

CORRESPONDENCE NO:

FROM:

TO:



LEASK & CO.

BARRISTERS & SOLICITORS
ABN 11 113 988 134

26 CLIFF STREET FREMANTLE WESTERN AUSTRALIA 6160
PO BOX 1161 FREMANTLE WESTERN AUSTRALIA 6959

TELEPHONE (08) 9430 6688
FACSIMILE (08) 9430 4044
EMAIL law@leask.com.au

Mr M Paxton
20 Livingstone Street
BEACONSFIELD WA 6162

Our Ref: 1334\DL:gw

Your Ref:

18 May 2010

Mark

FILE COPY

FISHERIES DEPARTMENT

I attach a copy of the State Solicitor's Office's letter of 21 April 2010, which arrived whilst I was away and, as a result of which an application was made to Court today, Tuesday, 18 May 2010, for orders that your action be dismissed.

I have done the best I can with the statement of claim but we are still left with the fundamental difficulty that I have not been able to identify any statutory requirement for the Minister to hold the enquiry or change the Management Plan.

I explained to the Court that I had not had the opportunity of obtaining your instructions on the State Solicitor's Office's response to the proposed amended statement of claim due, firstly, to my absence overseas and then your absence at work. The State Solicitor's Office's application has therefore been adjourned to **9.15am, Tuesday, 15 June 2010**. The Court has indicated that the matter must be resolved on that day, ie, either there will be argument as to whether or not the current version of the statement of claim should be struck out, or any further amended version that is prepared.

I feel that you have no option but to commit significant financial resources to utilise specialist counsel to prepare a further draft of the statement of claim, or face the likelihood that the action will be dismissed, leaving you liable for the State Solicitor's costs.

I therefore urge you to obtain an indication from Messrs Dowding and Lewis as to whether or not they are prepared to provide assistance to you.

Yours sincerely

David Leask
LEASK & CO
Encl ✓



FILE NOTE

Date : 18 May 2010
Re : **Mark PAXTON**
File Ref : 1334

DCL attending before Acting Master Chapman.

I made an application for the matter to be adjourned for 28 days on the basis that I have not had the opportunity of taking instructions from my client on the points raised by the State Solicitor's Office in relation to the latest draft of the proposed statement of claim.

The application was opposed, but the Acting Master adjourned the matter to **9.15am, Tuesday, 15 June 2010**, indicating that the matter had to be determined one way or another on that date.

The Acting Master ordered that the plaintiff pay the defendant's costs fixed in the sum of \$380.00, to be paid forthwith.

DCL



STATE SOLICITOR'S OFFICE

SSO Ref: 4301-07 **Your Ref:** 1334\DL:gw
Enquiries: Kate McDonald
Telephone: 9264 1655
Direct Fax: 9264 1670
Email: k.mcdonald@sso.wa.gov.au

Westralia Square
141 St Georges Terrace
Perth, Western Australia 6000

GPO Box B83 Perth W.A. 6838
Telephone (08) 9264 1888
Email sso@sso.wa.gov.au
Fax (08) 9264 1440
DX 175

Date: 6 May 2010

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6959

Dear Sirs

**PAXTON V MINISTER FOR FISHERIES AND PETER ROGERS
SUPREME COURT ACTION CIV 2076 OF 2007**

Please find enclosed a copy of the Court's notification of the hearing of the Defendants' application to have this action dismissed.

The hearing is listed before a Master on Tuesday 18 May 2010 at 9:15am.

Yours faithfully

Kate McDonald
SENIOR ASSISTANT STATE COUNSEL

Enc.



**SUPREME COURT OF WESTERN AUSTRALIA
GENERAL DIVISION**

CENTRAL OFFICE
Stirling Gardens, Barrack Street
Perth WA 6000
Switchboard: (08) 9421 5333 Fax: (08) 9221 4436

Your Ref: SSO 4301/07

Our Ref: CIV 2076 of
2007

Enquiries: Rebecca
Aubrey

Customer Service Officer

Central Office

Direct Line:

(08) 9421 5341

Direct Fax

9221 4436

State Solicitor for Western Australia
141 St Georges Terrace
PERTH WA 6000

4 May 2010

Dear Sir/Madam,

**RE: PAXTON V MINISTER FOR FISHERIES & ROGERS
SUPREME COURT ACTION CIV 2076 OF 2007**

I refer to your Application to Case Management Registrar filed on 29 April 2010, please be advised that the matter has been listed before the Master in Chambers on **Tuesday 18th May 2010 at 9.15 o'clock in the forenoon.**

It is your responsibility to give two days notice of the above return date to the other parties in accordance with Order 59 Rule 5(3)(b).

Should you have any further enquiries, please do not hesitate to contact the Central Office on the above number.

Yours faithfully,

Rebecca Aubrey

Customer Service Officer
Central Office



STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth Western Australia 6000

GPO Box B83 Perth WA 6838
Telephone (08) 9264 1888
DX 175

FACSIMILE TRANSMISSION

TO:	ATTENTION:	FAX NO:
LEASK & CO	DAVID LEASK	9430 4044

SUBJECT:	PAXTON V MINISTER FOR FISHERIES & PETER ROGERS SUPREME COURT ACTION CIV 2076 OF 2007
FROM:	KATE McDONALD
FAX NO.:	9264 1670
DATE:	6 MAY 2010
NO OF PAGES:	3 (INCLUDING COVER SHEET)

MESSAGE :

Please see attached.

PLEASE TELEPHONE (08) 9264 1662 IF ALL PAGES ARE NOT RECEIVED OR ARE NOT LEGIBLE

233077R1

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have this telecopy in error, please immediately notify me by telephone and return the original message to the above address via Australia Post. Thank you.



STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth, Western Australia 6000

SSO Ref: 4301-075 Your Ref: 1354DLgw
Enquiries: Kate McDonald
Telephone: 9264 1655
Direct Fax: 9264 1670
Email: k.mcdonald@sso.wa.gov.au

G.P.O. Box 883 Perth WA 6838
Telephone: (08) 9264 1888
Email: sso@sso.wa.gov.au
Fax: (08) 9264 1440
DX 175

Date: 6 May 2010

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6959

Dear Sirs

**PAXTON V MINISTER FOR FISHERIES AND PETER ROGERS
SUPREME COURT ACTION CIV 2076 OF 2007**

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Yours faithfully

**Kate McDonald
SENIOR ASSISTANT STATE COUNSEL**

Enc.



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GENERAL DIVISION

CENTRAL OFFICE

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Perth WA 6000

Switchboard: (08) 9421 5333 Fax: (08) 9221 4436

Our Ref: CIV 2076 of
2007

Enquiries: Rebecca
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Customer Service Officer

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Direct Line:

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9221 4436

State Solicitor for Western Australia
141 St Georges Terrace
PERTH WA 6000

4 May 2010

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**RE: PAXTON V MINISTER FOR FISHERIES & ROGERS
SUPREME COURT ACTION CIV 2076 OF 2007**

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Should you have any further enquiries, please do not hesitate to contact the Central Office on the above number.

Yours faithfully,

Rebecca Aubrey

Customer Service Officer
Central Office



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Enquiries: Kate McDonald
Telephone: 9264 1655
Direct Fax: 9264 1670
Email: k.mcdonald@sso.wa.gov.au

Date: 29 April 2010

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Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6959

Dear Sirs

**PAXTON V MINISTER FOR FISHERIES AND PETER ROGERS
SUPREME COURT ACTION CIV 2076 OF 2007**

Please find enclosed a copy of the Defendants' application to have the action dismissed.

Yours faithfully

Kate McDonald
SENIOR ASSISTANT STATE COUNSEL

B E T W E E N:

MARK ASHLEY PAXTON

Plaintiff

- and -

JOHN FORD, MINISTER FOR FISHERIES

First Defendant

- and -

PETER ROGERS

Second Defendant

**APPLICATION TO CASE MANAGEMENT REGISTRAR
ORDER 29A RULE 12: FORM 18A**

Date of Document: 29 April 2010
Filed on behalf of: First and Second Defendants
Date of Filing: 29 April 2010
Prepared by:
TIMOTHY SHARP
STATE SOLICITOR FOR WESTERN AUSTRALIA TELEPHONE: 9264 1888
141 ST GEORGES TERRACE REF: SSO 4301/07
PERTH WA 6000

The Defendants apply to the Case Management Registrar for the following orders:

1. The Plaintiff's action be dismissed.
2. Judgement is entered for the First and Second Defendants.

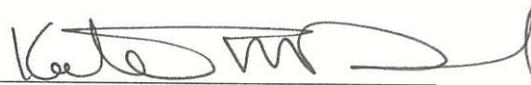
3. The Plaintiff pay the First and Second Defendants' costs of the action including reserved costs.
4. The Plaintiff pay the First and Second Defendants' costs of this application in any event.

The ground for this application is that the Plaintiff's Draft Amended Statement of Claim filed on 13 April 2010 further to the order of Registrar Dixon of 23 March 2010 has failed to address the deficiencies which led to the Statement of Claim originally filed in this action being struck out by Acting Master Chapman on 28 January 2010.

A copy of the Memorandum referred to in Order 59 rule 9, is attached to this application.

Dated the 29th day of April 2010

for



TIMOTHY SHARP
STATE SOLICITOR FOR WESTERN AUSTRALIA
SOLICITOR FOR THE FIRST AND SECOND
DEFENDANTS

TO: The Plaintiff and his solicitors
Leask & Co
26 Cliff Street
FREMANTLE WA 6160

B E T W E E N:

MARK ASHLEY PAXTON

Plaintiff

- and -

JON FORD, MINISTER FOR FISHERIES

First Defendant

- and -

PETER ROGERS

Second Defendant

**ORDER 59 RULE 9(1)
MEMORANDUM OF CONFERRAL
RE: DEFENDANTS' APPLICATION DATED 29 APRIL 2010 FOR DISMISSAL
OF ACTION**

Date of Document: 29 April 2010
Filed on behalf of: First and Second Defendants
Date of Filing: 29 April 2010

Prepared by:
TIMOTHY SHARP
STATE SOLICITOR FOR WESTERN AUSTRALIA TELEPHONE: 9264 1888
141 ST GEORGES TERRACE REF: SSO 4301/07
PERTH WA 6000
SOLICITOR FOR THE
FIRST AND SECOND DEFENDANTS

Conferral

1. The solicitor for the First and Second Defendants confirm that there has been attempted conferral with the Plaintiff's solicitors to try and resolve the matters giving rise to the application dated 29 April 2010 in support of which the Memorandum is filed.

2. On 2 March 2010 the defendants applied for a springing order against the plaintiff in the event he did not file any Statement of Claim in the action. On 23 March 2010 Registrar Dixon made an order that unless within 14 days of the service of the order, the plaintiff file and serve a Draft Statement of Claim, the action be dismissed with costs to the defendant, including any reserved costs.
3. On 13 April 2010 the plaintiff served a Draft Amended Statement of Claim.
4. The amendments in the Draft Amended Statement of Claim do not address the deficiencies that were previously identified and resulted in the original Statement of Claim being struck out by Acting Master Chapman on 28 January 2010.
5. On 21 April 2010 the defendants' solicitors wrote to the plaintiff's solicitors advising of the deficiencies in the Draft Amended Statement of Claim and stated that a failure by the defendants to make any application for leave to substitute the Draft Amended Statement of Claim within 7 days will result in this current application being made. A copy of the letter is attached and marked with the letter "A".
6. There has been no response at the time of filing from the plaintiff's solicitors other than to provide unavailable dates.

Matters in Dispute

7. All the matters giving rise to the Summons dated 29 April 2010 still remain in dispute.

COPY "A"

SSO Ref: 4301/07 **Your Ref:** 1334\DL:gw
Enquiries: Kate McDonald
Telephone: 9264 1655
Direct Fax: 9264 1670
Email: k.mcdonald@sso.wa.gov.au

Date: 21 April 2010

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6959

FAXED
21.4.2010

By facsimile: 9430 4044

Dear Sirs

**PAXTON V MINISTER FOR FISHERIES AND PETER ROGERS
SUPREME COURT ACTION CIV 2076 OF 2007**

I refer to your letter of 13 April 2010 enclosing a Draft Amended Statement of Claim.

It is our view that this Draft does not address the concerns that have been previously drawn to your attention on a number of occasions and which resulted in the Statement of Claim being struck out.

In relation to the amendments, it is clear from the Public Sector Management Act 1994 ("the Act") that section 9 does not apply to the First Defendant. Further, the "necessary and convenient" clause in section 10 of the Act is an enabling provision and does not give rise to a duty. I do not have a copy of the 2006 Ministerial Code of Conduct, but assuming clause 4 is the same as that contained in the 2008 Ministerial Code of Conduct it is not clear what you are asserting. Further, there is no allegation of any duty or breach of any nature against the Second Defendant. It is still not clear what is the cause of action.

As is apparent, being a draft you will require leave to substitute the Amended Statement of Claim. A failure to bring such application within 7 days will result in the Defendants bringing the matter back before the Registrar and the costs of any such summons will be sought from your client. Any application for leave based on the Draft filed will be opposed and it will be argued that the action be dismissed.

Yours sincerely



Kate McDonald
SENIOR ASSISTANT STATE COUNSEL



STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth Western Australia 6000

GPO Box B83 Perth WA 6838
Telephone (08) 9264 1888
DX 175

FACSIMILE TRANSMISSION

TO:	ATTENTION:	FAX NO:
LEASK & CO	DAVID LEASK	9430 4044

SUBJECT:	PAXTON V MINISTER FOR FISHERIES & PETER ROGERS SUPREME COURT ACTION CIV 2076 OF 2007
FROM:	KATE McDONALD
FAX NO.:	9264 1670
DATE:	29 APRIL 2010
NO OF PAGES:	8 (INCLUDING COVER SHEET)

MESSAGE :

Please see attached letter and attachments.

PLEASE TELEPHONE (08) 9264 1662 IF ALL PAGES ARE NOT RECEIVED OR ARE NOT LEGIBLE

233077R1

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STATE SOLICITOR'S OFFICE

Westalla Square
141 St Georges Terrace
Perth, Western Australia 6000

Sso Ref: 4801/07 Your Ref: 1334/DL/gw
Enquiries: Kate McDonald
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Email: k.mcdonald@sso.wa.gov.au

GPO Box 883 Perth WA 6830
Telephone: (08) 9264 1888
Email: sso@sso.wa.gov.au
Fax: (08) 9264 1440
DX: 175

Date: 29 April 2010

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6959

Dear Sirs

**PAXTON V MINISTER FOR FISHERIES AND PETER ROGERS
SUPREME COURT ACTION CIV 2076 OF 2007**

Please find enclosed a copy of the Defendants' application to have the action dismissed.

Yours faithfully

**Kate McDonald
SENIOR ASSISTANT STATE COUNSEL**

IN THE SUPREME COURT OF WESTERN AUSTRALIA

CIV 2076 OF 2007

B E T W E E N:

MARK ASHLEY PAXTON

Plaintiff

- and -

JOHN FORD, MINISTER FOR FISHERIES

First Defendant

- and -

PETER ROGERS

Second Defendant

APPLICATION TO CASE MANAGEMENT REGISTRAR
ORDER 29A RULE 12: FORM 18A

Date of Document: 29 April 2010
Filed on behalf of: First and Second Defendants
Date of Filing: 29 April 2010
Prepared by:

TIMOTHY SHARP
STATE SOLICITOR FOR WESTERN AUSTRALIA TELEPHONE: 9264 1888
141 ST GEORGES TERRACE REF: SSO 4301/07
PERTH WA 6000

The Defendants apply to the Case Management Registrar for the following orders:

1. The Plaintiff's action be dismissed.
2. Judgement is entered for the First and Second Defendants.

3. The Plaintiff pay the First and Second Defendants' costs of the action including reserved costs.
4. The Plaintiff pay the First and Second Defendants' costs of this application in any event.

The ground for this application is that the Plaintiff's Draft Amended Statement of Claim filed on 13 April 2010 further to the order of Registrar Dixon of 23 March 2010 has failed to address the deficiencies which led to the Statement of Claim originally filed in this action being struck out by Acting Master Chapman on 28 January 2010.

A copy of the Memorandum referred to in Order 59 rule 9, is attached to this application.

