

WA Fines Enforcement Race Discrimination Class Action

FEDERAL COURT OF AUSTRALIA

NOTICE TO GROUP MEMBERS:

COMMENCEMENT OF CLASS ACTION AND OPT OUT RIGHTS

PLEASE READ CAREFULLY

A. Why is this notice important?

1. The Estate of the late Ms Julieka Dhu and Ms Keennan Dickie are the lead applicants (**Applicants**) in a class action brought against the State of Western Australia (**State**) in the Federal Court of Australia. The class action was started in January 2022. It is called Sherona Roe and David Ferreira as co-administrators of the Estate of the Late Ms Julieka Dhu & Anor v The State of Western Australia (No. WAD5/2022).
2. Ms Dhu and Ms Dickie, both Aboriginal women, were jailed pursuant to warrants of commitment issued under *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) (**FPINE Act**) in respect of unpaid court fines. The Applicants allege that the manner in which the FPINE Act was administered by the State and the subsequent imprisonment of Ms Dhu and Ms Dickie pursuant to its terms amounted to unlawful racial discrimination and false imprisonment.
3. **If you are an Aboriginal or a Torres Strait Islander person who was imprisoned in Western Australia for any amount of time between 1 January 2014 and 30 September 2020 pursuant to a warrant of commitment issued under the FPINE Act because you did not pay a court fine, you may be a group member and should read this notice carefully.**
4. This notice is an important document which may affect your legal rights. You should read it carefully. It contains important information about:
 - (a) What a class action is (see section B below).
 - (b) What this class action is about (see section C below).
 - (c) How to tell whether you are a group member in this class action and what it means to be a group member (see sections D and E below).
 - (d) Whether group members will have to pay for this class action, and how it is funded (see sections F and G below).

- (e) Your right to “opt out” of the class action, what opt out is, and how you can opt out of this class action (see sections H and I below).
- 5. The Federal Court has ordered that this notice be published for the information of persons who are members of the group on whose behalf the action is brought and who may be affected by the action.
- 6. Any questions you have about the matters contained in this notice should not be directed to the Court. If there is anything in this notice that you do not understand, you should seek legal advice or contact Levitt Robinson Solicitors by telephone on (02) 9286 3133 (ask to speak about the WA Fines Enforcement matter) or by email at WAFines@levittrobinson.com.

B. What is a class action?

- 7. A class action is a type of court proceeding that is brought by one or more people (called “applicants”) on their own behalf and on behalf of a wider group of people who have similar claims (called “group members”). The person they sue is called the “respondent”.
- 8. Group members in a class action are not individually responsible for any legal costs associated with bringing the class action if the class action is unsuccessful. If you are a group member, you may only be required to pay legal costs if the class action is successful. Any legal costs you may be required to pay will not exceed the amount you may receive by being a part of the class action.
- 9. Group members are “bound” by the outcome in the class action unless they have **opted out** of the proceeding. This means that if you **do not** opt out:
 - (a) You may be able to share in any compensation or other benefit arising from a settlement of the class action;
 - (b) If the class action proceeds to a trial and is successful, you may be able to share in any damages awarded by the Court;
 - (c) You will be bound by the dismissal of the case if the class action fails; and
 - (d) You will not be able to sue about the matters that are the subject of the class action in separate legal proceedings.
- 10. A result that binds group members can happen in two ways — either by a judgment following a trial, or by a settlement at any time.
- 11. In a judgment following a trial, the Court will decide various factual and legal issues relating to the claims made by the Applicants and group members. Unless those decisions are successfully appealed, they bind the Applicants, group members and the Respondent.

12. Importantly, if there are other legal proceedings between a group member and the State, it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in this class action.
13. In a settlement of a class action, if the settlement provides for compensation to group members, then the settlement terms may also extinguish all rights to compensation which a group member might have against the State arising in any way out of the events or transactions which are the subject matter of the class action. A settlement will not be allowed by the Court unless the Court considers that it is a fair and reasonable settlement having regard to the interests of the group members. If a settlement is approved by the Court, all group members who have not opted out of the proceeding will be bound by the settlement.
14. If you think that you have claims against the State which are based on your individual circumstances, or that you have claims in addition to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action before the deadline for opting out (see further section E and I below).

