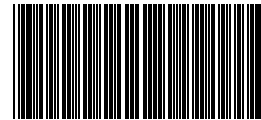




Filed: 27 March 2018 5:20 PM



D0000Z5BRA

Form 3A/B
Rule 6.2

AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court Sydney
Case number	2017/00374456

FILING DETAILS

Filed for	Plaintiff[s]
Legal representative	George Benjamin Newhouse
Legal representative reference	
Telephone	0422255109
Your reference	GN:nj:1723

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Amended Statement of Claim (e-Services), along with any other documents listed below, were filed by the Court.

Amended Statement of Claim (AMENDED statement of claim.pdf)

[attach.]

Form 3A (version 7)
UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
Registry	Sydney
Case number	

TITLE OF PROCEEDINGS

Plaintiff	Tracy Evans
First Defendant	<u>Health Administration Corporation Ambulance Service of New South Wales</u>
Second Defendant	Waqar Malik

FILING DETAILS

Filed for	Tracy Evans and the plaintiffs
Legal representative	Centennial Lawyers
Legal representative reference	GN:nj:1723
Contact name and telephone	George Newhouse (02) 8097 5146
Contact email	georgen@justice.org.au

TYPE OF CLAIM

Equity – Breach of Confidence – Breach of Contract - Torts – Invasion of Privacy

LISTED FOR A CASE CONFERENCE

RELIEF CLAIMED

The Plaintiff claims on her own behalf and on behalf of the Represented Persons:

As against the First Defendant

1. Declarations that the conduct of the First Defendant described in paragraphs 19 to 24 of the Pleadings below, whether by itself, its directors, officers, employees or agents or otherwise constitutes:
 - a) a breach of confidence in equity;
 - b) a breach of the Employment Agreement, through a breach of the:
 - (i) term of Trust and Confidence implied by law; and
 - (ii) express and/or implied term of confidentiality.
 - c) a contravention of or sections 18 and 29 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**)
 - d) a breach of the tort of Invasion of Privacy for which the First Defendant is liable or vicariously liable as outlined in paragraph 42 below.
2. Damages for breach of contract.
3. Damages pursuant to 236 of the Australian Consumer Law.
4. Damages and/or equitable compensation, including aggravated damages, for breach of confidence.
5. Aggravated and/or Exemplary Damages.
6. An order for interest at the full rate including pursuant to section 100 of the Civil Procedure Act 2005 (NSW).
7. Costs including interest on costs.
8. Such further and other orders as the Court deems fit.

As against the Second Defendant

9. Declarations that the conduct of the Second Defendant described in paragraphs 26 to 29 and 35 to 4.1 of the Pleadings below constitutes:
 - a) a breach of confidence in equity; and

- b) a breach of the tort of Invasion of Privacy.
10. An order restraining the Second Defendant whether by himself, his employees, servants, agents or any of them from using, disclosing, publishing or otherwise communicating:
 - (a) Employee Confidential Information;
 - (b) Employee Health Information; and
 - (c) Employee Private Information.
 11. An order requiring the Second Defendant to delivery up on oath to the Plaintiffs, or their duly authorised agents, for destruction all copies and reproductions of the Employee Confidential Information, Employee Health Information, and Employee Private Information created for any purpose other than the purpose for which it was supplied.
 12. Damages and/or equitable compensation, including aggravated damages, for breach of confidence.
 13. Aggravated and/or Exemplary Damages.
 14. An order for interest at the full rate including pursuant to section 100 of the Civil Procedure Act 2005 (NSW).
 15. Costs including interest on costs.
 16. Such further and other orders as the Court deems fit.

PLEADINGS AND PARTICULARS

DEFINITIONS

'Claim' means a claim by an Employee or former Employee of the First Defendant for compensation or benefits for a medical illness or condition that was work related or affected the Employee's working capacity.

'Code of Conduct' means the Ambulance Service of New South Wales Code of Conduct (as amended).

'Coloured List' means the document prepared by or at the instigation of the Second Defendant in which is recorded Employee Health Information and/or Employee Private Information and/or Employee Confidential Information.

'Computer Records' means the record management system used by the First Defendant for the recording and management of information in relation to Claims and/or Employee Health Information and/or Employee Private Information and/or Employee Confidential Information.

'Employee' means a person who provided Employee Health Information and/or Employee Private Information and/or Employee Confidential Information to the First Defendant in connection with the persons employment and/or for the purpose of the First Defendant making a determination about or managing a Claim.

'Employee Confidential Information' means Employee Private Information and/or Employee Health Information that is in law or in equity confidential information.

