

Amended Defence

No. NSD 1245 of 2016

Federal Court of Australia
District Registry: New South Wales
Division: General

DANIEL ARISTABULUS SANDA

Applicant

PTTEP AUSTRALASIA (ASHMORE CARTIER) PTY LTD

Respondent

In this pleading, all references to paragraphs are references to paragraphs of the Further Amended Statement of Claim filed by the Applicant on 31 July 2017 (the **FASOC**) unless the context indicates otherwise. The terms defined by the Applicant in the FASOC have the same meaning in this pleading, unless otherwise defined or stated.

1. In answer to paragraph 1, the Respondent:
 - (a) admits that that the Applicant purports to bring this proceeding as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976 (Cth)*;
 - (b) denies the allegations contained in paragraph 1(b);
 - (c) otherwise does not know and therefore cannot admit the allegations contained in paragraph 1.

2. In answer to paragraph 2, the Respondent:
 - (a) admits that the Applicant purports to represent seven or more Group Members who allege that they have claims against the Respondent as pleaded by the Applicant in the ASOC;

Filed on behalf of (name & role of party)	PTTEP Australasia (Ashmore Cartier) Pty Ltd, the Respondent		
Prepared by (name of person/lawyer)	Peter O'Donahoo and Andrew Maher		
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(include state and postcode)	Melbourne VIC 3000 Australia		

- (b) says that if, which is denied, the Applicant or any of the Group Members he purports to represent establish the allegations in the ASOC, then all of the pleaded causes of action were not maintainable against the Respondent either at the time the proceeding was commenced or the ASOC was filed by reason of section 12 of the *Limitation Act (NT)*;
 - (c) otherwise denies the allegation contained in paragraph 2 that the Applicant or any of the Group Members have claims against the Respondent as pleaded in the ASOC.
- 3. The Respondent does not know and therefore cannot admit the allegations contained in paragraph 3.
- 4. The Respondent admits the allegations contained in paragraph 4.
- 5. The Respondent admits the allegations contained in paragraph 5.
- 6. The Respondent admits the allegations contained in paragraph 6.
- 7. The Respondent admits the allegations contained in paragraph 7.
- 8. The Respondent admits the allegations contained in paragraph 8.
- 9. The Respondent admits the allegations contained in paragraph 9.
- 10. The Respondent admits the allegations contained in paragraph 10.
- 11. In answer to paragraph 11, the Respondent:
 - (a) says that, between at least 7 March 2009 and 1 November 2009, it was, as a registered holder of a petroleum retention lease for an area in Commonwealth waters within the Territory of Ashmore and Cartier Islands, required by section 569 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)* to:
 - (i) carry out all petroleum exploration and recovery operations in the area the subject of the petroleum retention lease in a proper and workmanlike manner and in accordance with good oilfield practice;
 - (ii) control the flow, and prevent the waste or escape, of petroleum or water in the area the subject of the petroleum retention lease;

- (b) otherwise admits the allegations contained in paragraph 11.
12. The Respondent admits the allegations contained in paragraph 12.
 13. The Respondent admits the allegations contained in paragraph 13.
 14. The Respondent admits the allegations contained in paragraph 14.
 15. The Respondent admits the allegations contained in paragraph 15.
 16. The Respondent admits the allegations contained in paragraph 16.
 17. The Respondent admits the allegations contained in paragraph 17.
 18. The Respondent admits the allegations contained in paragraph 18.
 19. The Respondent admits the allegations contained in paragraph 19.
 20. The Respondent admits the allegations contained in paragraph 20.
 21. The Respondent admits the allegations contained in paragraph 21.
 22. The Respondent admits the allegations contained in paragraph 22.
 23. The Respondent admits the allegations contained in paragraph 23.
 24. The Respondent admits the allegations contained in paragraph 24.
 25. The Respondent admits the allegations contained in paragraph 25.
 26. The Respondent admits the allegations contained in paragraph 26.
 27. The Respondent admits the allegations contained in paragraph 27.
 28. The Respondent admits the allegations contained in paragraph 28.
 29. The Respondent admits the allegations contained in paragraph 29.
 30. The Respondent admits the allegations contained in paragraph 30.
 31. The Respondent admits the allegations contained in paragraph 31.
 32. The Respondent admits the allegations contained in paragraph 32.
 33. The Respondent admits the allegations contained in paragraph 33.

