

SUPREME COURT OF QUEENSLAND

CITATION: *Merrett & ors v State of Queensland (Queensland Police Service) & anor* [2026] QSC 19

PARTIES: **DELLA MERRETT**
(first plaintiff)
SHANE ALLEN ANDREW BRENT POKAI
(second plaintiff)
DEBORAH POKAI
(third plaintiff)
v
STATE OF QUEENSLAND (QUEENSLAND POLICE SERVICE)
(first defendant)
KATARINA RUHZ CARROLL
(second defendant)

FILE NO/S: BS No 14484 of 2024

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 11 March 2026

DELIVERED AT: Brisbane

HEARING DATE: 24 November 2025 and 11 December 2025

JUDGE: Williams J

ORDER:

The Court orders that:

1. **The plaintiffs pay the defendants' costs of the Security for Costs Application on the standard basis.**
2. **The plaintiffs pay the defendants' costs of the Class Challenge Application on the standard basis.**

The Court directs that:

3. **The parties liaise and agree a form of order in respect of the Opt-Out Notice Application, or alternatively agree directions for the provision of proposed orders and brief further submissions in respect of the Opt-Out Notice Application, including costs.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COSTS FOLLOW THE EVENT – WHERE ACTION SETTLED OR OTHERWISE DETERMINED WITHOUT HEARING – where security for costs was a matter raised by the defendants in correspondence – where the defendants subsequently filed an application seeking security for costs – where the plaintiffs’ legal representation was disrupted and new representation was obtained – where the plaintiffs sought an adjournment in order to seek instructions as to the position of the litigation funder – where the plaintiffs accepted an offer made by the defendants – where costs of the application for security for costs remained in dispute – whether the Court should exercise its discretion order that the plaintiffs pay the defendants costs on a standard basis

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – CLASS ACTIONS OR GROUP PROCEEDINGS – where the first defendant was the employer of the group members at the relevant time – where the plaintiffs sought orders requiring the defendants to email or post a copy of the Notice to Group Members and Opt Out Notice to group members – where this involved accessing the contact details of group members provided to the first defendant for the purpose of commencing employment – whether the proposed procedure was reasonably practicable and not unduly expensive – whether the defendants should bear the costs of the procedure – whether the proposed procedure breached the first defendant’s obligations under the *Information Privacy Act 2009* (Qld) and the *Queensland Privacy Principles*

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – CLASS ACTIONS OR GROUP PROCEEDINGS – where the defendants sought orders to prevent the plaintiffs from pursuing any cause of action for a subgroup, and to strike out pleadings – where the plaintiffs submitted that such orders would amount to summary judgment being awarded against the members of the subgroup – where directions were made for the plaintiffs to prepare amended pleadings – whether the plaintiffs should pay the defendants’ costs for the application

Civil Proceedings Act 2011 (Qld), s 103T, s 103U, s 103V
Federal Court of Australia Act 1976 (Cth), s 33Y

Information Privacy Act 2009 (Qld), s 12, s 18, s 21, s 27, QPP 1, QPP 6, Sch 4

Uniform Civil Procedure Rules 1999 (Qld), r 670, r 681

Baker v Woolworths Group Ltd [2021] FCA 223, cited

Courtney v Medtel Pty Ltd [2001] FCA 1037, cited

Fairfield Services Pty Ltd (in liq) v Leggett (2020) 5 QR 50, considered

Femcare Ltd v Bright (2000) 100 FCR 331; [2000] FCA 512, cited

General Steel Industries Inc v Commissioner for Railways (1964) 112 CLR 125, cited

Johnson Tiles Pty Ltd v Esso Australia Pty Ltd [2001] VSC 284, cited

J Wisbey & Associates Pty Ltd v UBS AG (No 2) [2024] FCA 147, cited

King v GIO Australia Holdings Limited [2000] FCA 1869, cited

Luke v Aveo Group Ltd (No 2) [2022] FCA 1072, cited

Oshlack v Richmond River Council (1998) 193 CLR 72, cited

Pharm-a-Care Laboratories Pty Ltd v Commonwealth (No 4) [2010] FCA 749, cited

Re Minister for Immigration and Ethnic Affairs and another; ex parte Lai Qin (1997) 186 CLR 622, cited

Yafe v Sivyver and Trainor [2025] QSC 53, cited

COUNSEL: D Villa SC, with B Coyne, for the plaintiffs
J Horton KC, with D Favell, for the defendants

SOLICITORS: Sibley Lawyers for the plaintiffs
Crown Law for the defendants

- [1] The proceeding is case managed on the Class Actions List. Three applications were listed for hearing, namely:
- (a) an application by the defendants for security for costs (**Security for Costs Application**);
 - (b) an application by the plaintiffs for orders in respect of the Opt-Out Notice procedure (**Opt-Out Notice Application**); and
 - (c) an application by the defendants for various orders in respect of the class represented by the second plaintiff (**Class Challenge Application**).

- [2] Considering each of the applications in turn.

Security for Costs Application

- [3] At the hearing the parties indicated that an agreement had been reached in respect of the provision of security. Accordingly, it was not necessary to consider whether the threshold requirement was met and whether it was appropriate to exercise the discretion to order security pursuant to Rule 670 of the *Uniform Civil Procedure Rules (UCPR)*.

- [4] On 24 November 2025 the following order was made by consent:

- “1. An order that pursuant to r 670 of the [UCPR] that the plaintiffs provide security in the amount of \$250,000 for the first and second defendants’ costs of and incidental to the proceeding up to and including mediation.
2. An order that the security referred to in paragraph 1 above be provided:

- a. within 14 days of the date of the Court's order;
- b. by way of payment into Court."

- [5] The parties were unable to agree on the issue of costs and who should pay the costs of the Security for Costs Application remained in dispute.
- [6] The defendants sought an order that the plaintiffs pay the defendants' costs of the Security for Costs Application on the usual basis. Further, the defendants submit this result is in accordance with the primary purpose of a costs order being to indemnify the successful party.¹
- [7] The defendants contend that it is appropriate for the Court to exercise its discretion to award costs where the defendants' solicitors wrote to the solicitors then acting for the plaintiffs to attempt to resolve the issue of the provision of security for costs prior to the application being filed. Approximately one month after the application was filed, the plaintiffs agreed to the provision of the security in the terms of the order that was made.
- [8] The plaintiffs contend that the plaintiffs' former lawyers, Alexander Law, were responsible for the delay in resolution of the issue. However, the defendants submit that is not reflective of the position when the full chronology is considered.
- [9] The defendants rely upon the factual chronology to establish that the provision of security for costs remained in issue after Alexander Law ceased acting and other solicitors commenced acting for the plaintiffs.
- [10] The defendants submit that Alexander Law was not entirely to blame for the issue not being resolved earlier. In particular the defendants point to the following circumstances in support of that contention:
- (a) Sibley Lawyers were involved for at least five months.
 - (b) Crown Law sent correspondence to GSmith Law on 22 August 2025 attaching a copy of the earlier letter of 7 July 2025. There is no evidence that GSmith Law did not advise the plaintiffs of the contents of the letter of 22 August 2025.
 - (c) On 1 September 2025 the Security for Costs Application was filed and served on GSmith Law, then the plaintiffs' solicitors on the record. Later that day Sibley Lawyers filed a Notice of Change of Solicitor. There is no evidence as to whether Sibley Lawyers engaged with GSmith Law about the Security for Costs Application or not.
 - (d) On 17 September 2025 Sibley Lawyers received a letter from Crown Law expressly referring to the earlier correspondence of 7 July 2025 and 22 August 2025. That letter also detailed the defendants' position in respect of security for costs.
 - (e) On or about 17 September 2025 a copy of the 17 September 2025 correspondence was provided to Geoff Smith, the legal representative of the litigation funder. Mr Smith was the solicitor for the plaintiffs seventeen days earlier when the Security for Costs Application was made.

¹ *Oshlack v Richmond River Council* (1998) 193 CLR 72 at 97.