'Employee Health Information' means information collected and held, or created and held, by the First Defendant in its records concerning a specific Employee or former Employee in which the identity of the employee is apparent and includes:

- (a) information provided to the First Defendant by an Employee or Former Employee, or authorised by an Employee or Former Employee to be provided to the First Defendant, for the purpose of enabling the First Defendant to make a determination about, or managing, a Claim;
- (b) information or an opinion about the physical or mental health or a disability (at any time) of an Employee or Former Employee;
- (c) information or an opinion about a health service provided, or to be provided to an Employee or Former Employee;

'Employee Private Information' means information collected and held by the First Defendant in its records concerning a specific Employee or former Employee in which the identity of the employee is apparent and includes:

- (a) information collected, provided or obtained in the course of employment;
- (b) the information provided to the First Defendant by an Employee or Former Employee for the purpose of enabling the First Defendant to make a determination about or managing a Claim.
- (c) the information which an Employee or Former Employee authorised be provided to, or collected by, the First Defendant for the purpose of enabling the First Defendant to make a determination about or managing a Claim.
- (d) Date of birth, contact information, details of the medical conditions and illnesses, parts of the body affected by the medical condition and illnesses, details of treating medical and allied health practitioners, medical records.

'Express or implied term of confidentiality' means the express or implied term of each contract of employment of an Employee and any Claim made by the Employee that the First Defendant would hold the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information in confidence.

'Health Privacy Principles' means the Health Privacy Principles in Schedule 1 of the *Health Records and Information Privacy Act 2002 (NSW)*.

'Implied term of Trust and Confidence' means a term implied by law in each contract of employment with an Employee and in any Claim that the First Defendant would not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between it and its employee or former employee.

'Information Protection Principles' means the obligations created by sections 12 to 19 of the *Privacy and Personal Information Protection Act 1998 (NSW)*.

'Misleading Conduct' means the conduct of the First Defendant:

- (a) in representing expressly and or impliedly that the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information would be, and was being held, and retained by the First Defendant in accordance with the Information Protection Principles and/or the Health Privacy Principles;
- (b) in representing expressly and or impliedly that the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information would not be used for any purposes other than for purposes directly related to the employment of an Employee or a decision in relation to a Claim and would not be provided to any person not directly involved in the management of a Claim by an Employee;
- (c) in representing expressly or impliedly that the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information would be protected by taking reasonable security safeguards against unauthorised access, use, disclosure or any other misuse and that if it was necessary for the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information to be given to any person or organisation providing any service to the First Defendant that the First Defendant would take all reasonable steps to prevent unauthorised use or disclosure of the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information;
- (d) in representing expressly or impliedly that the First Defendant would ensure that any employee, contractor or agent of it would be required to comply with the *Health Records and Information Privacy Act, 2002, Privacy and Personal Information Protection Act, 1998, Code of Conduct, Health Services Act 1997 (NSW)*,

Ambulance Service Regulations and the Ambulance Services Policies and Procedures as amended from time to time;

- (e) in not withdrawing or modifying the representations in sub paragraph (a), (b), (c) and (d) before engaging in the conduct described in sub paragraphs (f), (g), (h) and (i);
- (f) in providing the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information to the Second Defendant without the knowledge or consent of the Employee when the Second Defendant was not involved in management of a Claim by the Employee or in the employment of the Employee;
- (g) in holding and retaining the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information for purposes other than purposes directly related to the Employment of, or Claim made by, an Employee, namely for commercial purposes of the First Defendant's management of its insurance premiums;
- (h) in storing the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information on a shared drive of the NSW Ambulance Service Risk & Safety Division to which persons not involved in making decisions in relation to a Claim by an Employee had access;
- (i) in providing the Second Defendant access to the computer drive in which Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information was stored:
 - (i) without undertaking any, or sufficient, pre-employment screening of the Second Defendant;
 - (ii) without technical safeguards and restrictions on access and use by the Second Defendant;
 - (iii) without auditing safeguards to detect unusual or unauthorised access by any employee or contractor, including the Second Defendant;
 - (iv) without a system to prevent or minimise the risk of data leakage or data theft; and
 - (v) In circumstances where the Second Defendant was not required to have access to the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information for the purposes of his employment.

- (j) in failing to ensure that the Second Defendant complied with the *Health Records and Information Privacy Act, 2002*, *Privacy and Personal Information Protection Act, 1998*, Code of Conduct, *Health Services Act 1997 (NSW)*, *Ambulance Service Regulations* and the Ambulance Services Policies and Procedures as amended from time to time.

Representative Proceeding

1. This proceeding was commenced by the Plaintiff as a representative proceeding pursuant to Rule 7.4 of the Uniform Civil Procedure Rules 2005 (NSW) and is continued by the Plaintiff pursuant to Part 10 of the Civil Procedure Act 2005 (NSW) on her own behalf and on behalf of the group members (which includes the Plaintiff) described in paragraph 2 below.

