



Federal Court of Australia

District Registry: Victoria Registry

Division: Fair Work

No: VID1662/2018

**TANIA KELEHEAR**

Applicant

**STELLAR PERSONNEL BRISBANE PTY LIMITED (ACN 158 542 191)** and another  
named in the schedule

Respondent

### **ORDER**

**JUDGE:** Justice Murphy

**DATE OF ORDER:** 10 December 2024

**WHERE MADE:** Melbourne

#### **THE COURT NOTES THAT:**

1. Subject to approval of the Court, and without any admission of liability on the part of the respondents (who deny liability), the applicant and respondents have agreed that the proceedings will be settled on the terms set out in a confidential “**Deed of Settlement**” (**Proposed Settlement**), and in the event the Proposed Settlement is approved by the Court, the proceedings will be dismissed following administration of the Proposed Settlement.
2. The applicant will file an application for approval of the Proposed Settlement of the proceedings pursuant to s 33V of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) (**Approval Application**), supported by a confidential affidavit annexing the Deed of Settlement in accordance with orders 11 and 12 of these Orders.

#### **THE COURT ORDERS BY CONSENT THAT:**

##### **Registration to participate in the Proposed Settlement**

1. Pursuant to s 33ZF of the FCA Act and further to the Orders dated 5 December 2023 (**5 December Orders**), any group member who has not opted out of the proceedings, and who registered by the deadline in the 5 December Orders is a “**Current Registered Group Member**” for the purposes of the proceeding and will be a



participant in the Proposed Settlement in the event that it receives approval by the Court.

2. Pursuant to s 33ZF of the FCA Act, any Group Member who has not opted out of these proceedings, and is not a Current Registered Group Member, but who registers to participate in the settlement of these proceedings (**Settlement**) in accordance with order 3 of these orders is a “**Future Registered Group Member**”.
3. Any Group Member who wishes to register as a Future Registered Group Member to participate in the Settlement must, by no later than 6 January 2025 (**Final Registration Deadline**), register by:
  - (a) completing a Group Member registration form in the form set out at Schedule 1 of the Notice of Proposed Settlement (being **Annexure A** to these orders) (**Group Member Registration Form**), either online at <https://www.aderolaw.com.au/class-actions/mining/stellar/> or by emailing or posting a hard copy to the Applicant’s solicitors (**Adero Law**) at the address shown on the Group Member Registration Form; and
  - (b) providing, by completing the Group Member Registration Form, the Future Registered Group Member’s full name, date of birth, postal address, email address, phone number, employing entity, and employee identification number(s) during their employment with one of the Respondents (as set out in the payslips issued to them) (**Additional Registration Data**).
4. By 8 January 2025, Adero Law will provide the Respondent’s solicitors with a list of the Future Registered Group Members, which includes the Additional Registration Data (**List of Future Registered Group Members**).
5. Pursuant to s 33ZF of the FCA Act, all Current Registered Group Members and Future Registered Group Members are “**Registered Group Members**” for the purposes of the proceedings and will be a participant in the Settlement in the event that it receives approval by the Court.
6. Pursuant to s 33ZF of the FCA Act, and subject to any further order of the Court, any Group Member who:



- (a) as at the date of these Orders, has not opted out of these proceedings in accordance with the 5 December Orders; and
- (b) after the Final Registration Deadline, is not a Registered Group Member, is a “**Final Unregistered Group Member**” for the purposes of the proceedings and will remain a group member for all purposes and shall not, without the leave of the Court, be entitled to receive any payment as part of the Proposed Settlement in the event that it receives approval by the Court.

### **Notice to group Members and Distribution of Notice**

- 7. Pursuant to s 33X of the FCA Act, Group Members be given notice of:
  - (a) the Proposed Settlement;
  - (b) the right for Group Members who are not Current Registered Group Members (**Unregistered Group Members**) to register to participate in the Settlement and become a Future Registered Group Member;
  - (c) the fact that they may oppose the Proposed Settlement and/or any aspect of the distribution of the settlement sum in accordance with these Orders; and
  - (d) in respect of Unregistered Group Members, that they will be bound by the Proposed Settlement if it receives approval by the Court but will not share in the distribution of the Proposed Settlement.
- 8. Pursuant to ss 33X and 33Y(2) of the FCA Act, the form and content of:
  - (a) the notice at **Annexure A** to these Orders, which includes the Group Member Registration Form and the Notice of Objection to Proposed Settlement Form (**Notice of Proposed Settlement**);
  - (b) the cover letter at **Annexure B** to these Orders (**Registered Group Member Cover Letter**);
  - (c) the cover letter at **Annexure C** to these Orders (**Unregistered Group Member Cover Letter**); and
  - (d) the cover letter at **Annexure D** to these Orders (**LFA Group Member Cover Letter**),



is approved (collectively, the **Notifications**).