- (f) On 9 October 2025 Sibley Lawyers wrote to Crown Law, at a time when the Security for Costs Application had been listed for hearing, in a manner that suggested that funding arrangements were the problem rather than the conduct of Alexander Law who had ceased acting two months previously.
- [11] Overall, it is submitted on behalf of the defendants that from at least 22 August 2025 the plaintiffs' current solicitors were on notice of the security for costs issue. The solicitors acting for the plaintiffs subsequently to Alexander Law were on notice of the security for costs issue and no resolution was forthcoming. This in effect forced the defendants to bring the Security for Costs Application which was ultimately conceded. In these circumstances, the defendants submit that an order requiring the plaintiffs to pay their costs on the standard basis is appropriate.
- [12] The plaintiffs rely on the Affidavit of Justin Wade Reuben Sibley affirmed 2 September 2025 (the **First Sibley Affidavit**) and the Affidavit of Justin Wade Reuben Sibley affirmed 6 November 2025 (the **Second Sibley Affidavit**) in respect of the costs issue.
- [13] The plaintiffs contend that any delay in resolving the Security for Costs Application was due to the "extraordinary circumstances of what occurred in relation to the previous solicitor on the record for the Plaintiffs, Mr Sam Iskander of Alexander Law, the transition of the carriage ... through GSmith Law Pty Ltd to Sibley Lawyers, and the fact that there were delays caused by receivers being appointed to Alexander Law by the Queensland Law Society leading to delays in Sibley Lawyers accessing the files of the Plaintiffs and group member clients".
- [14] In support of this position the plaintiff relies upon the following matters:
- (a) The Security for Costs Application occurred over a period of 8.5 weeks (1 September 2025 to 30 October 2025).
 - (b) It was a period of extraordinary disruption to the plaintiffs' legal representation.
 - (c) It was a period where a new funding agreement was required to be negotiated by Sibley Lawyers with a litigation funder, which reached an in-principle agreement on 16 October 2025.
 - (d) There was a delay of some 10 days (21 October 2025 to 31 October 2025), during which the defendants' representative erroneously stated the defendant was seeking \$275,663 before that was corrected.
 - (e) Fourteen days after an in-principle agreement was reached under the new funding agreement the issue of security for costs was resolved.
 - (f) This was more than three weeks prior to the hearing of the Security for Costs Application.
- [15] In these circumstances it is submitted that it would be appropriate that costs in respect of the Security for Costs Application be costs in the proceeding.
- [16] Pursuant to rule 681 of the UCPR, costs of an application in a proceeding are in the discretion of the Court but follow the event unless the Court orders otherwise.

- [17] Here the relevant event is the provision of security for costs (and obtaining the related protection), whether that was by agreement or by an order of the Court following a disputed hearing.
- [18] The relevant factual chronology includes:
- (a) On 7 July 2025 Crown Law wrote to Alexander Law in respect of the issue of security for costs and sought that the amount of \$230,000 be paid into Court.
 - (b) On 29 July 2025 a Notice of Change of Solicitor was filed with GSmith Law acting for the plaintiffs.
 - (c) On 30 July 2025 the security for costs issue was raised at a review.
 - (d) On 22 August 2025 Crown Law wrote to GSmith Law attaching a copy of Crown Law's letter of 7 July 2025, seeking a response before the review scheduled for 2 September 2025 in circumstances where a response had not previously been received.
 - (e) On 1 September 2025 the defendants filed the Security for Costs Application.
 - (f) Also, on 1 September 2025 a Notice of Change of Solicitor was filed with Sibley Lawyers taking over acting for the plaintiffs.
 - (g) On 2 September 2025 the proceeding was reviewed and the defendants requested that the Security for Costs Application be listed.
 - (h) On 17 September 2025 Crown Law sent a letter to Sibley Lawyers in respect of the Security for Costs Application referring to the lack of response to the Crown Law letters of 7 July 2025 and 22 August 2025. Further, the letter set out the defendants' position as to why the provision of security for costs was appropriate and requested that the plaintiffs confirm whether the security would be provided without the need to progress the Security for Costs Application.
 - (i) On 18 September 2025 the proceeding was further reviewed. At the review:
 - (i) It was expressed on behalf of the plaintiffs that they had sought an adjournment on 2 September 2025 to enable Sibley Lawyers to seek instructions as to "the position of the funder with respect to the [Security for Costs Application]".
 - (ii) A further adjournment was sought so that the plaintiffs could get access to the files from the receiver of Alexander Law and also so that Sibley Law could "ascertain the position of the funder, with regards to the [Security for Costs Application]".
 - (iii) An order was made for the Resolution Registrar to set the Security for Costs Application down on a date to be fixed.
 - (j) On 9 October 2025 Sibley Lawyers wrote to Crown Law outlining the steps that were being taken in respect of a new funding agreement, including the Security for Costs Application. Sibley Lawyers relevantly stated:
 - "23. We note the defendants' security for costs application filed on 1 September has been listed for hearing on 24 November 2025. The funder is presently in the process of finalising a new Funding Agreement to cover this

and a related represented proceeding. At that time, we expect to be in a better position to provide an update in relation to the plaintiffs' position as to the defendants' security for costs application.

24. As previously indicated, it is hoped that the matter will resolve without a hearing. We are awaiting instructions, but expect to be in a position to propose an alternative position before the end of the month."
- (k) On 10 October 2025 the proceeding was further reviewed and the defendants sought some clarity as to the status of the plaintiffs' funding agreement before the hearing of the Security for Costs Application on 24 November 2025.
- (l) On 16 October 2025 Sibley Lawyers sent a letter to Crown Law on a without prejudice save as to costs basis acknowledging the Security for Costs Application and the Crown Law letter of 17 September 2025. That letter contained an offer to resolve the Security for Costs Application on the following terms:
- "a. the litigation funder, Mineralogy, will provide an undertaking to the Court forthwith to cover the Defendants' potential legal costs up to \$180,000; and
- b. the parties bear their own costs relating to the Security for Costs Application."
- (m) Sibley Lawyers sent a follow up email to Crown Law also on 16 October 2025 in respect of the offer clarifying:
- "the Offer is conditional on the Plaintiffs in the matter each agreeing to the terms of a funding agreement with the litigation funder (Mineralogy)."
- (n) On 21 October 2025 Crown Law sent an email to Sibley Lawyers rejecting the offer of 16 October 2025 and advised that the defendants required the amount of \$275,663 to be paid into Court or by way of an unconditional bank guarantee.
- (o) On 30 October 2025 Sibley Lawyers wrote to Crown Law on an open basis and offered to resolve the Security for Costs Application on the basis that:
- "a. the litigation funder, Mineralogy, will pay into Court the amount of \$250,000 to cover the defendants' potential legal costs;
- b. the parties bear their own costs relating to the Security for Costs Application."
- (p) On 31 October 2025 Crown Law further wrote to Sibley Lawyers and advised that the figure of \$275,663 was an error and that the amount of \$250,000 as security was acceptable. A counteroffer was made in the following terms:
- "1. Pursuant to Rule 670(1) of the [UCPR] the litigation funder, Mineralogy Pty Ltd ACN 010582680 provide security for the defendant's [sic] costs of and incidental to this

proceeding, up to a mediation taking place in the first half of next year, in the amount of \$250,000.

2. The above security be provided within 14 days of the date of the Court's order; and
 3. That payment be made by way of payment into Court.
 4. The plaintiffs pay the defendant's [sic] costs of and incidental to the application on the standard basis."
- (q) On 3 November 2025 Sibley Lawyers advised instructions were being obtained and an itemised schedule of costs were sought.
- (r) Later that day Crown Law responded that they were unable to provide an itemised scheduled of costs as the Security for Costs Application had not yet been finalised.
- (s) On 3 November 2025 Sibley Lawyers accepted terms 1 to 3 of the defendants' offer made on 31 October 2025 but the issue of costs of the Security for Costs Application remained in dispute. The plaintiffs accepted that in the ordinary course costs would follow the event, however, in the circumstances proposed that costs be costs in the cause given:
- (i) the difficulties associated with the plaintiffs' former lawyers, including being placed into receivership by the Queensland Law Society;
 - (ii) any delay in resolving the issue in respect of security for costs and the Security for Costs Application was due to the conduct of the plaintiffs' previous solicitors, Alexander Law, and should not be attributed to the plaintiffs; and
 - (iii) that once Sibley Lawyers had commenced acting for the plaintiffs the parties had been able to reach a resolution without the need for a final hearing.
- (t) On 3 November 2025 Crown Law advised that the defendants were seeking their costs of the Security for Costs Application on a standard basis.
- [19] On the factual chronology, the Security for Costs Application was brought after Alexander Law ceased acting for the plaintiffs and there was a clear period of time when Sibley Lawyers were acting for the plaintiffs in respect of the Security for Costs Application prior to the agreement for the provision of security for costs.
- [20] The matter was case managed on the Class Actions List and adjournments were granted to enable the new lawyers on behalf of the plaintiffs to obtain instructions and the necessary files. While there was some disruption to the conduct of the proceedings by the plaintiffs due to those issues, Sibley Lawyers was clearly on notice of the Security for Costs Application from the time they took over the conduct of the proceeding on behalf of the plaintiffs. Further, there is no evidence of any impediment to GSmith Law progressing the Security for Costs Application from the time that they first received the correspondence in respect of the issue.

