

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION**

SCI 2014 06770

BETWEEN

MAJID KARAMI KAMASAEI

Plaintiff

- and -

COMMONWEALTH OF AUSTRALIA and others
(in accordance with the Schedule to the Writ)

Defendants

**DEFENCE TO AMENDED THIRD PARTY NOTICE FILED BY THE
SECOND DEFENDANT**

Date of Document: 30 November 2016

Filed on behalf of: First Defendant

Prepared by: Australian Government Solicitor
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In response to the Amended Third Party Notice filed by the Second Defendant (**G4S Australia Pty Ltd – G4S**) on ~~28 August 2015~~ 21 September 2016, the First Defendant says as follows:

1. The First Defendant does not plead to the matters alleged in paragraphs [1] through to [9] of the ~~Third Party Notice filed by G4S~~ as they those matters do not ~~make any~~ allegations against it relate to G4S's claim against it.
2. ~~The Third Party Notice Filed by G4S does not contain a paragraph [10].~~
2. In relation to paragraph [11(a)] [10] of the ~~Third Party Notice filed by G4S~~, the First Defendant:
 - a. repeats and relies upon the matters pleaded in its Defence to the Plaintiff's Third Amended Statement of Claim (Defence) dated ~~6 July 2015~~ 19 September 2016

and denies that it is liable to the Plaintiff and group members in respect of the same damage, or at all, and

- b. denies G4S is entitled to recover contribution from the First Defendant pursuant to:
- i. section 37 of the *Wrongs (Miscellaneous Provisions) Act 1975 (PNG)*;
 - ii. section 23B of the *Wrongs Act 1958 (Vic)*; or
 - iii. section 21 of the *Civil Law (Wrongs) Act 2002 (ACT)* –
or otherwise.

~~3. In relation to paragraph [11(b)] of the Third Party Notice filed by G4S, the First Defendant denies that G4S is entitled to recover contribution from the First Defendant pursuant to either:~~

- ~~i. section 37 of the *Wrongs (Miscellaneous Provisions) Act 1975 (PNG)* or~~
- ~~ii. section 23B of the *Wrongs Act 1958 (Vic)*~~

3. In relation to paragraph [10A], the First Defendant admits the allegations therein.

Particulars

The First Defendant and G4S entered into a contract for the provision of operational and maintenance services at the Manus Regional Processing Centre from 1 February 2013 (G4S Contract).

A deed of variation in respect of the G4S Contract was executed by the First Defendant and Second Defendant on 2 August 2013.

A letter of amendment in respect of the G4S Contract was signed on 7 November 2014.

4. In relation to paragraph [10B], the First Defendant:

- a. denies that G4S was under the G4S Contract, or otherwise, its agent.

Particulars

Clause 17.7.1 of the G4S Contract.

- b. says that it and G4S acknowledged that the terms of the G4S Contract required each of them to conduct themselves, and perform the Contract, in the spirit of cooperation and good faith, and that each of them acknowledged that the terms of the Contract required them to reach agreement on a range of matters, and that the parties agreed a procedure for dispute resolution, and submission to the applicable laws of Victoria in the event of any dispute as to the interpretation of the contract.

Particulars

Clauses 2.2, 14.1 and 17.12 of the G4S Contract.

- c. otherwise denies the allegations therein.
5. In relation to paragraph [10C], the First Defendant:
 - a. repeats and relies on the matters in paragraph [4] above.
 - b. says that the indemnity and insurance arrangements as between the First Defendant and G4S was as outlined in clause 12 of the G4S Contract, and not otherwise.
 - c. otherwise denies the allegations therein.
 6. In relation to paragraph [10D], the First Defendant:
 - a. repeats and relies on the matters in paragraph [5] above.

- b. says that G4S agreed not to permit any act or omission that causes or may cause the First Defendant to be in breach of its Memorandum of Understanding with Papua New Guinea or with the related Administrative Arrangements.

Particulars

Clause 2.3.1 of the G4S Contract.

- c. says that G4S agreed that it would, in performing its obligations under the G4S Contract, comply and ensure compliance by all its personnel with all applicable laws in PNG that were applicable to the Services or the Site where the Manus RPC was situated.

Particulars

Clause 3.3.1 of the G4S Contract.

- d. otherwise denies the allegations therein.
7. In relation to paragraph [10E], the First Defendant:
- a. refers to and relies on the matters in paragraph [6] above.
- b. otherwise does not plead to the matters in paragraph [10E] as no allegation is made against it.
8. The First Defendant does not plead to the matters in paragraph [10F] as no allegation is made against it.
9. The First Defendant does not plead to the matters in paragraph [10G] as no allegation is made against it.
10. In relation to paragraph [10H], the First Defendant:
- a. repeats and relies on the matters in paragraphs [4] to [6] above.
- b. otherwise denies the allegations therein.

11. The First Defendant does not plead to the matters in paragraph [10I] as no allegation is made against it.
12. In relation to paragraph [10J], the First Defendant:
 - a. repeats and relies on the matters in paragraphs [4] to [6] above.
 - b. otherwise denies the allegations therein.
13. The First Defendant does not plead to the matters alleged in paragraph [11] ~~of the Third Party Notice filed by G4S~~ because those matters do ~~it does not make any allegations~~ relate to G4S's claim against it.

Dated: 30 November 2016



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Christopher McDermott
AGS lawyer
For and on behalf of the Australian Government Solicitor
Solicitor for the First Defendant