

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application Starting a Representative Proceeding under Part IVA
Federal Court of Australia Act 1976 [Human Rights Div 2.4 Exemption] - Form
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Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)

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File Number: WAD5/2022

File Title: SHERONA ROE AND DAVIN FERREIRA AS CO-ADMINISTRATORS OF
THE ESTATE OF THE LATE MS JULIEKA DHU & ANOR v THE STATE
OF WESTERN AUSTRALIA

Registry: WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Reason for Listing: Case Management Hearing

Time and date for hearing: 31/07/2024, 9:15 AM

Place: Please check Daily Court List for details



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.

The date of the filing of the document is determined pursuant to the Court's Rules.



Further amended originating application starting a representative proceeding under Part IVA of the *Federal Court of Australia Act 1976 (Cth)* and the *Australian Human Rights Commission Act 1986 (Cth)*

Amended by leave granted by Colvin J on 21 June 2023 and further amended by leave granted by Colvin J on 15 May 2024

No: WAD5/2022

Federal Court of Australia
District Registry: Western Australia
Division: General

SHERONA ROE AND DAVIN FERREIRA AS CO-ADMINISTRATORS OF THE ESTATE OF THE LATE MS JULIEKA DHU and another named in the Schedule

Applicants

STATE OF WESTERN AUSTRALIA

Respondent

To the Respondent

The Applicants apply for the relief set out in this Amended Originating Application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Peter Durack Commonwealth Law Courts, Building 1, Victoria Avenue, Perth, Western Australia, 6000

Date: ~~30 June 2023~~

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of	Applicants
Law firm	Levitt Robinson
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Terms not defined in this document adopt the definitions in the accompanying Second Further Amended Statement of Claim (2FASOC).

Details of claim and relief sought

On the grounds stated in the 2FASOC, the First Applicants on behalf of the late Ms Dhu and as co-administrators of the late Ms Dhu's Estate, the Second Applicant (**Ms Dickie**) on her own behalf, and the First Applicants and Ms Dickie representing the group members (including the female group members) seek the declarations and other relief set out below.

1. A declaration that the issue by a Registrar of each of the Relevant Warrants of Commitment (as defined at paragraph 28 of the 2FASOC) was unlawful discrimination under s 9(1) and/or ~~under~~ by reason of the operation of s 10(1) of the *Racial Discrimination Act 1975* (Cth) (**RDA**).
2. A declaration that the arrest and detention and/or imprisonment of Ms Dhu, Ms Dickie and the group members (including the female group members) pleaded at paragraph 30 of the 2FASOC, was unlawful by reason of the operation of ss 9(1) and/or 10(1) of the RDA and s 109 of the Constitution.
3. A declaration that the arrest and detention and/or imprisonment of Ms Dhu, Ms Dickie and the group members (including the female group members), pleaded at paragraph 30 of the 2FASOC, constituted false imprisonment at common law.
4. A declaration that the Second Applicants and the group members (including the female group members, but excluding Ms Dhu) are entitled to:
 - (a) Damages, pursuant to s 46PO(4)(d) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**), by way of compensation for the loss and damage suffered by reason of:
 - (i) the unlawful discrimination set out in paragraph 1; and
 - (ii) the unlawful arrest and detention set out in paragraph 2.
 - (b) Damages at common law for false imprisonment in respect of the arrest, detention and imprisonment set out in paragraph 3.



5. A declaration that the State of Western Australia (**State**) is vicariously liable for the:
 - (a) unlawful discrimination described in paragraph 1;
 - (b) the unlawful arrest and detention and/or imprisonment described in paragraphs 2 and 3; and
 - (c) damages the subject of the declarations in paragraph 4.
6. Orders under s 46PO(4)(d) of the *Australian Human Rights Commission Act 1975* (Cth) (**AHRC Act**) requiring the State to pay damages by way of compensation for the loss or damage suffered by ~~Ms Dhu~~, Ms Dickie and the group members (including the female group members, but excluding Ms Dhu) because of the unlawful discrimination and the unlawful arrest and detention and/or imprisonment described in paragraphs 1 and 2.
7. Further or alternatively, orders requiring the State to pay damages at common law for the false imprisonment of ~~Ms Dhu~~, Ms Dickie and the group members (including the female group members, but excluding Ms Dhu) described in paragraph 3.
8. Costs.
9. Interest pursuant to statute.
10. Such further or other orders as this Honourable Court thinks fit.

