



Federal Court of Australia

District Registry: New South Wales Registry

Division: General

No: NSD274/2024

**KEVIN MASON** and others named in the schedule  
Applicant

**STATE OF NEW SOUTH WALES**  
Respondent

### ORDER

**JUDGE:** Justice Raper

**DATE OF ORDER:** 10 September 2024

**WHERE MADE:** Sydney

#### THE COURT ORDERS BY CONSENT THAT:

##### Opt out

1. Pursuant to s 33J(1) of the *Federal Court of Australia Act 1976 (FCAA)* the time and date before which Group Members may opt out of the proceeding be fixed as 9 December 2024 (**Opt Out Deadline**).
2. Pursuant to ss 33X and 33Y of the FCAA, the Court approve the form and content of:
  - (a) the notice to Group Members of the commencement of the class action and their opt-out rights at Annexure A to these orders (**Notice**);
  - (b) the advertisement referring to the Notice at Annexure B to these orders (**Advertisement**); and
  - (c) the announcement to be broadcast on radio at Annexure C to these orders (**Radio Announcement**).
3. By 16 September 2024, the Applicants are to provide to the Respondent and the Court copies of the Notice containing the venues of the information sessions.
4. Pursuant to s 33Y(3) of the FCAA, the Notice, Advertisement and Radio Announcement are to be distributed according to the following procedure, by 28 October 2024:
  - (a) the Federal Court of Australia shall cause the Notice to be posted on the Federal Court of Australia website and made available for inspection at the District



Registry of the Federal Court of Australia in Melbourne, Sydney, Canberra, Brisbane, Adelaide, Perth, Hobart and Darwin;

- (b) the Applicants shall cause the Notice to be made available online on the website of the Applicants' solicitors;
  - (c) the Applicants shall cause the Advertisement to be published at least twice during the period prior to the Opt Out Deadline in each of the newspapers listed in Annexure D to these orders;
  - (d) the Applicants are to arrange for the Radio Announcement to be broadcasted at least twice during the period prior to the Opt Out Deadline on each of the radio stations listed in Annexure E to these orders; and
  - (e) the Notice may also be distributed by the solicitors for the Applicants, or (if the parties agree) by the solicitors for the Respondent, in such other manner as they consider will best bring it to the attention of Group Members (including in connection with the Information Meeting Schedule in **Annexure A**).
5. The costs for distributing the Notice and the costs of publishing the Advertisement and causing the Radio Announcement to be broadcast referred to in Order 4 shall be paid in the first instance by or on behalf of the Applicants, but otherwise the costs of and incidental to the procedure set out in Order 4 shall be costs in the proceeding. For the avoidance of doubt, answering enquiries by Group Members and members of the public, who are seeking to ascertain their eligibility as a Group Member in the proceeding, in relation to the Notice, Advertisement and Radio Announcement is work incidental to Order 4.
6. The Notice, Advertisement and Radio Announcement may be amended by the Applicants' solicitors before they are posted, advertised, displayed or broadcast in order to correct any website or email address or telephone number or other non-substantive error, or to update a venue or time for any information session.
7. The Applicants' solicitors may amend the dates, times and locations of the information meetings set out in **Annexure A** to these orders provided:
- (a) reasonable circumstances, including COVID-19 border or travel restrictions, safety concerns for members of the Applicants' solicitors' team or the communities/towns, extreme weather events or other environmental factors, require it;
  - (b) details of such circumstances are communicated to the Court and the Respondent's solicitors as soon as reasonably practicable following knowledge of the circumstance referred to in Order 7(a) above;
  - (c) reasonable steps are taken to notify affected persons of the amendment as soon as reasonably practicable by way of:



- (i) radio announcement to be broadcast at least twice on those radio stations listed in Annexure E to these orders which broadcast in the affected geographical area;
  - (ii) communication in such other manner as they consider will best bring it to the attention of Group Members (including in connection with the Information Meeting Schedule);
  - (d) reasonable steps are taken to reschedule the affected information meetings where circumstances permit, including undertaking the steps required under Order 4 above; and
  - (e) any rescheduled information meetings are completed before the Opt Out Deadline, unless the Court orders otherwise.
8. If, on or before the Opt Out Deadline, the solicitors for the Applicants or Respondent receive a document appearing to be an opt out form referable to the proceeding, the solicitors must file the notice in the New South Wales Registry of the Federal Court of Australia within seven days of receipt, and the notice shall be treated as an opt out form received by the Court at the time it was received by the solicitors.
9. The solicitors of the Applicants and Respondent have leave to inspect the Court file and copy any opt out forms filed.
10. By 31 January 2025, the Applicants file and serve an affidavit verifying the steps taken in compliance with these orders and including any opt out notice received.

### **Document management protocol**

11. The time for the parties to confer as to the appropriate form of the Document Management Protocol in Order 1 made on 21 August 2024 is extended to 12 September 2024.
12. Liberty to apply.

Date orders authenticated: 10 September 2024

  
Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



**Schedule**

No: NSD274/2024

Federal Court of Australia

District Registry: New South Wales Registry

Division: General

Second Applicant                      WAYNE CARBERRY

Third Applicant                         JASON DAVISON

**ASSISTED DISPUTE RESOLUTION**

Applicant                                 KEVIN MASON



ANNEXURE A—NOTICE

**OPT-OUT NOTICE**

**SOUTH COAST CULTURAL FISHING CLASS ACTION**

**THIS IS AN IMPORTANT NOTICE ISSUED TO YOU BY THE FEDERAL  
COURT OF AUSTRALIA**

**SOME IMPORTANT THINGS YOU SHOULD KNOW ABOUT THIS NOTICE:**

It is about the SOUTH COAST CULTURAL FISHING CLASS ACTION.

This has been sent to you because you might be eligible to be part of this class action.

This class action is to assist you to claim for loss you may have suffered.

We sincerely apologise if this notice has been sent to a relative who has passed away.

As explained in more detail on the following pages, you may do one of three things in response to this notice:

1. **Sign up** to the class action;

**OR**

2. **Opt-out** of this class action before 5:00pm AEDT on 9 December 2024. This means you will not be part of this case and you will lose a right to receive any compensation out of the class action (but keep your right to try to get some compensation in an action you may start yourself),

**OR**

3. **Do nothing.**



## 1. Why are you getting this notice?

Kevin Mason, Wayne Carberry and Jason Davison have brought a case in the Federal Court against the State of New South Wales on behalf of all members of the South Coast Peoples who have been directly or indirectly affected by the policing and prosecutions of cultural fishing on the South Coast of New South Wales. Mr Mason, Mr Carberry and Mr Davison are called the “Applicants” in this case.

The case is called a “class action” because the Applicants are bringing the case for South Coast Peoples and their family members and others suffering cultural harm who have been affected by the policing and prosecutions of cultural fishing by Fisheries officers between 1 January 1994 and 27 June 2023. The class action alleges that the actions of the State in policing and prosecuting cultural fishing on the South Coast breached the racial discrimination laws.

The State is defending the case.

The Applicants’ lawyers are JGA Saddler, and they are helping them run the case.

A litigation funder called CASL (or “**the funder**”) is currently paying the costs of bringing this class action against the State in return for repayment of those costs, plus a commission if the class action is successful.

The Federal Court has ordered that this notice be sent to people who might be affected by the class action. You should read this notice carefully as it may affect your legal rights.

## 2. What do you need to do to be part of the class action?

You are automatically part of the class action if:

- a. you are a member of the South Coast Peoples and between 1994 and 2023:
  - i. you were personally subjected to enforcement or prosecution by Fisheries while practising cultural fishing; or
  - ii. you suffered cultural harm or loss as a result of the above including being unable to learn or participate, enjoy traditional diet or otherwise restricted your cultural practices,



**OR**

- b. you are a family member of someone who is a member of the South Coast Peoples and who was personally subjected to enforcement or prosecution by Fisheries while practising cultural fishing between 1994 and 2023, and you have experienced harm or hurt as a direct result of the enforcement or prosecution of that other person.

All of these people are called “group members”.

To help you work out if you are a group member, when we say “South Coast Peoples”, we mean the peoples who have an ancestral connection to the South Coast, including persons who identify as peoples of the Yuin and Tharawal Nations and Groups, including the following:

- a. Wandi Wandian;
- b. Jerinja;
- c. Bidewal;
- d. Walbunja;
- e. Allellyin;
- f. Brinja-Djuwin;
- g. Mankata-Djuwin;
- h. Djiringanj;
- i. Wodi Wodi (Tharawal);
- j. Murramarang; and
- k. Gweagal (Tharawal).

If you want to continue to be part of the case you don’t need to do anything. You will be a group member and part of the case unless you tell the Federal Court you don’t want to be part of it. But if you give your information to JGA Saddler by signing up, it will help the Applicants to run the case on your behalf. You may give your information to JGA Saddler by following the instructions in **Option 1** below.

You don’t have to pay anything upfront to be part of the case. You will only have



to pay something if at the end of the case you get money from it. If the State pays you money, you may need to pay CASL a commission from your payment of up to 25%, plus your share of what it costs to run the case. You will get paid the rest of the money.

Choosing to remain part of the case means that you will be ‘bound’ by the result whether it wins, loses, or settles. Being ‘bound’ means that you will not be able to raise the same claims in any other proceedings against the State, even if you are not happy with the outcome.

Remaining part of the class action will mean that, whatever the result in the class action, it is likely that you will lose any right you might have had to bring the same or similar claims in an individual case.

### **3. How can I get more information about the class action?**

This notice tells you where to find more information about the case below – you can call JGA Saddler, look it up online on one of the websites below, or come to one of the Information Meetings and speak to someone in person. A list of places and dates of meetings is attached to this notice.

### **4. What do you need to do if you don’t want to be part of the class action?**

If you don’t want to be part of the case you need to fill out a form to tell that to the Federal Court. This is called “opting out” and the form you must fill out to not be part of the case is called an “Opt Out Notice”.

You may opt out of the class action by following the instructions in **Option 2** below.

## ***YOUR THREE OPTIONS***

### ***OPTION 1 – SIGN UP TO THE CLASS ACTION***

To sign up, you need to provide your details and information about your claim to JGA Saddler. You can do this by:

- a. Attending an Information Meeting.





- b. Ringing JGA Saddler on 02 9052 7557.
- c. Go to the website that JGA Saddler has established for the class action at [www.culturalfishingclassaction.com.au](http://www.culturalfishingclassaction.com.au).

Group members who sign up will not be liable for any “out of pocket” legal costs by remaining a group member in this class action.

Although you do not have to sign up now (see Option 3 below), at some point you will need to register your interest with JGA Saddler – either to get money in any settlement or to take further steps to progress your claim.

If you have already signed up, you do not need to sign up again.

By signing up, you are not being asked to enter into any contract with JGA Saddler or the Funder. At the end of the class action, the Applicants or the Funder intend to make an order for everyone who benefitted from the class action to contribute to the costs of the action out of any money they receive.

### ***OPTION 2 – OPT OUT AND CEASE TO BE A GROUP MEMBER***

Group members who do not want to be a part of the case must “opt out”. This is done by filling out a form. If you choose to opt out:

- a. you will not be affected by the outcome of the class action and will not receive any money from the class action if it is successful; and
- b. you will be able to bring your own individual claim against the State, if you issue your own Court proceedings.

You should seek legal advice before opting out. Opting out is serious – you should not do it unless you understand what it means.

To opt out, you need to fill out a form to tell the Federal Court you are opting out. You can get a copy of the form by:

- a. Attending an Information Meeting and asking JGA Saddler for a copy;
- b. Ringing JGA Saddler on 02 9052 7557 and asking for a copy; or
- c. Go to the website for the class action at [www.culturalfishingclassaction.com.au](http://www.culturalfishingclassaction.com.au).



Opt out forms must be sent directly to the New South Wales Registry of the Federal Court of Australia before 5:00pm AEDT on 9 December 2024.

***OPTION 3 – DO NOTHING***

Group members who do not sign up or opt out will remain as group members and await the outcome of the class action. But at some point those group members will need to register to receive money from any settlement if the class action is successful.

**OTHER IMPORTANT THINGS TO BE AWARE OF**

*First, this is not a scam.* You can check (and get further information) by:

- a. visiting the Federal Court of Australia website for the class action at <https://www.comcourts.gov.au/file/Federal/P/NSD274/2024/actions>;
- b. visiting the website that JGA Saddler has established for the class action at [www.culturalfishingclassaction.com.au](http://www.culturalfishingclassaction.com.au); and/or
- c. contacting JGA Saddler on 02 9052 7557 or by emailing [southcoast@jgasaddler.com.au](mailto:southcoast@jgasaddler.com.au)

*Second,* if you sign up, JGA Saddler can try to work out how much all the claims in the class action are worth if the case succeeds. Your information will help the Applicants to try to negotiate the best settlement possible on your behalf.

*Third,* if there is anything which you are unsure of and you do not want to speak with JGA Saddler, you should get legal advice from an independent lawyer.



## INFORMATION MEETING SCHEDULE

<b>Town</b>	<b>Date</b>	<b>Time</b>	<b>Location</b>
Bega	Monday, 18 November 2024	2:00pm and 5:00pm	TBA
Narooma	Tuesday, 19 November 2024	2:00pm and 5:00pm	TBA
Batemans Bay	Wednesday, 20 November 2024	2:00pm and 5:00pm	TBA
Ulladulla	Thursday, 21 November 2024	2:00pm and 5:00pm	TBA
Nowra	Friday, 22 November 2024	2:00pm and 5:00pm	TBA
Wollongong	Saturday, 23 November 2024	2:00pm and 5:00pm	TBA



## ANNEXURE B—ADVERTISEMENT

### SOUTH COAST CULTURAL FISHING CLASS ACTION NOTICE TO GROUP MEMBERS

Kevin Mason & Ors v State of New South Wales (Federal Court of Australia, NSD 274/2024)

Kevin Mason, Wayne Carberry and Jason Davison have brought a case in the Federal Court against the State of New South Wales on behalf of all members of the South Coast Peoples (including the Yuin and Tharawal Nations) who have been directly or indirectly affected by the policing and prosecutions of cultural fishing on the South Coast of New South Wales. Mr Mason, Mr Carberry and Mr Davison are called the “Applicants” in this case.

The case is called a “class action” because the Applicants are bringing the case for South Coast Peoples, their family members and other persons who have been affected by the policing and prosecutions of cultural fishing by Fisheries officers between 1 January 1994 and 27 June 2023. The class action alleges that the actions of the State in policing and prosecuting cultural fishing on the South Coast breached the racial discrimination laws. The State is defending the case.

The Applicants’ lawyers are JGA Saddler, and they are helping them run the case. A litigation funder called CASL is paying for the case to be brought.

#### What do you need to do to be part of the class action?

You are automatically part of the class action if:

- a. you are a member of the South Coast Peoples and between 1994 and 2023:
  - i. you were personally subjected to enforcement or prosecution by Fisheries while practising cultural fishing; or
  - ii. you suffered cultural harm or loss as a result of the above including being unable to learn or participate, enjoy traditional diet or otherwise restricted your cultural practices,

**OR**

- b. you are a family member of someone who is a member of the South



Coast Peoples and who was personally subjected to enforcement or prosecution by Fisheries while practising cultural fishing between 1994 and 2023, and you have experienced harm or hurt as a direct result of the enforcement or prosecution of that other person.

All of these people are called “group members”.

If you want to continue to be part of the case you don’t need to do anything. You will be part of the case unless you tell the Federal Court you don’t want to be part of it. But it will help the Applicants run the case if you provide JGA Saddler with your information.

If you want to find out more about the case or give your information to help the case, you can:

- come to an information meeting at the times and places shown with this advertisement
- ring JGA Saddler on 02 9052 7557
- go to JGA Saddler’s class action website at [www.culturalfishingclassaction.com.au](http://www.culturalfishingclassaction.com.au)

You don’t have to pay anything upfront to be part of the case. You will only have to pay something if at the end of the case you get money from it. If the State pays money to claimants including you, CASL will seek a maximum commission of 25%, plus what it costs to run the case to be deducted from that money before it is distributed, so that everyone who benefits from the class action contributes to those costs. The Court has to approve this before it happens.

Choosing to remain part of the case means that you will be bound by the result whether it wins, loses, or settles.

Remaining part of the class action will mean that, whatever the result in the class action, it is likely that you will lose any right you might have had to bring the same or similar claims in an individual case.

What do you need to do if you don’t want to be part of the class action?

If you don’t want to be part of the case you need to fill out a form to tell that to the Federal Court. This is called “opting out” and the form you must fill out to not be part of the case is called an “Opt Out Notice”.



You can get a copy of the Opt Out Notice from [www.culturalfishingclassaction.com.au](http://www.culturalfishingclassaction.com.au) or by ringing JGA Saddler on 02 9052 7557 or by attending an information meeting.

The Opt Out Notice must be sent by post to the New South Wales Registry of the Federal Court at Locked Bag A6000 Sydney South NSW 1235 or by email to [nswreg@fedcourt.gov.au](mailto:nswreg@fedcourt.gov.au) before 9 December 2024.

If you choose not to be part of the case, then you will have the option to bring your own case if you think you have a claim against the State. You should get your own legal advice about this. This advertisement is made pursuant to the order of the Federal Court made on 10 September 2024.

**Please ring JGA Saddler on 02 9052 7557 or visit [www.culturalfishingclassaction.com.au](http://www.culturalfishingclassaction.com.au) to find out when they will be visiting a town near you for an information session.**



### **ANNEXURE C—RADIO ANNOUNCEMENT**

“Kevin Mason, Wayne Carberry and Jason Davison have brought a class action against the State of New South Wales on behalf of all South Coast Peoples who have been impacted either directly or indirectly by the policing and prosecution of cultural fishing since 1994 on the South Coast including family members and the broader community.

If you want to continue to be part of this class action there is nothing further that you need to do. You can help get the best result by providing JGA Saddler lawyers with your information.

If you don't wish to be a part of the class action then you need to tell the Federal Court using a form called an opt-out notice before 9 December 2024.

Find out more by calling JGA Saddler on 02 9052 7557 or visiting [www.culturalfishingclassaction.com.au](http://www.culturalfishingclassaction.com.au).”



## **ANNEXURE D—NEWSPAPERS**

1. Batemans Bay Post
2. South Coast Register
3. Bega District News
4. Illawarra Mercury





## ANNEXURE E—RADIO STATIONS

1. i98FM
2. TripleU FM
3. 2EC