



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: S108/2024  
File Title: Lendlease Corporation Limited ACN 000 226 228 & Anor v. E  
Registry: Sydney  
Document filed: Respondents' outline of oral submissions  
Filing party: Respondents  
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#### Important Information

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## Form 27F – Outline of oral submissions

Note: see rule 44.08.2.

S108/2024

IN THE HIGH COURT OF AUSTRALIA  
SYDNEY REGISTRY

BETWEEN: **Lendlease Corporation Limited ACN 000 226 228**

First Appellant

**Lendlease Responsible Entity Ltd ABN 72 122 883 185**

**as responsible entity for Lendlease Trust ABN 39 944 184 773 ARSN 128 052 595**

Second Appellant

and

**David William Pallas and Julie Ann Pallas**

**as trustee for the Pallas Family Superannuation Fund**

First Respondent

**Martin John Fletcher**

Second Respondent

### RESPONDENTS' OUTLINE OF ORAL SUBMISSIONS

#### **Part I: Certification**

1. This outline is in a form suitable for publication on the internet.

#### **Part II: Propositions to be advanced in oral argument**

2. **The orders themselves do not create a conflict for the representative plaintiff:**  
The making of the notification orders do not give rise to a conflict of interest (contra J[115] / **CAB 52**). The circumstances giving rise to any possible or perceived conflict either already existed by reason of the fact some group members have registered while others have not, or would arise in the future upon the representative plaintiff applying for an order to exclude unregistered group members at the time of seeking

settlement approval (which has not yet occurred, and is not inevitable). The reasoning of Ward P at [128]-[130] is correct (**CAB 55-57**).

3. **Any perceived conflict is not ‘insoluble’:** Any possible or perceived conflict of interest is not insoluble at the time of making the notification orders. That proposition assumes that the representative plaintiff has a fixed intention to seek orders excluding unregistered group members. Further, even if that assumption could be made, the representative plaintiff cannot conduct (and ought not be presumed to propose to conduct) negotiations on the basis that the court *will* make those orders. The capacity of the representative plaintiff to enter into a settlement agreement is circumscribed because court approval is required for any settlement agreement to be binding. The court will only make orders pursuant to s 173 of the *Civil Procedure Act 2005* (NSW) binding all group members to a settlement (and distributing it on a criterion that may include registration) if satisfied that it is just to do so (RS [15]); *Parkin v Boral Ltd* (2022) 291 FCR 116 at [127]-[128] (**JBA v 4, tab 18, 865-866**). The reasoning of Ward P at [129], [131]-[135] is correct (**CAB 56-58**).
4. **Incongruity of outcome:** Once it is accepted that the notification orders themselves do not create a conflict, and that it is within power to exclude unregistered group members from sharing in a settlement, it begs the question why, as a matter of power under s 175(5) of the *Civil Procedure Act*, group members cannot be given advance notice of this possibility: *Parkin v Boral Ltd* (2022) 291 FCR 116 at [134] (**JBA v 4, tab 18, 867**).

Dated: 5 November 2024



**William Edwards KC**  
**Counsel for the Respondents**