Dated the 29th day of April 2010

for


TIMOTHY SHARP
STATE SOLICITOR FOR WESTERN AUSTRALIA
SOLICITOR FOR THE FIRST AND SECOND
DEFENDANTS

TO: The Plaintiff and his solicitors
Leask & Co
26 Cliff Street
FREMANTLE WA 6160

IN THE SUPREME COURT OF WESTERN AUSTRALIA

CIV 2076 OF 2007

BETWEEN:

MARK ASHLEY PAXTON

Plaintiff

- and -

JON FORD, MINISTER FOR FISHERIES

First Defendant

- and -

PETER ROGERS

Second Defendant

**ORDER 59 RULE 9(1)
MEMORANDUM OF CONFERRAL
RE: DEFENDANTS' APPLICATION DATED 29 APRIL 2010 FOR DISMISSAL
OF ACTION**

Date of Document: 29 April 2010

Filed on behalf of: First and Second Defendants

Date of Filing: 29 April 2010

Prepared by:
TIMOTHY SHARP
STATE SOLICITOR FOR WESTERN AUSTRALIA TELEPHONE: 9264 1888
141 ST GEORGES TERRACE REF: SSO 4301/07
PERTH WA 6000
SOLICITOR FOR THE
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Conferral

1. The solicitor for the First and Second Defendants confirm that there has been attempted conferral with the Plaintiff's solicitors to try and resolve the matters giving rise to the application dated 29 April 2010 in support of which the Memorandum is filed.

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5. On 21 April 2010 the defendants' solicitors wrote to the plaintiff's solicitors advising of the deficiencies in the Draft Amended Statement of Claim and stated that a failure by the defendants to make any application for leave to substitute the Draft Amended Statement of Claim within 7 days will result in this current application being made. A copy of the letter is attached and marked with the letter "A".
6. There has been no response at the time of filing from the plaintiff's solicitors other than to provide unavailable dates.

Matters in Dispute

7. All the matters giving rise to the Summons dated 29 April 2010 still remain in dispute.

Hearing

8. Subject to the direction of the Court, the application should be listed for hearing as follows:

- a. Status Conference;
- b. No programming orders are required;
- c. The time required for oral argument is 15-20 minutes;
- d. Unavailable dates:

May 3 – 6 (inclusive), 12, 24 and 28

June 4, 11 and 21.

As the person with the conduct of the file for the defendants works part-time – it would be very much appreciated if the application could be listed for hearing on a Tuesday or Thursday.

DATED the 29th day of April 2010



for TIMOTHY SHARP
STATE SOLICITOR FOR WESTERN AUSTRALIA
SOLICITOR FOR THE FIRST AND SECOND DEFENDANTS

TO: The Plaintiff's solicitors
Leask & Co
26 Cliff Street
FREMANTLE WA 6160

"A"
COPY

SSO Ref: 4301/07 Your Ref: 1334\DL:gw
Enquiries: Kate McDonald
Telephone: 9264 1655
Direct Fax: 9264 1670
Email: k.mcdonald@sso.wa.gov.au

Date: 21 April 2010

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6959

FAXED
21. 4. 2010

By facsimile: 9430 4044

Dear Sirs

**PAXTON V MINISTER FOR FISHERIES AND PETER ROGERS
SUPREME COURT ACTION CIV 2076 OF 2007**

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Yours sincerely



**Kate McDonald
SENIOR ASSISTANT STATE COUNSEL**



STATE SOLICITOR'S OFFICE

RECEIVED
23/04

SSO Ref: 4301/07 **Your Ref:** 1334\DL:gw
Enquiries: Kate McDonald
Telephone: 9264 1655
Direct Fax: 9264 1670
Email: k.mcdonald@sso.wa.gov.au

Westralia Square
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Telephone (08) 9264 1888
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Fax (08) 9264 1440
DX 175

Date: 21 April 2010

FAXED
21-4-2010

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Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6959

By facsimile: 9430 4044

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Date: 21 April 2010

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By facsimile: 9430 4044

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 SUPREME COURT ACTION CIV 2076 OF 2007**

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Yours sincerely

Kate McDonald
 for

**Kate McDonald
 SENIOR ASSISTANT STATE COUNSEL**

28/04 ?



STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth Western Australia 6000

GPO Box B83 Perth WA 6838
Telephone (08) 9264 1888
DX 175

FACSIMILE TRANSMISSION

TO:	ATTENTION:	FAX NO:
LEASK & CO	DAVID LEASK	9430 4044

SUBJECT:	PAXTON V MINISTER FOR FISHERIES & PETER ROGERS SUPREME COURT ACTION CIV 2076 OF 2007
FROM:	KATE McDONALD
FAX NO.:	9264 1670
DATE:	21 APRIL 2010
NO OF PAGES:	2 (INCLUDING COVER SHEET)

MESSAGE :

Letter follows.

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LEASK & CO.

BARRISTERS & SOLICITORS
ABN 11 113 988 134

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PO BOX 1161 FREMANTLE WESTERN AUSTRALIA 6959

TELEPHONE (08) 9430 6688
FACSIMILE (08) 9430 4044
EMAIL law@leask.com.au

State Solicitor's Office
141 St George's Terrace
PERTH WA 6000
Attention: Kate McDonald

Our Ref: 1334\DL:gw

Your Ref: 4301/07

13 April 2010

FILE COPY

Dear Sirs

**PAXTON v MINISTER FOR FISHERIES & PETER ROGERS
SUPREME COURT ACTION CIV 2076 of 2007**

We write further to your letter of 30 March 2010 and enclose by way of service draft amended statement of claim.

Yours faithfully

LEASK & CO

Encl ✓

- 13/8/03 "with records removed; mg" KC
2/04 Fisheries study completed
5/10/05 Investigation completed
11/11/05 Amendment to mg
16/11/05 Amendment ~~to mg~~ There is a 17 license in the plan. Made
amendments to Annex SAT to issue mg

MP write to Mr Ford January 2006 that there wasn't a vacant license.

didn't act in good faith by carrying amendments

Winnona 29/11/05

11/3/08.



STATE SOLICITOR'S OFFICE

SSO Ref: 4301-07 **Your Ref:** 1334/DL
Enquiries: Kate McDonald
Telephone: 9264 1655
Email: k.mcdonald@sso.wa.gov.au

Westralia Square
141 St Georges Terrace
Perth, Western Australia 6000

GPO Box B83 Perth W.A. 6838
Telephone (08) 9264 1888
Email sso@sso.wa.gov.au
Fax (08) 9264 1440
DX 175

Date: 30 March 2010

Leask & Co
Barristers and Solicitors
26 Cliff Street
FREMANTLE WA 6160
Attention: Mr David Leask

Dear Sir

PAXTON V MINISTER FOR FISHERIES & PETER ROGERS

I refer to the above matter.

On 23 March 2010 Registrar Dixon made a springing order and an order for costs against the Plaintiff. A copy of the order is attached.

As stated in the orders service of the order will cause time to begin to run.

Yours sincerely

Kate McDonald
Senior Assistant State Counsel

Enc



STATE SOLICITOR'S OFFICE

FAXED

Westralia Square
141 St Georges Terrace
Perth, Western Australia 6000

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Email: k.mcdonald@sso.wa.gov.au

GPO Box B83 Perth W.A. 6838
Telephone (08) 9264 1888
Email sso@sso.wa.gov.au
Fax (08) 9264 1440
DX 175

Date: 26 February 2010

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6959
Attention: Mr David Leask
By Facsimile: 9430 4044

Dear Sir

PAXTON V MINISTER FOR FISHERIES & PETER ROGERS

I refer to the above matter.

As you are aware, Master Chapman ordered on 28 January 2010 that by 25 February 2010 the Plaintiff file and serve any draft Statement of Claim. As that has not occurred, I have instructions to make the attached application.

For the purposes of Order 59 rule 9 could you advise if this matter can be resolved in any way and if not, your unavailable dates, by close of business today. It is my view that the matter will take no longer than 15 minutes and can be heard in the general list of the Case Management Registrar.

Yours sincerely

Kate McDonald
Senior Assistant State Counsel



STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth Western Australia 6000

GPO Box B83 Perth WA 6838
Telephone (08) 9264 1888
DX 175

FACSIMILE TRANSMISSION

TO:	ATTENTION:	FAX NO:
LEASK & CO	DAVID LEASK	9430 4044

SUBJECT:	PAXTON V MINISTER FOR FISHERIES & PETER ROGERS
FROM:	KATE MCDONALD
FAX NO.:	9264 1670
DATE:	26 FEBRUARY 2010
NO OF PAGES:	4 (INCLUDING COVER SHEET)

MESSAGE :

Letter and attachment follow

PLEASE TELEPHONE (08) 9264 1888 IF ALL PAGES ARE NOT RECEIVED OR ARE NOT LEGIBLE
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STATE SOLICITOR'S OFFICE

SSO Ref: 4801/07 Your Ref: 1394/DL
 Enquiries: Kate McDonald
 Telephone: 9264 1655
 Email: k.mcdonald@sso.wa.gov.au

Westralia Square
 141 St Georges Terrace
 Perth, Western Australia 6000

GPO Box 1883 Perth WA 6838
 Telephone (08) 9264 1888
 Email: sso@sso.wa.gov.au
 Fax (08) 9264 1440
 DX 1175

Date: 26 February 2010

Leask & Co
 Barristers and Solicitors
 PO Box 1161
 FREMANTLE WA 6959
 Attention: Mr David Leask
 By Facsimile: 9430 4044

Dear Sir

PAXTON V MINISTER FOR FISHERIES & PETER ROGERS

I refer to the above matter.

As you are aware, Master Chapman ordered on 28 January 2010 that by 25 February 2010 the Plaintiff file and serve any draft Statement of Claim. As that has not occurred, I have instructions to make the attached application.

For the purposes of Order 59 rule 9 could you advise if this matter can be resolved in any way and if not, your unavailable dates, by close of business today. It is my view that the matter will take no longer than 15 minutes and can be heard in the general list of the Case Management Registrar.

Yours sincerely

Kate McDonald
 Senior Assistant State Counsel

IN THE SUPREME COURT OF WESTERN AUSTRALIA

CIV 2076 OF 2007

B E T W E E N:

MARK ASHLEY PAXTON

Plaintiff

- and -

JOHN FORD, MINISTER FOR FISHERIES

First Defendant

- and -

PETER ROGERS

Second Defendant

**APPLICATION TO CASE MANAGEMENT REGISTRAR
ORDER 29A RULE 12: FORM 18A**

Date of Document:

Filed on behalf of:

First and Second Defendants

Date of Filing:

Prepared by:

TIMOTHY SHARP

STATE SOLICITOR FOR WESTERN AUSTRALIA
141 ST GEORGES TERRACE
PERTH WA 6000TELEPHONE: 9264 1888
REF: SSO 4301/07

The Defendants apply to the Case Management Registrar for the following orders:

1. Unless the Plaintiff file and serve any draft Statement of Claim within 7 days of the making of this order, the action be dismissed, with costs including reserved costs.

2. The Plaintiff pay the First and Second Defendants' costs of this application.

The ground for this application is that the Plaintiff has failed to comply with the order of Acting Master Chapman made on 28 January 2010, namely, that the Plaintiff file and serve any draft Statement of Claim by 25 February 2010.

A copy of the Memorandum referred to in Order 59 rule 9, and a copy of the order made by Acting Master Chapman on 28 January 2010 is attached to this application.

Dated the 26th day of February 2010

for TIMOTHY SHARP
STATE SOLICITOR FOR WESTERN AUSTRALIA
SOLICITOR FOR THE FIRST AND SECOND
DEFENDANTS

TO: The Plaintiff and his solicitors
Leask & Co
26 Cliff Street
FREMANTLE WA 6160



STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth, Western Australia 6000

SSO Ref: 4301-07 **Your Ref:** 1334/DL
Enquiries: Kate McDonald
Telephone: 9264 1655
Email: k.mcdonald@sso.wa.gov.au

GPO Box B83 Perth W.A. 6838
Telephone (08) 9264 1888
Email sso@sso.wa.gov.au
Fax (08) 9264 1440
DX 175

Date: 23 February 2010

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6959
Attention: Mr David Leask

Dear Sir

PAXTON V MINISTER FOR FISHERIES & PETER ROGERS

I refer to the above matter and my previous letter dated 4 February 2010.

A copy of the extracted orders made by A/Master Chapman on 28 January 2010 is attached.

In relation to the order that the Plaintiff pay the Defendants' costs fixed at \$6,500 forthwith, failure to make payment within 7 days will result in enforcement action being taken.

Yours sincerely

Kate McDonald
Senior Assistant State Counsel

Enc



STATE SOLICITOR'S OFFICE

FAXED

Westralia Square
141 St Georges Terrace
Perth, Western Australia 6000

SSO Ref: 4301-07 **Your Ref:** 1334/DL
Enquiries: Kate McDonald
Telephone: 9264 1655
Email: k.mcdonald@sso.wa.gov.au

GPO Box B83 Perth W.A. 6838
Telephone (08) 9264 1888
Email sso@sso.wa.gov.au
Fax (08) 9264 1440
DX 175

Date: 4 February 2010

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6959
Attention: Mr David Leask
By Facsimile: 9430 4044

Dear Sir

PAXTON V MINISTER FOR FISHERIES & PETER ROGERS

I refer to the above matter.

Further to the order made by Master Chapman on 28 January 2010 that the Plaintiff pay the Defendants' costs fixed at \$6,500 forthwith, please make payment within 7 days.

Yours sincerely

Kate McDonald
Senior Assistant State Counsel



STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth Western Australia 6000

GPO Box B83 Perth WA 6838
Telephone (08) 9264 1888
DX 175

FACSIMILE TRANSMISSION

TO:	ATTENTION:	FAX NO:
LEASK & CO	DAVID LEASK	9430 4044

SUBJECT:	PAXTON V MINISTER FOR FISHERIES & PETER ROGERS
FROM:	KATE MCDONALD
FAX NO.:	9264 1670
DATE:	4 FEBRUARY 2010
NO OF PAGES:	2 (INCLUDING COVER SHEET)

MESSAGE :

Letter follows.

PLEASE TELEPHONE (08) 9264 1888 IF ALL PAGES ARE NOT RECEIVED OR ARE NOT LEGIBLE

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**STATE SOLICITOR'S OFFICE****SSO Ref:**
Enquiries:**4301-07** **Your Ref: 1334/DL**
Kate McDonald
Telephone: 9264-1665
Email: k.mcdonald@sso.wa.gov.au**Westralia Square**
141 St Georges Terrace
Perth Western Australia 6000**GPO Box 883 Perth WA 6038**
Telephone: (08) 9264-1888
Email: sso@sso.wa.gov.au
Fax: (08) 9264-1440
DX 175**Date:** 4 February 2010**Leask & Co**
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6959
Attention: Mr David Leask
By Facsimile: 9430-4044

Dear Sir

PAXTON V MINISTER FOR FISHERIES & PETER ROGERS

I refer to the above matter.

Further to the order made by Master Chapman on 28 January 2010 that the Plaintiff pay the Defendants' costs fixed at \$6,500 forthwith, please make payment within 7 days.

Yours sincerely

Kate McDonald
Senior Assistant State Counsel

PART IV

28/1/10.

Comm: Henry Miller Chapman.

11:00

1. Def C in writing
2. Def C Amend MP
3. Issue stopped
4. S. 47A.

877.

A

Sech costs \$6,500

including recovered costs

SOC should be struck at

25/2/10. kept SOC.

P per D's costs \$6,500.



STATE SOLICITOR'S OFFICE

SSO Ref: 4301-07 **Your Ref:** 1334/DL
Enquiries: Kate McDonald
Telephone: 9265 1655
Direct Fax: 9264 1670
Email: k.mcdonald@sso.wa.gov.au

Westralia Square
141 St Georges Terrace
Perth, Western Australia 6000

GPO Box B83 Perth W.A. 6838
Telephone (08) 9264 1888
Fax (08) 9264 1440
DX 175

Date: 25 November 2009

Leask & Co
Barristers and Solicitors
26 Cliff Street
FREMANTLE WA 6160
Attention: Mr David Leask

By Courier

Dear Sirs

**PAXTON V MINISTER FOR FISHEREIS AND PETER ROGERS
SUPREME COURT ACTION 2076 OF 2007
STRIKE OUT APPLICATION**

Please find enclosed a copy of the Defendants' Outline of Submissions and List of Authorities in support of the Strike Out application.

Yours sincerely

Kate McDonald
Senior Assistant State Counsel

Enc

hp LaserJet 3030

LEASK & CO
08 9430 4044
27-Oct-2009 1:07PM



Fax Call Report

Job	Date	Time	Type	Identification	Duration	Pages	Result
247	27/10/2009	1:07:07PM	Send	92641670	0:32	1	OK

URGENT

STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth Western Australia 6000

GPO Box B83 Perth WA 6838
Telephone (08) 9264 1888
DX 175

FACSIMILE TRANSMISSION

TO:	ATTENTION:	FAX NO:
Leask & Co	David Leask	9430 4044

SUBJECT:	Paxton v Minister for Fisheries and Peter Rogers
FROM:	Kate McDonald, State Solicitor's Office
FAX NO.:	9264 1670
DATE:	27 October 2009
NO OF PAGES:	1 (INCLUDING COVER SHEET)

Dear Mr Leask

As you aware I am required to file our strike-out application today. As I have had no response on the substantive issues the subject of the application could you advise for the purposes of the Memorandum of Conferral if you are agreeable to the following and advise of any unavailable dates you would like included, by 2.00 pm today.

