

Rare to permit self-represented class actions: Judge

01 July 2022 1:51pm

It will rarely be appropriate for self-represented workers to run class actions, a Federal Court judge has held while moving to declass a representative proceeding brought by a Wilson Security guard on behalf of FIFO colleagues at the North-West Shelf gas project.

Self-represented facilities protection officer Peter Wilkinson is accusing Wilson Security of underpaying him and colleagues at the project, directing them to perform unpaid work and breaching rostering and payslip requirements (see [Related Article](#)).

He told *Workplace Express* after launching the [case](#) in June last year that he was "against class actions being hijacked by the big end of town" and believes workers "should be able to take their cases to court and have a judge adjudicate without it costing millions and millions of dollars".

"Why can't a simple security guard say 'we have some concerns' and have a judge see if it is legitimate?" he asked at the time.

This week the Federal Court gave its answer, with Justice Craig Colvin noting the inherent complexity of such cases and the fact that, without legal assistance, "the court is placed in a position where, in effect, it is required to supervise the performance by the applicant of his fiduciary obligations in the conduct of the proceedings".

In these circumstances, he said the court is "unable to look to the lawyers for the representative applicant as independent officers with duties to the court to perform their obligation to act in the interests of the group members when dealing with the determination of the common questions by proceedings or settlement".

Lack of legal nous, support make class action "inappropriate": Wilson

Wilson Security – which along with a facilities protection manager is represented by queens counsel Stuart Wood and Marc Felman, instructed by Seyfarth Shaw – sought declassing on the basis it is "inappropriate that the claims of group members be pursued by way of a class action because Mr Wilkinson and group members do not have any legal representation".

The company contended Wilkinson's "lack of legal knowledge and training and his conduct of the proceeding to date means that he is not able to adequately advance group members' interests in the conduct of the class action".

Justice Colvin said he directed "no criticism" towards Wilkinson, who did not oppose the declassing application.

"He has acted with sincerity, commitment and energy throughout," the judge said, observing Wilkinson "sought to do what he considers to be fair and proper and has been amenable to dealing with objections" raised by Wilson's lawyers.

However, he said the "task is considerable" and the "instances in which it may be appropriate for a person who is not legally represented to have the conduct of representative proceedings will be rare and, in my view, should occur only where leave has been given for such a course."

"Difficulty" with views of previous authorities

Justice Colvin noted that courts in two previous authorities, [McIntyre v Eastern Prosperity Investments](#) and [Boase as Trustee for Boase Family Trust v Brook](#), accepted the possibility that a person might conduct representative proceedings even though they are not a lawyer.

He said their reasoning treated such applicants as "being in the same position as an individual who acts on their own behalf and then looks to the overall power of the court to supervise the conduct of representative proceedings in the interests of justice".

But Justice Colvin said he had "difficulty with viewing such an applicant in that way".

Expressing "very real doubts as to whether, without leave first obtained, a representative applicant is able to take an active role in the making of submissions and otherwise undertaking the forensic conduct of representative proceedings on behalf of group members", he said those wanting to do so should seek leave "at the earliest opportunity".

"If leave is refused, as I expect it would be in almost all instances, then the proceedings will come to an end if legal representation is unable to be obtained."

Justice Colvin issued [orders](#) giving group members until July 29 to state whether they object to the case no longer proceeding as a class action, giving them time to consider whether they want to secure legal representation and appoint another applicant.

Wilkinson, who will continue pursuing his own claim if the case is declassified, told *Workplace Express* the Federal Court effectively passed to class members the question of how their matter should be dealt with, and it is a "good thing" they will get to decide.

He added that once the case kicked off and Justice Colvin expressed concern, he made "real efforts" to get legal representation but was left "disappointed".

[Wilkinson v Wilson Security Pty Ltd \[2022\] FCA 756 \(29 June 2022\)](#)

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- Related Article : [Self-represented security guard launches class action](#)

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