The Group Members

2. The 'Represented Persons' to whom this proceeding relates are Employees named in the 'Coloured List'.

Questions common to claims of Group Members

The questions of law or fact common to the claims of the group members are:

3. Whether the Employee Confidential Information, Employee Health Information, and Employee Private Information provided by each Group member was:
- (a) private information for the purposes of the *Privacy and Personal Information Act 1998 (NSW)* and to which the Information Protection Principles apply;
 - (b) health information for the purposes of the *Health Privacy Principles 5 (1) (c) and (d) of Schedule 1 of the Health Records and Information Privacy Act 2002*; and/or
 - (c) confidential information in equity.
4. Whether the First Defendant has disclosed the Employee Confidential Information and/or the Employee Health Information and/or Employee Private Information to the Second Defendant in circumstances that constitutes:
- (a) a breach of Information Protection Principles contained in sections 12 (e), 12 (f), 17 and 18 1 of the *Privacy and Personal Information Act 1998 (NSW)*;
 - (b) a breach of the *Health Privacy Principles 5 (c) and (d) of Schedule 1 of the Health Records and Information Privacy Act 2002*;
 - (c) a breach of confidence in equity;
 - (d) misuse of confidential information in equity; and/or

- (e) a breach of the Employment Agreement, through a breach of the:
 - (i) term of Trust and Confidence implied by law; and
 - (ii) express and/or implied term of confidentiality.
 - (f) a contravention of or sections 18 and 29 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**); and
 - (g) a breach of the tort of Invasion of Privacy for which the First Defendant is liable or vicariously liable.
5. Whether the Second Defendant received and/or compiled and/or used the Employee Confidential Information and/or the Employee Health Information and/or Employee Private Information in circumstances that constitutes:
- (a) a breach of confidence in equity; and/or
 - (b) misuse of confidential information in equity; and/or
 - (c) a breach of the tort of Invasion of Privacy.

5A. Whether group members have suffered distress, embarrassment, humiliation and or injury as a result of the disclosure and/or the Employee Health Information and/or Employee Private Information.

5B. Whether group members are entitled to compensation and or damages at law or in equity.

The Parties

6. The Plaintiff:
- (a) was employed by the First Defendant between about 1997 and 26 April 2012;
 - (b) was an Employee;
 - (c) made a Claim; and
 - (d) is named in the Coloured List.
7. The First Defendant:
- (a) by determination made under s. 8A of the *Health Administration Act*, may exercise all the functions under Chapter 5A of the *Health Services Act 1997* relating to the *New South Wales Ambulance Services*;
 - ~~(a)~~(b) provides clinical care and health related transport services for fee and reward;
 - ~~(b)~~(c) was the employer of the Employees;
 - ~~(c)~~(d) was the employer of, or contracted for the services of, the Second Defendant; and

(d)(e) is capable of being sued under section 5 of the *Crown Proceedings Act 1988* (NSW);

8. The Second Defendant:

- (a) was employed by, or contracted to provide services to, the First Defendant;
- (b) was the sole director and shareholder of Medical Assessments Australia Pty Ltd (ACN 603 155 424); and
- (c) on 26 June 2015 was convicted pursuant to section 62 (1) of the *Privacy and Personal Information Protection Act 1998* (NSW).

Employee Confidential, Health and Personal Information

9. Between about 1997 and 26 April 2012, the Plaintiff was employed by the First Defendant pursuant to a contract of employment (**Employment Agreement**).

Particulars

The agreement is in writing and contained in the letter of offer dated 23 October 1998 and acceptance dated 30 October 1998.

10. The Employment Agreement relevantly includes the following express terms:
- (a) that the Plaintiff would perform the role and duties outlined in the position description for Communications Assistants;
 - (b) that the First Defendant would provide the Plaintiff with training;
 - (c) that the Plaintiff would complete the training and comply with all Service policies, procedures and protocols, and maintain her skills and qualifications;
 - (d) that the Plaintiff would abide by the *Health Records and Information Privacy Act, 2002*, the *Privacy and Personal Information Protection Act, 1998*, and the Code of Conduct;
 - (e) that the Plaintiff would observe the requirements and provisions of the *Health Services Act 1997* (NSW) and the Ambulance Service Regulation in conjunction with Ambulance Services Policies and Procedures as amended from time to time;
11. The Employment Agreement included the following implied terms:
- (a) that the First Defendant would comply with its own policies and procedures;
 - (b) that the First Defendant would comply with its statutory obligations and other obligations imposed on it by law;

