

**SUPREME COURT OF QUEENSLAND**

REGISTRY: Brisbane  
NUMBER: BS 659/09

8659

Plaintiff: **CLASUL PTY LTD**  
**ACN 010 173 029**

AND

Defendant: **COMMONWEALTH OF AUSTRALIA**

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**REPLY**

Filed in the Brisbane Registry on 2010.

26 AUG 2010

The plaintiff relies on the following facts in reply to the Defence of the defendant:

1. As to paragraph 1 of the Defence:
  - 1.1 The plaintiff adopts the admissions contained in paragraph 1.1 of the Statement of Claim;
  - 1.2 As to paragraph 1.2 of the Defence:
    - (a) The plaintiff adopts the admissions that the Parliament of the Commonwealth is empowered by s51(viv) of the Constitution to make laws for the peace, order and good government of the Commonwealth with respect to quarantine;
    - (b) Joins issue in respect of the matters otherwise denied in paragraph 1.2 of the Defence as the plaintiff is uncertain of the truth or otherwise of the allegation contained therein and repeats and relies upon the matters alleged in paragraph 1.2 of the Statement of Claim;
  - 1.3 Joins issue in respect of the matters denied in paragraph 1.3 as the plaintiff is uncertain as to the truth or otherwise of the allegations contained therein;
  - 1.4 Joins issue in respect of the matters denied in paragraph 1.4 as the plaintiff is uncertain of the truth or otherwise of the allegation contained therein;
  - 1.5 Joins issue in respect of the allegations contained in paragraph 1.5 that the plaintiff is unaware of the truth or otherwise of the allegations contained therein;

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Reply  
Filed on behalf of the plaintiff

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- 1.6 Joins issue in respect of the matters raised in paragraph 1.6 as the plaintiff is uncertain of the truth or otherwise of the allegations contained therein;
  - 1.7 Joins issue in respect of the matters raised in paragraph 1.7 as the plaintiff is uncertain of the truth or otherwise of the allegations contained therein;
  - 1.8 As to paragraph 1.8 of the Defence:
    - (a) Adopts the admissions contained in paragraph 1.8(a);
    - (b) Joins issue in respect of the matters raised in paragraph 1.8(b) as the plaintiff is uncertain of the truth of the matters contained therein.
  - 1.9 Adopts the admissions contained in paragraph 1.9(a), (b) and (c) and joins issue in respect of the matters denied in paragraph 1.9 and repeats and relies upon the allegations contained in paragraph 1.9 of the Statement of Claim;
  - 1.10 As to paragraph 1.10 of the Defence, the plaintiff joins issue in respect of the matters denied therein as the plaintiff is uncertain of the truth or otherwise of the allegations contained therein;
  - 1.11 The plaintiff joins issue in respect of the matters not admitted in paragraph 1.11;
  - 1.12 The plaintiff joins issue in respect of the matters not admitted in paragraph 1.12;
  - 1.13 The plaintiff adopts the admissions contained in paragraph 1.13 of the Statement of Claim;
  - 1.14 The plaintiff joins issue in respect of the matters denied in paragraph 1.14 and repeats and relies upon the allegations contained in the Statement of Claim;
  - 1.15 The plaintiff joins issue in respect of the matters denied in paragraph 1.15 as the plaintiff is uncertain of the truth or otherwise of the allegations contained therein.
2. The plaintiff adopts the admissions contained in paragraph 2 of the Defence.
  3. The plaintiff adopts the admissions contained in paragraph 3 of the Defence.
  4. As to paragraph 4 of the Defence, the plaintiff joins issue in respect of the matters raised therein and repeats and relies upon paragraph 4 of the Statement of Claim.
  5. As to paragraph 5 of the Defence:
    - 5.1 The plaintiff adopts the admissions contained in paragraphs 5(a) and (b);
    - 5.2 Admits that Dr Widders also attended the meeting in or about October 2004;