C. What is this class action about?

15. As set out in paragraphs 1 to 2, the Applicants in this class action are the co-administrators of the Estate of the late Ms Julieka Dhu, an Aboriginal woman, and Ms Keennan Courtney Dickie, also an Aboriginal woman, both of whom were imprisoned pursuant to warrants of commitment issued under the FPINE Act for non-payment of court fines.
16. The Respondent in the class action is the State.
17. In the class action, the Applicants make allegations about the Western Australian fines enforcement system during the period 1 January 2014 to 28 September 2020.
18. In particular, the Applicants allege that the way in which the Western Australian Fines Enforcement Registry issued warrants of commitment under the FPINE Act during that period:
 - (a) constituted unlawful discrimination under section 9(1) of the *Racial Discrimination Act 1975* (Cth) and/or by reason of the operation of section 10(1) of that Act; and
 - (b) resulted in the unlawful arrest, detention and/or imprisonment of Aboriginal or Torres Strait Islander persons.

19. The Applicants claim compensation on behalf of Ms Dickie and the group members for unlawful discrimination, unlawful detention and imprisonment, and false imprisonment. They also seek declaratory relief.
20. The State denies the allegations and is defending the proceeding.
21. The Applicants' claims are set out more fully in their Further Amended Originating Application and Second Further Amended Statement of Claim, copies of which can be obtained from Levitt Robinson on request or read and downloaded on Levitt Robinson's website: [Further Amended Originating Application](#) [Second Further Amended Statement of Claim](#)

D. Are you a group member?

22. Group members in the class action are Aboriginal or Torres Strait Islander persons:
 - (a) who were arrested and detained and/or imprisoned in Western Australia for any period of time between 1 January 2014 and 30 September 2020; and
 - (b) whose arrest, detention or imprisonment was because of one or more warrants of commitment issued by the Registrar of the Western Australian Fines Enforcement Registry under section 53 or section 55D(1)(c) and (f) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) during the period 1 January 2014 to 28 September 2020.
23. If you are unsure whether or not you are a group member, you should contact Levitt Robinson Solicitors on (02) 9286 3133 (ask to speak about the WA Fines Enforcement matter) or email Wafines@levittrobinson.com, or seek your own legal advice without delay.

E. What does it mean to be a group member?

24. A class action will usually affect the legal rights of group members in relation to the claims that are covered by the action.
25. If the class action results in a settlement or judgment in favour of the Applicants and group members, the group members are likely to be entitled to share any money compensation that is ordered to be paid. The payments they receive will resolve and finalise the group members' own claims against the Respondent.
26. On the other hand, if the class action is not successful, the group members will be treated as if they had started their own court cases and were unsuccessful. This means that the group members will not be able to make another claim about the same issues.

F. How is the class action being funded?

27. The Applicants in the WA Fines Enforcement Race Discrimination Class Action have engaged Levitt Robinson Solicitors to run the case.
28. Levitt Robinson will run up fees for the work done by its solicitors and other staff (**legal costs**). Levitt Robinson will also pay various out-of-pocket costs associated with the class action, like court fees, witness fees, barristers' fees and other costs (called "**disbursements**").
29. Levitt Robinson has agreed with its clients that it will run the class action on a "no win, no fee" basis. This means that Levitt Robinson's clients will not pay for legal costs and disbursements unless and until the class action results in a settlement or judgment requiring the Respondent to pay compensation or costs.
30. If there is such a settlement or judgment, the money paid by the State will be used:
 - (a) to pay Levitt Robinson the amount of legal costs and disbursements incurred, but only to the extent that the Court assesses those costs and disbursements as being reasonable;
 - (b) to pay the remaining sum to the Applicants and group members (provided each are entitled to compensation) in accordance with the terms of any settlement agreement or judgment, in a process approved and supervised by the Court.

G. Do group members have to pay legal costs?

31. You **will not become liable for any legal costs** simply by remaining as a class member for the determination of the common questions. However:
 - (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Levitt Robinson Solicitors or other lawyers to do that work for you. A copy of the terms on which Levitt Robinson Solicitors are acting in the class action may be obtained from them by calling (02) 9286 3133 (ask to speak about the WA Fines Enforcement matter) or via email Wafines@levittrobinson.com;
 - (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicants in running the class action but which are not able to be recovered from the Respondent; and

- (c) class actions are often settled out of court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer.