- (c) that the First Defendant would ensure that all of its employees, contractors or agents would abide by the *Health Records and Information Privacy Act, 2002*, the *Privacy and Personal Information Protection Act, 1998*, and the Code of Conduct, and in particular clauses 1.1.1, 1.1.2, 1.1.3, 1.2.2, 1.3.1, 1.4.1, 1.4.2 and 1.4.3 of the Code of Conduct.
- (d) that the First Defendant would keep any Employee Confidential Information, Employee Health Information and/or Employee Private Information collected by, or imparted to it, private and confidential and would not use or disclose that information unless it was:
 - (i) for the primary purpose for which it was collected or for a legitimate secondary purpose without the consent of the Plaintiff; and/or
 - (ii) in accordance with its privacy policy; and/or
 - (iii) as required by law.
- (e) That the First Respondent would take reasonable steps to safeguard the Employee Confidential Information, the Employee Health Information and the Employee Private Information to ensure that it was kept private and confidential and to protect it from unauthorised access, use, disclosure or misuse.

Particulars

The terms are implied by law and to give business efficacy to the agreement.

11A. Each of the group members were employed by the First Defendant pursuant to Contracts of Employment.

Particulars

Express terms of the Contracts of Employment will be particularised in due course.

Implied Terms of the Contracts of Employment as set out in paragraph 11 of the Amended Statement of Claim.

- 12. The Plaintiff, in the performance of her employment relationship with the First Defendant, and as a result of her making three Claims, disclosed to, or authorised the disclosure to, the First Defendant, Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information either directly or through third party service providers, including:-
 - (a) date of Birth;
 - (b) address;

- (c) contact phone numbers;
- (d) details of her medical conditions including medical reports;
- (e) details of her psychological state, including psychological reports;
- (f) information about the diagnosis, treatment and prognosis of her injury/illness;
- (g) details of her treating medical practitioners;
- (h) parts of the body affected by medical illness and conditions;
- (i) the fact and nature of an illness and condition impacting on her ability to work; and
- (j) information that included medical information, about her injury/illness from treating medical and allied health practitioners.

12A. Group members in the performance of their employment relationship with the First Defendant, and as a result of making Claims, disclosed to, or authorised the disclosure to, the First Defendant, Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information either directly or through third party service providers, including:-

- (a) date of Birth;
- (b) address;
- (c) contact phone numbers;
- (d) details of medical conditions including medical reports;
- (e) details of their psychological state, including psychological reports;
- (f) information about the diagnosis, treatment and prognosis of their injury/illness;
- (g) details of their treating medical practitioners;
- (h) parts of the body affected by medical illness and conditions;
- (i) the fact and nature of an illness and condition impacting on their ability to work;
and
- (j) information that included medical information, about their injury/illness from treating medical and allied health practitioners.

13. The Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information was provided to the First Defendant by the Plaintiff and members of the group on the express or implied condition that:

- (a) The information would be used solely for the purpose of assessing the Claim;
- (b) only persons responsible for assessing or administering the Claim would be granted access to the information by the ~~Plaintiff~~ First Defendant;

- (c) persons granted access to the information would be adequately trained and required by the Plaintiff-First Defendant to maintain the confidentiality of the information and would not disseminate the information, or any part thereof, to any third party;
- (d) persons granted access to the information would access and use the information only for the purposes of assessing or administering the Claim and would not disseminate the information, or any part of it, to any third party except as expressly authorised;
- (e) reasonable security measures would be taken, implemented and undertaken by the Plaintiff to ensure that the information remained secure and the confidentiality of it maintained.

Particulars

The obligation is implied by circumstances of the disclosure of the Employee Private Information. Further, the First Defendant expressly acknowledged in the Ambulance Service of New South Wales Authority to Obtain/Release Medical Information provided to the Plaintiff and signed by her on 21 April 2009 that the First Defendant recognised the information provided by the Plaintiff was confidential and would not release this information to any person or organisation not involved in the management of the Plaintiff's injury/illness without the Plaintiff's consent. Further particulars in relation to the members of the group will be provided in due course.

14. In the premises, the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information was provided to the First Defendant in:
 - (a) circumstances imparting an obligation of confidence;
 - (b) on condition that it be held, recorded, used and accessed only in accordance with the Code of Conduct, Information Protection Principles, Health Privacy Principles, Express or implied terms of Confidentiality and the Implied term of Trust and Confidence; and
 - (c) in accordance with the express and implied terms of the Employment Agreement.

Particulars

The information contained personal and sensitive medical information which was not generally publicly available or known and falls within a recognised category of information easily identified as confidential information. The First Defendant recognised the information as confidential as expressly acknowledged in the “Ambulance Service of New South Wales Authority to Obtain/Release Medical Information”. The First Defendant expressly recognised the information as sensitive in Computer System Access Forms utilised by the First Defendant. The Plaintiff provided, and the First Defendant received, Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information on the express acknowledgement of confidentiality provided by the First Defendant.