34. The Respondent admits the allegations contained in paragraph 34.
35. The Respondent admits the allegations contained in paragraph 35.
36. The Respondent admits the allegations contained in paragraph 36.
37. The Respondent admits the allegations contained in paragraph 37.
38. The Respondent admits the allegations contained in paragraph 38.
39. The Respondent admits the allegations contained in paragraph 39.
40. The Respondent admits the allegations contained in paragraph 40.
41. The Respondent admits the allegations contained in paragraph 41.
42. The Respondent admits the allegations contained in paragraph 42.
43. The Respondent admits the allegations contained in paragraph 43.
44. The Respondent admits the allegations contained in paragraph 44.
45. The Respondent admits the allegations contained in paragraph 45.
46. The Respondent admits the allegations contained in paragraph 46.
47. The Respondent admits the allegations contained in paragraph 47.
48. The Respondent admits the allegations contained in paragraph 48.
49. The Respondent admits the allegations contained in paragraph 49.
50. The Respondent admits the allegations contained in paragraph 50.
51. The Respondent admits the allegations contained in paragraph 51.
52. The Respondent admits the allegations contained in paragraph 52.
53. The Respondent admits the allegations contained in paragraph 53.
54. The Respondent admits the allegations contained in paragraph 54.
55. The Respondent admits the allegations contained in paragraph 55.
56. The Respondent admits the allegations contained in paragraph 56.

57. The Respondent admits the allegations contained in paragraph 57.
58. The Respondent admits the allegations contained in paragraph 58.
59. The Respondent admits the allegations contained in paragraph 59.
60. The Respondent admits the allegations contained in paragraph 60.
61. The Respondent admits the allegations contained in paragraph 61.
62. The Respondent admits the allegations contained in paragraph 62.
63. The Respondent admits the allegations contained in paragraph 63.
64. The Respondent admits the allegations contained in paragraph 64.
65. The Respondent admits the allegations contained in paragraph 65.
66. The Respondent admits the allegations contained in paragraph 66.
67. The Respondent admits the allegations contained in paragraph 67.
68. The Respondent admits the allegations contained in paragraph 68.
69. The Respondent admits the allegations contained in paragraph 69.
70. The Respondent admits the allegations contained in paragraph 70.
71. The Respondent admits the allegations contained in paragraph 71.
72. The Respondent admits the allegations contained in paragraph 72.
73. The Respondent admits the allegations contained in paragraph 73.
74. The Respondent admits the allegations contained in paragraph 74.
75. The Respondent admits the allegations contained in paragraph 75.
76. The Respondent admits the allegations contained in paragraph 76.
77. The Respondent admits the allegations contained in paragraph 77.
78. The Respondent admits the allegations contained in paragraph 78.
79. The Respondent admits the allegations contained in paragraph 79.

80. The Respondent admits the allegations contained in paragraph 80.

81. The Respondent admits the allegations contained in paragraph 81.

82. In answer to paragraph 82, the Respondent:

(a) says that:

(i) the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances (the **National Plan**) outlined the national arrangements for responding to oil spills in the marine environment;

(ii) immediately following the Montara Oil Spill, the Respondent:

(A) prioritised the safe evacuation of personnel on the West Atlas Rig;

(B) engaged ALERT Disaster Control (Asia) Pte Ltd, an international oil and gas well control engineering specialist, to advise on the appropriate response to the Montara Oil Spill;

(C) activated its emergency response group and rostered 30 personnel to provide 24 hour/7 day a week support to the response to the Montara Oil Spill;

(D) alerted the National Offshore Petroleum Safety Authority (**NOPSA**) and the Northern Territory Department of Resources of the Montara Oil Spill; and

(E) at approximately 10:00am on 21 August 2009, alerted AMSA of the Montara Oil Spill;

(iii) on being advised of the Montara Oil Spill on 21 August 2009, AMSA enacted the National Plan and initiated the following action:

(A) immediately tasked one of AMSA's contracted aircraft to over-fly the H1 Well;

(B) activated the National Response Team;

(C) requested AMSA's fixed wing aerial dispersant contractor to deploy two aircraft and a manager to the Truscott airbase,

which was the closest airbase to the H1 Well, ready for first light response operations on 22 August 2009;

(D) deployed AMSA personnel to the Truscott airbase and to Darwin;

(E) sought a liaison officer from the Respondent to work with AMSA;

