

Third Report of the Administrator in accordance with the Settlement Distribution Scheme dated 30 August 2024

Minnie McDonald v Commonwealth of
Australia

Federal Court of Australia
No. VID 312 of 2021

1 September 2025

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PRIVATE AND CONFIDENTIAL

Associate to the Chief Justice
The Hon. Justice D S Mortimer CJ
305 William Street
Melbourne VIC 3000

BY EMAIL ONLY: vicreg@fedcourt.gov.au

Dear Hon. Justice D S Mortimer CJ

**In the matter of Minnie McDonald v Commonwealth of Australia
The Federal Court of Australia | No. VID 312 of 2021**

I refer to Clauses 46 and 48 of the Settlement Distribution Scheme in relation to this matter and attach the third report of the Administrator.

Should you have any questions please contact me on 03 9671 8335.

Yours sincerely



Julia Kaye

Partner, Deloitte Strategy Risk & Transactions
On behalf of the Administrators of the Settlement Distribution Scheme

cc. Vicky Antzoulatos, Joint Head of Class Actions, Shine Lawyers
Paul Barker, Senior Executive Lawyer, Australian Government Solicitor
Brendon Jacomb, Chief Lawyer, National Indigenous Australians Agency
Emma Colantonio, Chief Investment Officer, Litigation Lending Services Limited
Liz Harris, Costs Assessor, Ovid Consulting
Michael McCarthy, Legal Adviser to the Administrator, Hutton McCarthy

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THIRD REPORT OF THE ADMINISTRATOR

MINNIE McDONALD V COMMONWEALTH OF AUSTRALIA

A. BACKGROUND

1. This is the Third Court Report prepared by the Administrators pursuant to clauses 46 and 48 of the Settlement Distribution Scheme in this matter and covers the period from 1 July 2025 to 31 August 2025.
2. The background to this matter is set out in the first Court Report of the Administrators dated 1 May 2025 (**First Court Report**) and is not repeated here.
3. The second Court Report of the Administrators was dated 1 July 2025 (**Second Court Report**).
4. All defined terms in this Court Report have the meaning as set out in the Deed or the Scheme.

B. PROGRESS OF THE ADMINISTRATION OF THE SCHEME

5. During the period from 1 July 2025 to 31 August 2025 (the **Relevant Period**), the Administrators have completed the following activities to progress the Administration of the Scheme:
 - a. Approximately 8,694 calls have been made to our hotline, of which approximately 4,377 were handled via the Interactive Voice Response (**IVR**), and 3,762 calls were answered by our contact centre team. Calls not able to be answered live are directed to voicemail (693 for the period) and receive a call back from our contact centre team. We note that this is a highly engaged cohort, and we continue to receive a large volume of calls daily.
 - b. In addition to handling inbound calls from claimants, 959 outbound calls were made during the period where a voicemail was being responded to or additional information to support claims was sought from claimants.
 - c. Since receipt of the first tranche of registration data on 28 March 2025, the Administrators have prioritised the assessment of living Eligible Claimants, to ensure this population is paid the Interim Payments in accordance with the Orders dated 20 December 2024 as soon as practicable.
 - d. At the same time, the Administrators' team has also continued with the eligibility assessments of spouse and parent claims.
 - e. Our process involves an initial assessment of the claim and a review of each outcome by a second reviewer. The overarching results (whether determined to be eligible/ineligible) are then reviewed on a sample basis by senior team members to ensure accuracy and consistency of assessment.
 - f. Inconclusive claims are also reviewed by a second reviewer and/or assigned for additional information to be sought from the claimant. This involves a contact attempt being made to the claimant. Approximately 49% of claims reviewed to date have been inconclusive and therefore required further contact to be made with claimants. We discuss the process to reduce the number of inconclusive claims further in paragraphs 6 to 10 below.
 - g. As the registration data is being transferred to the Administrator from Shine Lawyers on an ongoing basis, every fortnight, and that the registration period remains open, there are many instances we have received multiple registration forms for the same claimant. We therefore

conduct a deduplication process to identify the distinct number of claimants represented in those forms.

