

## OPT OUT NOTICE

### PACIFIC ARIA CLASS ACTION

*Debrah Jackson v Carnival PLC t/as P&O Cruises Australia*

*Federal Court of Australia Proceedings QUD 183 of 2023*

#### Why is this important?

This notice is about the *Pacific Aria* Class Action, which is before the Federal Court of Australia. It has been sent to you because you may be a class member (which is defined in paragraph 4 of this notice).

As explained below, you may **do one of three** things in response to this notice:

1. **opt out** of the class action by 1 July 2024 (4:00 pm Brisbane time) and lose your right to receive any compensation from the class action;
2. **sign up** to the class action; or
3. **do nothing**, in which case you remain part of the class action.

#### 1. What is a class action?

A class action is an action that is brought by one person (“**Applicant**”) on his or her own behalf and on behalf of a class of people (“**class members**”) against another person (“**Respondent**”) where the Applicant and the class members have similar claims against the Respondent.

Class members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant is responsible for the costs.

Class members are “bound” by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways either a *judgment*

following a trial, or a *settlement* at any time. If there is a judgment or a settlement of a class action class members *will not* be able to pursue the same claims and *may not* be able to pursue similar or related claims against the Respondent in other legal proceedings. Class members should note that:

- (a) in a *judgment* following trial, the Court will decide various factual and legal issues in respect of the claims made by the Applicant and class members. Unless those decisions are successfully appealed they bind the Applicant, class members and the Respondent. Importantly, if there are other proceedings between a class member and the Respondent, it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action;
- (b) in a *settlement* of a class action, where the settlement provides for compensation to class members it may extinguish all rights to compensation which a class member might have against the Respondent which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against the Respondent which are based in your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

## 2. What is this class action?

This class action, the *Pacific Aria* Class Action, is brought by the Applicant, *Debrah Jackson*, on her own behalf and on behalf of all persons who are “class members” as defined in the proceeding.

The Applicant alleges in the Amended Statement of Claim in Federal Court proceeding QUD183/2023 that the Respondent, who operated *Pacific Aria* on a voyage departing Brisbane on 5 May 2017 bound for Noumea, Lifou Island and Port Vila, started the Cruise without any change to the planned route or itinerary due to the presence of Cyclone Donna which formed before the date of departure. As a result, the Applicant alleges she did not have the benefit of a safe and enjoyable sea passage and other facilities and benefits of the cruise, in that the Respondent breached the consumer

guarantees owed to her as a passenger under the Australian Consumer Law.

The Respondent contests the allegations and is defending the proceedings.

### **3. Why have I been sent this Opt Out Notice?**

The class action has been ordered to go to a mediation by 30 August 2024 and the Court provides you with an opportunity to 'op out' of the class action in advance of that mediation taking place. This and the other options that are available to you are explained further below.

### **4. What is "Opt Out"?**

The Applicant in the class action does not need to seek the consent of class members to commence a class action on their behalf or to identify a specific class member. However, class members can cease to be class members by opting out of the class action. An explanation of how class members are able to opt out is found below in the section headed "How you can opt out of the class action".

### **5. Are you a class member?**

You are a class member if you were a passenger on *Pacific Aria* when it sailed from Brisbane on 5 May 2017.

If you are unsure whether or not you are a class member, you should contact Peter Carter at Carter Capner Lawyers on 1300 529 529 or seek your own legal advice without delay.

### **6. Will you be liable for legal costs if you remain a class member?**

You will **not become liable for any legal costs** simply by remaining as a class member for the Applicant's claim or determination of the common questions. However:

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Carter Capner Law or other lawyers to do that work for you. A copy of the terms on which the Applicant's lawyers, Carter Capner Lawyers, are acting in the class action may be obtained from them in the numbers shown below;

- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicant in running the class action but which are not able to be recovered from the Respondent; and
- (c) class actions are often settled out of Court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer provided that you register (see section below “How to remain a class member”). A class action cannot settle or be discontinued without the court’s approval.

