



Federal Court of Australia

District Registry: Victoria Registry

Division: Fair Work

No: VID165/2025

CPSU, THE COMMUNITY AND PUBLIC SECTOR UNION and others named in the
schedule
Applicants

THE STATE OF VICTORIA
Respondent

ORDER

JUDGE: Justice Dowling

DATE OF ORDER: 12 August 2025

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

Opt-Out Notice

1. Pursuant to s 33Y(2) of the *Federal Court of Australia Act 1976* (Cth), the form and content of the opt-out notice set out in Annexure A to these orders is approved.

Date orders authenticated: 12 August 2025


Registrar

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



Schedule

No: VID165/2025

Federal Court of Australia

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Second Applicant PATRICK WREN

Third Applicant BEN POWELL



ANNEXURE A

FEDERAL COURT OF AUSTRALIA

OPT OUT NOTICE

OPT OUT NOTICE to CURRENT AND FORMER VPS 5 TO 7 DJCS EMPLOYEES

ISSUED BY ORDER OF THE FEDERAL COURT OF AUSTRALIA

'VPS Progression Payments' Class Action (VID165/2025)

Why am I receiving this notice?

You are receiving this notice because you:

- were employed by the Department of Justice and Community Safety and classified as a VPS Grade 5, 6 or 7 between 14 February 2019 and 18 August 2024;
- were assessed as having 'Achieved Expectations' in at least one performance cycle between 1 July 2018 and 30 June 2024; and
- in any such performance cycles, did not receive a "progression amount" or a "top of grade or value range payment" (together, **progression payment**) pursuant to the *Victorian Public Service Enterprise Agreement 2016* or the *Victorian Public Service Enterprise Agreement 2020* (the **Enterprise Agreements**).

If you meet the above criteria then you are potentially a group member in this class action. This notice is a communication from the **Federal Court of Australia** that informs you of your right to opt out of the class action by 26 September 2025.

What is this class action about?

The class action has been commenced by the Community and Public Sector Union (**CPSU**) and two VPS employees (together, the **Applicants**) against the State of Victoria (referred to here as **DJCS**). The Applicants allege that, under the Enterprise Agreements, employees who are assessed as having "met" their "progression criteria" as part of a performance review are entitled to a monetary progression payment. The Applicants allege that when DJCS employees classified as VPS Grades 5, 6 or 7 were assessed as having "achieved expectations", DJCS did not make any progression payment to them. The Applicants allege that DJCS instead required that those employees be assessed as having "exceeded expectations" to receive a progression payment. The Applicants allege that those employees "met" their "progression criteria" by being assessed as "achieved expectations" and were therefore entitled to a progression payment. The Applicants allege that those employees are entitled to compensation. DJCS contends that it complied with the Enterprise Agreements by only making progression payments to VPS Grades 5, 6 and 7 employees who were assessed as having an overall rating of "exceeded expectations" or higher.



What are my options?

OPTION 1: OPT OUT OF THE CLASS ACTION	OPTION 2: DO NOTHING AND STAY IN THE CLASS ACTION
<p>If you do not want your compensation claim dealt with in the class action and do not want to remain a group member, opt-out by 26 September 2025</p> <p>What happens if I opt-out?</p> <p>If you opt-out, then your claim will be removed from the class action. If the class action succeeds, you will not be entitled to share in the benefit of any compensation obtained. If the class action does not succeed, you will not be bound by the judgment which would mean that you could still bring your own claim for compensation. If you wish to bring your own claim against DJCS you should seek your own legal advice before opting out.</p> <p>How do I opt out?</p> <p>Complete the “Notice of opting out by a group member” in the form below and posting or emailing it to the Registrar of the Federal Court of Australia at the address shown on the form by 4:00pm on 26 September 2025.</p>	<p>If you want your compensation claim dealt with in the class action, do nothing.</p> <p>What happens if I do nothing?</p> <p>If you do nothing, then your compensation claim will be dealt with in the class action. If the class action succeeds, you will be entitled to share in the benefit of any compensation obtained. If the class action does not succeed, you will not receive any compensation and you will be bound by the judgment which would mean that you could not then bring your own claim for compensation.</p>