(F) deployed dispersant (initially approximately 50 tonnes) from the Australian Marine Oil Spill Centre to supplement existing stocks at AMSA's Darwin stockpile;

(G) investigated other options to contain any released hydrocarbons including tasking an aerial dispersant aircraft (a C-130 Hercules) from Singapore which arrived in Darwin on 22 August 2009;

(H) held discussions with other agencies to assess availability of other assets that would be required;

(iv) in the days and weeks following the Montara Oil Spill, the Respondent worked closely with NOPSA, AMSA and industry bodies in relation to ceasing the flow of oil from the H1 well and containment and recovery measures;

(b) otherwise admits the allegations contained in paragraph 82.

Particulars

*Submission by AMSA to the Montara Commission of Inquiry, p 9.
Outline of Submissions of the Respondent in National Offshore Petroleum Safety Authority v PTTEP Australasia (Ashmore Cartier) Pty Ltd, p.6. Further particulars may be provided following the service of evidence.*

83. In answer to paragraph 83, the Respondent:

(a) says that:

(i) on or shortly after 21 August 2009, AMSA determined, following consultation with the Commonwealth Department of the Environment, Water, Heritage and the Arts (**DEWHA**), that the overall objective of the response was to prevent hydrocarbons from impacting on sensitive marine resources, including in particular the marine parks of

the Cartier and Ashmore Reefs and the northwest coast of Western Australia;

- (ii) from 21 August 2009, AMSA conducted ongoing aerial surveillance to gather oil spill intelligence, environmental data and direct surface vessels and dispersant spraying aircraft to heavy concentrations of oil by way of:
 - (A) an AMSA contracted Dornier aircraft based at Darwin which performed daily sorties of an average flying time of 4.5 to 5 hours;
 - (B) additional aircraft, such as Cessna Conquest, King Air or Metro, based in Darwin to provide supplementary surveillance capability as required;
 - (C) a helicopter based at the Truscott airbase to provide surveillance of reefs and islands;
- (iii) on 23 August 2009, AMSA developed an Incident Action Plan which determined that the primary strategies for responding to the Montara Oil Spill would be the ongoing monitoring of the oil and the application of dispersants;
- (iv) on 23 August 2009, AMSA commenced dispersant spraying operations and continued until 1 November 2009 as follows:
 - (A) on 23 and 24 August 2009 using a C-130 Hercules aircraft contracted by the Respondent;
 - (B) from 25 August 2009 to 2 September 2009 using two fixed wing aircraft;
 - (C) from 3 September 2009 to 1 November 2009 using suitably equipped offshore support vessels with directions from aircraft to target concentrated patches of oil;
- (v) by 24 August 2009, a coordination group had been established by AMSA which:
 - (A) met each week day from 24 August 2009 until 9 November 2009;

(B) met every second week day from 9 November 2009 until AMSA's response was terminated on 3 December 2009;

(C) comprised representatives from:

- (I) AMSA;
- (II) DEWHA;
- (III) the Commonwealth Department of Resources, Energy and Tourism;
- (IV) the Commonwealth Department of Prime Minister and Cabinet;
- (V) Australian Fisheries Management Authority;
- (VI) Australian Maritime Oil Spill Centre;
- (VII) Department of Foreign Affairs and Trade;
- (VIII) the Respondent;

(vi) AMSA commenced containment and recovery operations on 5 September 2009 and continued until 3 December 2009 which:

- (A) involved two vessels working together joined by a 300 metre containment boom held in a "J" configuration with a skimmer operating in the boom "pocket" to recover the oil;
- (B) for much of the containment and recovery operations, involved two pairs of vessels performing this task;
- (C) were conducted on 35 days during the response;
- (D) were conducted on a more extensive scale than would normally be possible on open water because of benign weather conditions (low swell and moderate winds);
- (E) recovered a total of 844,000 litres of product which comprised approximately 493,000 litres of oil or oil emulsion;
- (F) stored the recovered oil on intermediate bulk containers on the deck of the vessels which were unloaded regularly to the Challis Venture platform;
- (G) did not locate any recoverable oil after 14 November 2009;

