

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 15/12/2015 11:33:04 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application - Form 15 - Rule 8.01(1)
File Number:	NSD1968/2013
File Title:	Paul Leslie McAlister by his Litigation Representative the NSW Trustee & Guardian v State of New South Wales & Ors
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 15/12/2015 12:55:07 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 19  
Rule 9.32

**Amended Originating application starting a representative proceeding under Part IVA  
of the Federal Court of Australia Act 1976**

No. 1968 of 2013

Federal Court of Australia  
District Registry: NSW  
Division: General

**Paul Leslie McAlister by his litigation representative NSW Trustee & Guardian**  
Applicant

**State of New South Wales and others named in the schedule**

Respondents

(Filed pursuant to Order 2 made by her Honour Justice Mortimer on 14 December 2015 .)

To the Respondents

The Applicant applies for the relief set out in this application.

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

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

**Time and date for hearing:**

**Place:** Law Courts Building Queens Square, Sydney NSW 2000

Date:

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

Filed on behalf of (name & role of party) Paul Leslie McAlister by NSW Trustee and Guardian, Applicant

Prepared by (name of person/lawyer) Ben Slade

Law firm (if applicable) Maurice Blackburn Pty Ltd

Tel (02) 9261 1488 Fax (02) 9261 3318

Email [bslade@mauriceblackburn.com.au](mailto:bslade@mauriceblackburn.com.au)

Address for service Level 32, 201 Elizabeth St, Sydney NSW 2000



## Details of claim

On the grounds stated in the accompanying Further Amended Statement of Claim, the applicant claims on his own behalf and in a representative capacity:

1. As against the first respondent:
  - 1.1 Damages;
  - 1.2 Such further or other orders as the nature of the case requires;
  - 1.3 Interest; and
  - 1.4 Costs.
2. As against the second respondent:
  - 2.1 Damages;
  - 2.2 Aggravated damages;
  - 2.3 Exemplary damages;
  - 2.4 Statutory compensation pursuant to section 82 of the *Trade Practices Act 1974 (Cth)* and section 236 of the *Australian Consumer Law (Cth)*;
  - 2.5 Relief pursuant to section 87 of the *Trade Practices Act 1974* and section 243 of the *Australian Consumer Law* in the nature of an account;
  - 2.6 Equitable compensation;
  - 2.7 Such further or other orders as the nature of the case requires;
  - 2.8 Interest; and
  - 2.9 Costs.
3. As against the third respondent:
  - 3.1 Damages;
  - 3.2 Aggravated damages;
  - 3.3 Exemplary damages;
  - 3.4 Statutory compensation pursuant to section 82 of the *Trade Practices Act 1974* and section 236 of the *Australian Consumer Law*;
  - 3.5 Relief pursuant to section 87 of the *Trade Practices Act 1974* and section 243 of the *Australian Consumer Law* in the nature of an account;
  - 3.5A Equitable account;
  - 3.6 Equitable compensation;



- 3.7 Such further or other orders as the nature of the case requires;
- 3.8 Interest; and
- 3.9 Costs.

### **Questions common to claims of Group Members**

The questions of law or fact common to the claims of the Group Members are:

1. Whether the first respondent owed a duty of care to the applicant and Group Members.
2. Whether the first respondent's duty of care to the applicant and Group Members was to take reasonable care in the exercise of its powers under the *Youth and Community Services Act 1973 (NSW)* (**YACS Act**) to prevent or minimise foreseeable injury, loss or damage occurring to the applicant and Group Members by conduct of the second respondent and/or the third respondent in breach of the "licence conditions" as defined in paragraph 15 of the Further Amended Statement of Claim.
3. Whether the first respondent should have taken precautions against the risks of harm to Group Members which are described in paragraph 27A of the Further Amended Statement of Claim.
4. Whether the first respondent knew or ought to have known of the risks of harm to Group Members which are described in paragraph 27A of the Further Amended Statement of Claim.
5. Whether the risks of harm described in paragraph 27A of the Further Amended Statement of Claim were not insignificant.
6. Whether a reasonable person in the first respondent's position would have taken the precautions against the risks of harm described in paragraphs 27E and 27F.
7. Whether the first respondent failed to effectively exercise its powers under the YACS Act in breach of its duty of care to the applicant and Group Members by failing to take the precautions described in paragraph 27E against the risks of harm.
8. Whether the first respondent's breaches of duty of care to the applicant and Group Members enabled the second respondent and the third respondent to continue to manage and operate GWL in the manner described in paragraphs 16 to 17 with the effect described in paragraph 20.