- [21] In all of these circumstances, it is appropriate to exercise the discretion to order that the plaintiffs pay the defendants' costs of the Security for Costs Application on the standard basis.

Opt-Out Notice Application

- [22] The plaintiffs seek orders pursuant to s 103U of the *Civil Proceedings Act 2011* (Qld) (**CP Act**) in respect of the Opt-Out Notice to be provided to group members.

- [23] It is appropriate to consider the orders sought in the Opt-Out Notice Application in full and to identify what remains in dispute and what is not in dispute. The Application seeks orders as follows:

- “1. An order pursuant to s 103U(1) of the [CP Act] that notice be provided to Group Members pursuant to section 103T(1)(a) of the CP Act in the form of the Notice to Group Members and Opt-Out Notice attached as Schedule A and Schedule B to this application.
2. An order pursuant to s 103U(2)(b) of the CP Act that the Notice to Group Members and Opt-Out Notice be given as follows:
 - a. by 4.00pm on [a date to be fixed], the Plaintiffs are to cause an advertisement in terms of the Notice to Group Members (in the form of Schedule A) and Opt-Out Notice (in the form of Schedule B) to be published in the legal notices or equivalent section in one weekday edition of the following publications:
 - i. The Courier Mail;
 - ii. The Gold Coast Bulletin;
 - iii. The Townsville Bulletin;
 - iv. The Cairns Post;
 - v. The Daily Mercury (Mackay).
 - b. by 4.00pm on [a date to be fixed], the Plaintiffs' solicitors shall cause a copy of the Notice to Group Members (in the form of Schedule A) and Opt Out Notice (in the form of Schedule B) to be sent to each person who has provided their contact details to the Plaintiffs' solicitors because they are or may be a group member (regardless of whether that person has retained them) with such Notices sent by email when an address is available and otherwise by ordinary post;
 - c. by 4.00pm on [a date to be fixed], the Defendants are to cause a copy of the Notice to Group Members (in the form of Schedule A) and Opt Out Notice (in the form of Schedule B) to be sent by: (i) email to their last known email address; or (ii) by ordinary post to their last known postal address (in the absence of their last known email address) to all persons who at any time in the period from 7 December 2021 to 12 December 2022 were employed by the First Defendant and subject to the “Instrument of

Commissioner's Direction No 12" dated 7 September 2021 (Direction No 12) and/or the "Instrument of Commissioner's Direction No 14" dated 14 December 2021 (Direction No 14);

- d. by 4.00pm on [a date to be fixed], the Defendants shall display the Notice to Group Members (in the form of Schedule A) and Opt Out Notice (in the form of Schedule B) on the intranet of the Queensland Police Service until the Opt Out Deadline.
- e. where a Notice to Group Members and Opt Out Notice is sent via email (in accordance with orders (b) and (c) above) it shall be attached to an email with the subject line of the email shall be: "Supreme Court Notice regarding QPS COVID-19 Vaccine Mandate Class Action (BS 14484/24)" and the content of the email shall be as follows:

Dear [FIRST NAME] [LAST NAME]

Please see attached an important notice from the Supreme Court of Queensland.

The Supreme Court of Queensland has ordered that this notice be sent to all persons, who at any time in the period from 7 December 2021 to 12 December 2022 were employed by the Queensland Police Service and were subject to the "Instrument of Commissioner's Direction No 12" dated 7 September 2021 (Direction No 12) and/or the "Instrument of Commissioner's Direction No 14" dated 14 December 2021 (Direction No 14). Please do not reply to this email. If you have any questions about this notice, please direct them to Sibley Lawyers, whose contact details are in the notice, or seek your own legal advice."

- f. where a 'bounce back' notification is received by the sender of an email referred to in order (e) above, to the effect that the email was not delivered or the sender otherwise becomes aware that an email was not delivered, the Notice to Group Members and Opt Out Notice is instead to be sent by ordinary post to the intended recipient within 5 business days of the 'bounce back' notification or the date on which the sender otherwise became aware, if the sender of the email has a postal address for that person;
- g. by 4.00pm on [a date to be fixed], the Defendants file and serve an affidavit stating:
 - i. the steps taken to complete the distribution in accordance with orders (c) – (e) above, including

steps taken to identify all persons on the distribution list;

- ii. the total number of persons sent a copy of the Notice to Group Members and Opt Out Notice; and
- iii. the number of persons in relation to whom the Defendants received notification (in any form) that the communication was not received.”

- [24] At the hearing it was accepted that the content of the Opt-Out Notice in Schedule B and the Notice to Group Members in Schedule A may need to be further revised in light of the ultimate procedure adopted and also the outcome of the Class Challenge Application. The hearing proceeded on the basis that the Court would determine the appropriate procedure for the Opt-Out Notice to be given to Group Members and then for the parties to be heard further as to the final form of order, including the contents of the Opt-Out Notice and the Notice to Group Members.
- [25] There is no dispute in respect of:
- (a) The proposed order that the plaintiffs cause an advertisement to be placed in the identified newspapers in accordance with proposed order [2(a)] of the Opt-Out Notice Application.
 - (b) The proposed order that the plaintiffs’ solicitors email a copy of the Notice to Group Members and Opt-Out Notice to the Group Members who provided contact details to the plaintiffs’ solicitors, or alternatively by post, in accordance with proposed order [2(b)] of the Opt-Out Notice Application.
 - (c) The proposed order that the defendants shall cause to display the Notice to Group Members and the Opt-Out Notice on the Intranet of the Queensland Police Service in accordance with proposed order [2(d)] of the Opt-Out Notice Application.
- [26] What is in dispute between the parties is the proposed procedure in [2(c)], [2(e)] and [2(f)] of the Opt-Out Notice Application.
- [27] Depending on the ultimate procedure, the order in [2(g)] of the Opt-Out Notice Application will need to be amended to reflect the steps to be taken by the defendants.
- [28] The plaintiffs contend that whilst a level of exposure will be given to potential group members by the newspaper advertisements, that procedure is “not optimal” as it is reasonable to assume that many potential group members would not read the legal notices sections of those publications. It is in these circumstances that the plaintiffs submit that the most efficient way to provide notice to prospective group members is to target notice to the known employees of the first defendant during the relevant period.
- [29] The plaintiffs propose that the defendants cause a copy of the Notice to Group Members and Opt-Out Notice to be sent by email to the last known email address or by ordinary post to the last known postal address of the individuals employed by the

Queensland Police Service in the relevant period of 7 December 2021 to 12 December 2022, being approximately 18,987 people.²

- [30] The defendants dispute notification by email on the basis that it goes beyond what is contemplated by s 103U(5) of the CP Act in that the Court must not order that a notice be given “personally to each group member unless it considers it reasonably practicable and not unduly expensive to do so”.
- [31] The affidavit material filed on behalf of the defendants identifies the significant costs and time involved in respect of sending the Notice to Group Members and Opt-Out Notice by email.
- [32] Further, the defendants contend that the proposed orders put the costs and inconvenience on the defendants. It is submitted that ordinarily this procedure is a matter for the plaintiffs’ representatives to attend to and the circumstances of this case do not warrant a departure from that.
- [33] The defendants also identify considerations under the *Information Privacy Act 2009* (Qld) (**IP Act**). The defendants contend that they are precluded from using or disclosing the personal information of Queensland Police Service employees (email addresses and postal addresses) for the purposes of advancing the plaintiffs’ litigation where that information was collected for the primary purpose of maintaining employment activity. It is submitted that this litigation is not within that, and the Queensland Police Service is accordingly not able to consent to the proposed procedure. Further it is contended that the information is unable to be volunteered to the plaintiffs’ representatives so the plaintiffs’ representatives can post or email the documents as that would also breach the IP Act.
- [34] Accordingly, it is necessary to consider the issues in respect of:
- (a) Section 103U(5) of the CP Act; and
 - (b) the IP Act and the *Queensland Privacy Principles* (**QPP**).
- [35] It is not contentious between the parties that the Queensland Police Service is an “agency”, being a public authority, for the purposes of ss 18 and 21 of the IP Act. Further, it is not in dispute that an agency must comply with the QPP. Pursuant to s 27(2) of the IP Act an agency must not “do an act or engage in a practice that contravenes, or is otherwise inconsistent with, a requirement of a QPP”.

The plaintiffs’ position

- [36] The plaintiffs submit that QPP 6³ does not prevent this Court making an order for the publication and dispatch of the Opt-Out Notice in the terms sought by the plaintiffs.
- [37] The plaintiffs refer to and rely upon the “carve out” in 6.2(b) of the QPP which provides:

“This QPP applies in relation to the use or disclosure of personal information about an individual if –

² Affidavit of Justin Wade Reuben Sibley affirmed 6 November 2025, JWRS-01 at page 17.