## **7. What will happen if you choose to remain a class member?**

Unless you opt out, you will be bound by any settlement or judgment of the class action. If the class action is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and class members, although you may have to satisfy certain conditions before your entitlement arises. If the action is unsuccessful or is not as successful as you might wish, you will not be able to pursue the same claims and may not be able to pursue related claims against the Respondent in other legal proceedings.

## **8. What class members need to do**

### **(a) How you remain a class member?**

**If you wish to remain** a class member there is **nothing you need to do** at the present time. The Applicant will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicant and the class members. However, you are invited to contact the Applicant’s lawyers Carter Capner Law on 1300 529 529; or email [P&Oclassaction@cartercapner.com.au](mailto:P&Oclassaction@cartercapner.com.au); or register online via <https://cartercapner.com.au/travel-injuries/cruise-ship-injury-lawyers/> and clicking on REGISTER YOUR CLAIM so that future notices about the class action can be sent to your preferred address.

### **(b) How you can opt out of the class action?**

**If you do not wish to remain** a class member you must opt out of the class action. If you opt out you will not be bound or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against the Respondent, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the Respondent, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

**If you wish to opt out** of the class action you **must** do so by completing a “**Notice of opting out by class member**” in the form shown below at **Annexure A** hereto (Form 21 of the Court’s approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form.

The “**Notice of opting out by class member**” can also be downloaded from the website of the Applicant’s lawyers by visiting <https://cartercapner.com.au/travel-injuries/cruise-ship-injury-lawyers/> and clicking on OPT-OUT FORM.

**IMPORTANT: the Notice must reach the Registrar by no later than 4:00PM on 1 July 2024** otherwise it will not be effective.

You should submit the Notice of opting out by class member if:

- (i) You qualify as a class member and you wish to opt out of the class action; or
- (ii) You believe that you have been incorrectly identified as a class member, because you do not meet the criteria set out in the section headed “Are you a class member” above.

Each class member seeking to opt out should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

## **9. Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the Application, the Amended Statement of Claim, the Defence, and the Reply, may be obtained by:

- (a) downloading them from the Applicant lawyer's website by visiting <https://cartercapner.com.au/travel-injuries/cruise-ship-injury-lawyers/> and clicking on VIEW COURT DOCUMENTS;
- (b) inspecting them between 9am and 5am at the Applicant's lawyer's office;
- (c) by contacting a District Registry of the Federal Court; or
- (d) where appropriate arrangement have been made with the Court, inspecting them on the Federal Court website at <https://www.fedcourt.gov.au/>

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Peter Carter at Carter Capner Law on 1300 529 529 or email [P&Oclassaction@cartercapner.com.au](mailto:P&Oclassaction@cartercapner.com.au) or seek your own legal advice.

You should not delay in making your decision.

**Annexure A**

Form 21

Rule 9.34

**Opt Out Notice**

Federal Court of Australia

No. **QUD 183 of 2023**

District Registry: Queensland

Division: General

**DEBRAH JACKSON**

Applicant

**CARNIVAL PLC T/AS P&O CRUISES AUSTRALIA (ABN 23 107 998 443)**

Respondent

**To: The Registrar**  
Federal Court of Australia  
Queensland District Registry  
Federal Court of Australia  
Level 6, Harry Gibbs Commonwealth Law Courts  
119 North Quay  
BRISBANE QLD 4000

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

Date: 2024

Signed by: \_\_\_\_\_

Name: \_\_\_\_\_

Group Member/Lawyer for the Group Member

Filed on behalf of (name & role of party):

\_\_\_\_\_  
Prepared by (name of person/lawyer): \_\_\_\_\_  
Law firm (if applicable): \_\_\_\_\_  
Tel: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
**Address for service:** \_\_\_\_\_  
(include State & postcode): \_\_\_\_\_