

<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>NEXT LISTING:</b>	<b>Garling J – approval 10am on 2.5.2025</b>

## **GARLING J MAKES THE FOLLOWING ORDERS:**

### **Settlement Approval Application**

1. On or before 12 December 2024, the Plaintiff file and serve an interlocutory application seeking orders approving (a) the proposed settlement of the proceeding pursuant to s 173 of the *Civil Procedure Act 2005* (NSW) (**the CPA**), (b) the dismissal of the proceeding and (c) the distribution of the settlement pursuant to the proposed Settlement Deed (**Settlement Approval Application**).
2. The Settlement Approval Application be listed for hearing before Garling J on 2 May 2025, noting that if dates become available in April, the hearing date may be brought forward.

### **Timing and mode of distribution of Settlement Notice**

3. On or before 4 December 2024:
  - (a) the Plaintiff provide to the Court a proposed form of notice to Group Members in respect of the Settlement Approval Application (**Settlement Notice**) (including a Notice of Objection) agreed by the Plaintiff and the Defendants, and a proposed minute of order for the Court to approve the same and the mode of its distribution pursuant to ss 175 and 176(1) of the CPA; and
  - (b) should the Plaintiff and the Defendants be unable to reach agreement as to the form of the Settlement Notice, the Plaintiff and the Defendants provide to the Court a brief outline as to the form and content of the Settlement Notice.
4. Pursuant to ss 175(4)-(5) and 176(2) of the CPA, following approval by the Court and by no later than 13 December 2024, the Plaintiff's solicitors:
  - (a) send by email a copy of the Settlement Notice to each Group Member who has retained them to act on their behalf in the proceedings or who has registered with them;
  - (b) publish a copy of the Settlement Notice on the Shine Lawyers website at <https://www.shine.com.au/service/class-actions/newmarch-house-coronavirus-class-action> for the period from 13 December 2024 to 14 February 2025;
  - (c) publish a copy of the Amended Statement of Claim and the Defences on the Shine Lawyers website at <https://www.shine.com.au/service/class-actions/newmarch-house-coronavirus-class-action> for the period from 13 December 2024 to 14 February 2025; and
5. The costs of and incidental to the procedure set out in Order 4 be paid by the Plaintiff in the first instance or on their behalf, but otherwise shall be costs in the proceeding. For the avoidance of doubt, answering enquiries by Group Members and members of the public in relation to the Settlement Notice is work incidental to Order 4.
6. Any Group Member who wishes to be heard in respect of the Settlement Approval Application (including any objection to settlement approval) following receipt of the Settlement Notice must, by no later than 14 February 2025 provide to the Court:

- (a) an outline of their grounds for supporting or opposing the Settlement Approval Application and any other document relied upon; and
  - (b) an indication as to whether or not they seek to supplement their written material with oral submissions at the Settlement Approval Hearing.
- 7. The solicitors for the Plaintiff provide to the Court (copied to the Defendants) any non-privileged communications from Group Members which ought to have been provided to the Court pursuant to Order 6.
- 8. If the legal representatives for any party receive a document purporting to be an objection to the settlement on or before 14 February 2025, that document be filed with the Sydney Registry of the Supreme Court of New South Wales within two business days of receipt of the document, and upon filing such document, shall be treated as a notice of objection received by the Court at the time it was received by the legal representatives.
- 9. The parties and any Group Member who wishes to be heard in respect of the Settlement Approval Application have leave to inspect the court file and take copies of any objections filed with the Court pursuant to Order 6 and 8.
- 10. The Court notes the agreement of the parties that the Group Members keep all terms of the Settlement Deed confidential in accordance with the terms of the Settlement Deed, from the date of this order, and such obligations are to continue in the event that the Settlement Deed is terminated as a result of the Court declining to approve the proposed settlement or for any other reason.

#### **Timetable for the Settlement Approval Application**

- 11. Save for any affidavit or written submissions in respect of which confidentiality orders will be sought, on or before 28 February 2025, the Plaintiff file and serve (including on each Group Member who has indicated they wish to be heard at the Settlement Approval Hearing in accordance with Order 6(b)) any affidavit(s), any costs assessor's report and written submissions on which they propose to rely in support of the Settlement Approval Application.
- 12. Subject to any further order, the Plaintiff and the Defendants have leave to file any affidavit or annexure or part thereof, and any written submissions, in respect of which they seek confidentiality orders, by email to the Associate of Garling J marked in the subject line with the word "confidential" and is excused from any requirement to electronically file, or serve any such affidavit or annexure or any part thereof or any written submissions on any party in that form, but shall instead electronically file and serve that affidavit or annexure or written submissions in redacted form, such evidence to be filed and served in this manner on the date referred to in Order 11.
- 13. The Defendants be granted leave to file and serve any affidavit material and any outline of submissions in relation to the Settlement Approval Application on or before 14 March 2025.

#### **Costs**

- 14. All of the Plaintiff's costs arising from these orders will be dealt with by the Court as part of the Plaintiff's costs of the proceeding and shall, subject to the Court's approval, be deducted from the Settlement Sum (as defined in the Settlement Deed) prior to any distribution of the Settlement Sum to Group Members if the settlement is approved by the Court.

#### **Other**

15. The parties and any person who wishes to be heard in respect of the Settlement Approval Application have liberty to apply on two days' notice to the Court.
16. If any Group Member indicates an objection to the settlement, the parties and any objecting Group Member have liberty to apply on two days' notice to the Court to seek orders that any confidential material filed in accordance with Order 12 above be