



## Annexure A

### NOTICE OF PROPOSED SETTLEMENT

#### P&O Pacific Aria Class Action

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This notice contains important information about the proposed settlement of the representative proceedings (otherwise known as a ‘class action’) (“**P&O Pacific Aria Class Action**”) commenced in the Federal Court of Australia by Debrah Jackson (“**Jackson**”) against Carnival PLC (ARBN 23 107 998 443) (“the Respondent”). Please read this Notice carefully. If you are a Group Member in the P&O Pacific Aria Class Action, your legal rights will be affected by the proposed settlement.

If there is anything of which you are unsure, you should contact Carter Capner Lawyers Brisbane on 1300 529 529 or email [pcarter@cartercapner.com.au](mailto:pcarter@cartercapner.com.au) or seek your own legal advice. The Federal Court is not able to answer questions about the proposed settlement.

**The purpose of this Notice is to inform you that there is a proposed settlement of the P&O Pacific Aria Class Action. The proposed settlement needs to be approved by the Federal Court of Australia. This notice generally explains what the proposed settlement is and what you need to do should you wish to claim a settlement distribution.**

**This notice is provided with the permission of Justice R. Derrington of the Federal Court of Australia by order made on 1 November 2024. A copy of His Honour’s order is available for perusal on the P&O Pacific Aria Class Action website at [www.pacificariaclassaction.com.au](http://www.pacificariaclassaction.com.au)**

#### PART A – OVERVIEW

##### PROPOSED SETTLEMENT

On 1 October 2024 the parties in the P&O Pacific Aria Class Action agreed on terms for the proposed settlement of the P&O Pacific Aria Class Action. If the settlement is approved by the Federal Court, **\$2,416,000.00 (\$2.416 million)**<sup>1</sup> will be available for eligible Group Members, subject to payment of any amount deducted for legal costs and other payments.

The proposed settlement must be approved by the Court before it can take effect.

The method by which this amount is to be divided amongst Group Members will be determined by a scheme (**Settlement Distribution Scheme**) which will also be approved by the Court at the settlement approval hearing.

You may be eligible to receive a settlement payment if:

- (1) you meet the Group Member criteria set out in **Part B** below under the heading “Who are Group Members?” (the **Group Member Criteria**); and
- (2) you register your interest to receive a settlement payment with the Administrator of the Settlement Distribution Scheme.

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<sup>1</sup> Australian Dollars (AUD)



## WHAT GROUP MEMBERS NEED TO DO<sup>2</sup>

A Group Member does not presently need to take any action in order to claim a settlement payment.

Following approval of the proposed settlement by the Court, the Administrator of the Settlement Distribution Scheme will send out a notice to you indicating what you need to do to receive a payment out of the Settlement.

The proposed Settlement Distribution Scheme requires all Group Member to register with the Administrator in order to become an “eligible group member” and to be able to claim a distribution under the settlement. The Administrator of the Settlement Distribution Scheme will contact all Group Members in a manner set out in the Scheme inviting them to register.

If you have already registered your details with Carter Capner Law you will be taken to have already registered.

If you are unsure whether you have registered your details with Carter Capner Law you can enquire about this by either emailing [pcarter@cartercapner.com.au](mailto:pcarter@cartercapner.com.au) or contacting **Peter Carter** on **(07) 3210 3409**.

If you have not already registered with Carter Capner Law then you may register now (in advance of the invitation from the Administrator) by completing the registration form on the P&O Pacific Aria Class Action website at [pacificariaclassaction.com.au](http://pacificariaclassaction.com.au)

## COURT APPROVAL OF THE PROPOSED SETTLEMENT

On 6 February 2025 at 10.15am, the Federal Court of Australia will be asked to approve the proposed settlement (“**settlement approval hearing**”). You may attend this hearing if you wish, although you are not required to do so. If you wish to attend the application will be heard at the Harry Gibbs Commonwealth Law Courts Building 119 North Quay (cnr Tank Street) Brisbane QLD 4000 (Entrance Tank St).