9. The Notifications may be amended by the parties before they are posted, emailed or published in order to correct any postal, website, email address or telephone number or any typesetting, typographical or other non-substantive errors.
10. Pursuant to s 33Y(3) of the FCA Act, the Notice of Proposed Settlement is to be given to Group Members according to the following procedure.

*Online publication*

- (a) From 12 December 2024 until up to and including the final determination of the Approval Application the applicant is, by her solicitors Adero Law, to publish the Notice of Proposed Settlement on their website at the address <https://www.aderolaw.com.au/class-actions/mining/stellar/> and on their Facebook page at the address <https://www.facebook.com/aderolawfirm/>.
- (b) Adero Law shall cause a copy of:
  - (i) the Amended Statement of Claim dated 10 October 2023;
  - (ii) the Defence dated 7 November 2023;
  - (iii) the Reply dated 21 November 2023;
  - (iv) these Orders; and
  - (v) the Microsoft Teams link and accompanying details to enable observation at the Approval Application hearing, once it has been listed and made available by the Court,

to be displayed on, or otherwise made available for download from, their website at the address <https://www.aderolaw.com.au/class-actions/mining/stellar/> and to remain continuously displayed or available up to and including the final determination of the Approval Application.

*Registered Group Members*

- (c) In the case of Registered Group Members, Adero Law will cause the Notice of Proposed Settlement and Registered Group Member Cover Letter in the form at **Annexure B** to these orders to be sent on or before 12 December 2024 to those



Group Members at the email addresses previously provided to Adero Law, or by ordinary post in the event that they have not specified an email address. If Adero Law receives an electronic notice that an email to any Registered Group Member has not been delivered to the addressee, Adero Law shall within 72 hours send the Notice of Proposed Settlement under cover of the Registered Group Member Cover Letter by ordinary post to the last recorded postal address of that person.

- (d) In the case of the individuals that Adero Law has identified in its system as having entered into a litigation funding agreement with Augusta 005 Limited (the **Funder**), Adero Law will cause the LFA Group Member Cover Letter in the form at **Annexure D** to these orders to be sent on or before 12 December 2024, at the email addresses previously provided to Adero Law. If Adero Law receives an electronic notice that an email to any Registered Group Member has not been delivered to the addressee, Adero Law shall within 72 hours send the LFA Group Member Cover Letter by ordinary post to the last recorded postal address of that person.

*All Group Members*

- (e) By no later than 12 December 2024, the Applicant shall engage a third party mailing service provider (**Mailing Service Provider**) to send the Notice of Proposed Settlement to Unregistered Group Members and shall provide to the Mailing Service Provider:
- (i) a copy of these orders; and
  - (ii) on a confidential basis, the list of individuals referred to in order 1 of these orders (**List of Registered Group Members**), and
- confirm in writing to the Respondent's solicitors that a Mailing Service Provider has been engaged.
- (f) By 13 December 2024, the Mailing Service Provider will prepare a list of Unregistered Group Members (**List of Unregistered Group Members**) by removing the name of any person which appears on the List of Registered



Group Members from the Respondents' List of Group Members (as defined in order 2(b)(ii) of the 5 December Orders).

(g) By 13 December 2024, the Mailing Service Provider will cause the Notice of Proposed Settlement and Unregistered Group Member Cover Letter in the form at Annexure C to these orders to be sent to each Group Member on the List of Unregistered Group Members in accordance with the procedures and requirements set out in the following paragraphs (**Distribution Protocol**):

- (i) the Mailing Service Provider will keep the List of Unregistered Group Members confidential, and will not disclose any information in it to any other person including the applicant or her legal advisors;
- (ii) the Mailing Service Provider will send the Notice of Proposed Settlement to the persons listed on the List of Unregistered Group Members, doing so under cover of the Unregistered Group Member Cover Letter at **Annexure C** to these orders, by sending it by email to each person on the list for whom an email address is held, and by ordinary post to the last recorded postal address of that person in the event that the respondent does not have an email address for that person;
- (iii) if the Mailing Service Provider receives an electronic notice that an email to any person on the List of Unregistered Group Members has not been delivered to the addressee, the Mailing Service Provider shall within 72 hours send the Notice of Proposed Settlement under cover of the Unregistered Group Member Cover Letter by ordinary post to the last recorded postal address of that person;
- (iv) the Mailing Service Provider shall within seven (7) days after completion of the preceding steps provide to the respondents' solicitors a list of the persons to whom the Notice of Proposed Settlement was sent, and which identifies in relation to each Group Member:
  - A. the method(s) by which the Notice of Proposed Settlement was sent;
  - B. the date(s) on which the Notice of Proposed Settlement was sent;
  - C. whether and which distribution attempts failed; and