Questions common to the claims of group members

The questions of law or fact common to the claims of the group members are:

- A. ~~Whether the issue of the Relevant Warrants of Commitment (as defined at paragraph 28 of the SOC) amounted to unlawful discrimination under s 9(1) and/or under s 10(1) of the RDA.~~
- B. ~~Whether, by reason of s 18A of the RDA, the State is vicariously liable for the unlawful discrimination referred to at paragraph A above.~~
- C. ~~Whether the Relevant Warrants of Commitment were not validly issued in accordance with the requirements of the FPINE Act as it applied during the relevant period because:~~



- (a) ~~they were issued without considering the individual circumstances of the relevant offenders;~~
- (b) ~~they were issued without considering whether the power to issue them should, or should not, as a matter of discretion be exercised.~~
- D. ~~Whether the Relevant Warrants of Commitment were not validly issued by reason of ss 9(1) and/or 10(1) of the RDA and/or s 109 of the Constitution.~~
- E. ~~Whether the group members (including the female group members) are entitled to orders under s 46PO(4)(d) of the AHRC Act for the payment of damages by way of compensation for the unlawful discrimination referred to at paragraph 1 above, and the unlawful detention and arrest referred to in paragraph 2 above.~~
- F. ~~Whether the group members (including the female group members) are entitled to damages at common law for false imprisonment.~~
- G. ~~Whether the State is liable to pay the damages referred to in paragraphs E and F.~~
- H. ~~Whether the group members are entitled to the other relief sought by them.~~
- A. At all material times during the relevant period (as defined in paragraph 4(a) of the 2FASOC), when considering whether to issue a warrant of commitment under s 53 or s 55D(1)(c) and (f) of the FPINE Act, did the Registrar have:
- (a) a Duty to Consider Individual Circumstances; and/or
- (b) a Duty to Consider Non-Exercise,
- (as those terms are defined in paragraph 27 of the 2FASOC)?
- B. At all material times during the relevant period, in issuing warrants of commitment under s 53 or s 55D(1)(c) and (f) of the FPINE Act, was it the Registrar's practice to issue warrants of commitment:
- (a) on the sole basis that the statutory criteria for issuing a warrant of commitment appeared to the Registrar to be satisfied;
- (b) without considering the individual circumstances of the relevant offenders;



- (c) without considering whether the power to issue a warrant of commitment should, as a matter of discretion, be exercised or not;
- (d) without according any opportunity to the relevant offenders to be heard in relation to the matters in sub-paragraphs (b) and (c) and also in relation to whether the warrants should or should not be issued; and/or
- (e) relying on s 103 of the FPINE Act to not accord natural justice or procedural fairness to the relevant offenders?
- C. If at all material times during the relevant period, in issuing warrants of commitment under s 53 or s 55D(1)(c) and (f) of the FPINE Act, a Duty to Consider Individual Circumstances and/or a Duty to Consider Non-Exercise is found to exist, did the Registrar's practice set out in any sub-paragraph in B (if found to exist) breach the duty to consider Individual Circumstances and/or the Duty to Consider Non-Exercise?
- D. If, at all material times during the relevant period, in issuing warrants of commitment under s 53 or s 55D(1)(c) and (f) of the FPINE Act:
- (a) the Duty to Consider Individual Circumstances and/or a Duty to Consider Non-Exercise is found to exist; and
- (b) the Registrar's practice set out in any sub-paragraph in B is found to exist; and
- (c) the Registrar's practice so found to exist breached the Duty to Consider Individual Circumstances and/or a Duty to Consider Non-Exercise,
- were such warrants of commitment not validly issued in accordance with the FPINE Act?
- E. During the relevant period, did the issue of warrants of commitment under s 53 or s 55D(1)(c) and (f) of the FPINE Act involve the imposition of the Urgent Payment Requirement (as defined in paragraph 36 of the 2FASOC)?
- F. If the warrants of commitment were issued under ss 53 or 55D(1)(c) and (f) of the FPINE Act during the relevant period in the manner alleged in one or more of the sub-paragraphs in paragraph 37 of the 2FASOC, was the Urgent Payment Requirement (if it existed) not reasonable?