9. Whether the negligence of the first respondent was a necessary condition of any loss or damage suffered by the applicant and Group Members.
10. Whether it is appropriate for the first respondent's liability to extend to loss or damage suffered by the applicant and John Harragon.
11. If the negligence of the first respondent is not a necessary condition of the loss or damage suffered by the applicant and John Harragon, whether it is appropriate to impose responsibility for that harm on the first respondent
12. Whether the second respondent owed a duty of care to the applicant and Group Members.
13. Whether the second respondent should have taken precautions against the risks of harm to Group Members which are described in paragraph 48A of the Further Amended Statement of Claim.
14. Whether the second respondent knew or ought to have known of the risks of harm to Group Members which are described in paragraph 48A of the Further Amended Statement of Claim.
15. Whether the risks of harm described in paragraph 48A of the Further Amended Statement of Claim were not insignificant.
16. Whether a reasonable person in the second respondent's position would have taken the precautions described in paragraph 48E against the risks of harm to Group Members which are described in paragraphs 48A.
17. Whether the second respondent breached its duty of care to Group Members by failing to take or adequately take the precautions described in paragraph 48E against the risks of harm identified in paragraph 48A.
18. Whether the negligence of the second respondent was a necessary condition of any loss or damage suffered by the applicant and Group Members.
19. Whether it is appropriate for the second respondent's liability to extend to loss or damage suffered by the applicant and John Harragon.
20. Whether the third respondent owed a duty of care to the applicant and Group Members.
21. Whether the third respondent is liable to John Harragon and Group Members for the tort of intentional infliction of mental harm.



22. Whether the second respondent is vicariously liable for the tortious conduct of the third respondent as pleaded in paragraphs 80 to 101, 128, and 131 to 137 of the Further Amended Statement of Claim.
23. Whether the second respondent and third respondent breached the licence conditions and operated and managed Grand Western Lodge, Millthorpe, New South Wales (**GWL**) in the manner pleaded in paragraphs 16 and 17 of the Further Amended Statement of Claim with the consequences pleaded in paragraph 20 of the Further Amended Statement of Claim.
24. Whether the second respondent engaged in conduct in contravention of section 51AA and/or 51AB of the *Trade Practices Act* and/or section 21 of the *Australian Consumer Law* as pleaded in paragraphs 68, 69, 77, and 78 of the Further Amended Statement of Claim.
25. Whether the third respondent was a person involved in any of the second respondent's proved breaches of section 51AA and/or 51AB of the *Trade Practices Act* and/or section 21 of the *Australian Consumer Law* as pleaded in paragraphs 109 and 110 of the Further Amended Statement of Claim.

### **Representative action**

26. Terms defined in the accompanying Further Amended Statement of Claim carry the same meaning when used in this originating application.
27. This application is brought by the applicant on his own behalf and as a representative party under *Part IVA of the Federal Court of Australia Act 1976 (FCA Act)*.
28. The applicant and the persons whom he represents are persons (**Group Members**) who:
  - 28.1. resided at GWL for some time within the period 1 January 2000 to 15 August 2011 (**Relevant Period**); and



28.2. suffered loss or damage as a consequence of some or all of the conduct referred to in paragraph 111 of the Further Amended Statement of Claim.

Date: 15 December 2015

A handwritten signature in black ink that reads 'Ben Slade'.

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Signed by Ben Slade  
Lawyer for the Applicant

**Applicant's address**

The Applicant's address for service is:

Place: Level 32, 201 Elizabeth St, Sydney NSW 2000

Email: [bslade@mauriceblackburn.com.au](mailto:bslade@mauriceblackburn.com.au)

The Applicant's address is c/o New South Wales Trustee and Guardian, 19 O'Connell Street Sydney NSW 2000.

**Service on the Respondent**

It is intended to serve this application on all Respondents.

**Schedule**

No. 1968 of 2013

Federal Court of Australia

District Registry: NSW

Division: General

**Respondents**

Second Respondent:

**Avibin Pty Ltd (ACN 2669267)**

Third Respondent:

**Adrian Alan Powell**

Date: 15 December 2015