- D. the form of evidence by which any failed distribution attempt was identified, including, but not limited to, by way of receipt of an email delivery failure notification, or receipt of a prepaid ordinary post envelope marked 'return to sender' (or similar);
- (v) the Mailing Service Provider is to retain records for the duration of this proceeding of all communications sent to and received from each person listed in the List of Unregistered Group Members in the course of carrying out this Distribution Protocol, including:
  - A. the emails sent in accordance with subparagraph (g)(ii) above;
  - B. postal records or receipts or similar of the Notice of Proposed Settlement sent by prepaid ordinary post in accordance with subparagraphs (g)(ii)-(iii) above; and
  - C. evidence of any failed distribution attempts of the kind referred to in subparagraph (g)(iv)(D) above.
- (h) Should either party become aware of any actual or potential non-compliance with the Distribution Protocol, they are to notify the other party within two (2) business days of becoming so aware. The applicant and the respondents are directed to advise the Court of any such non-compliance via email to Justice Murphy's Associate.
- (i) The cost of the third-party mailing service engaged to undertake the distribution of the Notice of Proposed Settlement and Unregistered Group Member Cover Letter in accordance with the Distribution Protocol is payable by the applicant to the third-party mailing service provider (or to the respondents if the parties so agree) forthwith.

**Approval Application – the applicant will put on evidence regarding the objections**

*Timetable for parties*

11. By 4:00pm on 3 February 2025, the applicant shall file and serve the Approval Application.



12. By 4:00pm on 3 February 2025, the applicant shall file and serve any evidence upon which she intends to rely in support of the Approval Application. The evidence shall include material addressing:
  - (a) whether the Proposed Settlement is fair and reasonable in the interest of class members and as between class members;
  - (b) the proposed scheme for the distribution of the settlement among class members; and
  - (c) the applicant's costs and disbursements in conducting the proceedings.
13. By 4:00pm on 3 February 2025, the applicant shall file and serve her outline of submissions in support of the Approval Application.
14. By 4:00pm on 10 February 2025, the respondents shall file and serve any evidence and outline of submissions on which they wish to rely.

*Objections to the Proposed Settlement*

15. By 4:00pm on 6 January 2025 (**Objection Deadline**), any group member who wishes to oppose the Proposed Settlement shall file and serve a completed Notice of Objection to Proposed Settlement (**Notice of Objection**) in the form of Schedule 2 to the Notice of Proposed Settlement by sending it to the Court and/or Adero Law as follows:
  - (a) by email to the Victoria District Registry of the Federal Court at [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au) or by post to Federal Court of Australia (VIC Registry), 305 William Street, Melbourne VIC 3000; and
  - (b) by email to [stellaraction@aderolaw.com.au](mailto:stellaraction@aderolaw.com.au) or by post to Adero Law, 3 Hobart Place, Canberra ACT 2601.
16. If on or before the Objection Deadline the solicitors for any party receive a notice purporting to be a Notice of Objection which has not also been sent to the Victoria District Registry of the Federal Court, the solicitors must file the notice in the Victoria District Registry of the Federal Court within two business days after receipt, with a notation as to the date of receipt. Any such notice shall be treated as a Notice of Objection received by the Court at the time it was received by the solicitors.





17. The solicitors for the applicant and the respondent each be granted leave to inspect the Court file and uplift for the purpose of copying any Notices of Objection.

*Approval Application Hearing*

18. Any application filed by the applicant in accordance with order 11 is set down for hearing on 21 February 2025, with half a day set aside.

*Interim regime for Confidential Material*

19. Leave is granted to the parties to file any affidavit, annexure, or submissions in respect of which confidentiality orders are to be sought on the Approval Application (**Confidential Documents**) by email to the Associate to Justice Murphy marked in the subject line with the word “confidential” and the parties be excused from any requirement to electronically file or serve any Confidential Documents on any party in that form. To the extent that any Confidential Documents are not entirely confidential, the party shall file and serve a redacted copy of the documents redacting only those parts which are claimed to be confidential.
20. Pursuant to s 37AI of the FCA Act, any Confidential Documents filed with the Associate to Justice Murphy in accordance with order 19 of these orders is suppressed until further order.
21. The application for confidentiality orders will be determined as part of the determination of the Approval Application, and if settlement approval is granted, the parties can make an application for any continuing confidentiality order they seek.

*Liberty to apply*

22. The parties have liberty to apply.

Date orders authenticated: 10 December 2024

  
Registrar

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



**ANNEXURE A**  
**NOTICE OF PROPOSED SETTLEMENT**

**Tania Kelehear v Stellar Personnel Brisbane Pty Limited (ACN 158 542 191) and  
Another (VID 1662/2018)**

**You should read this Notice carefully as it concerns your legal rights.** You have been sent this Notice by order of the Federal Court of Australia because you may be a Group Member in the above proceedings. This notice is not legal advice. You should seek independent legal advice if you are unsure what to do, noting the time limit to object to the proposed settlement.

