

NOTICE OF FILING

Details of Filing

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A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Applicant's submissions re suppression orders

1. The applicant seeks suppression orders pursuant to ss 37AF(1)(b) and 37AG(1)(a) of the *Federal Court of Australia Act 1976* (Cth) in relation to certain items of evidence that were adduced by the applicant or LLS at the settlement approval hearings on the basis that the orders are necessary to prevent prejudice to the proper administration of justice. The primary objective is to safeguard the public interest in open justice (s 37AE), a principle that serves to ensure public confidence in the administration of justice. While the word "*necessary*" in context is a strong word, it should not be given an unduly narrow construction; the question of whether an order is necessary will depend on the particular circumstances of the case: see *Commonwealth v De Pyle* [2024] FCAFC 43 at [26]-[27] (the Court). There are two categories of documents in respect of which the applicant seeks suppression orders.
2. The *first* category of material contains legal analysis prepared by counsel and the applicant's solicitors. This category includes counsels' confidential opinion on settlement: Interlocutory Application Annexure A (**Annex. A**) item 3, CB290-416. The opinion includes the applicant's counsels' candid views on the merits of her case and quantum. It was provided to the Court in line with the orthodox and longstanding practice in class action settlement approvals and consistently with GPN-CA 15.1(a). The suppression orders should be made to preserve the applicant's privilege and given the importance that the Court has "*the benefit of the frank expression of opinion by those representing the applicant*" and so as to "*to encourage full disclosures which will assist the Court in performing its supervisory role*": *DBE17 v Commonwealth* [2021] FCA 1584 at [23] (Mortimer J, as her Honour then was); see also *Ewok Pty Ltd v Wellard Limited* [2024] FCA 296 at [103] (Button J). This category also includes an actuarial report (Annex A items 2, 4; CB174, 1121-1164) which was prepared for the purposes of counsel's opinion as to the cap on the number of Eligible Claimants. Suppression orders should be made on the same or a similar basis as the opinion.
3. The first category also includes a number of summaries or excerpts of legal analysis prepared by counsel and the applicant's solicitors as to the merits of the claims to be brought in the proceedings, appearing in LLS' evidence: Annex. A items 7-30.¹ Much of the underlying legal analysis was prepared prior to the time the applicant retained Shine (10 May 2021). This includes the central prospects advices that were prepared by counsel, retained by Shine, who later represented the applicant (see eg Annex. A, item 11; CB1693-1694), and provided the blueprint for her claims and the way in which the matter was subsequently run on her behalf. This material should be regarded as either subject to the applicant's privilege or alternatively privileged material prepared in a class action investigation (see eg *IOOF Holdings Ltd v Maurice Blackburn Pty Ltd* [2016] VSC 311 at [82]-[93]) where there was no waiver and which was disclosed on a common-interest basis. Even if the applicant did not herself enjoy privilege in these legal analyses because the privilege was instead enjoyed by Shine or alternatively LLS, the applicant's privilege is so closely intertwined with that of Shine or LLS that it should be subject to suppression orders. This material was provided to LLS to facilitate funding for the matter and the administration of justice requires limiting the subsequent disclosure of that material. Where such privileged material has been disclosed to the Court in accordance with express orders maintaining the confidentiality of the material and for the purposes of a settlement approval, "*confidentiality orders to preserve the privileged material should be made as a matter of course*": *Clime Capital Ltd v Ugl Pty Ltd (No 2)* [2020] FCA 257 at [22] (Anastassiou J).
4. The *second* category over which the applicant seeks suppression orders are the materials that are subject to suppression orders in the *Street* proceeding: see Annex A, items 1, 5 and 6. This material was placed before the Court given the necessity of comparisons of aspects of the two cases. Orders made corresponding to those in the *Street* proceeding should be made.

2 June 2025

Julian Brezniak
Tenth Floor Chambers

¹ The applicant will also seek a final suppression order over at least part of the document appearing as Ex. SC1.12-16 to Mr Conrad's 20 October 2024 affidavit (CB1749-1763) which appears to have been inadvertently omitted from the interim order application.