- (vii) the Respondent decided on 23 August 2009 to drill a relief well (while continuing to examine the alternative option of seeking to cap the H1 Well, which was ruled out at that stage by the Respondent for technical and safety reasons) which thereafter involved the following steps:
 - (A) on 23 August 2009, contracting the West Triton rig to carry out the relief well operation;
 - (B) on or shortly after 23 August 2009, dispatching personnel to Singapore to prepare the West Triton rig for the relief well operation, from where the West Triton rig left on 27 August 2009;
 - (C) identifying an appropriate location to drill the relief well and applying surveying techniques to determine the location of the H1 Well and the proposed interception point;
 - (D) seeking and obtaining the necessary approvals to carry out the relief well operation;
 - (E) following the arrival of the West Triton rig at the site on 11 September 2009, drilling a relief well past the H1 Well commencing on 14 September 2009 and using vector magnetic passive ranging to enable the relief well to intercept the H1 Well, which intercept occurred successfully on 1 November 2009 after a number of attempts;
 - (F) once the H1 Well had been penetrated, circulating drilling fluids to stem the uncontrolled release from the H1 Well;
- (viii) through the relief well operation, the H1 Well was secured and the uncontrolled release of oil from the H1 Well ceased on 3 November 2009;
- (ix) following advice from the Respondent that the H1 Well was secure and the completion of a satisfactory assessment in accordance with the agreed response termination plan, AMSA ceased response operations on 3 December 2009;
- (x) in deciding to terminate its response operations, AMSA had regard to the following matters:

- (A) advice from the Commonwealth Department of the Environment, Water, Heritage and the Arts (as the environment and scientific coordinator) that there were no recoverable tar balls, slicks or sheens threatening Ashmore Reef or Cartier Islands;
 - (B) an extensive eight day aerial surveillance program from 21 to 28 November 2009 resulted in:
 - (I) no sightings of visible sheens or oil or wax patches threatening reefal habitats;
 - (II) no significant patches of floating oil sighted in open water;
 - (C) surface vessels maintaining surveillance within the area of operations did not sight oil in the period from 21 to 28 November 2009;
 - (D) shoreline cleanup on the cays around Ashmore Reef was not instigated as there was no evidence of oil on the cays requiring any response actions;
 - (E) dispersant spraying operations were not required after 1 November 2009;
- (b) admits the allegations contained in paragraph 83.

Particulars

Submission by AMSA to the Montara Commission of Inquiry, p 9-17; statutory declaration of Jamie Storrie dated 9 April 2010, paras 10-23, 29-34; submission by the Respondent to the Montara Commission of Inquiry, pp 6-15. Further particulars may be provided following the service of evidence.

84. The Respondent admits the allegations contained in paragraph 84.
85. In answer to paragraph 85, the Respondent:
- (a) repeats paragraphs 82(a) and 83(a) above;
 - (b) admits the allegations contained in paragraph 85.
86. In answer to paragraph 86, the Respondent:
- (a) says that:

- (i) dispersant operations commenced on 23 August 2009 and terminated on 22 October 2009, with dispersant spraying occurring on 46 days during this period;
 - (ii) AMSA decided to use dispersants after consideration of whether such use would produce a net environmental benefit;
 - (iii) all dispersants used by AMSA during its response had passed toxicity testing;
 - (iv) all dispersant spraying occurred within the Australian exclusive economic zone;
 - (v) dispersant spraying occurred no closer than around 230 kilometres from the coastline of Indonesia;
- (b) otherwise denies the allegations contained in paragraph 86(a);
 - (c) admits the allegations contained in paragraph 86(b).

Particulars

Submission by AMSA to the Montara Commission of Inquiry, p 9-17; statutory declaration of Jamie Storrie dated 9 April 2010, paras 10-18. Further particulars may be provided following the service of evidence.

87. The Respondent admits the allegations contained in paragraph 87.

88. In answer to paragraph 88, the Respondent:

- (a) says that:
 - (i) the majority of the oil remained within 35 kilometres of the H1 Well;
 - (ii) the westerly Indonesia Throughflow current appeared to act as a barrier to the north of the spill area;
- (b) otherwise denies the allegations contained in paragraph 88.

Particulars

Submission by AMSA to the Montara Commission of Inquiry, p 12; statutory declaration of Jamie Storrie dated 9 April 2010, paras 29-34. Further particulars may be provided following the service of evidence.

