

NOTICE OF MOTION

COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law
List	Common Law General
Registry	Sydney
Case number	2022/214157

TITLE OF PROCEEDINGS

Plaintiff	Raya Meredith
Defendant	State of New South Wales

FILING DETAILS

Person seeking orders	State of New South Wales , Defendant
Filed in relation to	Plaintiff's Claim
Legal representative	Nicholas Scott Regener Makinson d'Apice Lawyers
Legal representative reference	PCN: 51528 NSW Ref: 224209:NSW:RTH Court User No: 84
Contact name and telephone	Rachelle Harrington, 02 9513 9518
Contact email	rharrington@makdap.com.au

PERSON AFFECTED BY ORDERS SOUGHT

Raya Meredith, Plaintiff

HEARING DETAILS

This motion is listed on

ORDERS SOUGHT

Discovery by the State

- 1 Vary order 1 made on 5 May 2023 such that, on or before _____ (7 days after the hearing of this Notice of Motion), the defendant is to serve on the plaintiff in accordance with rr 21.3 and 21.4 of the UCPR, a verified list of all documents in their custody or control relating to the categories set out in Annexure A to the orders of 5 May 2023.
- 2 Order that the confidentiality and data security regime in Annexure A1 to these orders is to apply in respect of all documents discoverable by the defendant.
- 3 Direct that, for the purposes of paragraph 2 of the regime in Annexure A1, the plaintiff's solicitors respond to the defendant's information security assessment questionnaire or identify a proposed alternative standard of reasonable data security safeguards on or before _____ (7 days after the hearing of this Notice of Motion).
- 4 Order that:
 - a. on or before _____ (14 days after the hearing of this Notice of Motion)
 - b. 5 days after the plaintiff's solicitors certify compliance with reasonable data security safeguards in accordance with paragraph 1 of Annexure A1
 (whichever is the later),
 the defendant make available for inspection by the plaintiff the documents in its verified list of documents, other than:
 - c. documents (or parts of documents) the subject of a claim of privilege or public interest immunity; or
 - d. documents the subject of special protections pursuant to the confidentiality and data security regime in Annexure A2.
- 5 Order that the confidentiality and data security regime in Annexure A2 to these orders is to apply in respect of such documents (or classes thereof) as are identified by the defendant as requiring special protection because of their sensitivity.
- 6 Order that:
 - a. on or before _____ (14 days after the hearing of this Notice of Motion),

- b. 5 days after the plaintiff's solicitors certify compliance with reasonable data security safeguards in accordance with paragraph 1 of Annexure A1, or
- c. 5 days after the plaintiff provides the undertakings referred to in the regime in Annexure A2

(whichever is the later),

the defendant make available for inspection by the plaintiff the documents in its verified list, which are subject to special protections under the confidentiality and data security regime in Annexure A2, other than documents (or parts of documents) the subject of a claim of privilege or public interest immunity.

- 7 In the event the plaintiff disputes the defendant's assessment of the need for special protection regarding particular documents (or classes thereof), direct that she notify the defendant of that dispute promptly and that the defendant respond to such notification within 7 days of receipt.
- 8 If such dispute is unable to be resolved by agreement after 28 days, direct that the parties notify the Court and provide to my Associate a proposed timetable for the exchange of evidence and the hearing of oral arguments supporting and opposing the need for the special protections in Annexure A2 to apply.
- 9 Vacate order 2 of the orders made on 5 May 2023.
- 10 For the avoidance of doubt, nothing in orders 2 to 8 above prevents:
- a. reference to the contents of such documents in interlocutory proceedings;
 - b. tender of such documents as evidence in the proceeding at trial; or
 - c. the handling of documents by the Court and its staff.

Timetable for Plaintiff's evidence and State's lay evidence

- 11 Vary orders 5, 6 and 9 of the orders made on 5 May 2023 as follows:
- a. vary the date in order 5 from 28 July 2023 to 21 August 2023;
 - b. vary the date in order 6 from 25 August 2023 to 18 September 2023;
 - c. vary the date in order 9 from 8 September 2023 to _____ (the earliest date convenient to the court not before 20 September 2023).