³ In Schedule 3, Part 3 of the IP Act.

...

- (b) the use or disclosure of the information is required or authorised under an Australian law or a court or tribunal order”.

[38] Whilst pursuant to QPP 6.1 an agency must not use or disclose information that was collected for a particular purpose for another purpose, QPP 6.2 provides a lawful exception.

[39] The plaintiffs submit that it would be appropriate for the order to be made in the circumstances where the use of the information is to provide procedural fairness to a potential group of members to be informed of their rights in relation to a legal claim.

[40] Reference is also made to the “permitted general situations” pursuant to Schedule 4, Part 1 of the IP Act. In particular, the plaintiffs refer to and rely upon the following:

“A permitted general situation exists in relation to the collection, use or disclosure by an agency of personal information about an individual if –

...

(d) the collection, use or disclosure is reasonably necessary for the establishment, exercise or defence of a legal or equitable claim; or

(e) the collection, use or disclosure is reasonably necessary for the purposes of a confidential alternative dispute resolution process.”

[41] The plaintiffs submit that what is proposed is in accordance with the objects and purposes of Part 13A of the CP Act and the IP Act and it would be appropriate for the Court to make an order that the procedure set out in [2(c)], [2(e)] and [2(f)] be adopted.

[42] It is contended that this procedure gives proper and adequate notification to those who were employed by the first defendant during the relevant period. It is also submitted that notice to all group members in this fashion may in effect narrow the class of potential claimants.

[43] It is also accepted by the plaintiffs that there are approximately 1,482 individuals for whom the Queensland Police Service does not have an email address. It is not proposed that the defendants need to take any steps to obtain an email address for those individuals.

[44] The plaintiffs also refer to other examples of where defendants have had access to the contact details of potential group members and notification to group members by defendants has been ordered. These examples include:

- (a) The New South Wales Junior Doctors Underpayment Class Action filed in the Supreme Court of New South Wales, namely *Fakhouri v The Secretary for the NSW Ministry of Health and The State of New South Wales*, Case No. 2020/356588. In that case an opt-out process was ordered by consent of

the parties requiring the defendants to notify potential group members in similar terms to the email and intranet steps proposed in this case.

- (b) The Dillwynia Correctional Centre Class Action filed in the New South Wales Supreme Court, namely *CAI v State of New South Wales*, Case No. 2023/00209918. In that case an opt-out process was ordered directing the State of New South Wales to cause a copy of the approved notice to be posted to the last known address of persons who were inmates at the correctional centre at any time between February 2009 and February 2019.
- (c) The Robodebt Class Action filed in the Federal Court of Australia, namely *Prygodicz & ors v Commonwealth of Australia*, VID 1252 of 2019. In that case Murphy J ordered that the respondent use its own resources to identify the names of all group members and to provide a notice via the group members' MyGov account, last known email, SMS or postal contact details.
- [45] It is submitted that these are examples of cases where the defendant was a government agency who held the contact details of group members and potential group members and that the orders requiring the defendants to contact group members or potential group members in those cases were not contested.
- [46] In the current circumstances it is submitted that the class is confined to employees of the first defendant who were employed during the relevant period, that class is determined and ascertainable, and that the proposed procedure is the most efficient and efficacious way to provide notice to prospective group members of their rights in relation to these proceedings.
- [47] In respect of the issues arising pursuant to s 103U(5) of the CP Act, the plaintiffs acknowledge that the statute provides that the Court must not order that the notice be given personally to each group member unless it is reasonably practicable and not unduly expensive to do so. However, the plaintiffs point to s 103U(3)(b) of the CP Act which provides that the Court has a general discretion to order that the costs of giving a notice to group members be paid by any, or all, of the parties to the proceedings. The plaintiffs rely upon the statement of Gillard J in *Johnson Tiles Pty Ltd v Esso Australia Pty Ltd* as follows:
- “... the Court clearly does have power to order that the costs of giving notice be paid by any or all of the parties. This could include a defendant to the proceeding. The question is, should the defendants be ordered to pay the whole, or part, of the cost of giving notice at this stage?”⁴
- [48] The plaintiffs also accept that the discretion is unfettered, but it has been observed that “the general rule is that the costs incurred in giving a notice should be borne by those instituting and prosecuting the litigation”.⁵
- [49] Gillard J in *Johnson Tiles Pty Ltd v Esso Australia Pty Ltd* recognised that the general rule should be applied unless special circumstances are established justifying a departure from that rule and went on to state:

⁴ [2001] VSC 284 at [13].

⁵ *J Wisbey & Associates Pty Ltd v UBS AG (No 2)* [2024] FCA 147 at [183] (Beach J). See also *Johnson Tiles Pty Ltd v Esso Australia Pty Ltd* [2001] VSC 284 at [19] (Gillard J).

“[20] It would be both unwise and impossible to attempt to state an exhaustive list of special circumstances.

[21] The Australian Law Form Commission Report No. 46, “Grouped Proceedings in the Federal Court”, suggested, by way of example, that a defendant may be in a position to give notice more easily than the plaintiff and, in those circumstances, it may be appropriate for the defendant to bear those costs. Another example, which may constitute special circumstances, is where the plaintiff does not have the necessary financial resources to bring the proceeding, the defendant is wealthy or a large financial corporation, and the plaintiff may suffer significant hardship if the cost is borne by him.”⁶

- [50] The plaintiffs submit that what is proposed is that the plaintiffs bear the costs of the newspaper advertisements, but the defendants provide the Opt-Out Notice to potential group members. This is in circumstances where the defendants have access to direct communication with potential group members and the defendants, without a Court order, are precluded from consenting to the proposed steps in respect of the personal email and postal address procedure and are unable to voluntarily provide the personal email and postal addresses to the plaintiffs.
- [51] In effect, the plaintiffs submit that the costs are reasonable to be shared between the parties in the manner proposed.
- [52] The plaintiffs also reject the defendants’ submission that the proposed procedure in effect calls upon the defendants to incur the costs of advancing the plaintiffs’ case. The plaintiffs submit that the objects and purposes of the representative proceedings regime in Part 13A of the CP Act is to facilitate efficient and effective access to justice to Queenslanders who may have an actionable claim in a representative proceeding and this informs the operation of the regime, including s 103U regarding notice requirements.
- [53] It is submitted that the most effective and efficient way to provide notice to potential group members is via email, and alternatively by post, as proposed. Consequently, the proceedings require a departure from the general rule and pursuant to s 103U of the CP Act it is reasonably practical and not unduly expensive for the Court to order that the respondent undertake the proposed steps.
- [54] It is submitted that where the plaintiffs do not have access to the relevant contact details, the most efficacious method for the Opt-Out Notice to be given to potential group members is that proposed. This is more so than the newspaper advertisements which are also included in the procedure. It is submitted that the proposed procedure meets the overarching purpose. If the procedure was limited to newspaper advertisements only there is a risk that the purpose would not be met, or at least would not be optimised.

⁶ See [19] to [21].

- [55] It is in all of these circumstances that the plaintiffs contend that it would be appropriate for the Court to make the orders in the terms of the procedure outlines in [2(a)], [2(c)], [2(e)] and [2(f)], with the consequential amendments to [2(g)].

The defendants' position

- [56] The defendants' position is that the plaintiffs' proposal calls for the defendants to personally notify potential group members using email and postal addresses that were given to the QPS by employees in the context of their employment.
- [57] In the course of correspondence, and subsequently in submissions, the defendants identified a number of bases for the opposition to send notices by email and ordinary post and initially by way of notice on the Queensland Police Service intranet. The opposition in respect of the intranet notice is no longer maintained.
- [58] The opposition to personally notifying potential group members using email and postal addresses is on the basis that:
- (a) The procedure goes beyond what is contemplated by the legislation in s 103U(5) of the CP Act.
 - (b) The procedure involves the defendants having to incur significant costs and inconvenience. This includes that the Queensland Police Service would be required to implement the procedure at the expense of, and to the detriment of, normal duties being performed.
 - (c) The procedure involves the defendants having to use the personal information, being the email and postal addresses, of Queensland Police Service employees for the purposes of advancing the plaintiffs' litigation.
- [59] It is submitted that the starting point is s 103T(1)(a) of the CP Act which provides that for a representative proceeding "[n]otice must be given to group members of the starting of the proceeding and the right of group members to opt out of the proceeding before the date fixed by the court under s 103G".
- [60] Further, s 103T(5) provides that the Court may, at any stage, order that notice of any matter be given to a group member or group members.
- [61] The notice requirements are found in s 103U, which states:
- (1) The form and content of a notice under s 103T must be approved by the court.
 - (2) The court must, by order, state –
 - (a) who must give the notice; and
 - (b) the way in which the notice must be given.
 - (3) The order may also –
 - (a) direct a party to provide information relevant to the giving of the notice; and
 - (b) provide for the costs of giving notice.