15. The Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information provided by the Plaintiff and/or collected by the First Defendant was kept by the First Defendant on a shared computer drive, which the First Defendant:
- (a) allowed to be accessed by persons not responsible for assessing or administering the Claim;
 - (b) allowed to be accessed by persons who had not been adequately trained nor required by the Plaintiff to maintain the confidentiality of the information; and
 - (c) failed to ensure had reasonable security measures implemented and/or undertaken to ensure that the information remained secure and the confidentiality of it was maintained.

The Second Defendant is engaged by the First Defendant

16. On or about 9 January 2013, the Second Defendant entered into an agreement with Hays Recruitment Agency (**Contractor’s Agreement**) in which he agreed to allow Hays Recruitment Agency to provide his services under contract to third party businesses and organisations as a “Return to Work Co-Ordinator”.

Particulars

The agreement is in writing and contained in the Hays Recruitment Corporate Entity Contractors’ Agreement dated 9 January 2013.

17. It was a term of the Contractors' Agreement that the Second Defendant would not disclose to any person or use information in relation to the employees of the clients of Hays Recruitment Agency for their own or any other person's benefit.
18. On a date unknown, but between 9 January 2013 and 13 January 2013, the First Defendant retained Hays Recruitment Agency to provide contractors to work for the First Defendant.
19. Between 14 January 2013 and 5 February 2013, the Second Defendant was engaged on contract by the First Defendant as an Injury Management Officer through Hays Recruiting Agency.

Particulars

The Plaintiff is presently unable to provide particulars of the employment or service contract, but will do so after discovery.

20. On 14 January 2013, the Second Defendant signed a computer system access form whereupon he was given complete and unfettered access to the following information, which included Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information:
 - (a) Claim files, which included between 500-600 injured workers' compensation files;

Particulars

These were the physical files relating to employee worker's compensation claims. They contain medical certificates, return to work plans, medical reports, notification of injury forms, authority from the injured worker, general correspondence about the claim and any other relevant documents.

- (b) personal files of each Employee;

Particulars

This included files containing documents relating to the employment of each employee of the First Defendant, including Employees, and included recruitment documentation, qualifications, leave forms, award documents, salary documents and certificates.

- (c) the risk management 'shared drive' of compensation files, which included information relating to Claims.

Particulars

The "shared drive" contained electronic versions of documents contained in compensation files, including those relating to Claims by Employees. It contained medical certificates, return to work plans, medical reports, notification of injury forms, authority from the injured worker, general correspondence about the claim and any other relevant documents. The shared drive also contained draft versions of documents, the final versions of which were put on the physical file.

- (d) the Total Records Information Management System ("**the TRIM system**").

Particulars

The TRIM system is the Electronic Document and Records Management System used by NSW Ambulance to record the creation and location of physical files. The TRIM system contains a description of each physical file, including the name of the file, date of creation and current location.

21. The Second Defendant was not involved in the management of the Plaintiff's Claim, and therefore was not required to have access to the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information.
22. In the premises, in providing the Second Defendant with the access outlined in paragraph 20 above, the First Defendant failed:
 - (a) to provide the Second Defendant with any training, or adequate training, in relation to the security of the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information, and
 - (b) to ensure that the Second Plaintiff abided by the *Health Records and Information Privacy Act, 2002*, the *Privacy and Personal Information Protection Act, 1998*, and the Code of Conduct, and in particular clauses 1.1.1, 1.1.2, 1.1.3, 1.2.2, 1.3.1, 1.4.1, 1.4.2 and 1.4.3 of the Code of Conduct.
23. On 14 January 2013, and during the period 14 January to 5 February 2013, the First Defendant provided the Second Defendant with access to the Computer Records, which:
 - (a) permitted the Second Defendant to have general access to the Computer Records and specifically to approximately 500-600 files on the "Risk Management on NSNSW\group" and "TRIM";
 - (b) permitted access to the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information; and

- (c) did not confine the access to Claims in respect of which the Second Defendant had express duties.
24. The First Defendant did not have the Plaintiff's authority to allow the Second Defendant access to the permitted access to the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information, and nor did the Second Defendant have the authority access to the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information, as the Second Defendant was not managing the Plaintiff's Claim.
25. The conduct of the First Defendants described in paragraphs 19 to 24 above, was an unauthorised use and or disclosure of the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information to the Second Defendant (**the First Unauthorised Use/Disclosure**) and was:
- (a) in breach of the Employment Agreement;
 - (b) in breach of the Express or implied term of confidentiality;
 - (c) in breach of the Implied term of Trust and Confidence;
 - (d) in breach of the obligation of confidence owed by the First Defendant to the Plaintiff;
 - (e) in breach of the Information Protection Principles, and in particular sections 12 (e), 12 (f), 17, and 18;
 - (f) in breach of the Health Privacy Principles, and in particular Health Privacy Principles 5 (c) and (d); and
 - (g) Misleading Conduct in breach of section 18 and 29 of Schedule 2 of the Australian Consumer Law ('ACL').

