

<b>FILE NO</b> :	<b>2023/124390</b>
<b>PARTIES</b> :	<b>Mark FAHEY v Anglican Community Services Investment Holdings Pty Ltd t/as Anglicare Sydney</b>
<b>DIVISION</b> :	Common Law
<b>DATES</b> :	9.2.2024
<b>CORAM</b> :	Garling J

**GARLING J MAKES THE FOLLOWING ORDERS:**

**Opt Out Notice**

- 1 Order, pursuant to section 162(1) of the *Civil Procedure Act 2005* (NSW) (**CP Act**), that the time and date before which a group member must opt out of this proceeding is fixed as **4:00pm on 3 May 2024 (Opt Out Date)**.
- 2 Order that, the form and content of the Important Public Notice attached to these Orders be approved for the purposes of section 176 of the CP Act as the notice that must be given to group members pursuant to section 175(1)(a) of the CP Act.
- 3 Order, pursuant to section 183 of the CP Act, that the Opt Out Notice attached to these Orders be approved for this proceeding for the purpose of rule 58.2(1) of the *Uniform Civil Procedure Rules 2005* (NSW) (**UCPR**).
- 4 Order that, pursuant to sections 176 and 183 of the CP Act, notice is to be given no later than **4:00pm on 15 March 2024** by:
  - (a) The First Defendant:
    - i. Emailing and posting the Important Public Notice and Opt out Notice to those recorded next of kin the First Defendant holds contact details for, as enclosures in a plain coloured envelope, and the envelope is to be devoid of text other than the addressee details and the return address of the First Defendant; and
    - ii. Placing the Important Public Notice on its website from **4:00pm on 15 March 2024** to **4:00pm on 3 May 2024**.
  - (b) Shine Lawyers:
    - i. Emailing and posting the Important Public Notice and Opt Out Notice to each of the close family members who have registered their interest in the proceedings with Shine Lawyers as enclosures in a plain coloured envelope, and the envelope is to be devoid of text other than the addressee details and the return address of Shine Lawyers; and
    - ii. Placing the Important Notice on its website from **4:00pm on 15 March 2024** to **4:00pm on 3 May 2024**.
- 5 For the purposes of the email distribution in accordance with order 4 above, the First Defendant and Shine Lawyers, will cause a copy of the Important Public Notice and Opt Out Notice to be attached to an email with the subject line: *"Newmarch House Class Action"* and the covering email as follows:

Dear [FIRST NAME] [LAST NAME],

*A representative proceeding has been commenced in the Supreme Court of New South Wales against Anglican Community Services trading as Anglicare Sydney and Nepean Blue Mountains Local Health District arising out of the injury and loss alleged to have been suffered by close family members of*

*residents of Newmarch House Aged Care Facility who it is claimed died as a result of contracting coronavirus (COVID-19) following an outbreak between 18 April 2020 and 19 May 2020.*

*You are receiving this notice because you may be a Group Member. If you are aware of any other family members that may be a Group Member, you should forward them a copy of this notice.*

*Please see attached an important notice from the Supreme Court of New South Wales.*

*The Supreme Court of New South Wales has ordered that this notice be sent to certain individuals who might be considered a Group Member who may be affected by the proceeding.*

*As explained in the attached notice, you may do one of three things in response to the notice.*

*Please do not reply to this email.*

*If you have any questions about the notice, please direct them to Shine Lawyers, whose contact details are in the notice or seek your own legal advice.*

- 6 Order that, for the purpose of rule 58.2(1) of the UCPR, a group member who wishes to opt out of the proceeding must do so by filing an Opt Out Notice in the Court by the Opt Out Date.
- 7 Order that, if, on or before the Opt Out Date, the solicitors for any party to this proceeding receive a notice purporting to be an Opt Out Notice referable to this proceeding, the solicitors must file the notice in the Registry within 2 business days after receipt, and the notice shall be treated as an Opt Out Notice received by the Court at the time it was received by the solicitors.
- 8 Order that, on or before 29 March 2024, the First Defendant and the Plaintiff's solicitors file and serve affidavits as to compliance with Order 7.
- 9 Order that, the solicitors for the parties have leave to inspect the Court file and to copy any Opt Out Notice filed by any group member.

## **Discovery**

- 10 On or before 20 February 2024, the plaintiff and second defendant shall respond to the first defendant's correspondence dated 17 August 2023 and 30 September 2023 (proposal for the electronic document platform to be used in this proceeding).
- 11 I note that on or before 19 February 2024, a letter will be sent to the Coroner hearing the Investigation into the death of Catherine Adam & Ors (Case Number 2020/192802) (**Inquest**) for the purpose of confirming whether:
  - (a) the Coroner is willing to agree to permit the parties to treat the Brief of Evidence and Exhibits tendered in the Inquest as material disclosed for the purpose of this proceeding; and
  - (b) whether the parties, or the Coroner, will need to procure consent from any interested party to the Inquest in relation to agreeing that the Brief of Evidence and any Exhibits in the Inquest will be material disclosed for the purpose of this Proceeding.

- 12 By 15 March 2024, the parties are to confer in relation to, and exchange, any further categories or classes of documents required by way of discovery (**Further Categories**).
- 13 By 29 March 2024, the parties are to confer in relation to the Further Categories, with a view to agreeing a proposed form of Further Categories.
- 14 By 4.00 on 12 April 2024, the parties to provide to the Associate to Garling J either an agreed form of proposed Further Categories or, if there is no agreement between the parties following conferral, then file and serve their proposed Further Categories and any supporting affidavits and outlines of submissions they wish to rely upon.

#### **Common questions**

- 15 By 4.00pm on 8 March 2024, the plaintiff to serve on the defendants his proposed list of common questions.
- 16 By 4.00pm on 29 March 2024, the defendants are to serve on the plaintiff their proposed amendments, if any, to the plaintiff's proposed list of common questions.
- 17 By 12 April 2024, the parties to provide to the Associate to Garling J either an agreed form of common questions or each parties' proposed common questions
- 18 By 12 April 2024, the parties are to confer regarding the need for sample group members.

#### **Mediation**

- 19 Order, pursuant to s 26 of the *Civil Procedure Act* 2005 (NSW), that the whole of the proceedings be referred for mediation to be conducted in accordance with Part 4 of the *Civil Procedure Act*.
- 20 Note that the parties agree that pursuant to section 28 of the CP Act, the mediation costs are to be paid in equal shares between the parties.
- 21 Direct pursuant to Pt 4 of the CPA, and for the purposes of the mediation only, that the plaintiff is to serve on or before 29.4.2024, on each of the defendants, by letter, the particulars of the claim for damages for each individual plaintiff and group member from whom the solicitor for the plaintiff presently has instructions, of the particulars set out in r 15.12(2)(a and b) and the particulars referred to in r 15.12(4), (5) and (6) insofar as those particulars and documents are capable of being either ascertained or made available.
- 22 Direct that service in accordance with this order is to be made sequentially, ie as soon as practicable after each set of particulars has been obtained.

#### **Directions**

- 23 The matter be listed for a further directions hearing before Garling J on 10 May 2024 and for the determination of any issues relating to discovery or common questions, and sample group members.
- 24 There be liberty to apply on three days' notice.