



Allens Arthur Robinson

Date 22 October 2004
Page 1 of 6
From Guy Foster / Steven Fleming
To Mark O'Brien / Kate Fitzgerald, Gilbert + Tobin, Sydney
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Dear Sirs

Airservices Australia

We refer to your client's notice of motion, and attach, by way of service an affidavit of Thomas Grant sworn 21 October 2004. Please can you let us know whether or not Mr Grant is required to attend Court today for the purpose of cross-examination.

Yours faithfully



Guy Foster
 Partner
 Guy.Foster@aar.com.au
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Steven Fleming
 Senior Associate
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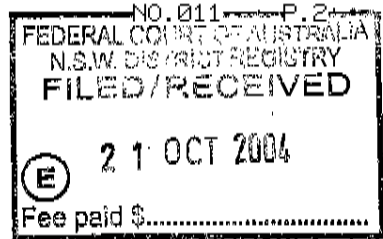
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**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY**

No NSDT351 of 2004

RICHARD HAROLD SMITH

Applicant

AIRSERVICES AUSTRALIA PTY LIMITED

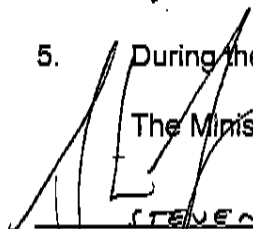
Respondent

**AFFIDAVIT OF THOMAS MORE ANTHONY GRANT
SWORN ON 21 OCTOBER 2004
(Order 14 rule 2)**

On 21 October 2004, I, THOMAS MORE ANTHONY GRANT of 25 Constitution Avenue, Canberra, in the Australian Capital Territory, Corporate Secretary, say on oath:

1. I am the Corporate Secretary of Airservices Australia Pty Limited (AA) and also AA's General Manager, Organisation Development Unit.
2. I am authorised to swear this affidavit on behalf of AA.
3. I have been shown a copy of the affidavit of Richard Harold Smith sworn on 20 October 2004.
4. On 20 October 2004 at 10am, Bernie Smith, Ken McLean and I represented AA at a meeting with the Honourable John Anderson, the Minister for Transport and Regional Services. Also in attendance at this meeting were Peter Marchi and Peter Langhorne (both from the Minister's office), Ken Matthews (by telephone, Secretary of the Department of Transport and Regional Services), Martin Dolan (First Assistant Secretary in the Department of Transport and Regional Services), Peter Yuile (Deputy Secretary Department of Transport and Regional Services), Kym Bills (Director of the Australian Transport Safety Bureau), Bruce Byron (Chief Executive Officer of CASA), and Mike Smith (Leader of the National Airspace System Implementation Group).
5. During the course of this meeting, there was a conversation to the following effect:

The Minister said


STEVEN FLEMING



Filed on behalf of: the Respondent

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"Could you the representatives of Airservices please tell me about the Dick Smith litigation. I understand that Gilbert and Tobin have suggested discontinuation of the proceedings on the basis that I am going to issue a direction to Airservices."

Bernie Smith said:

"This appears to be the thrust of Gilbert and Tobin's strategy"

I said:

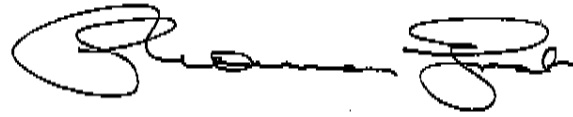
"I'm not sure that they used the word "Direction"."

The Minister said:

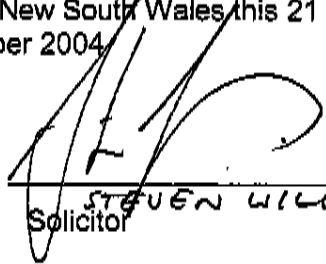
"I have no intention of issuing a Direction."

- 6. I believe that during the course of the meeting the Minister said on two other occasions that he had no intention of issuing a Direction to stop the implementation of Option 3 on 25 November 2004.
- 7. Exhibited and marked "TMAG1" is a copy of a letter dated 21 October 2004 to me from the Office of the Deputy Prime Minister and Minister for Transport and Regional Services Leader of the Nationals.

SWORN by **TOM GRANT** at Sydney in the State of New South Wales this 21 day of October 2004.



Before me



STEVEN WILLIAM FLEMING
Solicitor

**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY**

No 1351 of 2004

RICHARD HAROLD SMITH

Applicant


AIRSERVICES AUSTRALIA]

Respondent

**AFFIDAVIT – CERTIFICATE OF COMPLIANCE
(Order 14 rule 5A)**

I, Guy Foster, certify to the Court that the affidavit of THOMAS MORE ANTHONY GRANT Sworn on 21 October 2004 and filed on behalf of the respondent complies with Order 14 rule 2 of the Federal Court Rules.

Dated 21 October 2004



Guy Foster *on his employees*
Solicitor for the respondent *for under*

Stevens Fleming

Filed on behalf of: The Respondent

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**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY**

No 1351 of 2004

RICHARD HAROLD SMITH

Applicant

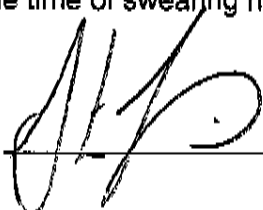
AIRSERVICES AUSTRALIA

Respondent

EXHIBIT NOTE

This is the exhibit marked 'TMAG1' produced and shown to THOMAS MORE ANTHONY GRANT at the time of swearing his affidavit this 21 October 2004.

Before me



STEVEN FLEMING

Filed on behalf of: The Respondent

Allens Arthur Robinson
Lawyers

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AIRSERVICES AUSTRALIA

ALLENS

002/002

21-10-04 9:46

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Office of the Deputy Prime Minister
and Minister for Transport and Regional Services
Leader of The Nationals

21 October 2004

Mr Tom Grant
General Manager
Organisational Development
Airservices
GPO Box 367
CANBERRA ACT 2601

via facsimile: 02 6268 5686

I am writing concerning what I understand to be Airservices legal representatives statement to the Court in the "Dick Smith" case, namely that the Minister would not issue a direction to stop the proposed National Airspace System changes.

It is a fact that the Minister did make such a statement, however it was clearly in the context of no further advice being provided to him between now and 25 November 2004 to the effect that neither the change process or the arrangements that will operate from 25 November 2004 are found to compromise safety. You will recall that there was considerable discussion about the advice from the Australian Government Solicitor in this regard.

Please advise the Court accordingly.

I would add that it would have been appropriate for Airservices to have informed the Minister of their intention to use his comments in such a public way, given that such comments were made to a group of officials in a private meeting.

Yours sincerely

Peter Langhorne
Chief of Staff

Parliament House, Canberra ACT 2600
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john.anderson.mp@aph.gov.au