- h. Weekly meetings were held between Shine Lawyers and the Administrators to discuss the sharing of registration data, impact of outreach [by Shine?], claimant queries and the details of the eligibility assessments.
- i. Legal advice was sought from Hutton McCarthy regarding various items within the Administrator's remit.
- j. Meetings were held with the Costs Assessor, Ms Liz Harris, to discuss the Second Costs Report and the Third Costs Report provided for approval.
- k. The court hearing was attended by all parties, including the Administrator and their Legal Adviser on 11 August 2025. The parties then attended associated meetings for the conferral on the Joint report during the week beginning 18 August 2025. Further detail on this is provided in Section C.
- l. During the Relevant Period, the following tranches of Registration data with supporting documents were received from the Applicant's solicitors, Shine Lawyers:
 - 11 July 2025 - 639 Registration Forms
 - 28 July 2025- 751 (including one duplicate) Registration Forms
 - 12 August 2025 - 450 Registration Forms
 - 29 August 2025 - 373 Registration Forms
- m. A total of 9,388 registration forms has been received from Shine Lawyers to 31 August 2025.
- n. As noted in the Second Court Report, the Administrators have made Reimbursement payments to 20 out of 23 eligible Group Members/Lay Witnesses pursuant to the Court Orders dated 20 December 2024 and Order 13(c) dated 14 November 2024. A further payment was made to one Lay Witness on 14 July 2025. In relation to the two outstanding Reimbursement payments, those Group Members/Lay Witnesses have since passed away and the Administrator has received advice from the independent Legal Advisor on the process for the distribution of these payments to beneficiaries of these Estates and is now awaiting confirmation of beneficiary details from the representatives of the two Estates.

C. APPLICATION FOR EXTENSION OF REGISTRATION DATE AND JOINT REPORT OF THE PARTIES

6. There was a hearing held on 11 August 2025 regarding the Application for an extension to the registration date. To assist with the hearing, an Affidavit was filed on behalf of the Administrator setting out the progress of the Administration to date and the time that would be required to complete the administration if an extension to registration date was granted.
7. At the hearing, the number of inconclusive cases (49%) was discussed and the Court ordered that the parties confer regarding the assessment process and file a Joint Report to set out ways to increase the accuracy, timeliness and cost effectiveness of the registration and assessment process.
8. During the week commencing 18 August 2025, all parties met to discuss the current assessment criteria and ways to increase the accuracy, timeliness and cost effectiveness of the registration and assessment process.

9. On 22 August 2025, a joint report was filed with the Court, which sets out guidelines to increase the accuracy, timeliness, cost effectiveness of the registration and assessment process.
10. On 29 August 2025, Orders were made to the effect that the registration date be extended to 3 October 2025 (previously 31 August 2025) and the approval of the agreed variations to the Settlement Deed to make it more straightforward for registrations forms to be processed and assessed.
11. Using the updated guidelines and agreed variations to the Settlement Deed, and the less strict approach to what supporting documents claimants are required to submit, the parties anticipate that the number of inconclusive cases will reduce significantly, and the number of eligible cases will increase accordingly.

D. LIVING CLAIMANTS

12. In relation to Living Claimants, a total of 1,192 registration forms has been received to date. Of those, a total of 1,141 claims for living claimants have been through the assessment process during the period to 31 August 2025. Of the claims, a total of 777 have been determined to be Eligible claims, 123 have been determined to be Ineligible claims, 109 claims are duplicate claims, and the remaining 132 claims are inconclusive and are in the process of being followed up prior to undergoing final review.

E. DESCENDANT CLAIMS

13. Out of the total of 9,388 registrations received to date, a total of 8,196 are spouse or parental claims. In relation to descendant claims, as of 31 August 2025:
 - The assessments of spouse and parental claims are ongoing, and a total of 7,842 registrations have been through initial assessment. This comprises a total of 252 spouse claims and 7,590 parental claims.
 - A further total of 3,823 registrations has been through a secondary assessment.
 - 2,277 of the Descendant claims have been determined to be Eligible and 77 descendant claims have been determined to be ineligible.
 - 1,229 claims remain inconclusive and require follow up whilst 240 claims are duplicates.