It is our view that, subject to the direction of the Court, the application should be listed for hearing as follows:

- (a) Special appointment;
- (b) Standard programming orders;
- (c) The time required for oral argument is 2 ½ hours;
- (d) Unavailable dates: Mondays and Fridays, 11 and 18 November 2009, 15 December 2009, 11 to 21 January 2010.

Kate McDonald

URGENT

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URGENT

Westralia Square
141 St Georges Terrace
Perth Western Australia 6000

GPO Box B83 Perth WA 6838
Telephone (08) 9264 1888
DX 175



STATE SOLICITOR'S OFFICE

FACSIMILE TRANSMISSION

TO:	ATTENTION:	FAX NO:
Leask & Co	David Leask	9430 4044

SUBJECT:	Paxton v Minister for Fisheries and Peter Rogers
FROM:	Kate McDonald, State Solicitor's Office
FAX NO.:	9264 1670
DATE:	27 October 2009
NO OF PAGES:	1 (INCLUDING COVER SHEET)

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Kate McDonald

URGENT

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STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth, Western Australia 6000

SSO Ref: 4301-07 **Your Ref:** 1334/DL
Enquiries: Kate McDonald
Telephone: 9264 1655
Direct Fax: 9264 1670
Email: k.mcdonald@sso.wa.gov.au

GPO Box B83 Perth W.A. 6838
Telephone (08) 9264 1888
Fax (08) 9264 1440
DX 175

Date: 22 October 2009

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6959

FAXED

By Facsimile: 9430 4044

Dear Sir

PAXTON V MINISTER FOR FISHERIES & PETER ROGERS

I refer to the above matter.

As indicated in my letter dated 15 October 2009 I have instructions to apply to strike out the Plaintiff's Statement of Claim.

For the purposes of conferral pursuant to Order 59 rule 9 of the Rules of the Supreme Court I have attached a draft application. Please advise if there are any issues that can be conceded or agreed upon, so that I can advise the Court which issues remain in dispute.

The Affidavit referred to in paragraph 1 of the Particulars in support of the non-compliance with section 47A of the *Limitation Act 1935* has not yet been sworn, but will depose to those matters referred to in that paragraph.

I am obliged pursuant to the Order of Registrar Dixon to file the application by 27 October 2009 and therefore I would be grateful for your early response.

Yours sincerely

Kate McDonald
SENIOR ASSISTANT STATE COUNSEL

Enc



STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth Western Australia 6000

GPO Box B83 Perth WA 6838
Telephone (08) 9264 1888
DX 175

FACSIMILE TRANSMISSION

TO:	ATTENTION:	FAX NO:
LEASK & CO		9430 4044

SUBJECT:	PAXTON v MINISTER FOR FISHERIES & PETER ROGERS
FROM:	KATE McDONALD
FAX NO.:	9264 1670
DATE:	22 OCTOBER 2009
NO OF PAGES:	9 (INCLUDING COVER SHEET)

MESSAGE :

Letter follows.

PLEASE TELEPHONE (08) 9264 1888 IF ALL PAGES ARE NOT RECEIVED OR ARE NOT LEGIBLE

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141 St Georges Terrace
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Telephone (08) 9264 1688
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DX 175

Date: 22 October 2009

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6959

By Facsimile: 9430 4044

Dear Sir

PAXTON V MINISTER FOR FISHERIES & PETER ROGERS

I refer to the above matter.

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I am obliged pursuant to the Order of Registrar Dixon to file the application by 27 October 2009 and therefore I would be grateful for your early response.

Yours sincerely

Kate McDonald
SENIOR ASSISTANT STATE COUNSEL

Enc

IN THE SUPREME COURT OF WESTERN AUSTRALIA

CIV 2076 OF 2007

BETWEEN:

MARK ASHLEY PAXTON

Plaintiff

- and -

MINISTER FOR FISHERIES

First Defendant

- and -

PETER ROGERS

Second Defendant

**SUMMONS BY DEFENDANTS TO STRIKE OUT THE STATEMENT OF
CLAIM DATED 15 SEPTEMBER 2009 PURSUANT TO ORDER 20 r19 AND
ORDER OF REGISTRAR DIXON DATED 29 SEPTEMBER 2009**

Date of Document: 27 October 2009

Filed on behalf of: First and Second Defendants

Date of Filing: 27 October 2009

Prepared by:
TIMOTHY SHARP
STATE SOLICITOR FOR WESTERN AUSTRALIA TELEPHONE: 9264 1888
141 ST GEORGES TERRACE REF: SSO 4301/07
PERTH WA 6000
SOLICITOR FOR THE
FIRST AND SECOND DEFENDANTS

LET ALL PARTIES concerned attend before a Master in Chambers on the day
of at the hour of on the hearing of an application by the First and Second
Defendants for orders that:

1. The Plaintiff's Writ and Statement of Claim be struck out in its entirety on the ground that the action is an abuse of process in failing to comply with section 47A of the *Limitation Act 1935* – O20r19(1)(d).
2. Pursuant to Order 20 Rule 19(1) of the *Rules of Supreme Court* the Statement of Claim be struck out in its entirety and the action against the First and Second Defendants be dismissed, on the grounds that:
 - a. The Statement of Claim reveals no reasonable cause of action against the First and Second Defendants (O20r19(1)(a));
 - b. The Statement of Claim contains matters which are frivolous and vexatious (O20r19(1)(b));
 - c. The Statement of Claim may prejudice, embarrass or delay the fair trial of the action (O20r19(1)(c));
 - d. The Statement of Claim is otherwise an abuse of process of the Court (O20r19(1)(d)).
3. Further and in the alternative, paragraphs 4 to 17 (inclusive), 21, 26, 29, 30, 33 and the Prayer for Relief be struck out on the grounds referred to in paragraph 2 above.
4. Further and in the alternative, the Plaintiff's Writ and Statement of Claim be struck out in its entirety on the ground that the action is an abuse of process in seeking to raise matters which the court has already determined in earlier proceedings – O20r19(1)(d).
5. There be judgement for the First and Second Defendants with costs.

The Particulars of the Grounds for this application are set out in the document entitled "Particulars of Grounds of Application to Strike out Statement of Claim in Support of Summons dated 27 October 2009 Order 20r19(3)(b)".

A copy of the Memorandum referred to in Order 59 rule 9 is attached to this application.

DATED the 27 day of October 2009

for TIMOTHY SHARP
STATE SOLICITOR FOR WESTERN AUSTRALIA
SOLICITOR FOR THE FIRST AND SECOND DEFENDANTS

TO: The Plaintiff's solicitors
Leask & Co
26 Cliff Street
FREMANTLE WA 6160

IN THE SUPREME COURT OF WESTERN AUSTRALIA

CIF 2076 OF 2007

B E T W E E N:

MARK ASHLEY PAXTON

Plaintiff

- and -

MINISTER FOR FISHERIES

First Defendant

- and -

PETER ROGERS

Second Defendant

**PARTICULARS OF GROUNDS OF APPLICATION TO STRIKE OUT
STATEMENT OF CLAIM IN SUPPORT OF SUMMONS
DATED 27 OCTOBER 2009
ORDER 20 RULE 19(3)(b)**

Date of Document: 27 October 2009

Filed on behalf of: First and Second Defendants

Date of Filing: 27 October 2009

Prepared by:
TIMOTHY SHARP
STATE SOLICITOR FOR WESTERN AUSTRALIA TELEPHONE: 9264 1888
141 ST GEORGES TERRACE REF: SSO 4301/07
PERTH WA 6000
SOLICITOR FOR THE
FIRST AND SECOND DEFENDANTS

-
1. The Writ and Statement of Claim should be struck out in their entirety on the ground the action is an abuse of process in that there is a complete bar to legal proceedings as, contrary to section 47A of the *Limitation Act 1935*, the Plaintiff failed to:

- (a) commence an action before the expiration of one year from the date on which any purported cause of action accrued; or
- (b) obtain the First or Second Defendants' consent in writing to the bringing of the action against them; or
- (c) apply to the Court for leave to bring an action before the expiration of six years from the date on which the cause of action accrued; O20r19(1)(d); Affidavit of Michael Andrew Cuomo sworn

2. The Statement of Claim discloses no reasonable cause of action, is frivolous, embarrassing, likely to delay the fair trial of the action and is an abuse of process in that;

- (a) the Writ alleges negligence on the part of the First and Second Defendants;
- (b) the Statement of Claim presumes failures to take certain actions (paragraph 33), when no duty is pleaded that the First and/or Second Defendants were legally obliged to take those actions – O20r19(1)(a)(b)(c);
- (c) even if a duty were pleaded the facts pleaded if proved could not support the same – O20r19(1)(a)(b)(c);
- (d) the only duty pleaded in the Statement of Claim (at paragraph 15) is irrelevant to the failures alleged at paragraph 33 – O20r19(1)(a),(b),(c);
- (e) there are no material facts pleaded to support the alleged "failures"- O20r19(1)(b)(c);
- (f) the loss and damage claimed at paragraph 33 does not follow from the alleged "failures" - O20r19(1)(b), (c).