Particulars of Misleading Conduct

- i. The Plaintiff and members of the group acquired services from the First Defendant in relation to their claims as a consumer within the meaning of section 3 of the ACL.
- ii. Representations (including future representations) in relation to the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information including the purpose for which it would be used, the persons to whom access the information would be given and the security measures in place for storage of, and to protect against unauthorised access to, the information;

iii. Additionally, in relation to the Plaintiff, this also included, inter alia:

- Letter dated 7 April from Sarah Sheret from Ambulance Services of New South Wales enclosing the document titled "Authority to Obtain/Release Medical Information" and requiring that the release be signed by the Plaintiff before the development of a Return to Work Plan;
- A pro forma document prepared and provided by Ambulance Services of New South Wales signed by the Plaintiff dated 21 April 2009 titled "Authority to Obtain/Release Medical Information" in which Ambulance Service of New South Wales agreed to keep the information relating to the diagnosis, treatment and prognosis of any injury confidential and ensure that it was not released to any person or organisation not involved in the management of the injury/illness without the Plaintiff's permission;
- The booklet prepared and produced by Ambulance Services of New South Wales titled "Workers Compensation & Injury Management for Injured Workers";
- A pro forma document prepared and provided by Ambulance Services of New South Wales signed by the Plaintiff and dated 13 July 2005 titled "Permanent Staff Confidentiality Agreement" in which Ambulance Service of New South Wales represented to the Plaintiff that it is committed to maintaining the confidentiality personal and confidential information collected and generated throughout the course of its business.

Unauthorised Use/Disclosure

26. On a date or dates unknown, but after 14 January 2013, the Second Defendant accessed the Computer Records and accessed Employee Health Information and/or Employee Private Information and/or Employee Confidential Information of, and relating to, the Employees named in the Coloured List. The Second Defendant was not authorised to access Employee Health Information and/or Employee Private Information and/or Employee Confidential Information as he was not undertaking any work on the Claims

for the Employees named in the Coloured List (**the Second Unauthorised Use/Disclosure**).

27. On a date or dates unknown but after 14 January 2013, the Second Defendant compiled the Coloured File (**the Third Unauthorised Use/Disclosure**). The compilation of the Coloured File was a breach of the obligation of confidence owed by the Second Defendant to the Plaintiff.

Particulars

The obligation of confidence arises in circumstances where the Second Defendant knew, or ought to have known that the information was confidential and was imparted in confidence, due to the nature of the information, the purpose for which it was provided, and the manner in which it was provided, collected, stored and used. The Plaintiff further refers to and repeats the particulars to paragraph 14 above.

28. On a date or dates unknown but after 14 January 2013, the Second Defendant approached law firms to market and sell the Coloured List, and sold for profit the Coloured File to a third party, or alternatively to third parties (**the Fourth Unauthorised Use/Disclosure**) to facilitate the third party, or alternatively the third parties, marketing their legal services to Employees named in the Coloured List for the purposes of making or pursuing workers' compensation claims.

Particulars

The Plaintiff is aware that the Coloured list was provided to Bannister Law. The Plaintiff will provide further particulars, including particulars of any further disclosures, after discovery.

29. The sale of the Coloured List by the Second Defendant was a breach of the obligation of confidence owed by the Second Defendant to the Plaintiff.

Particulars

The Plaintiff further refers to and repeats the particulars to paragraphs 14 and 27 above.

30. In the premises, the Second Unauthorised Use/Disclosure, Third Unauthorised Use/Disclosure and Fourth Unauthorised Use/Disclosure were in breach of the obligation of confidence owed by the Second Defendant to the Plaintiff.
31. By letter dated 28 July 2014 from NSW Ambulance, the Plaintiff was advised that there may have been a breach of her privacy in relation to her personal information.

32. On or about on 26 June 2015, the Second Defendant was convicted pursuant to section 62 (1) of the *Privacy and Personal Information Protection Act 1998* (NSW) for his acts, actions and conduct described in paragraphs 26 to 29 above, and for the Second Unauthorised Use/Disclosure, the Third Unauthorised Use/Disclosure and the Fourth Unauthorised Use/Disclosure.