F. INTERIM PAYMENTS DISTRIBUTED

14. A total of 368 Interim payments (totalling \$3,680,000) were successfully made as of 1 July 2025, as stated in the Second Court Report; noting there were an additional 8 attempted payments which were unsuccessful.
15. During the period 1 July 2025 and 31 August 2025, the following Interim payments were attempted:
 - The fifth tranche of Interim payments to 92 living Eligible claimants was made on 3 July 2025.
 - The sixth tranche of Interim payments to 79 living Eligible claimants was made on 17 July 2025.
 - The seventh tranche of Interim payments to 62 living Eligible claimants was made on 31 July 2025.

- The eighth tranche of Interim payments to 56 living Eligible claimants was made on 14 August 2025.
 - The ninth tranche of Interim payments to 33 living Eligible claimants was made on 28 August 2025.
16. A total of 698 Interim payments (out of the total of 777) have been attempted to 680¹ distinct claimants as of 31 August 2025). 674 payments have been successful. The remaining 97² eligible claimants are in the process of confirming bank/other details so that they can be included in the next payment tranche.

G. NUMBER OF ELIGIBLE CLAIMANTS

17. The Administrator has determined 2,565 of the registrants to be Eligible Claimants.
18. Of those, 777 Eligible Claimants were living at the Effective Date.
19. A total of 1,788 were deceased Eligible Claimants at the Effective Date.
20. Given the agreed variations to the Eligibility Assessment process will streamline the Administration going forward, we anticipate reaching the 3,000th Eligible Claimant by mid-September. Once we determine the 3,000th Eligible Claimant:
- The “per person sum” commences as per Clause 2.8.1 of the Deed
 - The Administrator will prepare and provide the payment report to the Court (at least every 2 months) as per Clause 2.8.2 of the Deed
 - The Administrator will submit to the Commonwealth a request for payment of the applicable amount of the “Per person sum” going forward.
 - The Commonwealth will also pay additional separate amounts for legal costs, administrators costs and the costs of the cost's assessor.
 - The Administrator will also make payments from the Settlement Fund Account for (as per the Orders dated 28 May 2025):
 - Payment of the Litigation Funder’s ATE premiums - \$1,045,000
 - Payment of Applicants’ Actual costs to 17 December 2024 and uplift in the amount of \$2,416,989.80
 - Payment of the Litigation Funder’s commission (20% of the settlement sum for 3000 ECs) of \$10,800,000.

H. NUMBER OF INDIVIDUALS NOTIFIED AS BEING INELIGIBLE

21. The Administrator has identified 200 individuals as ineligible to participate in the Scheme for the following reasons:
- 166 claims where the claimant (impacted person) was born after 12 November 1961.

¹ Out of 24 failed payments, 6 payments are yet to be reprocessed, meaning 18 have since been successfully paid

² 777 minus 680 distinct claimants leaves 97 where we are yet to confirm details

- 26 claims where the claimant worked in the Northern Territory outside the review period (between 1 June 1933 and 12 November 1971).
 - 8 claims where the claimant did work within the review period but not in the Northern Territory.
22. Currently, the Administrator has notified 100 individuals via SMS or email of their ineligibility to participate in the Scheme.
23. The Administrator is collating the contact details of a further 100 claimants who are deemed ineligible so that individuals may be notified of the outcome and the associated reason/s.

I. STATUS OF SETTLEMENT FUND

24. The balance of the Settlement Fund as of 29 August 2025 is \$47,491,164.21.
25. Interest earned on the Settlement Fund as of 29 August 2025 \$1,337,521.46.
26. Total payments made from the Settlement Fund as of 29 August 2025 is \$7,030,000.

