

IN THE FEDERAL COURT OF AUSTRALIA )  
WESTERN AUSTRALIA DISTRICT REGISTRY )

No. W151 of 2002

B E T W E E N:

OLBERS CO. LTD.

Applicant

-and-

THE COMMONWEALTH OF  
AUSTRALIA

First Respondent

-and-

AUSTRALIAN FISHERIES  
MANAGEMENT AUTHORITY

Second Respondent

### REPLY

1. The Applicant repeats the Amended Statement of Claim and joins issue with the Respondents on their Amended Defence (“the Defence”).
2. As to paragraphs 6, 12, 19, 20, 22, and 26 of the Defence, the Applicant says:
  - (1) automatic forfeiture of a foreign boat, net, trap, equipment, or fish as provided in section 106A of the Act can occur only when a person has been convicted of at least one of the offences enumerated at section 106A(a) of the Act in respect of such foreign boat, net, trap, equipment, or fish (“conviction”);

- (2) an officer acting pursuant to the Act has directed or ordered the foreign boat to stop whilst that foreign boat was within the AFZ; and
- (3) the pursuit was not terminated or interrupted at any time before the officer concerned arrived at such a place with a view to exercising that power.

4. Further to paragraph 3(2) herein, and consequent upon the admissions by the Respondents at paragraph 8 of the Defence that:

- (a) *“no direct order to stop was issued to the Vessel within the AFZ”;* and
- (b) the first message as therein pleaded *“...was transmitted at 1205 hours when the vessel was approximately 0.5 nautical miles outside the AFZ”*,

there was no lawful basis for any exercise of any power under section 84(1) of the Act by the Respondents in respect of the Vessel, its nets, traps, equipment, or catch.

5. As to paragraph 9 of the Defence, the Applicant says that any exercise of a power under either section 84(1)(g)(i), (ii) or (iii) of the Act requires that an officer purporting to exercise such a power must have, *at or immediately before* the exercise of the purported power under section 84(1)(g)(i), (ii) or (iii), the reasonable grounds for belief required under the relevant paragraph(s) of section 84(1)(g) of the Act. Further, the Applicant repeats paragraphs 3 and 4 herein.
6. As to paragraph 16 of the Defence, the Applicant says that any exercise of a power under section 84(1)(a) of the Act requires that the officer purporting to exercise such a power must have, *at or immediately before* the exercise of the purported power to search or break open a hold under section 84(1)(a)(i) or (ii), reasonable grounds to believe that the boat in respect of which the power is to be exercised has been used, is being used

or is intended to be used for fishing in the AFZ, and further the Applicant repeats paragraph 3 herein.

Dated this 6<sup>th</sup> day of November 2002

*C.P. Shanahan*

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Counsel  
CP Shanahan