If you wish to oppose or object to the proposed settlement, you must lodge a written statement of your concerns by 23 January 2025 by emailing or posting it to Carter Capner Law (the relevant contact details are provided below). Carter Capner Law will ensure your statement of concerns is considered by the Court at the settlement approval hearing even if you do not appear in person. Remember you may also (but do not need to) attend the hearing in the Federal Court on 6 February 2025 at 10.15am. You may also communicate an expression of support for the settlement in the same way.

A copy of the proposed Settlement Distribution Scheme is sent with this notice. The material that will be relied on when seeking the Court’s approval of the proposed settlement<sup>3</sup> will be posted on the P&O Pacific Aria Class Action website at [www.pacificariaclassaction.com.au](http://www.pacificariaclassaction.com.au)

## CONTACT DETAILS

You can contact Carter Capner Law for further information or if you have any questions:

### **Carter Capner Law**

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<sup>2</sup> See Part B Section 3 herein

<sup>3</sup> Save for any material which is confidential



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150 Charlotte Street  
Brisbane QLD 4000  
**Phone: (07) 3210 3409**  
**Email: [pcarter@cartercapnerlaw.com.au](mailto:pcarter@cartercapnerlaw.com.au)**

## **PART B – SETTLEMENT DETAILS**

### **SECTION 1: OVERVIEW OF THE CLASS ACTION**

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In 2020 Carter Capner Law commenced a class action on behalf of Debrah Jackson (the **Applicant**) against Carnival plc (ARBN 21 107 998 443) (the **Respondent**) in relation to a Cruise on the ship the “Pacific Aria” that departed from Brisbane on 5 May 2017 and was impacted by Cyclone Donna.

#### **What is the class action about?**

The claim made by the Applicant against the Respondent in the Amended Statement of Claim is based on a breach of statutory guarantees under the *Australian Consumer Law (ACL)*<sup>4</sup>. Section 60 of the ACL puts in place a guarantee that services supplied to a consumer will be rendered with due care and skill. Section 61(1) puts in place a guarantee that services supplied will be reasonably fit for any purpose which is made known to the supplier. Section 61(2) of the *ACL* puts in place a guarantee that services supplied will be of such a nature and quality, state or conduction that they might reasonably be expected to achieve the result the consumer wishes to achieve.

The Applicant booked and paid for a 7 day cruise operated by Respondent which departed from Brisbane on 5 May 2017 on a ship called Pacific Aria (the **ship**). The cruise’s itinerary included stops at Noumea, Lifou Island and Port Vila before returning to Brisbane on 12 May 2017 (the **Cruise**).

The Applicant alleges that:

- On 1 May 2017 a severe Cyclone began to form about 1,500km west-northwest all Fiji. By 3 May 2017, this storm had intensified into a category 1 Cyclone and was given the name Cyclone Donna (the **Cyclone**).
- The Cyclone intensified and by 6 May 2017 it was a category 4 Cyclone which meant that it had wind gusts of between 225 to 279 kilometres per hour. On the 7 May 2017, Cyclone had lessen to a category 3 Cyclone.
- By 6 May 2017 the Cyclone had tracked back through Vanuatu and turned south towards Noumea and New Caledonia. It then followed a southerly direction approximately parallel to the Australian coastline.
- The Cruise departed Brisbane at 2:00 PM on 5 May 2017. At that time the Cyclone had been classified as a category 3 Cyclone which meant that it could have sustained winds of up to 159 kilometres per hour with gusts of wind up to 224 km/h.
- The route the ship was to take would be impacted by the Cyclone.

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<sup>4</sup> Schedule 2 to the *Competition and Consumer Act 2010* (Cth)



On 7 May 2017 the ship arrived in Noumea.