**SECTION 1 – INFORMATION ABOUT THE CLASS ACTION**

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**What is this Class Action?**

1. On 21 December 2018, a class action was filed in the Federal Court of Australia by the Applicant, Ms Tania Kelehear on behalf of certain persons who were employed by the Respondents, Stellar Personnel Brisbane Pty Limited ACN 158 542 191 and Stellar Recruitment Pty Limited (ACN 157 737 150) (**Stellar**), between 25 December 2012 and 24 December 2018 (**Class Action**). The law firm, Adero Law, acts on behalf of Ms Kelehear in the class action.
2. You are a Group Member if you were at any time, in the period between 25 December 2012 to 24 December 2018, employed by Stellar:
  - 2.1 as a production and engineering employee within the meaning of Schedule A of the Black Coal Mining Industry Award 2010; and
  - 2.2 were treated as a “casual” employee by Stellar.
3. The class action seeks orders from the Court awarding compensation and imposing penalties upon Stellar for alleged underpayments of annual leave to Ms Kelehear and Group Members which Ms Kelehear alleges should have been paid on termination of their employment.



4. The allegations made by Ms Kelehear against Stellar are set out in the Amended Statement of Claim, a copy of which is available at:  
<https://www.aderolaw.com.au/class-actions/mining/stellar/>. Stellar denies liability and a copy of its Defence is also available at that link.

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#### **Why have you received this Notice?**

5. Ms Kelehear and Stellar have agreed to settle the Class Action and will be seeking Court approval of the proposed settlement. You are receiving this Notice because you may be affected by the proposed settlement of the Class Action.
6. You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything in this notice that you do not understand, then you should contact Adero Law or seek independent legal advice.

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#### **What does the Proposed Settlement involve?**

7. The parties participated in mediation on 28 March 2024.
8. The parties were subsequently able to agree an in-principle settlement of the Class Action, which means that the parties agreed to resolve the Class Action out of Court without going to trial.
9. Without admission of liability, Stellar has agreed to pay \$500,000 in full and final settlement of the claims of the Applicant and all Group Members and inclusive of all costs, including legal and administration costs, expenses, disbursements, interest, tax and penalties (**Settlement Sum**). The Settlement Sum is paid by Stellar without any admission of liability or wrongdoing and on a commercial basis to resolve the proceedings without the parties incurring further legal fees.
10. The amounts which are proposed to be deducted from the Settlement Sum (each of which is subject to Court approval) before it is distributed to group members who have registered (**Registered Group Members**) or register by the Deadline 6 January 2025 (**Future Registered Group Members**) are for:
  - 10.1 the **Legal Costs** for running the claim, including an amount to litigation funders, Augusta 005 Limited (the **Funder**) who funded the legal costs from 2018 to



March 2022. The total legal costs for running the claim up to 31 October 2024 was \$358,406.70. The Funder has paid \$226,839.82. Adero Law has incurred \$131,566.88 (unpaid by the Funders). Adero Law estimates it will cost an additional \$55,000 to obtain settlement approval. Therefore, the total Legal Costs for running the claim are approximately \$413,406.70; and

10.2 **Administration Costs** of administering the Settlement Distribution Scheme. As noted in paragraph 20 below, it is proposed that Adero Law be appointed as Administrator of the Settlement Distribution Scheme under Court supervision.

11. Adero Law is proposing not to seek to recover all of its fees and to only seek a reduced amount to ensure the settlement is proportionate. The Applicant and Adero Law proposes to seek the following amounts in respect of the deductions:
  - 11.1 a deduction to the Funder of \$50,000;
  - 11.2 a deduction to Adero Law for its deferred legal costs for work already done but not yet paid for, and work which will be done up to and including the Settlement Approval Application hearing, of \$132,000; and
  - 11.3 a deduction to the Settlement Administrator of \$18,000.
12. Ms Kelehear will seek orders from the Court for the Settlement Sum to be distributed to the Registered Group Members and Future Registered Group Members who register by the Deadline of in accordance with the process set out in paragraphs [28] and [32]-[33] respectively.
13. Group members who are already registered are individuals who registered their interest in participating in the Class Action with Adero Law by 4:00pm on 29 February 2024. If you did not register by this date and you do not register by the Deadline, you will not be eligible to receive any compensation, subject to any further order by the Court.
14. The number of Registered Group Members is approximately 50 individuals. The aggregate claim value of the Registered Group Members is approximately \$390,350, being an average of \$7,807. With the proposed deductions of \$200,000 from the Settlement Sum of \$500,000, Registered Group Members would receive an average of approximately \$6,000 each. The average amount group members would receive will



decrease depending on the number of Future Registered Group Members, who register to participate in the proposed settlement.