First Defendant's liability for breach of confidence

33. In the premises, the First Defendant is liable to the Plaintiff for breach of confidence, and misuse of confidential information in respect of the Second Unauthorised Use/Disclosure, Third Unauthorised Use/Disclosure and Fourth Unauthorised Use/Disclosure.

Particulars

- (a) The First Defendant was aware the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information was provided to the First Defendant in circumstances importing an obligation of confidence.
- (b) The First Defendant stored Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information in the Computer Records of the First Defendant;
- (c) The First Defendant was required to take steps to maintain the confidentiality of the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information;
- (d) The First Defendant gave the Second Defendant access to the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information but the Second Defendant was not involved in managing the Plaintiff's Claim;
- (e) The Second Defendant accessed the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information for the purpose of collating and selling the information when working for the First Defendant, and did so whilst in the employ of the First Defendant;
- (f) The First Defendant provided the means and opportunity for the Second Defendant to access the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information by providing the Second Defendant with access to the Computer Records where the Employee Private Information was stored.

34. In the alternative, the First Defendant is vicariously liable for breach of confidence, and misuse of confidential information for the Second to Fourth Unauthorised Use/Disclosure by the Second Defendant.

Particulars

The Plaintiff refers to and repeats the particulars to paragraph 34.

Invasion of Privacy

35. At all material times the First and Second Defendants were aware the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information:
- (a) was private; and
 - (b) had been conveyed by the Plaintiff to the First Defendant in circumstances where the Plaintiff had a reasonable expectation of privacy and a reasonable expectation that the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information would be kept private.
36. At all material times, the Second Defendant knew, or ought to have known, he did not have the Plaintiff's authority to access the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information.
37. In the period 14 January 2013 to 5 February 2013, the Second Defendant intentionally accessed the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information in order to obtain that Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information to sell to third parties for reward.

Particulars

The Second Defendant approached law firms to market and sell Employee Private Information to solicitors who would use the Employee Private Information for their business purposes so as to contact Employees and procure potential litigation work, namely, workers' compensation litigation. At present the plaintiff is only aware of Bannister Law purchasing the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information from the Second Defendant, but further particulars may be provided after discovery.

38. On a date unknown but after 14 January 2013, the Second Defendant compiled the Coloured List and sold the Coloured List to a third party, namely, Bannister Law. The

Second Defendant did not have the Plaintiff's authority to compile the Coloured List or to sell the List to any person.

39. The Second Defendant deliberately invaded the Plaintiff's privacy:
 - (a) by accessing the Employee Private Information;
 - (b) copying, downloading or otherwise recording the Employee Private Information;
 - (c) compiling the Coloured List for his own purpose; and
 - (d) selling the Coloured List to a third party.
40. In compiling the Coloured List to sell for reward and selling the Coloured List to Bannister Law, the Second Defendant acted with contumelious disregard of the Plaintiff's right to privacy.
41. In the premises, the Second Defendant's conduct in making the Second to Fourth Unauthorised Use/Disclosures, was in breach of the tort of Invasion of Privacy, as the use and disclosures were:
 - (a) a misuse of private information;
 - (b) perpetrated in circumstances where the Plaintiff had a reasonable expectation of privacy;
 - (c) an intentional or reckless invasion of the Plaintiff's privacy;
 - (d) a serious invasion of privacy;
 - (e) caused loss and damage to those named in the Coloured List; and
 - (f) perpetrated in circumstances where there was no public interest in the use and disclosure of the information.

First Defendant's Vicarious Liability for Second Defendant's Invasion of Privacy

42. The First Defendant is vicariously liable for the Second Defendant's invasion of the Plaintiff's privacy, as:
 - (a) the First Defendant was aware the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information was provided to the First Defendant with the reasonable expectation of privacy;
 - (b) the First Defendant stored Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information in the Computer Records of the First Defendant;

- (c) the First Defendant was required to take steps to protect the Plaintiff's privacy in the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information;
- (d) the First Defendant gave the Second Defendant access to the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information but the Second Defendant was not involved in managing the Plaintiff's Claim;
- (e) the Second Defendant accessed the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information when working for the First Defendant; and
- (f) the First Defendant provided the means and opportunity for the Second Defendant to invade the Plaintiff's privacy by providing him with access to the Computer Records where the Employee Health Information and/or Employee Private Information and/or the Employee Confidential Information was stored.