3. In the alternative, the following paragraphs of the Statement of Claim should be struck out:

Paragraphs 4 to 17

- (1) The paragraphs raise wholly irrelevant matter which may prejudice, embarrass or delay the fair trial of the action – O20r19(1)(c).
- (2) Any claim based on the events pleaded at paragraphs 4 to 17 are time-barred and an abuse of process – O20r19(1)(d).

Paragraph 26

The pleading is evidence rather than material fact if what is sought to be pleaded is a failure to investigate – O20r8 and O20r19(1)(c).

Paragraph 30

The terms "amendment", "assurance" and "statement" are not defined or referable to particular events and the pleading is therefore unclear and is prejudicial, embarrassing and likely to delay the fair trial of the action O20r19(1)(c).

Paragraphs 21 and 29

Refers to comments that are inadmissible and may not be relied on by the Plaintiff as to do so would contravene section 1 of the *Parliamentary Privileges Act 1891 (WA)* – O20r19(1)(c).

Paragraph 33

The paragraph fails to disclose a cause of action, is frivolous, prejudicial, embarrassing and likely to delay the fair trial of the action in that:

- (a) it refers to consequences arising from a failure to investigate, when no such failure is pleaded in the Statement of Claim – O20r19(1)(a), (b), (c);

- (b) in any event pleads no material facts in support of any failure to investigate, even if the fact of such a failure was pleaded – O20r19(1)(a);
- (c) is irrelevant when no duty to conduct an investigation or amend the Management Plan in a particular way is pleaded – O20r19(1)(a)(c);
- (d) by referring to paragraph 23 confines the claim to fishing in the 2005 season, but then claims losses for subsequent seasons without any material facts to support the same; O20r19(1)(a) (b) and (c).

Prayer for Relief

No reasonable cause of action is disclosed entitling the Plaintiff to damages and judgement – O20r19(1)(a).

4. In any event, the Writ and Statement of Claim are an abuse of process in that the Plaintiff is attempting to re-litigate issues already determined by the Court in *Paxton v Jon Ford & Minister for Fisheries* [2006] WASC 194 – O20r19(1)(d).

for TIMOTHY SHARP
STATE SOLICITOR FOR WESTERN AUSTRALIA
SOLICITOR FOR THE FIRST AND SECOND DEFENDANTS

TO: The Plaintiff's solicitors
Leask & Co
26 Cliff Street
FREMANTLE WA 6160



1. What do you say gives rise to the obligation to conduct an inquiry – what is the statutory basis?
2. What did you do or not do to your detriment as a result of the statement made by Kim Chance that he was going to have an investigation?
3. What do you say gives rise to the obligation to change the management plan – what is the statutory basis?
4. What did you do or not do to your detriment as a result of the statement made by Kim Chance that he was going to have an investigation?
 - a. Didn't purchase "Ca-Den II"
 - b. Continued to operate FTC when non commercial
5. NCP?



STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth, Western Australia 6000

SSO Ref: 4301-07 **Your Ref:** 1334/DL
Enquiries: Kate McDonald
Telephone: 9264 1655
Direct Fax: 9264 1670
Email: k.mcdonald@sso.wa.gov.au

GPO Box B83 Perth W.A. 6838
Telephone (08) 9264 1888
Fax (08) 9264 1440
DX 175

Date: 15 October 2009

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6160

FXED

By Facsimile: 9430 4044

Dear Sir

**PAXTON V MINISTER FOR FISHERIES & ANOR
SUPREME COURT ACTION CIV 2076 OF 2007**

I note the deadline to file and serve an Amended Statement of Claim has passed.

Please advise by close of business today if the Plaintiff intends to proceed with the Statement of Claim dated 15 September 2009 already filed.

I have instructions to make a strike out application and this letter will be used in support of any application for costs thrown away, in the event of any subsequent application to file and serve an Amended Statement of Claim.

Yours faithfully

**KATE McDONALD
SENIOR ASSISTANT STATE COUNSEL**



STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth Western Australia 6000

GPO Box B83 Perth WA 6838
Telephone (08) 9264 1888
DX 175

FACSIMILE TRANSMISSION

TO:	ATTENTION:	FAX NO:
LEASK & CO		9430 4044

SUBJECT:	PAXTON v MINISTER FOR FISHERIES & ANOR SUPREME COURT ACTION CIV 2076 OF 2007
FROM:	KATE McDONALD
FAX NO.:	9264 1670
DATE:	15 October 2009
NO OF PAGES:	2 (INCLUDING COVER SHEET)

MESSAGE :

LETTER FOLLOWS.

PLEASE TELEPHONE (08) 9264 1888 IF ALL PAGES ARE NOT RECEIVED OR ARE NOT LEGIBLE

Error! Unknown document property name.

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**STATE SOLICITOR'S OFFICE**

Westralia Square
141 St Georges Terrace
Perth, Western Australia 6000

SSO Ref: 4301-07 Your Ref: 1334/DL
Enquiries: Kate McDonald
Telephone: 9264 1655
Direct Fax: 9264 1670
Email: kmcDonald@sso.wa.gov.au

GPO Box B83 Perth W.A. 6898
Telephone (08) 9264 1688
Fax (08) 9264 1440
DX 175

Date: 15 October 2009

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6160

By Facsimile: 9430 4044

Dear Sir

**PAXTON V MINISTER FOR FISHERIES & ANOR
SUPREME COURT ACTION CIV 2076 OF 2007**

I note the deadline to file and serve an Amended Statement of Claim has passed.

Please advise by close of business today if the Plaintiff intends to proceed with the Statement of Claim dated 15 September 2009 already filed.

I have instructions to make a strike out application and this letter will be used in support of any application for costs thrown away, in the event of any subsequent application to file and serve an Amended Statement of Claim.

Yours faithfully

**KATE McDONALD
SENIOR ASSISTANT STATE COUNSEL**



STATE SOLICITOR'S OFFICE

FAXED

Westralia Square
141 St Georges Terrace
Perth, Western Australia 6000

SSO Ref: 4301-07 **Your Ref:** 1334/DL
Enquiries: Kate McDonald
Telephone: 9264 1655
Direct Fax: 9264 1670
Email: k.mcdonald@sso.wa.gov.au

GPO Box B83 Perth W.A. 6838
Telephone (08) 9264 1888
Fax (08) 9264 1440
DX 175

Date: 22 September 2009

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6160

By Facsimile: 9430 4044

Dear Sir

**PAXTON V MINISTER FOR FISHERIES & ANOR
SUPREME COURT ACTION CIV 2076 OF 2007**

I refer to your letter dated 15 September 2009 enclosing by way of service the Plaintiff's Statement of Claim. I note that it is effectively the same as the Draft Statement of Claim dated 30 June 2009.

On 26 August 2009 you requested our comments on the perceived defects of that Draft, so that you might address them before 15 September 2009. The Draft was the subject of extensive comments contained in my letter of 4 September 2009. As I stated in that letter the Draft was, in our opinion, defective and liable to be struck out for a number of reasons, including failing to disclose a reasonable cause of action, as well as being time-barred in the absence of your client obtaining any leave to proceed notwithstanding non-compliance with section 47A of the *Limitation Act 1935*.

In your letter of 15 September 2009, you state that you will endeavour to address the issues raised in my letter prior to the next Status Conference on 29 September 2009. As the Plaintiff does not have leave to file any further draft and there is no clear indication that you will be able to obtain instructions to amend the Statement of Claim, my client has no option other than to apply to strike out the Statement of Claim filed.

An application will be filed within the time permitted by the Rules. As it appears that it is likely that the Statement of Claim may ultimately need to be amended or substituted, whether by virtue of your client's instructions or the Defendants' application to strike it out, it seems premature to file a defence. As such, I would ask that you consent to our request for an extension of time in which to file and serve a defence until a date to be fixed following the determination of the Defendants' application to strike-out the Statement of Claim.