89. In answer to paragraph 89, the Respondent:

- (a) repeats paragraph 82(a) and 83(a) above;

- (b) says that:
- (i) AMSA monitored the movement and fate of oil throughout its response operations through a number of methods including:
 - (A) monitoring the position and movement of the main oil slick near the H1 Well and outlying patches of sheen and weathered oil through daily aerial and vessel surveillance;
 - (B) tasking APASA to carry out oil spill trajectory modelling to predict the movement of oil and target aerial surveillance and other assets;
 - (C) analysis of satellite imagery;
 - (D) tracking buoys to monitor local ocean currents;
 - (E) tasking DEWHA to conduct shoreline surveys of coral cays around Ashmore Reef, which were conducted between 20 and 25 October 2009 and on 30 October 2009;
 - (F) tasking Leeder Laboratories to undertake analysis of water samples;
 - (ii) aerial surveillance conducted on behalf of AMSA reported numerous patches of seasonal natural phenomena (which are typically algal blooms) which are heavily present in the region and have an appearance similar to oil;
 - (iii) when doubt existed as to the identity of such material, sampling by vessel and/or helicopter was conducted;
 - (iv) on 1 September 2009, satellite imagery showed that small patches of weathered oil had crossed into Indonesia's exclusive economic zone, of which AMSA notified the Indonesia Government in accordance with the memorandum of understanding between the Commonwealth and Indonesian Governments;
 - (v) AMSA thereafter conducted aerial surveillance which confirmed patches of weathered oil within Indonesia's exclusive economic zone that, by 21 September 2009, was approximately 94 kilometres from the Indonesian island of Palau Roti;

- (vi) on 23 September 2009, two response vessels, supported by overflying aircraft, entered Indonesia's exclusive economic zone to conduct containment and recovery operations using a boom and oil spill skimmer on heavier patches of oil that had been sighted by the aircraft which operations continued for several days;
 - (vii) following this operation, regular aerial surveillance continued and indicated:
 - (A) primarily sheen within Indonesia's exclusive economic zone, with occasional small patches of weathered oil;
 - (B) patches of natural phenomena such as algal blooms or coral spawn which had an appearance similar to oil;
 - (viii) AMSA reached the following conclusions following the completion of its surveillance operations:
 - (A) the westerly Indonesia Throughflow current appeared to act as a barrier to the north of the spill area;
 - (B) a combination of distance and current was largely responsible for preventing any oil from impacting the Kimberley Region coastline;
 - (C) the majority of the oil remained within 35 kilometres of the H1 Well;
 - (ix) following the completion of its surveillance operations, AMSA analysed the locations where isolated patches of oil and/or sheen were observed by surveillance aircraft on 130 separate flights between 21 August 2009 and 28 November 2009;
 - (x) the analysis referred to in the previous subparagraph indicated that no patches of oil and/or sheen were observed in coastal areas of Indonesia during the surveillance flights conducted between 21 August 2009 and 28 November 2009;
- (c) otherwise denies the allegations in paragraph 89.

Particulars

Submission by AMSA to the Montara Commission of Inquiry, p 12-17; statutory declaration of Jamie Storrie dated 9 April 2010, paras 29-34. Further particulars may be provided following the service of evidence.

90. In answer to paragraph 90, the Respondent:
- (a) repeats paragraphs 82(a), 83(a) and 89(b) above;
 - (b) otherwise denies the allegations in paragraph 90.

Particulars

The particulars to paragraphs 82, 83 and 89 are repeated.

91. In answer to paragraph 91, the Respondent:
- (a) repeats paragraphs 82(a), 83(a) and 89(b) above;
 - (b) otherwise denies the allegations in paragraph 91.

Particulars

The particulars to paragraphs 82, 83 and 89 are repeated.

92. In answer to paragraph 92, the Respondent:
- (a) repeats paragraph 82(a), 83(a) and 89(b) above;

~~(b) — says that paragraph 92 is embarrassing and liable to be struck out;~~

~~(e)(b)~~ denies the allegations contained in paragraph 92.

Particulars

The particulars to paragraphs 82, 83 and 89 are repeated.

93. In answer to paragraph 93, the Respondent:
- (a) repeats paragraph 82(a), 83(a) and 89(b) above;

~~(b) — says that paragraph 93 is embarrassing and liable to be struck out;~~

~~(e)(b)~~ denies the allegations contained in paragraph 93.

Particulars

The particulars to paragraphs 82, 83 and 89 are repeated.