H. What is “Opt Out”?

- 32. The Applicants in a class action do not need the permission of group members to begin a class action on their behalf, but group members can stop being group members by opting out of the class action. The way you can opt out is explained below.

I. How can you opt out of the class action and what will happen if you do?

- 33. If you opt out of the class action:
 - (a) You **WILL NOT** receive any compensation if the State agrees to pay compensation as part of any settlement of the class action; and
 - (b) You **WILL NOT** be bound by, or entitled to share in any benefit of, any order, judgment or other settlement of the class action; and
 - (c) You **WILL** be able to bring your own claim against the State, provided that you issue court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the State, you should seek your own legal advice about your claim and the legal costs involved and the applicable time limit before opting out.
- 34. If you do not opt out, then:
 - (a) You **WILL** be able to share in any compensation or other benefit arising from any settlement of the class action, subject to Court approval; and
 - (b) If the class action proceeds to a trial and is successful, then you **MAY** be able to share in any Court-awarded damages; and
 - (c) You **WILL** be bound by the dismissal of the case if the class action fails; and
 - (d) You **WILL NOT** be able to sue about the matters that are the subject of the class action in separate legal proceedings.
- 35. **If you wish to remain** a group member, **you must not** opt out of the class action.
- 36. **If you do not wish to remain** in the class action, you **must opt out** by completing an “**Opt Out Notice**” in the form attached to this notice and marked “Attachment A”, then returning it to the Registrar of the Federal Court of Australia, Western Australia District Registry via email to perth.registry@fedcourt.gov.au or by post to Peter Durack Commonwealth Law Courts Building, 1 Victoria Avenue,

Perth WA 6000. **IMPORTANT: if you want to opt out, the Notice must reach the Registrar by no later than 4pm AWST on 11 April 2025**, otherwise it will not be effective.

37. **You are free to make up your own mind** whether to submit an Opt Out Notice or do nothing and therefore remain a group member. You can also take advice about your options and the information contained in this Notice. Further information can be obtained by contacting Levitt Robinson, or any other lawyer of your choice.

J. How can you become a registered group member?

38. If you wish to remain a group member, there is nothing you need to do now. The Applicants will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicants and group members. However, if you would like to register as a group member and receive updates about the progress of the class action, you can contact Levitt Robinson Solicitors by phone on (02) 9286 3133 (ask to speak about the WA Fines Enforcement matter) or by email at WAFines@levittrobinson.com.

K. Do you need more information?

39. Copies of relevant documents, including the Further Amended Originating Application and Second Further Amended Statement of Claim filed by the Applicants, may be obtained by:
- (a) emailing WAFines@levittrobinson.com and requesting copies;
 - (b) contacting the Western Australia District Registry of the Federal Court (contact details are available at www.fedcourt.gov.au) and paying the appropriate inspection fee; or
 - (c) inspecting them on the Levitt Robinson website at: <https://www.levittrobinson.com/class-actions>.
40. Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Levitt Robinson Solicitors on (02) 9286 3133 (ask about the WA Fines Enforcement matter) or WAFines@levittrobinson.com, or seek your own legal advice. **You should not delay in making your decision.**

“Attachment A”

Complete and return ONLY if you do NOT want to be a part of the class action

Form 21
Rule 9.34

Opt out notice

No. WAD 5 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

SHERONA ROE AND DAVIN FERREIRA AS CO-ADMINISTRATORS OF THE ESTATE OF THE LATE MS JULIEKA DHU and another

Applicants

THE STATE OF WESTERN AUSTRALIA

Respondent

To: The Registrar
Federal Court of Australia
Western Australia District Registry
Peter Durack Commonwealth Law Courts Building
1 Victoria Avenue
Perth WA 6000

OR by email to perth.registry@fedcourt.gov.au

The person named below as a group member in this representative proceeding gives notice, under section 33J of the *Federal Court of Australia Act 1976*, that the group member is opting out of the representative proceeding.

Name of group member:	
Telephone number:	
Email address:	

Date:

Signed: