



## **CLASS ACTION TO BE BROUGHT BY JEWISH STUDENTS AND ACADEMICS AGAINST THE UNIVERSITY OF SYDNEY**

Adam Butt of Counsel, instructed by Levitt Robinson Solicitors ('LR'), will be imminently launching class action proceedings to protect and defend Jewish Students and Academics at Sydney University (the 'USyd Class Action') and to see redress against the propagators of antisemitism.

Further information on legal tactics and strategies, will be imparted at invitation-only gatherings.

### **THE TEAM**

#### **Levitt Robinson**

Levitt Robinson has extensive experience in successfully prosecuting Class Actions and with a particular focus on Human Rights. Click [here](#) to read more.

**Stewart Levitt**, Senior Partner of [Levitt Robinson Solicitors](#), has been practising law for 45 years. This year, Stewart Levitt of Levitt Robinson Solicitors was recognised (as he has been since 2019) in "Best Lawyers - Civil Rights Law, 2025".

**Dana Levitt**, Human Rights Advocate, and Lawyer has three (3) degrees from the University of Sydney and a Masters' Degree in Political Sciences (specialising in Contemporary Middle Eastern Politics) from IDC, Herzliya, Israel. Since her return to Australia from 4 years in Israel, she has been actively managing the conduct of three large Human Rights Class Actions.

#### **Adam Butt**

Adam Butt of Counsel was voted Australia's Lawyers' Weekly "Barrister of the Year" in 2021. He was formerly a Senior Associate in the International Arbitration Team at Clayton Utz. He has worked closely with the Hon. James Spigelman AC, former Chief Justice of NSW, on complex commercial and human rights. He is a current member of the NSW Bar Association's Human Rights Committee.

Only last year, Butt persuaded the Federal Court of Australia to hold the Victorian Department of Education vicariously liable for two school principals' failures adequately to respond to antisemitic bullying at a Victorian State school which occurred from 2013 to 2020. The students' claims centred on negligence and breaches of the Racial Discrimination Act 1975. See – [Kaplan v. State of Victoria \(No.8\) \[2023\] FCA 1092](#).

## **LEAD APPLICANTS; GROUP MEMBERS; DONORS AND FUNDERS**

### **Lead Applicants**

Levitt Robinson has identified Lead Applicants, who have agreed to their appointment and will need to prove their own particular cases and claims for the benefit of the group or class. Only the claims of the

Lead Applicants are filed in Court and initially litigated, although the opportunity will arise later to file Points of Claim for other key individuals, with typical experiences.

The claims of Lead Applicant(s) are representative of the wider group ("Class") – so, in the case of the prospective USyd Class Action, there will be (a) Lead Applicant(s) who represent(s) Jewish Students, and (a) Lead Applicant(s) who represent(s) Jewish Academics.

The Lead Applicants are selected to be representative of the whole Class of claimants, of which there can be sub-Classes.

### **Group Members**

Many of you are concerned about possible recriminations from being identified with this case. Only the Lead Applicants need to be identified. In certain circumstances, the Court will even suppress the Lead Applicants' names – for example, if there is a perceived risk to them, of which the Court is persuaded.

Similar suppression orders could be made for other group members, if the Court deemed it necessary and appropriate but this is generally not required for the following reason. Only your lawyers, who owe you a duty of trust and confidence, need to know who you are and then, only so that, if the case is successful and there is a settlement or an award of damages in which you are entitled to share, you can then come forward to claim your portion.

Levitt Robinson speaks from experience – of a dozen class actions which LR has run, where it has not had to disclose the identities and contact details of group members, other than as stated above.

### **BUDGET**

So that Levitt Robinson and Adam Butt of Counsel can also be seen to have "skin in the game", both are prepared to work at cost, based on just 70% of our costs and disbursements being paid as we go, with the other 30% payable on success.

The above concession means that of the **\$971,850** (GST inclusive) estimated for total costs, including Counsel's fees and experts' and mediator's fees to the end of a trial, the amount to be paid "as we go" would be reduced to **\$680,295** (GST inclusive), with the balance of roughly \$290,000 only to be paid on a successful outcome being achieved.

Jewish Students, Academics, and the Australian Jewish Community as a whole need your help, both moral and material.

Contributing to the proposed class action is not just a donation - it is an investment; an investment in the future of Australia's Jewish community: a statement that we, as a people, will always stand with Israel, through thick and thin, and that Israel is not alone in the world. It will always have us, in the Diaspora, behind it. We owe it to the people of Israel, and we owe it to ourselves, to take this action.

## **THE IMPORTANCE OF LITIGATION FUNDING**

### **Costs Orders**

The Lead Applicant/s (not the group members) can become liable for any adverse costs pursuant to an order made in the proceedings.

A group member is not liable for costs except where appointed to be a sub-group representative party on behalf of sub-group members.

Alternatively, an adverse costs order could be made in circumstances where the group member has directly provided litigation funding (and stands to obtain a benefit from that funding – which would not be the case if they simply donated – see below).

### **Indemnification of Lead Applicants**

The risk to the Lead Applicant/s and sub-group representative parties (if applicable) can be mitigated if a litigation funder provides an indemnity to them in respect of any adverse costs.

### **Role of the Funder**

The Funder is not actually a party to the legal proceedings. If a successful outcome is obtained, the Funder is usually entitled to a commission from any such proceeds, in addition to reimbursement for any amount they have paid as security for costs and to the Lead Applicant/s lawyers for their costs and disbursements throughout the proceedings.

## **SUPPORT THE ACTION**

**The Georgatos Foundation**, a registered Human Rights Advocacy charity with tax exemption, has agreed to accept donations and pass them on to the Funder. All funds raised through donations will be held in a dedicated bank account, known as the '**USyd Litigation Fund**'.

The Georgatos Foundation will impose a 3% administration charge.

To donate directly to the USyd Litigation Fund, [click here](#).

Levitt Robinson recommends and requests that you obtain independent tax advice as to the benefit if any of any tax deduction which may apply to your individual financial circumstances, should a donation be made.

## **LEVITT ROBINSON CLASS ACTION LITIGATION, A CONTINUING STORY OF ACHIEVEMENT**

### **CURRENT CLASS ACTIONS**

#### **UNITED PETROLEUM**

In October 2022 Levitt Robinson filed a Class Action in the Supreme Court of Victoria against United Petroleum Franchise Pty Ltd and its director Avi Silver. To learn more, click [here](#).

#### **BANKSIA HILL CLASS ACTION**

Alexandra Walters & Ors v State of Western Australia and Anor (WAD224/2022)

Thousands of young people held in juvenile detention have sued the State of Western Australia for compensation relating to their treatment in detention. To learn more, click [here](#).

#### **FINES ENFORCEMENT CLASS ACTION**

Filed as Sherona Roe and Davin Ferreira as Co-Administrators of the Estate of the Late Ms Julieka Dhu & Ors v the State of Western Australia & Anor (WAD5/2022).

The action was commenced in the name of Ms Julieka Dhu, a 22-year-old Aboriginal woman, MS Dhu, who was imprisoned for unpaid fines and was subject to "appalling and inhumane" treatment in police custody, resulting in her death.

The West Australian government settled the Dhu family's claims, and issued a public apology to her family as follows: "On behalf of the Western Australian Police Force and WA Country Health Service, we apologise to the family and community of the late Ms Dhu," they said. "We are truly sorry for the circumstances of Ms Dhu's death and recognise the significant impact her passing has had on her family and her community." To learn more, click [here](#).



## **HISTORICAL CLASS ACTIONS**

### **THE STORM FINANCIAL CLASS ACTIONS**

Between 2010 and 2015, Levitt Robinson (LR) started and ran Class Action claims (self-funded by the litigants themselves) against CBA, Macquarie Bank, Bank of Queensland and Westpac. These cases arose from the Banks' role in funding a risky scheme, where borrowers' properties were mortgaged to fund investments which were vulnerable to margin calls. At the onset of the GFC, margin calls were made, and Storm borrowers lost hundreds of millions of dollars.

LR moved CBA to improve its Resolution Scheme Offers to Class Action members through an ASIC – CBA joint pitch made mid-proceedings, to Class Members who would opt-out, by roughly \$100m and settled the Class Action claim against CBA for \$43 million.

LR settled the claim against Macquarie Bank for \$82.5m, against Bank of Queensland for \$22m (just around 100 Group Members) and Westpac (87 opt-in group members) for \$10m. LR also negotiated roughly another \$100m for participants in ANZ, NAB and CBA Resolution Schemes for their Storm Financial losses, of investments funded by those Banks.

## **LEVITT ROBINSON'S FIRST HUMAN RIGHTS CASE**

### **WOTTON V THE STATE OF QUEENSLAND**

LR "spec-ed" a representative action against the State of Queensland and the Queensland Commissioner of Police known as Wotton v State of Queensland (No. 5) [2016] FCA 1457, resulting in a verdict in favour of the lead applicants for \$418k (inclusive of pre-judgment interest) plus costs, in late 2016, plus a \$30m settlement for 447 group members, negotiated the following year, approved by the Court in 2018. The case arose out of the treatment of indigenous Palm Islanders under a State of Emergency proclaimed by Police in November 2004.

The Queensland Government issued an apology to Palm Islanders for the violence and discrimination to which they were subjected by police in the aftermath of the riots on the island in 2004: "The Queensland Government acknowledges that men, women and children who were assaulted, or otherwise treated illegally during this time suffered distress, humiliation and violence... As a government, we have learned from your significant pain and suffering, and have taken significant steps to ensure that none of our citizens will again suffer discrimination at the hands of their government."

## **OTHER SIGNIFICANT CLASS ACTIONS**

### **SEARLE V THE COMMONWEALTH BANK OF AUSTRALIA**

LR achieved a unanimous judgment in the NSW Supreme Court of Appeal in 2019, from the verdict at first instance. This was a ground-breaking case because until then, it was assumed that members of the Australian Defence Force (ADF) could not enforce a contract against the military establishment.

Approximately 300 group members have received or will receive on average, approximately \$87,000 each plus costs.



### **O'DEA V WESTPAC**

A \$10m settlement was achieved, to be paid by Westpac, for a self-funded Closed Class with LR's costs and disbursements at \$2m and \$8m to group members. The clients were victims of a Ponzi Scheme conducted by Famularo (deceased) – Westpac was alleged to have been knowingly involved.

### **DAVARIA ET ORS V 7-ELEVEN STORES PTY LTD ET ANOR**

This case was commenced in early 2018 and a settlement was negotiated in mid-2021 for \$98m, the first-class action “win” against 7-Eleven anywhere in the world.

### **JACK V CORESTAFF NT PTY LTD**

This was a small Class Action (only 32 Funded Group Members and fewer than 100 in the Class), resolved by LR in 2022. The class action was funded by Omni Bridgeway. On 26th August, 2022, the settlement of \$6.4m, and LR's legal costs (without the appointment of a cost referee), were approved by Justice Bromwich in the Federal Court at Sydney. Stewart Levitt of LR was appointed Fund Administrator.

### **LUKE & ANOR V AVEO GROUP**

This class action was settled for \$11m, to be paid by Aveo in March 2023 but the settlement approval only occurred in December 2023. The matter, which required the valuation of residential units in retirement villages, was complicated by the fact that Aveo periodically changed its contract model during the life of the proceedings and also, by the 20 (twenty) month-long COVID 19 lockdowns, which obstructed access by real estate valuers to retirement villages across Eastern Australia, where the Aveo villages were mostly located. Most expert valuers contacted by LR were reluctant to give evidence against AVEO, which dominated the retirement village market – or were otherwise conflicted.

The WA valuer whom LR had initially engaged, pre-Covid, was unable to perform his contract because of the COVID crackdown on freedom of movement between the States. This was the most disappointing of all the class actions in which LR has been involved but still resulted in a settlement in favour of our clients in the sum of \$11 million. Arnold Bloch Leibler (ABL) represented Aveo.

Only on the 4 March 2022, the Federal Court approved a \$28 million settlement against ABL in a class action brought against ABL by persons who had acquired shares in Slater & Gordon Ltd. ABL had acted as advisors on the Quindell Acquisition on which the claim against ABL was based: *Hall v Arnold Bloch Leibler (a firm) (No.2) [2022] FCA 163*. So, there are swings and roundabouts in litigation.

### **KYLE-SAILOR V NINE ENTERTAINMENT CO. HOLDINGS LTD ET AL (CHANNEL 9)**

This involved a claim against Channel 9 over two (2) broadcasts which it was claimed, offended against Section 18C of the Racial Discrimination Act 1975 (C'th), causing hurt and offence to those Palm Islanders who had received compensation pursuant to the previous successful class action litigation, styled *Wotton v State of Queensland [5] (No. 5) [2016] FCA 1457* which had been the first case of a community successfully alleging discrimination against the State.

LR successfully resisted, with costs, a High Court challenge by Channel 9, seeking to stay the Federal Class action. This involved an abortive Constitutional challenge to the validity of section 18C in the High Court, heard on 18 November 2022.

Channel 9 has agreed “without admission” to settle the class action for \$3,000,000 and has also agreed to publish an apology and correction once the settlement is approved.

## **FUNDS ADMINISTRATION**

Stewart Levitt, Senior Partner of Levitt Robinson Solicitors, has repeatedly been appointed by the Federal Court to be Administrator of Class Action Settlement Funds or to act as Co-Administrator, or alternatively, to be the solicitor assisting the Fund Administrator, in class actions where LR acted for the Applicants.

## **ANOTHER LEGAL MILESTONE**

On 11 October 2023, in *Official Trustee in Bankruptcy v Kent* [2023] FCA 1211, his Honour, Acting Chief Justice Rares, decided a landmark case, brought by LR “on spec” which held that a compensation claim made to the Australian Financial Complaints Authority (AFCA) by a former bankrupt (Mr Kent), is not property of the bankrupt which vests in the trustee under the Bankruptcy Act.

On 13 November 2023, in *Official Receiver in Bankruptcy v Kent (No. 2)* [2023] FCA 1396, Acting Chief Justice Rares ordered that the Official Trustee in Bankruptcy should pay the respondent, Richard Kent’s costs, on the indemnity basis.

On 21 December 2023, the Official Trustee in Bankruptcy announced on its website that “The Official Trustee has carefully reviewed His Honour’s recent decision and decided not to appeal the decision in the Full Court of the Federal Court.”

## **FAMILY LAW – BAPTISM OF FIRE**

The case of *Norbis v Norbis* (1986) 161 CLR 513 was decided in the High Court in the mid-eighties and turned on its head, the way in which matrimonial property was treated. This was Stewart Levitt’s first foray into the High Court and LR - or as the firm was then known – acted for the Respondent who had won 4: Nil in the Full Court of the Family Court.

Up till then, Courts had been meticulous in determining who had brought what into the marriage and weighing up financial contributions during the marriage, too, and ascribing them to one spouse or the other. There was an “asset-by-asset” assessment undertaken, as if what was being dissolved was a commercial partnership, not a love match.

The High Court decided in *Norbis* that, henceforth, the proper approach would be to look at financial contributions in a global or holistic way, particularly when considering money coming into the household during the marriage.

Because what was being determined was a matter of high public importance, Levitt’s client was awarded costs from the Commonwealth Suitors’ Fund, even though the Full Court decision was reversed. LR had acquired a taste for being involved in transformational litigation, which it is yet to lose.