- (4) An order under subsection (2) may require notice to be given by way of press advertisement, radio or television broadcast, or any other means.
- (5) The court must not order that notice be given personally to each group member unless it considers it is reasonably practicable and not unduly expensive to do so.
- (6) A notice about a matter for which the court's leave or approval is required must state the period within which a group member or other person may apply to the court, or take some other step, in relation to the matter.
- (7) A notice that includes or is about conditions must state the conditions and period, if any, for compliance.
- (8) The failure of a group member to receive or respond to a notice does not affect a step taken, an order made, or a judgment given in the representative proceeding."

[62] Section 103U of the CP Act is similar in terms to s 33Y of the *Federal Court of Australia Act 1976* (Cth) (the **Federal Court Act**), with s 103U(5) in materially identical terms to s 33Y(5) of the Federal Court Act.

[63] The Full Court of the Federal Court considered s 33Y(5) of the Federal Court Act in *Femcare Ltd v Bright* and observed that the provision was directed at finding:

"the most economical means of ensuring that the group members are informed of the proceedings and their rights. The [Law Reform Commission, "Grouped Proceedings in the Federal Court" (Report No. 46, 1988), at paragraph 190] considered that 'the more at stake for each person, the more effective the notice should be'".⁷

[64] Further, the defendants submit that, consistently with s 103U(4) of the CP Act, the common method of giving notice is by way of press advertisements. It is acknowledged however, that the Courts have on occasion ordered notice to be given by post or by email. It is submitted however, that in each of the instances identified where that occurred the facts were such that it was "reasonably practicable, and not unduly expensive to do so".

[65] By way of example, the defendants pointed to the case of *Courtney v Medtel Pty Ltd*⁸ where there was evidence that the cost of notices being sent in the mail would be \$1,000 in comparison to \$25,000 if newspapers and television advertisements were to be placed nationally. In those circumstances it was appropriate for the notice to be given by pre-paid regular mail to each group member.

[66] The defendants acknowledge that there are other cases where notice has been given personally, including *King v GIO Australia Holdings Limited*,⁹ *Pharm-a-Care*

⁷ (2000) 100 FCR 331, 349 at [74].

⁸ [2001] FCA 1037.

⁹ [2000] FCA 1869.

Laboratories Pty Ltd v Commonwealth (No 4),¹⁰ *Luke v Aveo Group Ltd (No 2)*,¹¹ and *Baker v Woolworths Group Ltd*.¹² However, the defendants contend that these cases identify some common themes that are relevant, including:

- (a) That the giving of the notice, by email or post, was ordered to be carried out by the applicant/plaintiff or a third-party mailing service provider.
- (b) The costs of giving notice personally were borne by the applicant/plaintiff in the first instance.

[67] It is submitted that it is rare for a respondent/defendant to be ordered to undertake the tasks associated with giving notice personally. It is submitted that this goes to the “deeper issue” of why a defendant should not be enlisted to facilitate a suit against itself and bear the expense of doing so.

[68] The second issue identified by the defendants is the costs and inconvenience of the proposed procedure. The defendants submit that what is proposed in the orders is “far from straight forward”. The affidavit of Ms Perry¹³ deposes to the relevant numbers as at 3 November 2025 including as follows:

- (a) During the relevant period there were 18,987 people who were employed by the Queensland Police Service.
- (b) 13,980 are still employed by Queensland Police Service and are not currently on leave. Of those, Queensland Police Service has a personal email address for only 5,748.
- (c) 4,416 are no longer employed by the Queensland Police Service and the Queensland Police Service has a personal email address for only 2,934 of these people.
- (d) 591 are currently on leave or secondment and Queensland Police Service has a personal email address for only 315 of these people.

[69] Further, the Affidavit identifies that if notices are to be sent to the personal email addresses of former employees and leave/secondment employees,¹⁴ it will be necessary to manually compile a list so it can be given to the technology department. It is estimated that would take two employees a total of 8 hours.

[70] Once the manual list is compiled, steps would need to be taken to send a bulk email to the private email addresses. The affidavit of Mr McFarlane¹⁵ estimates that sending notices in bulk via email and ordinary post would take 131.25 hours at a cost of over \$15,000.

[71] It is submitted that the task of undertaking the emailing and posting of the notices would likely interfere with the Queensland Police Services general operations. For example, one Queensland Police Service employee would need to spend about

¹⁰ [2010] FCA 749.

¹¹ [2022] FCA 1072.

¹² [2021] FCA 223.

¹³ Affidavit of Melissa Joan Harriette Perry affirmed 6 November 2025 (CFI #25).

¹⁴ For whom a personal email address is held.

¹⁵ Affidavit of Simon McFarlane affirmed 6 November 2025 (CFI #24).

12.5 business days doing the necessary IT work, taking them away from other usual IT support tasks.

[72] Further, to complete the proposed mail out procedure, four Queensland Police Service employees would be required to undertake the necessary work, exclusively using four Queensland Police Service printers over approximately 4.5 business days. These resources would be unavailable for ordinary duties within the mail room during that period.

[73] It is also submitted that it is necessary to consider the privacy issues which have been identified pursuant to the IP Act and the QPP.

[74] Section 12 of the IP Act defines “personal information” to mean:

“information or an opinion about an identified individual or an individual who is reasonably identifiable from the information or opinion –

- (a) whether information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.”

[75] It is submitted that the names, email addresses and postal addresses of the Queensland Police Service employees constitute personal information for the purposes of the IP Act.

[76] QPP 6 is also the operative provision that restricts use or disclosure of personal information. QPP 6 relevantly states:

“6.1 If an agency holds personal information about an individual that was collected for a particular purpose (the **primary purpose**), the agency must not use or disclose the information for another purpose (the **secondary purpose**) unless –

- (a) The individual has consented to the use or disclosure of the information; or
- (b) QPP 6.2 applies in relation to the use or disclosure of the information.”

[77] The defendants contend that none of the matters referred to in QPP 6.2 are capable of applying here except for two of the matters.

[78] Firstly, the exception in 6.2(b) that provides that “the use or disclosure of the information is required or authorised under an Australian law or a court or tribunal order”.

[79] The second exception is 6.2(c) which provides that “a permitted general situation exists in relation to the use or disclosure of the information by the agency”.

[80] The permitted general situations are set out in Schedule 4 Part 1. The defendants recognise that arguably the situations identified in (d) and (e) might apply. These are:

- “(d) the collection, use or disclosure is reasonably necessary for

the establishment, exercise or defence of a legal or equitable claim; or

- (e) the collection, use or disclosure is reasonably necessary for the purposes of a confidential alternative dispute resolution process.”

- [81] The defendants acknowledge that the Queensland Police Service could lawfully use or disclose the private information of Queensland Police Service employees if ordered to do so. However, ultimately the defendants submit that such an order ought not to be made.
- [82] Pursuant to QPP 1.3, the Queensland Police Service is required to have a clearly expressed and up to date policy about the management of personal information by the agency.
- [83] Further, the policy must contain various information, including “how the agency collects and holds information” and “the purposes for which the agency collects, holds, uses and discloses personal information”.¹⁶
- [84] Further, an agency must take reasonable steps to make a QPP Privacy Policy available free of charge and in an appropriate form, for example on the website.¹⁷
- [85] The current Queensland Police Service QPP Privacy Policy is published on the Queensland Police Service Website. Relevantly, Appendix A is headed “Kinds of personal information, how and why we collect that personal information”.
- [86] Under “Personnel Records” the QPP Privacy Policy states:
- “These records are used to maintain all employment activity including payroll, recruitment and associated administrative activity relating to all current and former employees, contract employees and applicants for positions within the QPS. Contents of personnel records include personal identifiers, sensitive information and information volunteered or collected as part of the person’s employment history. Access to personnel records is restricted to managers and personnel management staff, selection committees (as appropriate), the individual to whom the record relates and, as appropriate, personnel specialists, investigators (in the case of misconduct), security officers, and to internal and external auditors. Information held in personnel records may be disclosed, as appropriate, to superannuation authorities, the Australian Tax Office and a receiving agency following a transfer. QPS members can obtain information regarding access to their personal records by contacting their Human Resources Officer or representative...”
- [87] There is evidence that when persons begin employment with the Queensland Police Service, they fill out a “payroll commencement” form.¹⁸ This provides for a residential address to be provided.

¹⁶ QPP 1.4.

¹⁷ QPP 1.5.

