



## NOTICE TO GROUP MEMBERS – PROPOSED DISCONTINUANCE OF CLASS ACTION

### SIMON ALEXANDER TURNER v TESA MINING (NSW) PTY LIMITED ACN 111 753 792 (ACD46/2018)

#### A. The Claim

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The Federal Court has ordered this notice to be sent to you because it appears that you were hired by TESA Mining (NSW) Pty Limited and/or the Tesa Group Pty Ltd (**TESA**) as a “casual” employee, and you worked at the Mt Arthur Coal mine in the period 7 December 2012 to 27 September 2014. This means that you may be a “Group Member” in the Federal Court class action named *Turner v TESA Mining (NSW) Pty Ltd (Class Action)*.

In the Class Action, Mr Turner has alleged that he and Group Members were not, at law, casual employees, and were therefore wrongly denied paid annual leave and other entitlements provided to non-casuals under the *TESA Group – Enterprise Agreement 2012 (Agreement)*. Mr Turner also makes claims with respect to rates of pay applicable to hours worked under the Agreement.

#### B. Reasons for Discontinuance

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Mr Turner has sought leave of the Court to discontinue the Class Action. He, his solicitors, and counsel have decided that the Class Action no longer has reasonable prospects of success because:

- (a) the High Court has recently decided a case named *WorkPac Pty Ltd v Rossato & Ors*, in which it found that Mr Rossato (another black coal miner working on labour hire assignments) was, at law, a casual employee; and
- (b) the *Fair Work Act 2009* (Cth) has recently been amended in a way that will make it harder for the Class Action to succeed, and the amendments apply retrospectively.

For similar reasons, the litigation funder that has provided funding to run the Class Action has also said it will cease providing any further funding to pay for lawyers, and Adero Law no longer wishes to act as solicitor in the case.

If the Court grants leave to discontinue the Class Action, you will still be able to bring your own court case to make the same claims, either just for yourself, or also on behalf of other Group Members, if you wish. If this is something you think you might want to do then you should get legal advice urgently, because there are deadlines for bringing such claims.

#### C. What Options Are Available to You?

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There are three options. The deadline for taking up one or other of the options is the **close of business, 10 January 2022**. Should you wish to discuss your options, you should obtain independent legal advice and/or contact Adero Law via the details provided at paragraph D of this notice. The options are:

- (1) do nothing, in which case the matter will be discontinued. In this event, you will still be able to bring any individual claim connected to your employment with TESA, if you wish;
- (2) propose yourself or another Group Member to be substituted for Mr Turner as lead applicant in the Class Action, and thereby take over the conduct of the case. The proposed new lead applicant must be willing to conduct the case on his or her own behalf and on behalf of Group Members, and to appoint lawyers to act in the case and to meet the legal costs; or
- (3) object to or oppose the proposed discontinuance of the Class Action.

If you wish to take up option (2) or (3) above, you must so inform Adero Law via email by **close of business on 10 January 2022**. Any email to Adero Law in this regard may need to be shown to the Court and to the other parties to the Class Action (namely TESA and Mt Arthur Coal).

#### D. Contacting Adero Law

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Adero Law can be contacted via the following details:

Phone: (02) 6189 1022

Email: [tesacoalaction@aderolaw.com.au](mailto:tesacoalaction@aderolaw.com.au)