94. In answer to paragraph 94, the Respondent:
- (a) repeats paragraph 82(a), 83(a) and 89(b) above;

~~(b) — says that paragraph 94 is embarrassing and liable to be struck out;~~

~~(e)(b)~~ denies the allegations contained in paragraph 94.

Particulars

The particulars to paragraphs 82, 83 and 89 are repeated.

95. In answer to paragraph 95, the Respondent:

(a) repeats paragraph 82(a), 83(a) and 89(b) above;

~~(b) — says that paragraph 95 is embarrassing and liable to be struck out;~~

~~(e)(b)~~ denies the allegations contained in paragraph 95.

Particulars

The particulars to paragraphs 82, 83 and 89 are repeated.

96. In answer to paragraph 96, the Respondent:

(a) repeats paragraph 82(a), 83(a) and 89(b) above;

~~(b) — says that paragraph 96 is embarrassing and liable to be struck out;~~

~~(e)(b)~~ denies the allegations contained in paragraph 96.

Particulars

The particulars to paragraphs 82, 83 and 89 are repeated.

97. In answer to paragraph 97, the Respondent:

(a) says that it would not have been foreseeable to a reasonable person in its position at the relevant time that a failure by it to operate or suspend properly the H1 Well would result in the uncontrolled release of hydrocarbons and the use of chemical dispersants in response to the uncontrolled release, such that this would cause property damage or pure economic loss in the areas identified in paragraph 94 because:

(i) the distance between the H1 Well and those areas was so great that any released hydrocarbons would not reach those areas in a physical form or at a concentration capable of causing any or any significant property damage or economic loss;

(ii) the distance between the H1 Well and those areas was so great that any chemical dispersants used to respond to the uncontrolled release would not, at the application rates which were likely to be used and having regard to the mixing conditions of the ocean, reach those areas in a physical form or at a concentration capable of causing any or any significant property damage or economic loss;

(b) denies the allegation contained in paragraph 97.

98. In answer to paragraph 98, the Respondent:

- (a) repeats paragraph 97(a) above;
 - (b) denies the allegations contained in paragraph 98.
99. In answer to paragraph 99, the Respondent:
- (a) repeats paragraph 97(a) above;
 - (b) admits the allegations contained in paragraphs 99(b), 99(c) and 99(f);
 - (c) does not know and therefore cannot admit the allegations contained in paragraph 99(g), 99(h) and 99(i);
 - (d) says, in response to paragraph 99(a1), that:
 - (i) it was reasonably foreseeable to PTTEP AA that chemical dispersants may be used in response to a significant oil spill;
 - ~~(d)~~(ii) otherwise denies paragraph 99(a1);
 - (e) denies the allegations contained in paragraphs 99(a), 99(d) and 99(e).
100. The Respondent denies the allegations contained in paragraph 100.
101. The Respondent admits the allegations contained in paragraph 101.
102. In answer to paragraph 102, the Respondent:
- (a) repeats paragraph 97 above and its denial of the duty alleged in paragraph 97;
 - (b) on that basis, denies the allegations contained in paragraph 102.
103. In answer to paragraph 103, the Respondent:
- (a) repeats paragraph 97 above and its denial of the duty alleged in paragraph 97;
 - (b) on that basis, denies the allegations contained in paragraph 103.
104. In answer to paragraph 104, the Respondent:
- (a) repeats paragraph 97 above and its denial of the duty alleged in paragraph 97;
 - (b) on that basis, denies the allegations contained in paragraph 104.

105. In answer to paragraph 105, the Respondent:
- (a) repeats paragraph 97 above and its denial of the duty alleged in paragraph 97;
 - (b) on that basis, denies the allegations contained in paragraph 105.
106. In answer to paragraph 106, the Respondent:
- (a) repeats paragraph 97 above and its denial of the duty alleged in paragraph 97;
 - (b) on that basis, denies the allegations contained in paragraph 106.
107. In answer to paragraph 107, the Respondent:
- (a) repeats paragraph 97 above and its denial of the duty alleged in paragraph 97;
 - (b) on that basis, denies the allegations contained in paragraph 107.
108. In answer to paragraph 108, the Respondent:
- (a) repeats paragraph 97 above and its denial of the duty alleged in paragraph 97;
 - (b) on that basis, denies the allegations contained in paragraph 108.
109. In answer to paragraph 109, the Respondent:
- (a) repeats paragraph 97 above and its denial of the duty alleged in paragraph 97;
 - (b) on that basis, denies the allegations contained in paragraph 109.
110. In answer to paragraph 110, the Respondent:
- (a) repeats paragraph 97 above and its denial of the duty alleged in paragraph 97;
 - (b) on that basis, denies the allegations contained in paragraph 110.
111. In answer to paragraph 111, the Respondent:
- (a) denies the allegations contained in paragraph 111;