¹⁸ Affidavit of Melissa Joan Harriette Perry affirmed 6 November 2025 (CFI #25), at [9] and MJHP-1.

[88] Also, the payroll commencement form commences with a privacy statement that advises:

“The information being collected in this form is for the purpose of managing your employment and entitlements... The employing agency may disclose only such information to other Queensland Government agencies or contracted service providers as is necessary for the performance of the HR functions performed by these bodies. Your personal details will not be disclosed to any other third party without your consent, unless required to do so by law.”

[89] It is submitted that the personal information of the Queensland Police Service employees was obtained for the primary purpose of maintaining employment activity. When the residential addresses were provided the employees were advised that such information would be used for a limited purpose. Further, it was not envisaged that the information would be used for the purposes of advancing litigation.

[90] The defendants submit that the protections and the IP Act are important and should not be displaced simply because it is convenient to those seeking to run a class action.

[91] In these circumstances the defendants submit:

- (a) The effect of s 103U(4) and (5) of the CP Act is that giving notices personally is the exception, and not the norm.
- (b) The considerable cost and inconvenience involved in sending notices individually by email and ordinary post arises here. Further, doing so would impact the ability of the Queensland Police Service to undertake its normal functions.
- (c) The proposed orders involve using personal information in a way that is prima facia prohibited under the IP Act and consequently the issuing of notices via email and postal communication should not be ordered.
- (d) The general rule is that costs of giving notice to group members is to be borne by the plaintiffs. The proposed orders would result in the costs being borne by the defendants.
- (e) If the Court were to order the notices to be delivered personally, the costs of doing so should be borne by the plaintiffs at first instance and be the subject of specific orders under s 103U(3)(b) of the CP Act.

Alternative opt-out procedure and further submissions

[92] On 28 November 2025 the parties were asked by email to consider a possible alternative opt-out procedure (**Alternative Opt-Out Procedure**) and the matter was listed for review to enable the parties to make further submissions.

[93] The numbers referred to in the Alternative Opt-Out Procedure are subject to any further evidence as to the final numbers involved in each category. It is acknowledged that the relevant numbers are constantly changing.

[94] The Alternative Opt-out Procedure proposed the following steps:

- (a) the plaintiffs cause newspaper advertisements to be placed in the identified newspapers.¹⁹
 - (b) the plaintiffs' solicitors send a copy of the Notice to Group Members and the Opt-Out Notice to the people who have contacted the plaintiffs' solicitors.²⁰
 - (c) the defendants cause a notice to be displayed on the QPS intranet.²¹
 - (d) the defendants cause the Queensland Police Service to email the [13,980] people still employed by the Queensland Police Service attaching the Notice to Group Members and the Opt-Out Notice.²²
 - (e) the plaintiffs arrange for [5,007] envelopes (without windows) containing a generic letter, the Notice to Group Members and the Opt-Out Notice to be prepared and delivered to the Queensland Police Service.²³
 - (f) the defendants cause the Queensland Police Service to prepare [5,007] address labels and attach the address labels to the [5,007] pre-prepared envelopes and to deposit them in the mail.²⁴
 - (g) the defendants file and serve an affidavit as to compliance with the above.
- [95] The parties were requested to consider whether the Alternative Opt-Out Procedure was:
- (a) more (or less) in accordance with s 103U(5) of the CP Act than the proposals by the parties; and
 - (b) more (or less) consistent²⁵ with the object and purpose of QPP Privacy Policy and the IP Act than the proposals of the parties.
- [96] The Alternative Opt-Out Procedure was formulated on the basis that:
- (a) In respect of the [13,980] people still employed by the Queensland Police Service, an email could be sent to the work email address attaching the Notice to Group Members and the Opt-Out Notice and this could be done in a reasonable and proportionate time.
 - (b) In respect of the [4,416] people no longer employed by the Queensland Police Service, a letter attaching the Notice to Group Members and the Opt-Out Notice could be sent to the mailing address held by the Queensland Police Service at the date of ceasing employment and this could be done in a reasonable and proportionate time.
 - (c) In respect of the [591] people still employed by the Queensland Police Service but on leave or secondment, a letter attaching the Notice to Group Members and the Opt-Out Notice could be sent to the mailing address held by the Queensland Police Service at the date the person went on leave or secondment, and this could be done in a reasonable and proportionate time.

¹⁹ As proposed in [2(a)] of the Opt-Out Notice Application.

²⁰ As proposed in [2(b)] of the Opt-Out Notice Application.

²¹ As proposed in [2(d)] of the Opt-Out Notice Application.

²² A variation of the proposal in [2(c), (e) and (f)] of the Opt-Out Notice Application.

²³ A variation of the proposal in [2(c), (e) and (f)] of the Opt-Out Notice Application.

²⁴ A variation of the proposal in [2(c), (e) and (f)] of the Opt-Out Notice Application.

²⁵ Or substantially consistent.

- (d) The plaintiffs could cause to be prepared [5007]²⁶ envelopes containing a generic letter and the finalised Notice to Group Members and Opt-Out Notice and to provide the finalised and postage paid envelopes to the Queensland Police Service and this could be done in a reasonable and proportionate time.
- (e) The defendants could cause the Queensland Police Service to prepare address labels containing the mailing address for the [5007] people and affix the address labels to the envelopes prepared by the plaintiffs and this could be done in a reasonable and proportionate time.

[97] At the further hearing, the defendants relied upon a further affidavit of Simon McFarlane affirmed on 10 December 2025, which included updated figures and evidence as to the feasibility of the Alternative Opt-Out Procedure.

[98] Based on this further evidence the preparation of the address labels and the task of attaching them to the pre-prepared envelopes and having them picked up by Australia Post could be done in 7 to 8 days. Further, the cost of undertaking these tasks is reasonable and proportionate.

[99] In respect of the bases identified at [96] above, the defendants provided the following further clarification:

- (a) In respect of (a), this could be done.
- (b) In respect of (b), this could be done for almost all of the people: namely, [4,362] out of [4,487].
- (c) In respect of (c), this could be done for almost all of the people: namely, [1,183] out of [1,122].

[100] On the basis of these numbers, all but a small number of individuals could be directly notified pursuant to the Alternative Opt-Out Procedure, with the balance reasonably likely to be informed by the newspaper advertisements.²⁷

[101] The defendants accept that on this approach the risk that a person would not receive the Opt-Out Notice or have it drawn to their attention is minimised.

[102] Overall, the defendants submit that they could not reasonably oppose the Alternative Opt-Out Procedure. The costs involved were proportionate and not borne disproportionately by the defendants.

[103] The plaintiffs' Counsel at the review hearing indicated that the envelopes containing the generic letter and the Notice to Group Members and the Opt-Out Notice could be prepared in 2 weeks. In respect of the object and purpose of QPP Privacy Policy and the IP Act the plaintiffs relied on their primary submissions.

[104] Overall, the plaintiffs accepted that the Alternative Opt-Out Procedure was reasonable, and it was acceptable to the plaintiffs.

²⁶ Being total of the 4,416 people no longer employed by the Queensland Police Service and the 591 people still employed by the Queensland Police Service but on leave or secondment.

²⁷ If they had previously been in contact with the plaintiffs' solicitors, they would also receive separate communication.

- [105] The Opt-Out Notice Application requires the Court to balance the varying objects and purposes of a number of legislative schemes and also to consider the practical reality of providing notice to class members that is likely to come to their attention.
- [106] The Court has power to order that an opt-out notice procedure be undertaken, including who is to bear the cost of the required steps. However, consistent with the relevant objects and purposes, the procedure itself needs to minimise the impact on the privacy of the individuals involved but is also protective in nature, in that it is to advise the individuals of their legal rights in respect of the representative proceeding.
- [107] The Alternative Opt-Out Procedure:
- (a) Keeps the personal information, being the mailing addresses of former employees or current employees on leave or secondment, within the Queensland Police Service.
 - (b) The individuals will receive one communication by a method most likely to be received by the individuals. This avoids the needs for cascading communications if an email address bounces back, for example, and would involve multiple uses of personal information.
 - (c) The Notice to Class Members and Opt-Out Notice is arguably in connection with the past or current employment, and accordingly is not plainly inconsistent with QPP Privacy Policy, particularly QPP 6 and Schedule 4.
 - (d) The costs are proportionate and are not borne disproportionately by the defendants.
 - (e) Minimises the impact on the underlying rights, including the right to privacy, while maximising the objective of the individuals being given notice.
 - (f) Is consistent with the permitted disclosures in QPP 6 and Schedule 4.
 - (g) Is “reasonably practicable, and not unduly expensive to do”.
- [108] In the circumstances, I am satisfied that it is appropriate to order an Opt-Out Notice procedure consistent with the Alternative Opt-Out Procedure. The parties should prepare draft orders reflecting the Alternative Opt-Out Procedure consistent with these reasons.
- [109] The parties should also consider the content of the Opt-Out Notice and the Notice to Group Members that may be required, including the impact of the determination of the Class Challenge Application, and incorporate the form of the Opt-Out Notice and the Notice to Group Members into the proposed draft orders for the Court’s consideration.