I would be grateful if you could advise of your consent or otherwise by close of business tomorrow, so that should I need to take instructions from my client I can do so, taking into account the public holiday on Monday.

Yours faithfully

A handwritten signature in black ink, appearing to read "Kate McDonald". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

KATE McDONALD
SENIOR ASSISTANT STATE COUNSEL

LEASK & CO.

BARRISTERS & SOLICITORS
ABN 11 113 988 134

26 CLIFF STREET FREMANTLE WESTERN AUSTRALIA 6160
PO BOX 1161 FREMANTLE WESTERN AUSTRALIA 6959

TELEPHONE (08) 9430 6688
FACSIMILE (08) 9430 4044
EMAIL law@leask.com.au

State Solicitor's Office
141 St George's Terrace
PERTH WA 6000

Attention: Kate McDonald

Our Ref: 1334\DL:gw

Your Ref: 4301/07

15 September 2009

FILE COPY

Dear Sirs

**PAXTON v MINISTER FOR FISHERIES & PETER ROGERS
SUPREME COURT ACTION CIV 2076 of 2007**

We enclose by way of service the Plaintiff's Statement of Claim which has been filed at Court today.

The Statement of Claim does not address the issues raised in your letter dated 4 September 2009 as we have not been able to discuss those issues with the Plaintiff, who is working in the northwest of the State. We will endeavour to do so before the Status Conference listed for 29 September 2009.

Yours faithfully


LEASK & CO

Encl ✓



STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth Western Australia 6000

GPO Box B83 Perth WA 6838
Telephone (08) 9264 1888
DX 175

FACSIMILE TRANSMISSION

TO:	ATTENTION:	FAX NO:
LEASK & CO	1334/DL	9430 4044

SUBJECT:	PAXTON v MINISTER FOR FISHERIES & ANOR
FROM:	KATE MCDONALD
FAX NO.:	9264 1670
DATE:	22 September 2009
NO OF PAGES:	3 (INCLUDING COVER SHEET)

MESSAGE :

Please see the attached letter.

PLEASE TELEPHONE (08) 9264 1888 IF ALL PAGES ARE NOT RECEIVED OR ARE NOT LEGIBLE

193192R1

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STATE SOLICITOR'S OFFICE

SSO Ref: 4301-07 Your Ref: 1354/DL
 Enquiries: Kate McDonald
 Telephone: 9264 1655
 Direct Fax: 9264 1670
 Email: kmcDonald@sso.wa.gov.au

Date: 22 September 2009

Leask & Co
 Barristers and Solicitors
 PO Box 1161
 FREMANTLE WA 6160

Westralia Square
 141 St George's Terrace
 Perth, Western Australia 6000

GPO Box 933 Perth W.A. 6038
 Telephone (08) 9264 1888
 Fax (08) 9264 1440
 DX: 175

By Facsimile: 9430 4044

Dear Sir

PAXTON V MINISTER FOR FISHERIES & ANOR SUPREME COURT ACTION CIV 2076 OF 2007

I refer to your letter dated 15 September 2009 enclosing by way of service the Plaintiff's Statement of Claim. I note that it is effectively the same as the Draft Statement of Claim dated 30 June 2009.

On 26 August 2009 you requested our comments on the perceived defects of that Draft, so that you might address them before 15 September 2009. The Draft was the subject of extensive comments contained in my letter of 4 September 2009. As I stated in that letter the Draft was, in our opinion, defective and liable to be struck out for a number of reasons, including failing to disclose a reasonable cause of action, as well as being time-barred in the absence of your client obtaining any leave to proceed notwithstanding non-compliance with section 47A of the *Limitation Act 1935*.

In your letter of 15 September 2009, you state that you will endeavour to address the issues raised in my letter prior to the next Status Conference on 29 September 2009. As the Plaintiff does not have leave to file any further draft and there is no clear indication that you will be able to obtain instructions to amend the Statement of Claim, my client has no option other than to apply to strike out the Statement of Claim filed.

An application will be filed within the time permitted by the Rules. As it appears that it is likely that the Statement of Claim may ultimately need to be amended or substituted, whether by virtue of your client's instructions or the Defendants' application to strike it out, it seems premature to file a defence. As such, I would ask that you consent to our request for an extension of time in which to file and serve a defence until a date to be fixed following the determination of the Defendants' application to strike-out the Statement of Claim.

- 2 -

I would be grateful if you could advise of your consent or otherwise by close of business tomorrow, so that should I need to take instructions from my client I can do so, taking into account the public holiday on Monday.

Yours faithfully

A handwritten signature in black ink, appearing to read "Kate McDonald", with a long, sweeping horizontal line extending to the right.

KATE McDONALD
SENIOR ASSISTANT STATE COUNSEL



STATE SOLICITOR'S OFFICE

SSO Ref: 4301-07
Enquiries: Kate McDonald
Telephone: 92641655
Direct Fax: 9264 1670
Email: k.mcdonald@sso.wa.gov.au

Westralia Square
141 St Georges Terrace
Perth, Western Australia 6000

GPO Box B83 Perth W.A. 6838
Telephone (08) 9264 1888
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DX 175

Date: 4 September 2009

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6160

FAXED
4.9.09

By facsimile: 9430 4044

Dear Sir

**PAXTON V MINISTER FOR FISHERIES & ANOR
SUPREME COURT ACTION CIV 2076 OF 2007**

I refer to your facsimile of 26 August 2009 wherein you request comments on behalf of the Defendants "in relation to the perceived defects in the Draft Statement of Claim".

The fundamental (and in the Defendants' view fatal) defect is that your client still has not complied with section 47A of the *Limitation Act 1935*. This was first brought to your attention by letter dated 28 December 2007. No leave has ever been granted to issue these proceedings.

Ultimately it is of course for the plaintiff to plead his own case. Nevertheless, the Draft Statement of Claim dated 30 June 2009 ("the Draft") is, in our opinion, defective and would, in its current form be liable to be struck out. Given that your client has obtained leave to file and serve a Statement of Claim my comments below are confined to the Draft, not to any subsequent document that may be filed and served.

As to the Draft its defect is it fails to disclose any reasonable cause of action.

By way of general comment:

1. The Plaintiff seeks damages, loss of profit and loss of opportunity to apply for a licence without pleading any legal basis for such a claim. It is pleaded in paragraph 33 of the Draft that these losses arose by virtue of the Defendants' failure to conduct the investigation referred to in the Draft. However, it is not pleaded anywhere in the Draft that there was any obligation, statutory or otherwise, to conduct such an investigation. The source of any obligation remains speculative. It is an abuse and frivolous to proceed as pleaded.

2. Even if an obligation to conduct an investigation was established, I note that paragraph 26 of the Draft, inconsistently with what is pleaded in paragraph 33, pleads and proceeds on the basis that an investigation was in fact conducted. Paragraph 26 of the Draft refers to the fact that the Plaintiff was advised by the Defendant that the investigation was finalised, the outcome was that the Plaintiff's claim was dismissed, a detailed response would be provided in the near future, the exemption would be not be renewed and First Defendant viewed the matter of the Plaintiff's lost right to fish in the Fishery as concluded. Paragraph 33 pleads a failure to conduct an investigation. It is not pleaded that any such investigation was inadequate. These paragraphs are clearly inconsistent and as pleaded are frivolous.
3. The only duty alleged is pleaded in paragraph 15 of the Draft. However, that alleges that there was a duty not to transfer the entitlement or deal with the entitlement without first notifying the Plaintiff. Nowhere is it pleaded that this duty was breached. Even if it was to be pleaded, obviously attempting to establish any cause of action rising from these facts would be statute-barred, since it is pleaded that these events occurred in May 1991 and proceedings were not commenced until October 1997.
4. Likewise it is not pleaded in paragraph 33 of the Draft or at all what legal obligation was breached by the making of the 2005 amendments (which I have assumed are the matters referred to in paragraph 27 of the Draft) so as to give the Plaintiff a right to damages.
5. The failure to identify a cause of action also means that it is not possible for the Defendants to determine when time begins to run for the purposes of any possible limitation period. This failure is embarrassing and prejudicial.
6. It is pleaded in paragraph 33 that the Plaintiff was prevented from operating within the Fishery consistent with the statements referred to in paragraph 23 of the Draft. However, the statements in paragraph 23 effectively state that the First Defendant offered to extend the Exemption to allow it to remain in force for the 2005 fishery season until the Department finalised its investigation into the issues. It appears from the pleadings that the Plaintiff was in fact entitled to continue fishing during the 2005 season in which case he was not prevented from operating in the Fishery in a manner consistent with the statements in paragraph 23, contrary to what is pleaded at paragraph 33. Further, if the statements in paragraph 23 only entitled an exemption for the 2005 season, on what basis is a loss of profit for the subsequent seasons claimed? Again these paragraphs are inconsistent and as pleaded are frivolous.
7. The sequence of events in paragraphs 27 to 32 is entirely confusing. The terms "amendment", "assurance" and "statement" are not referable to particular events. On one hand, it seems that the Plaintiff is complaining about the amendments made on 11 November 2005 (paragraph 27 and 32), yet paragraph 30 suggests that such amendments breached an assurance that no licence would be made available to or could be applied for by the Plaintiff. It is not clear what assurance is being referred to as the only assurances pleaded appear to refer to the very opposite (paragraph 28 and 29). In any event, again it is not at all clear what

cause of action is relied upon. These paragraphs are prejudicial, embarrassing and an abuse.