J. COSTS INCURRED BY THE ADMINISTRATOR

27. The Administrator has incurred costs of \$1,269,223 (excluding GST) for the period from 18 November 2024 to 31 July 2025. Costs to 30 June 2025 of \$857,662 have been approved by the Costs Assessor, Ms Liz Harris.
28. The fees of the Legal Adviser to the Administrator, Hutton McCarthy, totals \$38,863 for the period to 29 August 2025.
29. The fees of the yamagigu team total \$21,281.80 for the period to 29 August 2025 and will be included in the Administrator's Fourth costs report.
30. A third Costs Report for the period 1 July to 31 July 2025 has been shared with the Costs Assessor for review and approval in the coming weeks. A fourth Costs Report will be prepared in September 2025.
31. As the total costs incurred to 31 July 2025 represent 71% of the Administrator's approved costs, and given the granting of an extension to both the registration date and the Administration Finalisation Date, an application for an increase in costs for the Administrator will be necessary for the completion of the Administration. The reasons for the increased time and costs required are set out in the Affidavit of Michael McCarthy dated 6 August 2025, and in our Court reports, and can be summarised as follows:
- This is a highly engaged cohort and there has been a higher volume of inbound calls than originally anticipated. For the period from 7 April 2025 to 19 August 2025, approximately 17,526 calls have been made to our hotline. In contrast, the contact rate as per our original proposal was a total of 3,000 calls for the entire Administration, calculated as 20% of 15,000.
 - The time required for an eligibility assessment was budgeted at 4 minutes per claim, on the assumption that full and complete registration forms and supporting information would be provided to us to facilitate that review. However, the average time required is 22 minutes, for several reasons:
 - There have been many unsigned and incomplete forms received by the Administrator.

- To date, many claims have been assessed as inconclusive (approx. 49%) requiring further outreach
 - There have been difficulties in reaching registrants in the first instance
 - The required supporting documents and ability of registrants to share required information has been an issue
 - The receipt of duplicate registration forms and the de-duplication process that had to be subsequently undertaken to remove the risk of making duplicated payments to claimants.
 - Payment files have been produced by the Administrator fortnightly, aligning to the cadence of the receipt of data, to ensure living eligible claimants are paid expediently. This contrasts with the proposed 6 quarterly payment tranches budgeted for in the original proposal.
 - Interim Distribution Statements have been issued as the result of a request by Shine to alleviate confusion from registrants receiving payments from multiple settlement schemes.
 - The Cost assessor in her Review of Costs dated 17 July 2025, acknowledged the higher volume of costs, the increased time spent undertaking eligibility reviews and the increased complexity of the assessment due to the nature of the information provided.
32. Her Honour provided her judgment in relation to the extension of the program on 29 August 2025. Now that there is certainty over the timing of the remainder of the Administration, we will be preparing an Affidavit to support an uplift to our fees shortly.

K. LIMITATIONS

33. This report has been prepared to provide an update to the Court in accordance with clauses 46 and 48 of the Settlement Distribution Scheme dated 30 August 2024.
34. A copy of this report has been made available to Shine Lawyers as representatives of the Applicant, Minnie McDonald, to the AGS as representatives of the Commonwealth, to the Respondent, the National Indigenous Australians Agency, to the Litigation Funder, Costs Assessor, and the Legal Adviser to the Administrator. In all other respects this report is confidential.
35. This report has been prepared for the sole purpose of updating the Court on the progress of the Administration in this matter and should not be relied upon by any other party for any other purpose.
36. Neither Deloitte, nor any of its employees or agents, accept any liability or responsibility for loss suffered by any party as a result of the circulation, publication, reproduction, or other use of this report.
37. In preparing this report, we have considered the registration documents and supporting materials provided to us by Shine Lawyers as of 31 August 2025. Other than performing the required eligibility assessments as set out in clause 43 of the Scheme, we have not otherwise been asked to, nor have we conducted, an audit or otherwise verified the completeness and accuracy of the material made available to us. Accordingly, we do not accept any responsibility for any errors that result from reliance thereon.

38. This report should not be construed as expressing opinions on matters of law, which are outside our expertise and for the Court to determine. However, it necessarily reflects our understanding thereof.

Dated: 1 September 2025



Julia Kaye

On behalf of the Administrators of the Settlement Distribution Scheme