Class Challenge Application

- [110] Pursuant to the Class Challenge Application the defendants seek orders from the Court on a number of different bases. It is appropriate to consider the relief sought in full to fully understand the nature of the application.
- [111] The Class Challenge Application seeks the following orders:

- “1. Pursuant to r 103K and/or r 103ZA of the [CP Act], an order that the plaintiffs not be permitted to pursue any cause of action with respect to any person employed as a police officer or staff member who is said to have ‘complied with the requirements of the COVID-19 Directions to be vaccinated under protest’ but failed to communicate such a protest to the QPS.
2. Pursuant to r 16(i) and 171 of the [UCPR], [2(b)] of the claim and [5(b)] of the statement of claim (in so far as they refer to persons who did not communicate any protest to the QPS) be struck out.
3. In the alternative to orders 1 and 2 above, pursuant to r 103ZA of the [CP Act]:
 - a. the plaintiffs cause notices to be published in newspaper/s publications requiring, within a reasonably stated time frame, those persons who allegedly ‘complied with the requirements of the COVID-19 Directions to be vaccinated under protest’ but failed to communicate such protest to the QPS, to give written confirmation that they wish to pursue a claim.
 - b. any person who allegedly ‘complied with the requirements of the COVID-19 Directions to be vaccinated under protest’ but failed to communicate such protest to the QPS, and fails to provide the confirmation referred to above, is prevented from pursuing a claim of the type pleaded in this proceeding.”

[112] The plaintiffs oppose the relief sought. At the time of the written submissions, this was on the basis that the defendants had provided insufficient information in respect of the Class Challenge Application.

[113] At the hearing it was submitted that even if the defendants obtained an order that the identified parts be struck out, leave to replead would be granted and it was inappropriate to prevent the cause of action being able to be pursued.

[114] The plaintiffs submitted that orders [1] and [2] of the Class Challenge Application in effect sought summary judgment against the subgroup represented by the second plaintiff, being the “No-Express-Protest Vaccine Coercion Group Members”.

[115] The plaintiffs rely on the general principles including that a Court must approach an application for summary judgment with exceptional caution.²⁸ It is submitted that this equally applies to the striking out of a subgroup in a class action.

[116] Further, the plaintiffs contend that the power to strike out a pleading is only to be used in a clear case and great care must be taken to ensure that a plaintiff is not wrongly deprived of an opportunity to present a case at trial.²⁹

[117] The plaintiffs submit that the Vaccine Coercion Group Members have been clearly defined in [5] of the Statement of Claim as follows:

²⁸ *General Steel Industries Inc v Commissioner for Railways* (1964) 112 CLR 125 at 129.

²⁹ *General Steel Industries Inc v Commissioner for Railways* (1964) 112 CLR 125 at 129-130.

“The second plaintiff ... brings this proceeding in his own right and on behalf of each person who:

- a. at any time between 7 September 2021 and 12 December 2022 was a police officer or staff member;
- b. complied with the requirements of the COVID-19 Directions to be vaccinated under protest (whether or not that protest was communicated to QPS) (Vaccine Coercion Group Members);
- c. is not a Refused Medical Exemption Group Member.”

[118] The plaintiffs put particular emphasis on the words “under protest”, and also “whether or not that protest was communicated to QPS”.

[119] Further, the plaintiffs submit that whether or not a person who was vaccinated under duress but neither explicitly nor expressly communicated their protest to the first defendant should be considered on the basis of all the evidence at the trial and should not be subject to the exceptional and severe consequences of summary dismissal or strike out.

[120] Additionally, the plaintiffs submit that it would be inappropriate to conclusively rule on the Opt-Out Notice Application in circumstances where the Court also needs to determine the Class Challenge Application as the form of the Opt-Out Notice and the procedure itself may need to be considered in light of any changes to the proceeding as a result of the Class Challenge Application.

[121] The defendants’ position was articulated in the written submissions and identifies the particular issues in respect of the relevant subgroup.

[122] Considering the pleadings relevant to the Class Challenge Application:

- (a) The Statement of Claim states that on the identified dates the second plaintiff received a vaccine or booster “under protest and without full and free consent”.³⁰
- (b) The defendants in the Defence deny this on the basis that “had the Second Plaintiff protested or not consented to being vaccinated, the person administering the vaccine would not have proceeded to do so, and been obliged so to act”.³¹
- (c) In response to that issue being raised in the Defence, the plaintiffs in the Reply state:

“the additional allegations misconceive the circumstances in which the Second Plaintiff received [the vaccine/booster] (which will be a matter of evidence at trial) and are speculative and irrelevant to the circumstances of the Second Plaintiff.”³²

³⁰ At [48], [52] and [57].

³¹ At [48], [52] and [57].

³² At [16], [18] and [19].

- [123] It is not a material fact on the pleaded statement of claim that the first defendant was notified of the second plaintiff having taken the vaccine/booster without full and free consent.
- [124] This issue was initially raised by Crown Law with Sibley Lawyers on 21 October 2025.³³ No response was received to that correspondence.
- [125] The defendants' primary position is that removal of a subgroup entirely is the appropriate remedy given the particular matters that are identified in [62] of their submissions on the basis that:
- (a) The existence of such person seems most unlikely or implausible even.
 - (b) There is no way to verify one of the critical facts said to constitute the subgroup.
 - (c) The composition of the class could never be determined.
- [126] It became apparent at the hearing that there was some disconnect between the parties as reflected in the current pleadings outlined above. The plaintiffs' position is that, in respect of the person administering the vaccine, there was effective consent such that the administration of the vaccine did not amount to an assault. There is no suggestion that the person who administered the vaccine was aware of the "protest".
- [127] The defendants raised that it would be difficult to prove what was meant by "under protest" and further reference was made to the dictionary definition of protest. This was consistent with there being some overt act rather than it being an internal thought process.
- [128] Given the lack of certainty as to how a person could be identified as being part of this subgroup, the defendants contend it could never be known how many people are in the subgroup. There were 18,987 Queensland Police Service employees during the relevant period, almost all of whom received the vaccine. However, if there was no communication of protest to the Queensland Police Service, how would the individuals in this subgroup be identified?
- [129] Further, the defendants contend that s 103V(3) of the CP Act prohibits the award of damages in an aggregate amount unless "a reasonably accurate assessment can be made of the total amount to which the group members are entitled under the judgment".³⁴ It is submitted that the subgroup could never be the subject a settlement or indeed a judgment in this proceeding.
- [130] The defendants also raise whether the subgroup possess the requisite common issue of fact given the matter of protest and to whom it was made will vary in each case.
- [131] The current pleading in respect of the second plaintiff is that the second plaintiff:
- (a) "was coerced";
 - (b) "was under duress";
 - (c) "experienced undue influence";

³³ Affidavit of Paula Freeleagus sworn 17 November 2025 (CFI #30), PF-13.

³⁴ Sections 103V(3), 103V(1)(f).

- (d) “feared for his own financial and emotional well-being, and the financial and emotional well-being of his family”; and
 - (e) “was under a practical compulsion to receive the [...] dose of COVID-19 vaccine against his wishes”.³⁵
- [132] From the discussion at the hearing, the plaintiffs’ position appears to be that there may have been what could loosely be described as “apparent consent”, but that was vitiated by the alleged coercion, duress, undue influence etc such that there was no full and free consent.
- [133] This may be understood as an argument that there was what would otherwise objectively be seen as consent, but that in all of the circumstances the consent was vitiated such that there was no actual consent.
- [134] At the hearing it was discussed whether it was appropriate for the plaintiffs to be given the opportunity to consider the issue with the benefit of the detailed written and oral submissions and to prepare a proposed amended claim and statement of claim.
- [135] Directions were made for the provision of proposed amendments and for the defendants to file and serve submissions in response.
- [136] Pursuant to those directions:
- (a) The plaintiffs served a proposed draft amended statement of claim, together with a proposed amended claim, in respect of the subgroup represented by the second plaintiff.
 - (b) The defendants provided further submissions in respect of the Class Challenge Application.
 - (c) The plaintiffs filed supplementary submissions in reply in respect of the Class Challenge Application.
- [137] The Class Challenge Application was briefly considered on 11 December 2025 and further directions were made as follows to facilitate a further proposed amended claim and statement of claim being prepared:
- “1. The defendants’ application dated 20 October 2025, being the Class Challenge Application, be adjourned to 9 am on 13 February 2026 before Williams J.
 2. ...
 3. The plaintiffs serve a further proposed draft amended Claim and Statement of Claim by 6 February 2026.
 4. Costs reserved.”
- [138] Following the provision of a revised proposed amended claim and statement of claim, the parties agreed orders dealing with the Class Challenge Application. The following orders were made on 12 February 2026:

³⁵ Statement of Claim (CFI #1) at [47], [51] and [56].