(b) says further that if, which is denied, the Applicant suffered any loss or damage by reason of the Montara Oil Spill then:

(i) he has failed unreasonably to mitigate his loss or damage by failing to take all reasonable steps to:

(A) re-commence as soon as practicable the cultivation of seaweed sufficient to generate profits higher than the profits that he generated during the period September 2009 to December 2012 by:

(I) purchasing or otherwise obtaining (including from other local seaweed farmers) seaweed seeds, cuttings or cultivars;

(II) investing time and money in re-establishing his seaweed farming business and in seeking to grow seaweed from seeds, cuttings or cultivars (including investing profit earned from the production of seaweed in or before 2009);

(III) obtaining domestic or foreign aid or assistance to re-establish his seaweed farming business, including aid or assistance to obtain seaweed seeds, cuttings or cultivars;

(B) replace any lost profit by undertaking other income-producing activities, including those activities he previously undertook;

Particulars

File note prepared by Greg Phelps of a conference with the Applicant and his wife on 29 October 2014.

Further particulars may be provided following the delivery of the Respondent's evidence.

(ii) the Applicant, if he had acted reasonably, would have been able to:

(A) re-commence as soon as practicable the cultivation of seaweed sufficient to generate profits higher than the profits that he generated during the period September 2009 to December 2012;

~~(b)(B)~~ replace some or all of his lost profit through other income-producing activities, by no later than late 2009.;

112. ~~The~~In answer to paragraph 112, the Respondent:

- (a) repeats paragraph 111(b) above;
- (b) denies the allegations contained in paragraph 112.

113. TheIn answer to paragraph 113, the Respondent:

(a) repeats paragraph 111(b) above;

~~113.(b)~~ denies the allegations contained in paragraph 113.

~~114. In answer to paragraph 114, the~~The Respondent:

~~(a)~~ ~~says that paragraph 114 is embarrassing and liable to be struck out;~~

~~(b)~~114. does not know and therefore cannot admit denies the allegations contained in paragraph 114.

115. The Respondent admits the allegations contained in paragraph 115.

116. In answer to paragraph 116, the Respondent:

- (a) says that the delay in bringing of this claim by the Applicant causes prejudice to the Respondent because the passage of time since the Montara Oil Spill makes the collection, verification and testing of any data, information or evidence relevant to the claims substantially more difficult;
- (b) denies the allegations contained in paragraph 116.

117. The Respondent denies the allegations contained in paragraph 117.

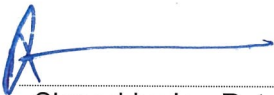
118. The Respondent does not plead to paragraph 118 as it does not contain any allegations against it.

119. In answer to paragraph 119, the Respondent:

- (a) says that paragraph 119 is embarrassing and liable to be struck out;
- (b) does not know and therefore cannot admit the allegations contained in paragraph 119.

120. The Respondent admits the allegations contained in paragraph 120.
121. In answer to paragraph 121, the Respondent:
- (a) repeats paragraph 116(a) above;
 - (b) denies the allegations contained in paragraph 121.
122. The Respondent denies the allegations contained in paragraph 122.
123. The Respondent does not plead to paragraph 123 as it does not contain any allegations against it.
124. The Respondent denies that the Applicant or Group Members are entitled to the relief that they seek from the Respondent set out in the Further Amended Originating Application filed on ~~2 November 2016~~31 July 2017.

Date: 14 August 2017



Signed by Ian Peter Scott O'Donahoo
Lawyer for the Respondent

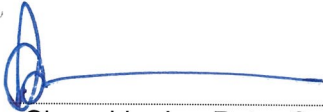
This amended pleading was prepared and settled by C M Scerri QC and J A Arnott.

Certificate of lawyer

I, Ian Peter Scott O'Donahoo, certify to the Court that, in relation to the amended defence filed on behalf of the 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: 14 August 2017



Signed by Ian Peter Scott O'Donahoo
Lawyer for the Respondent