Loss, loss of dignity, Distress, Embarrassment and Injury to Feelings

43. The Plaintiff suffered psychiatric illness, or alternatively loss of dignity, distress, embarrassment and injury to feelings as a result of the:
- (a) First Unauthorised Use/Disclosure;
 - (b) Second Unauthorised Use/Disclosure;
 - (c) Third Unauthorised Use/Disclosure;
 - (d) Fourth Unauthorised Use/Disclosure; and/or
 - (e) invasions of her privacy.
44. Further, the Plaintiff's pre-existing mental health condition has been exacerbated by the breaches of privacy, and she suffers:
- a) anxiety and depression;
 - b) loss of trust and confidence; and
 - c) paranoia.
45. The Plaintiff claims:
- (a) Damages for breach of contract; and/or in the alternative
 - (b) Damages pursuant to 236 of the Australian Consumer Law; and/or in the alternative

- (c) Damages and/or equitable compensation, including aggravated damages, for breach of confidence; and
- (d) Aggravated and/or Exemplary Damages as against the Second Defendant; and
- (e) An order requiring the Second Defendant to delivery up on oath to the Plaintiffs, or their duly authorised agents, for destruction all copies and reproductions of the Employee Confidential Information, Employee Health Information, and Employee Private Information.
- (f) An order restraining the Second Defendant whether by himself, his employees, servants, agents or any of them from using, disclosing, publishing or otherwise communicating:
 - (i) Employee Confidential Information;
 - (ii) Employee Health Information; and
 - (iii) Employee Private Information.
- (g) Declarations that the conduct of the First Defendant described in paragraphs 19 to 24 of the Pleadings above, whether by itself, its directors, officers, employees or agents or otherwise constitutes:
 - (i) a breach of confidence in equity;
 - (ii) a breach of the Employment Agreement, through a breach of the:
 - (iii) term of Trust and Confidence implied by law;
 - (iv) express and/or implied term of confidentiality;
 - (v) a contravention of or sections 18 and 29 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**); and
 - (vi) breach of the tort of Invasion of Privacy for which the First Defendant is liable or vicariously liable as outlined in paragraph 42 above.
- (h) Declarations that the conduct of the Second Defendant described in paragraphs 26 to 29 and 35 to 41 of the Pleadings above constitutes:
 - a) a breach of confidence in equity; and
 - b) a breach of the tort of Invasion of Privacy.

- (i) An order for interest at the full rate including pursuant to section 100 of the Civil Procedure Act 2005 (NSW); and
- (j) Costs including interest on costs.

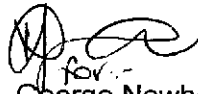
Michael J Rivette
Maria Gerace

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

George Newhouse

Solicitor on the record

Date of signature

27 March 2018

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim, by filing a defence and/or making a cross-claim.**
- 2 If money is claimed, and you believe you owe the money claimed, by:**
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed, by:**
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Level 5, Law Courts Building, 184 Phillip Street, Sydney, New South Wales
Postal address	Supreme Court of NSW, GPO Box 3, Sydney NSW 2001, Australia
Telephone	1300 679 272

AFFIDAVIT VERIFYING

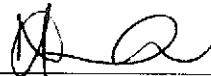
Name Nicola Jandura
 Address 5/22 Cooper Street, Surry Hills NSW 2010
 Occupation Solicitor
 Date 27 March 2018

I affirm:

- 1 I am a solicitor employed by the solicitor on the record for the plaintiff.
- 2 I am one of the solicitors providing legal services to the plaintiff in relation to the matters set out in the statement of claim. I have undertaken enquiries and investigations in relation to the particulars set out above, including pursuant to Government Information (Public Access) Act and other relevant documentation.
- 3 I believe that the allegations of fact pleaded in the statement of claim are true.

AFFIRMED at

Signature of deponent



Name of witness

ASHLEIGH BUCKETT

Address of witness

1/28-32 CHIPPENDALE NSW 2008

Capacity of witness

Justice of the peace/solicitor/barrister/commissioner for affidavits/notary public

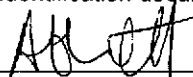
And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable]
~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.*~~
- 2 #I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]
 #I have confirmed the deponent's identity using the following identification document:

Drivers Licence 12755410

Identification document relied on (may be original or certified copy) †

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

PARTY DETAILS**PARTIES TO THE PROCEEDINGS****Plaintiff**

Tracy Evans First plaintiff

DefendantsHealth Administration Corporation First
Defendant

Waqar Malik

FURTHER DETAILS ABOUT PLAINTIFF(S)**First plaintiff**

Name	Tracy Evans
Address	43 Church Street Singleton NSW 2330

Frequent user identifier

Legal representative for plaintiff

Name	George Newhouse
Practising certificate number	
Firm	Centennial Lawyers
Contact solicitor	Nicola Jandura
Address	Suite 203, Bay House, Level 2 2 Guilfoyle Avenue Double Bay, NSW 2027
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Telephone	02 8097 5146
Fax	
Email	georgen@justice.org.au
Electronic service address	georgen@justice.org.au