

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

SCI 2014 06770

BETWEEN

MAJID KARAMI KAMASAE

Plaintiff

- and -

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

Defendants

**DEFENCE TO THE AMENDED COUNTERCLAIM FILED BY THE
THIRD 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 Counterclaim filed by the Third Defendant (**Transfield Services (Australia) Pty Ltd – Transfield**) on ~~7 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 [186] ~~of the Counterclaim filed by Transfield as they do~~ those matters do not ~~make any allegations against~~ relate to Transfield's claim against it.
2. In relation to paragraph [187(a)] ~~of the Counterclaim filed by Transfield~~, the First Defendant 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.

3. In relation to paragraph [187(b)] ~~of the Counterclaim filed by Transfield~~, the First Defendant denies that Transfield 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. ~~alternatively, section 21 of the *Civil Law (Wrongs) Act 2002* (ACT) which contains an equivalent provision to the provisions of now repealed *Law Reform (Miscellaneous Provisions) Act 1955*~~
- or otherwise.
4. In relation to paragraph [188], the First Defendant:
- a. Refers to and relies upon the matters pleaded in its Defence and, in particular, the matters pleaded at paragraphs [16], [29], [29A] to [29C], and [185A] to [185Y].
 - b. says that on 24 March 2014 it entered into a contract with Transfield for the provision of garrison and welfare services in regional processing countries (**the Transfield Contract**), and the Transfield Contract recorded the entire agreement between the parties in relation to its subject matter.

Particulars

Clause 1.2.1 of the Transfield Contract.

- c. says that Transfield 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 Transfield Contract.

- d. says that Transfield agreed that it would in performing its obligations under the Transfield 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 Transfield Contract.

- e. says that Transfield agreed to carry out the Services identified in Schedule 1 ('Statement of Work') to the Transfield Contract, and to provide other services on terms to be agreed between the First Defendant and Transfield, and thereafter to be incorporated by amendment into the Services to be provided by Transfield under the Transfield Contract.

Particulars

Clause 3.1.1 of the Transfield Contract.

- f. says that Transfield agreed to comply with directions of the First Defendant's Contract Administrator (as that term is defined in the Transfield Contract) consistent with the Transfield Contract.

Particulars

Clause 4.3.1 of the Transfield Contract.

- g. says that it and Transfield acknowledged that the terms of the Transfield Contract required each of them to conduct themselves, and perform the Transfield Contract, in the spirit of cooperation and good faith, and that each of them acknowledged that the terms of the Transfield 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 the Australian Capital Territory in the event of any dispute as to the interpretation of the Transfield Contract.

Particulars

Clauses 2.2, 14.1, and 17.12 of the Transfield Contract.

- h. denies that Transfield was under the Transfield Contract, or otherwise, its agent.

Particulars

Clause 17.7.1 of the Transfield Contract.

- i. says that the indemnity and insurance arrangements as between the First Defendant and Transfield was as outlined in clause 12 of the Transfield Contract, and not otherwise.
- j. refers to and relies upon the whole of the Transfield Contract for its full force and effect.
- k. otherwise denies the allegations therein.
5. The First Defendant does not plead to the matters alleged in paragraph ~~[188]~~ [189] of the Counterclaim filed by Transfield because those matters do ~~it does not make any~~ allegations relate to Transfield'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