15. **If the proposed settlement is approved by the Court, the Class Action will be dismissed, and Registered Group Members and Future Registered Group Members may receive a payment from the Settlement Sum.**
16. If the Court approves the proposed settlement, the Applicant and all Group Members (whether Registered or Unregistered) will release Stellar and its related entities from all claims that are made, or could be made, as against Stellar by all Group Members:
  - 16.1 arising from or under, in connection with or in relation to the Class Action proceedings; and
  - 16.2 that are in respect of, or arise out of, directly or indirectly, the same, similar or related circumstances to the Claims made in the Proceeding (whether known or unknown),  
  
including any claim for compensation, damages, interest, other losses, pecuniary penalties, or costs.
17. **As a Group Member, you will be bound by the proposed settlement if it is approved by the Court regardless of whether you have registered for the Class Action.**
18. The Applicant has agreed to, and seeks the Court approve the proposed settlement for the following reasons:
  - 18.1 the group size that is eligible to participate in the settlement on current orders is approximately 50 Registered Group Members;
  - 18.2 the Class Action has been on foot since 2018, with group members having been given sufficient time to register their interest with Adero Law to participate from 2018 up until February 2024;
  - 18.3 the continuation of the litigation for the interests of potentially a small group of people is likely to incur further legal costs that will dilute the claim value. In a claim where the only compensation is in relation to annual leave entitlements, there is a risk that Registered Group Members would receive less;



- 18.4 the value of the settlement obtained on behalf of Registered Group Members is in comparable terms to the results obtained in the related class action against the labour hire company Hays Specialist Recruitment (Australia) Pty Limited (VID1661/2018); and
- 18.5 an appropriate discount in legal costs and disbursements and funding is being sought in support of the settlement, that the Applicant and Adero Law hopes will allow for an appropriate return to Registered Group Members.

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**What is a Settlement Distribution Scheme?**

19. The Settlement Distribution Scheme outlines the process by which the Settlement Sum is proposed to be paid to eligible Registered Group Members and Future Registered Group Members on a fair and reasonable basis and must also be approved by the Court.
20. If the Court approves the proposed settlement, the parties will seek to have Adero Law appointed as the Administrator of the Settlement Distribution Scheme. The role of the Administrator is to supervise and manage the payment of the Settlement Sum to Group Members in accordance with the Settlement Distribution Scheme.

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**Are Group Members liable for legal or other costs?**

21. If the Court approves the Proposed Settlement, the Settlement Sum will be in full and final satisfaction of all costs. The legal costs incurred by the Applicant in pursuing the Class Action, in an amount approved by the Court, will be paid from the Settlement Sum prior to the distribution of any Settlement Payments to Group Members. This ensures that all Group Members who benefit will contribute to the legal costs and are treated equally.
22. Adero Law is proposing not to seek to recover all of its fees, being the Applicant's costs, to ensure the settlement is proportionate. The Applicant's costs are exclusive of any costs of administering the settlement under the Settlement Distribution Scheme.
23. You will not otherwise be required to pay any legal costs for the Class Action, regardless of whether you receive a Settlement Payment.



**What is the settlement approval process?**

- 24. The Court still needs to approve the Proposed Settlement. The Proposed Settlement does not come into effect unless it is approved by the Court.
- 25. The Court will determine whether it is fair and reasonable and in the interests of all Group Members. The Court will also determine whether the amount allocated for payment to Adero Law on account of legal costs and settlement administration costs is reasonable.
- 26. You may file a Notice of Objection to the Proposed Settlement and/or any aspect of the proposed distribution of the Settlement Sum to eligible Group Members. If you wish to file a Notice of Objection to the Proposed Settlement, you must do so by no later than 4:00pm on 6 January 2025. The Court will take any objections into account in deciding whether or not to approve the Proposed Settlement.

**SECTION 2 – SUMMARY OF YOUR OPTIONS**

<b>Step 1 - If you:</b>	<b>Step 2 - Then:</b>	<b>Your Options:</b>
<b>Have</b> registered to participate in the Class Action and have not opted out	<b>You are a Registered Group Member</b>	<ol style="list-style-type: none"><li>1. <b>Do Nothing (and participate in the Proposed Settlement if it is approved)</b></li><li>2. <b>Object (and participate in the Settlement if it is nonetheless approved)</b></li></ol>
<b>Have not</b> previously registered to participate in the Class Action and have not opted out	<b>You are an Unregistered Group Member</b>	<ol style="list-style-type: none"><li>1. <b>Register (and participate in the Settlement if it is approved)</b></li><li>2. <b>Do Nothing (and be ineligible for any payment even if the</b></li></ol>



		<p><b>Settlement is approved, subject to a further order from the Court and any rights you have to make a claim against Stellar or its related entities shall be extinguished)</b></p> <p><b>3. Object (and, if you also register, participate in the Settlement if it is approved, notwithstanding your objection)</b></p>
<p><b>Have</b> filed an opt out notice with the Court</p>	<p>You have opted out of the Class Action, and you may disregard the remainder of this notice.</p>	<p>Not Applicable</p>

**SECTION 3 – INFORMATION ABOUT YOUR OPTIONS**

**Your options if you are a Registered Group Member (that is, you have already registered by 4:00 pm on 29 February 2024)**

27. If you have registered for the Class Action, you are a Registered Group Member and you have two options.

**Option A: Do nothing (and participate in the proposed settlement)**

28. If you wish to remain a Registered Group Member and participate in the Proposed Settlement, you do not need to do anything in response to this notice. **If the proposed settlement is approved by the Court, you may be eligible to receive a payment. You will be bound by the settlement and may need to provide certain information to the administrator.**





### **Option B: Object by 6 January 2025**

29. You may object to the Proposed Settlement or any part of it by completing the Notice of Objection to Proposed Settlement Form attached as Schedule 2 to this Notice and submitting it to the Court and the Applicant's solicitors at the emails or postal addresses on the form **by no later than 4:00pm on 6 January 2025**. If you choose to do this, you will still participate in the Proposed Settlement if it is approved.
30. Any objections received by the Court will be considered by the Court, along with any evidence and submissions filed by the Applicant and Stellar, in determining whether or not the Proposed Settlement should be approved. If after considering any objections, the Court does not approve the Proposed Settlement, then the Class Action will continue. At or following a trial of the common issues, the Court may give directions in relation to the determination of any remaining issues.

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### **Your options if you are an Unregistered Group Member**

31. If you have not previously registered to participate in the Class Action and you have not opted out of the Class Action, you are an Unregistered Group Member. You have two options.

### **Option A: Register to participate in the Settlement by 6 January 2025**

32. You may register your claim by completing and submitting the Group Member Registration Form either online at <https://www.aderolaw.com.au/class-actions/mining/stellar/> or completing the hard copy form attached as Schedule 1 to this Notice and returning it to Adero Law at the email or postal address on the form **by no later than 6 January 2025**.
33. **If you register, you may be eligible to receive a payment from the Settlement.** The precise amount of the payment is presently unknown and will be determined using a model as part of the Settlement Distribution Scheme. There is no cost associated with registering your claim.

### **Option B: Do nothing**

34. If you do nothing and the proposed settlement is approved by the Court, you will remain a Group Member for all purposes and be bound by the settlement but:



**34.1 you will not, unless the Court determines otherwise, be entitled to receive a payment from the proposed settlement; and**

**34.2 any rights you have to make a claim against Stellar or its related entities as set out at paragraph 16 of this Notice will be extinguished.**

**Option C: Object to the Proposed Settlement by 6 January 2025**

35. You may object to the Proposed Settlement by completing the **Notice of Objection to Proposed Settlement Form** attached as **Schedule 2** to this Notice and submitting it to the Court and the Applicant’s solicitors at the emails or postal addresses on the form **by no later than 4:00pm on 6 January 2025**. If you choose to do this, you must still register if you wish to participate in the Settlement if it is approved by the Court.

36. Any objections received by the Court will be considered by the Court, along with any evidence and submissions filed by the Applicant and Stellar, in determining whether or not the Proposed Settlement should be approved. If after considering any objections the Court does not approve the Proposed Settlement and you have not opted out, then the Class Action will continue. At or following a trial of the common issues, the Court may give directions in relation to the determination of any remaining issues.

**SECTION 4 – INFORMATION ON LITIGATION FUNDING**

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37. At the commencement of the proceedings, the litigation funder, Augusta 005 Limited (the **Funder**) provided funding in respect of the legal costs in connection with claims alleging group members were entitled to:

37.1 benefits non-casuals receive under the National Employment Standards;

37.2 shift work, weekend and public holiday work and overtime, to be paid at “double time” (or similar) at the contract rate of pay rather than the minimum rate of pay allowed under the *Black Coal Mining Industry Award 2020* (previously entitled the Black Coal Mining Industry Award 2010) (the **Award**); and

37.3 annual leave under the Award.



In 2022, all claims but for the Award claim for annual leave entitlements were discontinued following the High Court decision in the *Workpac Pty Ltd v Rossato* proceeding (*Workpac Pty v Rossato* [2021] HCA 23). The Funder terminated the LFAs with group members in March 2022.