Other matters

- 12 Grant leave to the plaintiff to amend paragraphs [68A] to [68D] of her Further Amended Statement of Claim.

- 13 Directs that, if the plaintiff exercises such leave, she do so by the filing of a Second Further Amended Statement of Claim on or before _____ (14 days after the hearing of this Notice of Motion).
- 14 Alternatively to orders 4 and 5, direct that the plaintiff respond to the defendant's letter of 13 July 2023 with respect to the Further Amended Statement of Claim on or before _____ (14 days after the hearing of this Notice of Motion).
- 15 Direct that the plaintiff respond to the defendant's letter of 19 May 2023 with respect to the distribution of opt out notices on or before _____ (14 days after the hearing of this Notice of Motion).

SIGNATURE

Signature of legal representative

Signature of or on behalf of person seeking orders if not legally represented



Capacity

Solicitor

Date of signature

17 July 2023

NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

REGISTRY ADDRESS

Street address

Supreme Court of NSW, Level 5, Law Courts Building
Queens Square, 184 Phillip Street, Sydney NSW 2000

Postal address

Supreme Court of NSW, GPO Box 3, Sydney NSW 2001

Telephone

1300 679 272

**ANNEXURE A1:
CONFIDENTIALITY AND DATA SECURITY PROTOCOL
(GENERAL)**

1. The Plaintiff's solicitors are to certify that they, along with any third-party e-discovery providers used by them, will comply with reasonable data security safeguards in relation to the material discovered by the State in these proceedings.
2. For the purpose of paragraph 1, "reasonable data security safeguards" means:
 - a.the security controls identified in the document titled "ISM Cloud Security Assessment – SG – June 2023";
 - b.ISO 27001; or
 - c.such alternative controls as may be agreed between the parties.
3. The documents discovered by the State in these proceedings are to be endorsed with a prominent stamp or watermark in the following terms:

"THIS IS A DOCUMENT PRODUCED BY THE DEFENDANT TO SUPREME COURT PROCEEDINGS NO. 2022/214157, PURSUANT TO ORDERS MADE BY THE COURT. IT IS NOT TO BE USED OR DISCLOSED OTHERWISE THAN FOR THE PURPOSES OF THE SUPREME COURT PROCEEDINGS."

**ANNEXURE A2:
CONFIDENTIALITY AND DATA SECURITY PROTOCOL
(SPECIAL PROTECTIONS)**

1. Documents identified by the defendant as requiring special protection because of their sensitivity be kept confidential and not provided or disclosed to any person save:
 - a. solicitors and counsel (including relevant office staff) or expert witnesses engaged by the parties for the purpose of the conduct of the proceeding;
 - b. the Plaintiff, but not in respect of documents in categories 1 and 2 of Annexure A to the orders of 5 May 2023 that relate to persons other than the Plaintiff;
 - c. representatives of the State and the NSW Police Force, who have access to the information as part of the usual course of their employment or engagement; and
 - d. any Judge of the Supreme Court of New South Wales and his or her staff in connection with the proceedings.
2. Prior to receiving the confidential documents, the persons identified in 1(a) and (b) above are to sign an undertaking in the form set out below.
3. The confidential documents are to be endorsed with a prominent stamp or watermark indicating that they are subject to a confidentiality order.

(a) any Judge of the Supreme Court of New South Wales and his or her staff in connection with the Proceedings;

(b) the defendant, its staff, consultants and legal advisers; and

(c) any one or more of the following persons:

- (i) [#name solicitors for the plaintiff] providing that they signed an undertaking in terms substantively identical to this undertaking;
- (ii) [#name counsel for the plaintiff] providing that they signed an undertaking in terms substantively identical to this undertaking;
- (iv) [#name expert witnesses for the plaintiff] providing that they signed an undertaking in terms substantively identical to this undertaking;
- (v) any other person specifically approved by the defendant in writing and who has signed an undertaking in terms substantively identical to this undertaking;
- (vi) a secretary or legal assistant employed by solicitors and counsel for the Plaintiff for the sole purpose of providing clerical or administrative assistance to the persons listed in paragraphs (i) to (v) in relation to the Proceedings.