- 5.3 Joins issue in respect of the matters not admitted at paragraph 5(d) of the Defence.
6. The plaintiff adopts the admissions contained in paragraph 6 of the Defence.
7. The plaintiff adopts the admissions contained in paragraph 7 of the Defence.
8. The plaintiff adopts the admissions contained in paragraph 8 of the Defence.
9. As to paragraph 9 of the Defence:
  - 9.1 The plaintiff joins issue in respect of the matters raised in paragraph 9(a) as the plaintiff is uncertain of the truth of the matters contained therein;
  - 9.2 Adopts the admissions contained in paragraph 9(b)(i) and (ii);
  - 9.3 Joins issue in respect of the matters denied in paragraphs 9(b)(iii) – (v) and repeats and relies upon the allegations contained in paragraphs 9.3, 9.4, 9.5 and 9.6 of the Statement of Claim.
10. As to paragraph 10 of the Statement of Claim, the plaintiff:
  - 10.1 Adopts the admissions contained in paragraph 10(a);
  - 10.2 Joins issue in respect of the matters otherwise denied in paragraphs 10(b) and (c) of the Defence.
11. As to paragraph 11 of the Defence, the plaintiff joins issue in respect of the matters raised therein as the plaintiff is uncertain of the truth of the matters alleged.
12. As to paragraph 12 of the Defence, the plaintiff adopts the admissions contained therein and joins issue in respect of the matters otherwise denied.
13. As to paragraph 13 of the Defence the plaintiff:
  - 13.1 Joins issue in respect of the matters not admitted in paragraph 13.1 and adopts the admission that no audit was conducted in paragraph 13.1(b);
  - 13.2 Joins issue in respect of the matters raised in paragraph 13.2 and repeats and relies upon the matters alleged in paragraph 13.2 of the Statement of Claim;
  - 13.3 Joins issue in respect of the matters not admitted in paragraph 13.3;
  - 13.4 Adopts the admissions contained in paragraph 13.4(a) and joins issue in respect of the matters otherwise denied in paragraphs 13.4(b) and (c);
  - 13.5 Joins issue in respect of the matters not admitted in paragraph 13.5;
  - 13.6 Joins issue in respect of the matters raised in paragraph 13.6(a) and admits that the New South Wales Regional Manager of AQIS was unaware of the live horses work instruction and did not take steps to

ensure that the Quarantine Officers were aware of the live horses work instruction and had access to it;

- 13.7 Joins issue in respect of the matters denied in paragraph 13.7(a) as the plaintiff is uncertain of the truth or otherwise of the allegations contained therein and otherwise adopts the admissions contained therein;
  - 13.8 Joins issue in respect of the matters admitted in paragraph 13.8(a) and denies the allegations contained at paragraph 13.8(b) and repeats and relies upon the allegations contained in paragraph 13.8 of the Statement of Claim;
  - 13.9 Joins issue in respect of the matters denied in paragraph 13.9(a) as the plaintiff is uncertain of the truth or otherwise of the allegations contained therein and joins issue in respect of the matters not admitted in paragraphs 13.9(b) and (c);
  - 13.10 Joins issue in respect of the matters denied in paragraph 13.10(a) as the plaintiff is uncertain of the truth or otherwise of the allegations contained therein and joins issue in respect of the matters not admitted in paragraphs 13.10(b) and (c);
  - 13.11 Joins issue in respect of the matters denied in paragraph 13.11(a) as the plaintiff is uncertain of the truth or otherwise of the allegations contained therein and joins issue in respect of the matters not admitted in paragraphs 13.11(b) and (c).
14. The plaintiff adopts the admissions contained in paragraph 14 of the Defence.
  15. The plaintiff adopts the admissions contained in paragraph 15 of the Defence.
  16. The plaintiff adopts the admissions contained in paragraph 16 of the Defence.
  17. As to paragraph 17 of the Defence:
    - 17.1 The plaintiff adopts the admissions contained in paragraph 17.1 and joins issue in respect of the matters not admitted, being the allegation that the Japanese horses were housed in the same stalls as other intakes of imported horses from the USA and Europe;
    - 17.2 Adopts the admissions contained in paragraph 17.2;
    - 17.3 Adopts the admissions contained in paragraph 17.3;
    - 17.4 Joins issue in respect of the matters denied in paragraph 17.4 and repeats and relies upon the allegations contained in paragraph 17.4 of the Statement of Claim;
    - 17.5 Joins issue in respect of the matters denied in paragraph 17.5 and repeats and relies upon the allegations contained in paragraph 17.5 of the Statement of Claim;