The Applicant alleges that:

- The trip between Brisbane and Noumea was rough and that no activities were open on the ship, it was difficult to move around and the environment was unpleasant.
- Shortly after arriving in Noumea passengers were informed that the ship would be returning to Brisbane and that no other ports would be visited. Although passengers could disembark from the ship in Noumea most businesses were closed, and the township was locked down due to the Cyclone. The ship did not call at Lifou Island or at Port Vila on its return voyage.
- During the trip back to Brisbane it is alleged that the seas were very rough with tables moving, the ship listing, and water ingress down corridors and into some cabins. The Applicant found the experience caused by the listing of the ship to be very frightening and she was fearful of her own safety.
- Because of the weather during the trip from Noumea to Brisbane, most of the facilities on board the ship were closed, live performances were cancelled and the environment was unpleasant.

The ship arrived back in Brisbane on 12 May 2012.

The Applicant claims in the Amended Statement of Claim that at the time the ship departed Brisbane Respondent knew, or a reasonable and prudent cruise operator in the position of Respondent would have known, of the existence of the Cyclone and that it would adversely impact on the Cruise. These risks could have been avoided by either cancelling the Cruise or altering the route of the Cruise so as to avoid or limit the impact of the Cyclone. In those circumstances the Amended Statement of claim alleges that Respondent failed to exercise due care and skill in the supply of services to the Applicant and was in breach of the due care and skill guarantee, the purpose guarantee and the results guarantee (created by ss 60 and 61 of the *ACL*).

The Respondent disputes the allegations and is defending the class action. Copies of the current pleadings, including the Respondent's Defence to the Amended Statement of Claim can be found at [www.pacificariaclassaction.com.au](http://www.pacificariaclassaction.com.au)

### **Who are Group Members?**

You are a Group Member if you were a passenger on the Cruise.

If you are unsure about whether or not you are a Group Member please contact Carter Capner Law who may be able to assist you (the contact details are above) or seek independent legal advice.

Being a group member does not mean the you will be eligible to receive a payment from the proposed Settlement. In order to receive a payment from the Settlement it is necessary for Group Members to register. If the action settles the Administrator will send you a notice indicating how to register. If you have already registered with Carter Capner Law then further registration is not required.



## **SECTION 2: THE PROPOSED SETTLEMENT**

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On 1 October 2024 the parties in the Pacific Aria Class Action reached an in-principle agreement to settle the class action, subject to Court approval. On 31 October 2024, the parties formalised that agreement by signing a Settlement Deed. A copy of the Settlement Deed is enclosed with this Notice. Before it can take effect, the proposed settlement must be approved by the Federal Court of Australia.

If the Court approves the settlement the Respondent will pay the gross amount of **\$2,416,000.00 (\$2.416 million)** inclusive of the Applicant's legal costs and other payments which are to be deducted prior to any distribution to Group Members.

The proposed settlement will be administered in accordance with a settlement scheme called the Settlement Distribution Scheme, which also needs to be approved by the Court. The Settlement Distribution Scheme is a document which sets out the process for Group Members to register and claim a settlement payment and the method by which those claims are to be assessed and paid. A copy of the Settlement Distribution Scheme is enclosed with this Notice. It is also available for download from the Pacific Aria Class Action website at [www.pacificariaclassaction.com.au](http://www.pacificariaclassaction.com.au)

### **Who is eligible to receive a settlement payment?**

If the settlement is approved by the Federal Court, then you will be eligible to receive a payment if you satisfy the Group Member Criteria **and** you have registered within the time frame set by the Administrator under the Settlement Distribution Scheme.

### **How much will Group Members receive under the settlement?**

Under the Settlement Distribution Scheme each registered Group Member will receive the same amount which is presently estimated to be about \$1,754 (the **Settlement Payment**). This amount represents the median price paid per person for a ticket on the Cruise of \$944.00 plus an amount of about \$944.00 as additional damages. The result is that on average a group member will be repaid the cost of his or her ticket plus that amount again as damages

The settlement payment is calculated on the following assumptions:

- (a) that the median price of a ticket on the Cruise was \$944;
- (b) that 750 people will register as group members.