38. The Funder is asserting it has an entitlement to a proportion of the Project Costs<sup>1</sup> which is to be calculated by reference to the proportion that the amount of the claims of the group members who entered into LFAs bear to the total amount of the claims of the group members who are participating in the settlement (subject to the settlement being approved by the Court).
39. The entitlement described above is presently restricted to individuals that signed an LFA and may result in a nil payment to those individuals. It is the position of the Applicant and Adero Law that a proportion of any awarded legal costs by the Court be made payable to the funder. Adero has negotiated with the Funder such that the Funder has agreed to reduce its costs to \$50,000 (down from the \$226,839.82 which it spent). Adero will ask the Court to spread that reimbursement across all group members, including non-funded group members on the basis that their cost was to the benefit of all group members. The cost to group members would therefore be relatively modest, but are not able to be estimated as the number of group members is unknown at present.
40. The Court will need to assess the suitability of any orders in favour of the Funder under s 33V of the *Federal Court of Australia Act 1976* (Cth) when considering whether to approve the settlement.
41. The Court will determine what, if any, deductions from the settlement should be made to the Funder at the hearing on 21 February 2025.
42. Adero Law has identified group members that it considers entered into an LFA with the Funder at a period prior to March 2022. Adero Law will separately notify impacted group members of that position via email. A copy of the LFA for those that have signed one can be obtained by emailing [stellaraction@aderolaw.com.au](mailto:stellaraction@aderolaw.com.au).

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<sup>1</sup> Project Costs means the costs paid by the Funder in respect of the claim in the period of 2018 to 2022. The Funder says this cost was \$226,839.82. The funder relies on the contractual assignment under clause 8 and in respect of clauses 12.2 and 12.8 of the LFAs.



43. If you have signed an LFA or wish to otherwise object to the Court making any orders in favour of the Funder by way of a deduction from the settlement sum, please follow the details in the following section. If you do not wish to object to the position of the Funder or the settlement, you are not required to take any further steps in addition to those outlined in section 3 above.

### **Objections**

44. Should you wish to object to the settlement on the basis of the above, you may object to the Proposed Settlement by completing the **Notice of Objection to Proposed Settlement Form** attached as **Schedule 2** to this Notice and submitting it to the Court and the Applicant's solicitors at the emails or postal addresses on the form **by no later than 6 January 2025**. If you choose to do this, you will still be considered registered to participate in the settlement should it be approved by the Court.
45. Any objections received by the Court will be considered by the Court, along with any evidence and submissions filed by the Applicant and Stellar, in determining whether or not the Proposed Settlement should be approved. If after considering any objections the Court does not approve the Proposed Settlement, then the Class Action will continue. At or following a trial of the common issues, the Court may give directions in relation to the determination of any remaining issues.

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### **Where can I get more information?**

46. If you have any questions or queries, you may contact the Applicant's solicitors, Adero Law, at [stellaraction@aderolaw.com.au](mailto:stellaraction@aderolaw.com.au) with the subject line: Proposed Settlement VID1662/2018.

If you are unsure of what to do, you should seek independent legal advice.



**SCHEDULE 1 – GROUP MEMBER REGISTRATION FORM**

**TANIA KELEHEAR v STELLAR PERSONNEL BRISBANE PTY LIMITED (ACN  
158 542 191) AND ANOTHER (VID1662/2018)**

**Please return this form to:**

**By post:** Adero Law, 3 Hobart Place, CANBERRA ACT 2601

**OR**

**By email:** [stellaraction@aderolaw.com.au](mailto:stellaraction@aderolaw.com.au) with subject line: Registration Form  
VID1662/2018

**YOU MAY ALSO COMPLETE THIS FORM ONLINE**

**at** <https://www.aderolaw.com.au/class-actions/mining/stellar/>

The person named below gives notice that the person wishes to **REGISTER** for the  
Settlement of this proceeding.

**Details of Group Member**

Name of Group Member	
Date of Birth	
Telephone	
Email Address	
Postal Address	
Employing Entity (from payslips or employment contract)	
Stellar Personnel Brisbane Pty Limited or Stellar Recruitment Pty Limited Employee ID(s) (from payslips) (optional)	



**SCHEDULE 2 – OBJECTION TO PROPOSED SETTLEMENT**

**TANIA KELEHEAR v STELLAR PERSONNEL BRISBANE PTY LIMITED (ACN  
158 542 191) AND ANOTHER (VID1662/2018)**

**Please return this form to:**

**By post:** Federal Court of Australia (VIC Registry), 305 William Street, Melbourne  
VIC 3000

**and**

Adero Law, 3 Hobart Place, CANBERRA ACT 2601

**OR**

**By email:** [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au) with subject line: Notice of Objection VID1662/2018

**and**

[stellaraction@aderolaw.com.au](mailto:stellaraction@aderolaw.com.au) with subject line: Notice of Objection  
VID1662/2018

The person named below gives notice that the person **OBJECTS** to the proposed settlement of this proceeding.

**Details of Objector**

Name of Individual	
Telephone	
Email Address	
Postal Address	



**Ground(s) of Objection**

I am a Group Member in the above proceedings and I object to the Proposed Settlement of  
because [*set out below any submissions, attaching additional pages if necessary*]:

Signed	
Name of Person Signing	
Date	



## ANNEXURE B

### REGISTERED GROUP MEMBER COVER LETTER

Dear Registered Group Member

**CLASS ACTION – TANIA KELEHEAR v STELLAR PERSONNEL BRISBANE PTY LIMITED (ACN 158 542 191) AND ANOTHER (VID1662/2018)**

You are receiving this correspondence because you have registered for the Class Action.