FREQUENTLY ASKED QUESTIONS	
What is going to happen in the proceeding?	<p>It is expected that the Court will order that an initial trial take place.</p> <p>At the initial trial, the Court will determine whether DJCS breached its legal obligations by failing to pay progression payments to employees classified as VPS Grades 5, 6 or 7 who were assessed as having “achieved expectations”.</p> <p>If the Court finds that DJCS breached its obligations, it may be ordered to pay compensation and/or penalties.</p>
Who are the lawyers?	<p>Maurice Blackburn Lawyers are the solicitors for the Applicants in the class action.</p>
What does the case seek?	<p>The Applicants seek declarations that DJCS breached its legal obligations under the Enterprise Agreements; orders that compensation be paid to group members; and orders that DJCS pay penalties (which are like a fine).</p> <p>The Applicants intend to seek an order that any penalty be paid to the CPSU.</p>
Is the claim being defended?	<p>Yes, DJCS is defending the claim. DJCS contends that it complied with the Enterprise Agreements by only making progression payments to VPS Grade 5, 6 and 7 employees who were assessed as having an overall rating of “exceeded expectations” or higher.</p>
Who is funding the proceeding?	<p>The CPSU is funding the proceeding as well as being one of the lead Applicants.</p>



Who will the compensation and penalties be paid to?	<p>The Applicants intend to seek that the compensation be paid to group members and the penalties be paid to the CPSU. The Court will decide those matters later and only if the class action succeeds. You will be notified further at that time and will have an opportunity to be heard.</p> <p>If the class action succeeds, but any penalties ordered to be paid to the CPSU do not cover its expenses in funding the case, or no penalties are ordered to be paid to the CPSU at all, the Applicants intend to seek an order requiring that part of the compensation paid to group members be used to contribute to the CPSU's costs in bringing this class action on their behalf.</p>
Am I required to pay any legal costs?	<p>No, you are not liable for any legal costs simply by remaining a group member. As above, if the class action succeeds, the Applicants may seek an order requiring that part of the compensation paid to group members be used to contribute to the costs of running the proceeding, but will only do so if those costs are not met by the penalties that the Applicants are seeking be ordered against DJCS.</p>
What period of time is covered?	<p>The class action currently covers the performance cycles that occurred between 1 July 2018 and 30 June 2024.</p>
What is a class action?	<p>A class action is a proceeding brought by one or more persons on their own behalf and on behalf of group members who have similar claims against the respondent(s). Group members are bound by the outcome in the class action, unless they have opted out of the proceeding. That can occur because of (a) a <i>judgment</i> following a trial, or (b) a <i>settlement</i> (which would require Court approval).</p>
Is there a deadline for opt-out?	<p>Yes, there is a strict deadline of 4:00pm on 26 September 2025. If you do not opt-out by this time your opt-out will not be effective. You can opt-out by posting or emailing the form below to the Registrar of the Federal Court of Australia.</p>
Where can you obtain copies of relevant documents?	<p>Copies of relevant documents, including the application, statement of claim, defence and reply may be obtained at https://www.mauriceblackburn.com.au/vps-progression-payments-class-action, or by contacting Maurice Blackburn Lawyers by emailing djcsclassaction@mauriceblackburn.com.au or by contacting a District Registry of the Federal Court (contact details are available at www.fedcourt.gov.au) and paying the appropriate inspection fee.</p>
Where can I find out more?	<p>You can find out more by contacting Maurice Blackburn Lawyers at djcsclassaction@mauriceblackburn.com.au or calling 1800 995 570.</p>



Form 21
Rule 9.34

Opt out notice

No. 165 of 2025

Federal Court of Australia
District Registry: Victoria
Division: Fair Work

COMMUNITY AND PUBLIC SECTOR UNION and others

Applicants

THE STATE OF VICTORIA

Respondent

To: The Registrar
Federal Court of Australia
Victoria District Registry
Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne VIC 3000
vicreg@fedcourt.gov.au

[Name of group member], a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [Name of group member] is opting out of the representative proceeding.

Date:

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Signed by
[Insert capacity eg group member / Lawyer for the
group member]