- G. During the relevant period, was the issue of warrants of commitment under s 53 or s 55D(1)(c) and (f) of the FPINE Act, involving the Urgent Payment Requirement (if it existed) in the circumstances alleged in one or more of the sub-paragraphs in paragraph 37 of the 2FASOC (if they existed), unlawful under s 9(1) (by reason of s 9(1A) of the RDA), having regard to the circumstances of Indigenous persons, or alternatively Indigenous women, as pleaded in one or more sub-paragraphs in paragraph 33 of the 2FASOC?
- H. During the relevant period, was the issue of warrants of commitment under s 53 or s 55D(1)(c) and (f) of the FPINE Act:
- (a) in accordance with the practice referred to in one or more of the sub-paragraphs in section B above (if found to exist); and/or
- (b) in the circumstances pleaded in paragraphs 48, 49 and/or 50 of the 2FASOC (if, and to the extent that, those circumstances are found to exist),
- unlawful by the operation of s 10(1) of the RDA and/or s 109 of the Commonwealth Constitution, having regard to the circumstances of Indigenous persons, alternatively Indigenous women, (as identified in one or more of the sub-paragraphs in paragraph 33 of the 2FASOC);
- I. If the issue of warrants of commitment under s 53 or s 55D(1)(c) and (f) of the FPINE Act during the relevant period was unlawful under s 9(1) of the RDA and/or by the operation of s 10(1) of the RDA, was the State vicariously liable for their issue, pursuant to s 18A of the RDA and/or pursuant to the common law?
- J. Did the RDA apply to the conduct of the Registrar and/or was the Registrar subject to a common law judicial immunity from suit?
- K. Are s 13 and/or 16 of the *Limitation Act 2005 (WA)* and/or s 4(2) of the *Law Reform (Miscellaneous Provisions) Act 1941 (WA)* invalid, inoperative or inapplicable in federal jurisdiction being exercised in this matter by the operation of s 10(1) of the RDA and/or s 109 of the Commonwealth Constitution and/or s 79(1) of the *Judiciary Act 1903 (Cth)*?



Representative action

The First Applicants and ~~Eleventh~~ Second Applicant bring this proceeding as representative parties under Part IVA of the *Federal Court of Australia Act 1976* (Cth).

The group members to whom this proceeding relates are:

1. Aboriginal or Torres Strait Islander persons (**Indigenous persons**):
 - (a) who were arrested and detained and/or imprisoned in Western Australia for any period of time between 1 January 2014 and 30 September 2020; and
 - (b) whose arrest and detention and/or imprisonment was pursuant to one or more warrants of commitment purportedly issued by the Registrar of the Western Australian Fines Enforcement Registry (**Registrar**) under s 53 or s 55D(1)(c) and (f) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) (**FPINE Act**) during the period 1 January 2014 to 28 September 2020 (the **relevant period**),
(group members).
2. Further or alternatively, as a sub-group or otherwise, Aboriginal or Torres Strait Islander women (**Indigenous women**):
 - (a) who were arrested and detained and/or imprisoned in Western Australia for any period of time between 1 January 2014 and 30 September 2020; and
 - (b) whose arrest and detention and/or imprisonment was pursuant to one or more warrants of commitment purportedly issued by a Registrar under s 53 or s 55D(1)(c) and (f) of the FPINE Act during the relevant period,
(female group members).

Commonwealth Legislation

The Applicants claim that the discrimination complained of is unlawful under ss 9(1) and 10(1) of the RDA and that, as a consequence, damages are payable under s 46PO(4)(d) of the AHRC Act.



Accompanying documents

This application is accompanied by:

1. A copy of the original complaint to the Australian Human Rights Commission (**AHRC**) lodged on 8 June 2018 by Ms Della Roe, Ms Carol Roe and Mr Shaun Harris (**First Complaint**).
2. A copy of the final amended version of the complaint to the AHRC lodged on 21 May 2021 (**Final Complaint**), which included the First Applicants (in their capacity as co-administrators of Ms Dhu's Estate) as complainants, among other amendments.
3. The notice of termination of complaint given by the President of the AHRC on 10 November 2021 pursuant to s 46PH(2) of the AHRC Act.

Applicants' details

The First Applicants' relationship to the Respondent is that they are the co-administrators of the estate of a deceased person who was resident in the State.

The Second Applicant's relationship to the Respondent is that she is a resident of the State.

The Applicants are all aged over 18 years.

Applicants' address for service

The Applicants' address for service is:

Place: PO Box 850, Darlinghurst NSW 1300

Email: WAFines@levittrobinson.com

Service on the Respondents

It is intended to serve this application on the Respondent.

Date: ~~30 June 2023~~ 24 May 2024


Signed by Stewart Levitt

Lawyer for the Applicants

Schedule

No: WAD5/2022

Federal Court of Australia

District Registry: Western Australia

Division: General

Applicants

First Applicants: Sherona Roe and Davin Ferreira as co-Administrators
of the Estate Of the late Ms Julieka Dhu

Second Applicant: Keennan Courtney Dickie

Respondents

Respondent: State of Western Australia

Date: ~~30 June 2023~~ 24 May 2024