ANNEXURE A2: Form of undertaking

I,.....
.....of.....
..... undertake to the defendant and the Supreme Court of New South Wales, in respect of the documents identified by the defendant as requiring special protection because of their sensitivity and which are marked as confidential (Confidential Documents) and in relation to the information identified as confidential in the Confidential Documents (Confidential Information) (such Confidential Documents and Confidential Information are listed in Schedule 1 to this undertaking) that:

1. Subject to the terms of this undertaking, I will keep the Confidential Documents and the Confidential Information confidential at all times.
2. I will not use the Confidential Documents or the Confidential Information or any part of either of them, for any purpose other than the sole purpose of the conduct of Supreme Court proceedings No. 2022/214157, and any proceedings which are joined to, or to be heard with, these proceedings (the Proceedings), except with the defendant's prior written approval.
3. Subject to cl 4 below, the Confidential Documents and the Confidential Information and any part of either of them will not be disclosed by me either directly or indirectly to any person, including other witnesses in the Proceedings unless:
 - (a) such disclosure is expressly authorised by the Supreme Court or the defendant;
 - (b) such part of the Confidential Documents or Confidential Information is already known to the plaintiff otherwise than in contravention of this or a similar confidentiality undertaking;
 - (c) such part of the Confidential Documents or Confidential Information is already generally and publicly available otherwise than in contravention of this or a similar confidentiality undertaking; or
 - (d) such disclosure is required by law (and then only to the extent that, and to the persons, required by law and in accordance with cl 6).
4. The Confidential Documents and the Confidential Information may be disclosed by me to:
 - (a) any Judge of the Supreme Court of New South Wales and his or her staff in connection with the Proceedings;
 - (b) the defendant, its staff, consultants and legal advisers; and
 - (c) any one or more of the following persons:
 - (i) [#name solicitors for the plaintiff] providing that they signed an undertaking in terms substantively identical to this undertaking;
 - (ii) [#name counsel for the plaintiff] providing that they signed an undertaking in terms substantively identical to this undertaking;
 - (iv) [#name expert witnesses for the plaintiff] providing that they signed an undertaking in terms substantively identical to this undertaking;

(v) any other person specifically approved by the defendant in writing and who has signed an undertaking in terms substantively identical to this undertaking;

(vi) a secretary or legal assistant employed by solicitors and counsel for the Plaintiff for the sole purpose of providing clerical or administrative assistance to the persons listed in paragraphs (i) to (v) in relation to the Proceedings.

5 If I disclose the Confidential Documents or the Confidential Information to any of the persons listed in cl 4(c) above, I will use my best endeavours to protect the confidentiality of the Confidential Documents and the Confidential Information and ensure that the confidentiality is maintained.

6 If I am required by law to disclose any Confidential Documents or Confidential Information to a third person, I agree that before doing so I will, to the extent permitted by law:

- (a) notify the defendant;
- (b) give the defendant a reasonable opportunity to take any steps that it considers necessary to protect the confidentiality of that information; and
- (c) notify the third person that the information is confidential information of the defendant and must be kept confidential.

7 I will:

- (a) promptly notify the defendant of, and will take all reasonable steps to prevent or stop, any breach of confidentiality in relation to the Confidential Documents or the Confidential Information; and
- (b) provide all assistance which is reasonably requested by the defendant in relation to any proceedings which that person may take against any person for unauthorised use or disclosure of the Confidential Documents or Confidential Information.

8 Upon the conclusion of the Proceedings, or my ceasing to have any involvement in the Proceedings, I will:

- (a) at the election of the defendant return to the defendant or destroy paper copies of the Confidential Documents;
- (b) destroy or remove any references to the Confidential Information in any documents created and held by me;
- (c) take whatever reasonable steps are specified by the defendant to prevent access to, or recovery or retrieval of:
 - (i) any electronic copies of the Confidential Documents held by my or under my control; and
 - (ii) any references to the Confidential Information in any documents created and held by me or under my control.

Schedule 1

[#Defendant to list or otherwise identify the confidential documents]