The notice enclosed with this correspondence has been approved by the Federal Court of Australia. It provides you with important information about:

1. the proposed settlement of the class action; and
2. your right to object to the proposed settlement of the class action and/or any aspect of the proposed distribution of the settlement proceeds before the deadline of 6 January 2025.

It is therefore very important that you read the enclosed Notice carefully.

If you have any questions, please visit the Class Action website at <https://www.aderolaw.com.au/class-actions/mining/stellar/> or contact Adero Law directly at [stellaraction@aderolaw.com.au](mailto:stellaraction@aderolaw.com.au).

Alternatively, you may wish to seek independent legal advice regarding the matters set out in this Notice.

Sincerely,

Adero Law





## ANNEXURE C

### UNREGISTERED GROUP MEMBER COVER LETTER

Dear Group Member

**CLASS ACTION – TANIA KELEHEAR v STELLAR PERSONNEL BRISBANE PTY LIMITED (ACN 158 542 191) AND ANOTHER (VID1662/2018)**

You are receiving this correspondence because, based on the information available, you may have been employed by Stellar at any stage between 25 December 2012 and 24 December 2018 and may be a Group Member in the Class Action.

The notice enclosed with this correspondence has been approved by the Federal Court of Australia. It provides you with important information about:

1. the proposed settlement of the class action;
2. what you need to do to register to participate in the settlement of the class action before the deadline of 6 January 2025; and
3. your right to object to the proposed settlement of the class action and/or any aspect of the proposed distribution of the settlement proceeds before the deadline of 6 January 2025.

It is therefore very important that you read the enclosed Notice carefully.

If you have any questions, please visit the Class Action website at <https://www.aderolaw.com.au/class-actions/mining/stellar/> or contact Adero Law directly at [stellaraction@aderolaw.com.au](mailto:stellaraction@aderolaw.com.au).

Alternatively, you may wish to seek independent legal advice regarding the matters set out in this Notice.



## Annexure D

### EMAIL TO BE SENT TO GROUP MEMBERS IDENTIFIED AS SIGNING LFAs

Dear Registered Group Member

#### **CLASS ACTION – TANIA KELEHEAR v STELLAR PERSONNEL BRISBANE PTY LIMITED (ACN 158 542 191) AND ANOTHER (VID1662/2018)**

You are receiving this email in addition to the previous email enclosing a notice approved by the Court, as Adero Law has identified that you entered into a Litigation Funding Agreement (LFA) with Augusta 005 Limited (the **Funder**) at some stage in the period of 2018 to 2022.

A copy of this notice is also enclosed.

The LFA contains a term that you assign and pay to the Funder, the “Augusta Entitlements”<sup>\*</sup> from any “Claim Proceeds”<sup>\*\*</sup> in exchange of the Funder agreeing to provide the services and funding set out in the LFA.

This is a contractual right that gives the Funder priority to any amount you may receive in the proceeding and the settlement (should it be approved by the Court). If the Funder seeks to enforce the LFA, this may result in a nil payment to you from the Settlement.

Adero has negotiated with the Funder such that the Funder has agreed to reduce its costs to \$50,000 (down from the \$226,839.82 which it spent). Adero will ask the Court to spread that reimbursement across all group members, including non-funded group members on the basis that their cost was to the benefit of all group members. The cost to group members would therefore be relatively modest, but the amount per group member is not able to be estimated as the number of group members is unknown at present. It is for the Court to decide. When considering whether to approve the settlement the Court will also be required to consider whether the amount of compensation group members would be receiving is fair and reasonable.

If you would wish to object to the settlement, you are required to do so by **4:00pm on 6 January 2025** through the process outlined in the notice at paragraph 29.

If you have any questions or queries, you may contact the Applicant’s solicitors, Adero Law, at [stellaraction@aderolaw.com.au](mailto:stellaraction@aderolaw.com.au) with the subject line: Proposed Settlement VID1662/2018.



\* Augusta Entitlements refers to the individual's share of the costs paid by the Funder at any time up to the conclusion of the LFA calculated by reference to the proportion of the claim in relation to the total amount of the claims against Stellar.

\*\* The term Claim Proceeds refers to any amount of money attributable to the resolution or settlement of a claim by employees engaged by Stellar Personnel Brisbane Pty Limited and/or Stellar Recruitment Pty Limited to work in black coal mines for underpayment under an industrial instrument due to being misclassified as casual employees.



**Schedule**

No: VID1662/2018

Federal Court of Australia

District Registry: Victoria Registry

Division: Fair Work

Second Respondent

STELLAR RECRUITMENT PTY LIMITED (ACN 157 737  
150)