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos  |
|     | Weekly Report (week ending 17 January 2017)   |
| 15. | 25 January 2017 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos  |
|     | Weekly Report (week ending 24 January 2017)   |
| 16. | 1 February 2017 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos  |
|     | Weekly Report (week ending 31 January 2017)   |

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| 17. | 8 February 2017 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos  |
|     | Weekly Report (week ending 7 February 2017)   |
| 18. | 15 February 2017 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos |
|     | Weekly Report (week ending 14 February 2017)  |
| 19. | 22 February 2017 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos |
|     | Weekly Report (week ending 21 February 2017)  |
| 20. | 8 March 2017 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos     |
|     | Weekly Report (week ending 7 March 2017)  |
| 21. | 15 March 2017 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos    |
|     | Weekly Report (week ending 14 March 2017)   |
| 22. | 22 March 2017 – Email from Laura D'Cruz to Darryl Cotter and Steve Stamatopoulos    |
|     | Weekly Report (week ending 21 March 2017)   |

### Claim for Contribution

33. In the circumstances, SEPL is entitled to an equitable contribution to its liability (if any) to Group 1 and Group 3 Members and the Cross-respondents must contribute rateably to SEPL's liability to pay compensation (if any) to the Group 1 and Group 3 Members in such amount and manner as the Court considers just and equitable.
34. Further, or alternatively, if, which is denied, SEPL is liable to compensate Group 1 and Group 3 Members by reason of the alleged contraventions of the *Fair Work Act 2009*:
- 34.1. SEPL's liability is a liability in damages arising under statute within the meaning of section 4 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA) (the **Law Reform Act**);
- 34.2. as particularised above, the Cross-respondents are liable in damages for the same harm within the meaning of section 6 of the Law Reform Act; and
- 34.3. SEPL may recover contribution from the Cross-respondents under Section 6 of the Law Reform Act in an amount that is fair and equitable having regard to the extent of its responsibility for the harm and that of the Cross-respondents.

### AND SEPL claims:

1. Contribution in equity towards SEPL's liability (if any) to Group 1 and Group 3 Members.

2. Alternatively, contribution under the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA) towards SEPL's liability to Group 1 and Group 3 Members (if any).
3. Costs.
4. Any other order that this Honourable Court deems fit.

Date: 7 April 2022



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Signed by Thomas Alexander Griffith  
Piper Alderman  
Lawyer for the Respondent and Cross-claimant

This pleading was prepared by Mark Hoffmann QC of counsel.

### **Certificate of lawyer**

I Thomas Alexander Griffith certify to the Court that, in relation to the statement of cross-claim filed on behalf of the Respondent and Cross-claimant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 7 April 2022



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Signed by Thomas Alexander Griffith  
Piper Alderman  
Lawyer for the Respondent and Cross-claimant

**Schedule**

No. SAD76 of 2020

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

**Applicants**

|                  |                            |
|------------------|----------------------------|
| Second Applicant | Paul Young                 |
| Third Applicant  | Shannan Mahoney            |
| Fourth Applicant | Christopher Palmer         |
| Fifth Applicant  | Laurence Lagoon Williamson |

**Cross-respondents**

|                         |                       |
|-------------------------|-----------------------|
| Second Cross-respondent | Laura Madeline D'Cruz |
|-------------------------|-----------------------|