In addition to the failure to identify and plead a cause of action and the other defects mentioned above, there are numerous other problems with the Draft that render it embarrassing and liable to be struck out. I do not, however, intend to attempt a detailed critique of these issues when the cause of action is yet to be identified. In light of these comments, it is likely that I would receive instructions to apply to strike out the Draft, (should it be filed in its current form as the Statement of Claim) in its entirety and seek the costs of the same.

Finally, you should not proceed upon the assumption that even if you amended the Draft in light of the above or otherwise, the Defendants would not seek to strike out any filed Statement of Claim. My clients reserve their rights to make any such application following the filing of any Statement of Claim in the future.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Kate McDonald", written in dark ink.

KATE McDONALD
SENIOR ASSISTANT STATE COUNSEL



STATE SOLICITOR'S OFFICE

Westralia Square
141 St Georges Terrace
Perth Western Australia 6000

GPO Box B83 Perth WA 6838
Telephone (08) 9264 1888
DX 175

FACSIMILE TRANSMISSION

TO:	ATTENTION:	FAX NO:
LEASK & CO		9430 4044

SUBJECT:	PAXTON v MINISTER FOR FISHERIES & ANOR – SUPREME COURT ACTION CIV 2076 OF 2007
FROM:	KATE McDONALD
FAX NO.:	9264 1111
DATE:	4 September 2009
NO OF PAGES:	4 (INCLUDING COVER SHEET)

MESSAGE :

PLEASE TELEPHONE (08) 9264 1888 IF ALL PAGES ARE NOT RECEIVED OR ARE NOT LEGIBLE

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STATE SOLICITOR'S OFFICE

SSO Ref: 4301-07
Enquiries: Kate-McDonald
Telephone: 92641655
Direct Fax: 9264 1670
Email: k.mcdonald@sso.wa.gov.au

Westalia Square
141 St Georges Terrace
Perth, Western Australia 6000

GPO Box 683 Perth WA 6836
Telephone (08) 9264-1888
Fax (08) 9264 1440
DX 175

Date: 4 September 2009

Leask & Co
Barristers and Solicitors
PO Box 1161
FREMANTLE WA 6160

By facsimile: 9430 4044

Dear Sir

PAXTON V MINISTER FOR FISHERIES & ANOR
SUPREME COURT ACTION CIV 2076 OF 2007

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- 3 -

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Yours sincerely



KATE McDONALD
SENIOR ASSISTANT STATE COUNSEL

FACSIMILE FROM:

LEASK & CO.

BARRISTERS & SOLICITORS
ABN 11 113 988 134

26 CLIFF STREET FREMANTLE WESTERN AUSTRALIA 6160
PO Box 1161 FREMANTLE WESTERN AUSTRALIA 6959

TELEPHONE (08) 9430 6688
FACSIMILE (08) 9430 4044
E-MAIL: law@leask.com.au

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FROM	:	David Leask
OUR REF	:	1134/DL:gw
No.OF PAGES	:	1
DATE	:	26 August 2009
TO	:	STATE SOLICITOR'S OFFICE
ATTENTION	:	Eric Heenan
YOUR REF	:	4301/07
FACSIMILE No.	:	9264 1670

Dear Sirs

PAXTON v MINISTER FOR FISHERIES & Anor
SUPREME COURT ACTION CIV 2076 of 2007

We refer to the orders made by Master Sanderson in chambers on 25 August 2009.

May we respectfully request your comments in relation to the perceived defects in the draft statement of claim so that we might address these before 15 September 2009.

Yours faithfully


LEASK & CO

PAYTON & MUN FAMILIES

25/8/09

Cavan: Janderzon

M: JH

Depts: Ideaman.

Order:

1. Case removed from narrative cases list
2. Leave to P to pass J/C w/i 21 days ce by 15/8/09
3. Costs and reserved costs of app. to the Depts in any event.
- 4 - Any further interlocking apps. to be referred to MIC.

LEASK & CO.

BARRISTERS & SOLICITORS
ABN 11 113 988 134

26 CLIFF STREET FREMANTLE WESTERN AUSTRALIA 6160
PO Box 1161 FREMANTLE WESTERN AUSTRALIA 6959

TELEPHONE (08) 9430 6688
FACSIMILE (08) 9430 4044
EMAIL law@leask.com.au

State Solicitor's Office
141 St George's Terrace
PERTH WA 6000

Attention: Eric Heenan

Our Ref: 1334\DL:gw

Your Ref: 4301/07

19 August 2009

FILE COPY

Dear Sirs

PAXTON v MINISTER FOR FISHERIES & PETER ROGERS
SUPREME COURT ACTION CIV 2076 of 2007

We enclose by way of service the plaintiff's affidavit sworn 19 August 2009.

Yours faithfully

LEASK & CO

Encl

LEASK & CO.

BARRISTERS & SOLICITORS
ABN 11 113 988 134

26 CLIFF STREET FREMANTLE WESTERN AUSTRALIA 6160
PO Box 1161 FREMANTLE WESTERN AUSTRALIA 6959

TELEPHONE (08) 9430 6688
FACSIMILE (08) 9430 4044
EMAIL law@leask.com.au

Supreme Court of Western Australia
Civil Registry
Stirling Gardens
PERTH WA 6000

Our Ref: 1334\DL:gw

Your Ref:

19 August 2009

FILE COPY

Dear Sirs

PAXTON v MINISTER FOR FISHERIES & PETER ROGERS
SUPREME COURT ACTION CIV 2076 of 2007

We enclose for filing affidavit of Mark Ashley Paxton, sworn 19 August 2009.

Yours faithfully

LEASK & CO

Encl

FACSIMILE FROM:

LEASK & CO.

BARRISTERS & SOLICITORS
ABN 11 113 988 134

26 CLIFF STREET FREMANTLE WESTERN AUSTRALIA 6160
PO BOX 1161 FREMANTLE WESTERN AUSTRALIA 6959

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E-MAIL: law@leask.com.au

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FROM	:	David Leask
OUR REF	:	1134/DL:gw
No.OF PAGES	:	1
DATE	:	14 August 2009
TO	:	STATE SOLICITOR'S OFFICE
ATTENTION	:	
YOUR REF	:	4301/07
FACSIMILE No.	:	9264 1670

Dear Sirs

PAXTON v MINISTER FOR FISHERIES & Anor
SUPREME COURT ACTION CIV 2076 of 2007

Regrettably, the plaintiff has been unable to complete his affidavit due to his being engaged in an intensive training course which finishes today.

We will accordingly seek an extension of time for the filing of his affidavit, and that the matter be adjourned from 18 August 2009.

Yours faithfully



LEASK & CO

LEASK & CO.

BARRISTERS & SOLICITORS
ABN 11 113 988 134

26 CLIFF STREET FREMANTLE WESTERN AUSTRALIA 6160
PO Box 1161 FREMANTLE WESTERN AUSTRALIA 6959

TELEPHONE (08) 9430 6688
FACSIMILE (08) 9430 4044
EMAIL law@leask.com.au

Mr M Paxton
20 Livingstone Street
BEACONSFIELD WA 6162

Our Ref: 1334\DL:gw

Your Ref:

1 April 2008

FILE COPY

Mark

FISHERIES DEPARTMENT

Here is a first draft of the statement of claim.

Please check for factual accuracy and confirm which of the two copy letters contains "*the issues*" which were being investigated by the Department.

Yours sincerely



David Leask
LEASK & CO

Encl