18. The plaintiff joins issue in respect of the matters denied in paragraph 18 of the Defence as the plaintiff is uncertain of the truth or otherwise of the allegations contained therein.
19. As to paragraph 19 of the Defence, the plaintiff joins issue in respect of the matters denied therein and repeats and relies upon the allegations contained in paragraph 19 of the Statement of Claim.
20. As to paragraph 20 of the Defence, the plaintiff joins issue in respect of the matters denied therein and repeats and relies upon the allegations contained in paragraph 20 of the Statement of Claim.
21. As to paragraph 21 of the Defence, the plaintiff:
  - 21.1 Joins issue in respect of the matters raised in paragraph 21.1 of the Defence and repeats and relies upon the allegations contained in paragraph 21.1 of the Statement of Claim;
  - 21.2 Joins issue in respect of the matters denied in paragraph 21.2 of the Defence and repeats and relies upon the matters referred to in paragraph 21.2 of the Statement of Claim;
  - 21.3 Adopts the admissions contained in paragraph 21.3(a) of the Defence and joins issue in respect of the matters otherwise denied;
  - 21.4 Joins issue in respect of the matters denied in paragraph 21.4 of the Defence;
  - 21.5 Adopts the admissions contained in paragraph 21.5(b) of the Defence and joins issue in respect of the matters otherwise denied;
  - 21.6 Joins issue in respect of the matters denied in paragraph 21.6 of the Defence;
  - 21.7 Joins issue in respect of the matters denied in paragraph 21.7 of the Defence.
22. As to paragraph 22 of the Defence, the plaintiff adopts the admissions contained in paragraph 22(a) and joins issue in respect of the matters denied at paragraph 22(b).
23. As to paragraph 23 of the Defence, the plaintiff joins issue in respect of the matters not admitted therein.
24. As to paragraph 24 of the Defence, the plaintiff joins issue in respect of the matters not admitted therein.
25. As to paragraph 25 of the Defence, the plaintiff joins issue in respect of the matters not admitted and otherwise denied therein.
26. As to paragraph 26 of the Defence, the plaintiff joins issue in respect of the matters not admitted therein.
27. As to paragraph 27 of the Defence, the plaintiff joins issue in respect of the matters not admitted therein.

28. As to paragraph 28 of the Defence, the plaintiff joins issue in respect of the matters not admitted therein.
29. As to paragraph 29 of the Defence, the plaintiff:
- 29.1 Joins issue in respect of the matters denied in paragraph 29(a) and 29(c);
- 29.2 Joins issue in respect of the matters not admitted in paragraph 29(b) and 29(d).

### Immunity

30. As to paragraph 30 of the Defence, the plaintiff admits that section 82(1) of the *Quarantine Act, 1908* (Cth) relieves the Minister, Director of Animal & Plant Quarantine and other persons from liability to any action, suit or other civil proceeding in circumstances as prescribed by the Act.
31. As to paragraph 31 of the Defence, the plaintiff denies the matters raised therein and says further:
- 31.1 The protection provided by section 82(1) of the Act does not extend to the wrongful acts or omissions of the defendant in the circumstances pleaded in the Statement of Claim; and
- 31.2 The defendant is thereby liable for any such wrongful act or omission.

### Proportionate Liability

32. As to paragraph 32 of the Defence, the plaintiff joins issue in respect of the matters raised therein as the plaintiff is uncertain of the truth or otherwise of the allegations based on current enquiries and is undertaking further investigations in respect of the allegations.

Signed:

  
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Description:

Solicitors for the plaintiff

Dated:

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This pleading was settled by Mr Couper QC, Mr Gerard Mullins and Mr Charrington of Counsel.