- “1. The Plaintiffs are granted leave to file an Amended Claim and Amended Statement of Claim in substantially the same form as was served on the Defendants on 6 February 2026 and marked exhibit PF-11 to the affidavit of Paula Freeleagus filed 11 February 2026.
2. The Defendants file and serve any submissions with respect to the question of costs of and associated with the Class Challenge Application (such submissions not too exceed 5 pages) by 4pm on Friday, 20 February 2026.
3. The Plaintiffs to file and serve any submissions in reply (such submissions not to exceed 5 pages) by 4pm on Friday, 27 February 2026.
4. The application for costs be determined on [the] papers.
5. The hearing of the Defendants’ [C]lass [C]hallenge [A]pplication set down on Friday 13 February 2026 be vacated.”

[139] In the circumstances, the only issue that remains to be determined in respect of the Class Challenge Application is the issue of costs.

[140] The defendants contend that the Court should order that the plaintiffs pay the defendants’ costs of the Class Challenge Application on the standard basis. The plaintiffs contend that the Court should order that the defendants pay the plaintiffs’ costs of the Class Challenge Application on the standard basis. Alternatively, the plaintiffs submit that the Court should order that each party bear their own costs of the Class Challenge Application.

[141] The defendants set out the relevant chronology in their submissions dated 20 February 2026 and this is adopted by the plaintiffs.

[142] Further, the general principles as to costs are not contentious between the parties. Rule 681 of the UCPR provides that costs are in the discretion of the Court but follow the event, unless the Court orders otherwise.

[143] It is also not contentious that where an application is discontinued or otherwise does not proceed to a determination, there is no “event” in the usual sense.³⁶ It is also agreed that the analysis of Bond J (as his Honour then was) in *Fairfield Services Pty Ltd (in liq) v Leggett*³⁷ is of the most assistance in this case.

[144] Bond J considered the two categories referred to in the earlier decision of *Yafe v Sivyver and Trainor*.³⁸ The first category is cases in which one party, after litigating for some time, effectively surrenders to the other. The second category is cases where some supervening event, or settlement, so removes or modifies the subject of the dispute that, although it could not be said that one side has simply won, no issue remains between the parties except that of costs.

[145] In respect of the first category, Bond J observed that the surrender or capitulation will usually provide a strong reason to award costs against the party who has surrendered

³⁶ *Re Minister for Immigration and Ethnic Affairs and another; ex parte Lai Qin* (1997) 186 CLR 622.

³⁷ (2020) 5 QR 50.

³⁸ [2025] QSC 53.

or capitulated. As to the second category, Bond J reasoned that there may be difficulty in discerning a clear reason why one party, rather than the other, should bear the costs, and that might provide good reason to decide that each party should bear its own costs.

[146] The primary position of both the defendants and the plaintiffs is that the Class Challenge Application falls within the first category. The plaintiffs contend in the alternative, that the second category is engaged.

[147] The defendants submit that:

- (a) It was unreasonable for the plaintiffs not to respond to the defendants' letter of 21 October 2025.
- (b) The defendants had identified an issue and sought to find a resolution. The plaintiffs maintained there was no issue.
- (c) The plaintiffs amending the claim and statement of claim resolved the Class Challenge Application.
- (d) There was no intervening event of the kind identified in the authorities.
- (e) In all of the circumstances, it was a capitulation and an admission that the Class Challenge Application had a proper basis.

[148] The plaintiffs submit that:

- (a) The plaintiffs' conduct in responding to the Class Challenge Application was not so unreasonable that the defendants should obtain the costs of the litigation.
- (b) There was no delinquency on the part of the plaintiffs in responding to the Class Challenge Application: in respect of the 21 October 2025 letter or otherwise.
- (c) The proposal to serve an amended statement of claim was separate and distinct from any issue raised in the Class Challenge Application, and arose in the course of argument and case management.
- (d) Service of a proposed amended statement of claim was done in a timely and reasonable fashion.
- (e) The defendants' conduct in pursuing a class indeterminacy argument as part of the Class Challenge Application at this stage of the proceedings was not reasonable.
- (f) The defendants' conduct in pursuing and abandoning "soft" class closure orders at this stage of the proceedings was not reasonable.
- (g) It was not unreasonable for the plaintiffs not to address the defendants' deficiency of pleading argument in relation to causation until they were fairly put on notice of the argument, which did not occur until 5 December 2025.

[149] Alternatively, the plaintiffs submit that costs should be determined by reference to the second category: that is, supervening events so modified the subject of dispute that, it could not be said that one side has simply won. In this regard, the plaintiffs rely on:

- (a) The new arguments raised by the defendants at the 24 November 2025 hearing and in their supplementary submissions filed 5 December 2025.
- (b) The proactive case management in directing a proposed amended claim and statement of claim to address the new arguments raised.

[150] Whilst various relief was sought in the Class Challenge Application, by [2] of the Class Challenge Application the defendants did seek that [2(b)] of the claim and [5(b)] of the statement of claim (in so far as they refer to persons who did not communicate any protest to the QPS) be struck out.

[151] At the hearing on 24 November 2025, Senior Counsel for the plaintiffs stated:

“Now, if my learned friends’ difficulty is that the use of the words “under protest” convey something which is not intended to be conveyed in the way that I’ve explained to your Honour, then there are two things that would follow. One is *even if your Honour were minded to strike out the particular paragraphs that are complained of, your Honour would immediately grant leave to amend the pleading* so that that aspect of the pleading with respect to the second plaintiff would have that language clarified, and that would then flow into the other parts of the paragraph.”³⁹ (emphasis added)

[152] Consideration was then given to whether amendments to the claim and statement of claim could meet the concerns that had been articulated in the Class Challenge Application and expanded on in written and oral submissions.

[153] After two attempts at amending the claim and statement of claim, ultimately the plaintiffs’ proposed amended claim and statement of claim dealt with the underlying concerns to such a degree that the Class Challenge Application did not need to proceed further.

[154] The objectives in r 5 of the UCPR also need to be kept in mind. The defendants were justified in bringing the Class Challenge Application given the then pleaded case in respect of the second plaintiff. The resolution of the Class Challenge Application was a consequence of the plaintiffs addressing the underlying pleading issue.

[155] Whilst it may be that the positions of the defendants and the plaintiffs were not fully understood by the other until the issue was workshopped at the hearing on 24 November 2025, the step taken by the defendants to bring the Class Challenge Application resulted in the crystallisation of the real issue in dispute. The consequential amendments to the claim and statement of claim were effectively precipitated by the bringing of the Class Challenge Application and the engagement with the issues that followed.

[156] While this may not be an “event” in the traditional sense, the defendants achieved the objective of having the cause of action brought by the second plaintiff clarified. To this extent, the defendants were successful, and it could be said that the defendants “won”.

[157] The Court has an unfettered discretion as to costs. Taking into account the objectives of r 5 of the UCPR and the ultimate pragmatic resolution of the Class Challenge

³⁹ T1-19 L40 – 46.

Application and all of the circumstances, it is appropriate to order that the plaintiffs pay the defendants' costs of the Class Challenge Application on the standard basis.

Orders

- [158] The parties will be heard further in respect of:
- (a) The form of orders in respect of the Opt-Out Notice Application in light of these reasons.
 - (b) The costs of the Opt-Out Notice Application.
- [159] In these circumstances, the parties should liaise and agree a form of order in respect of the Opt-Out Notice Application, or alternatively agree directions for the provision of proposed orders and brief further submissions in respect of the Opt-Out Notice Application, including costs.
- [160] It is appropriate to make the costs orders in respect of the Security for Costs Application and the Class Challenge Application at this stage.
- [161] Accordingly, the Court orders that:
1. The plaintiffs pay the defendants' costs of the Security for Costs Application on the standard basis.
 2. The plaintiffs pay the defendants' costs of the Class Challenge Application on the standard basis.
- The Court directs that:
3. The parties liaise and agree a form of order in respect of the Opt-Out Notice Application, or alternatively agree directions for the provision of proposed orders and brief further submissions in respect of the Opt-Out Notice Application, including costs.