The distribution of the settlement payment and the registration of group members will be undertaken by an Administrator in accordance with the Settlement Distribution Scheme.

The way that the Settlement Distribution Scheme determines individual payments will be based on the following steps:

**Step 1:** Deducting from the Settlement Sum the amount of the Applicant's legal costs and expenses as approved by the Court;

**Step 2:** A notice is sent by the Administrator to group members (in the manner set out in the Settlement Distribution Scheme) inviting Group members who have not already registered with Carter Capner Law to register in order to receive a settlement payment.

**Step 3:** Once the registration period has expired the Administrator will calculate the settlement payment payable to each registered group member using the following formula:



([settlement amount] less legal and other costs as approved by the Court) divided by the number of registered group members

**Step 4:** Payment of settlement payment to registered group members.

The Applicant will seek approval of its legal costs and expenses by the Court on 6 February 2025 at 10.15am. The amounts to be deducted at Step 1 will be capped at a maximum amount of \$1,000,000.00 (plus GST). This does not include the costs of administering the Settlement Distribution Scheme and of making payment in the sum of \$2,000 (or such lesser amount as approved by the Court) to the Applicant in recognition of her time and inconvenience occasioned by acting as Applicant. That means that about 55% of the settlement amount will be distributed to registered Group Members.

**This is only an approximation, and the final amount will be determined by the Administrator.**

**Is the proposed settlement an admission of liability by the Respondents?**

No. The Respondent denies the allegations made in the class action and the proposed settlement was agreed without any admission of liability by them.

This settlement represents a negotiated commercial outcome. A settlement without any admission of liability is common in Australian class actions.

**Will Group Members be required to pay any legal fees?**

No. As a Group Member you will not need to pay or make any contribution to the payment of any legal costs relating to the class action or the administration of the proposed settlement.

If the proposed settlement is approved, as set out above, the Applicant's reasonable legal costs and other expenses (in an amount that will be determined by the Court of no more than \$1,000,000.00 (plus gst)) and the cost of administration will be **paid from the settlement sum**.

### **SECTION 3: PROCESS FOR MAKING AND ASSESSING CLAIMS**

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Only Group Members who have registered in accordance with the Settlement Distribution Scheme will be eligible to receive a settlement payment

If the settlement is approved by the Court then you will be sent a Registration and Confirmation of Settlement Notice informing Group Members of the settlement and giving details as to how they can register in order to receive a settlement payment. If you are already registered with Carter Capner Law you will not need to further register your claim.

Group Members who do not register will not be entitled to receive a settlement payment but will nevertheless be bound by the outcome of the class action and will be unable to bring separate legal action against the Respondent.

A copy of the proposed Settlement Distribution Scheme has been placed on the Pacific Aria Class Action website.



Please visit the Pacific Aria Class Action website at [www.pacificariaclassaction.com.au](http://www.pacificariaclassaction.com.au) for further information or contact **Mr Peter Carter** at Carter Capner Law on **(07) 3210 3409** or email [pcarter@cartercapner.com.au](mailto:pcarter@cartercapner.com.au)



## **Annexure B**

### ***P&O PACIFIC ARIA CLASS ACTION***

*Debrah Jackson v. Carnival PLC t/as P&O Cruises Australia QUD 183 of 2023*  
*This class action concerns passengers on Pacific Aria when it sailed from Brisbane on 5/11/2017.*

*The Proceeding has settled subject to the court's approval. Subject to approval of the Federal Court \$2,416,000 will be available to eligible group members subject to any approved deductions for legal costs and other payments.*

*A Settlement Approval Hearing will be heard by the Federal Court of Australia at the Harry Gibbs Commonwealth Courts Building, 119 North Quay (cnr Tank Steet) Brisbane QLD 4000.at 10:15 AM on 6 February 2025.*

*Further information can be found at [www.pacificariaclassaction.com.au](http://www.pacificariaclassaction.com.au)*