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## SUPREME COURT PRACTICE NOTE SC GEN 17

### SC Gen 17 - Supreme Court Representative Proceedings ("Class Actions")

#### Introduction

Representative proceedings under Part 10 of the *Civil Procedure Act 2005* (NSW), commonly described as class actions, present complexities which are unique compared to other forms of civil and commercial litigation.

This Practice Note is designed to facilitate the management of representative proceedings in a manner consistent with Part 6 of the *Civil Procedure Act*. This Practice Note sets out guiding principles applicable to all representative proceedings commenced in the Supreme Court.

The principles are not intended to be inflexibly applied and the Court will adopt such processes as are best designed to achieve the overriding purpose referred to in s 56 of the *Civil Procedure Act*, namely the facilitation of the just, quick and cheap resolution of the real issues in the proceedings.

A party to representative proceedings is under a duty to assist the court to further the overriding purpose. Parties are encouraged proactively, collaboratively and expeditiously to identify issues which require the attention of the Court as well as proposals for how such issues might be addressed in a manner best designed to achieve the overriding purpose in the particular case.

#### Commencement

1. This Practice Note replaces the Practice Note SC Gen 17 issued on 31 July 2017 and commences on 1 August 2024.

#### Application

2. This Practice Note applies to representative proceedings (commonly referred to as "class actions") under Part 10 of the *Civil Procedure Act*.

## General

3. Words and expressions in this Practice Note have the meanings given to them in Part 10 of the *Civil Procedure Act*.
4. Subject to Part 10 of the *Civil Procedure Act*, the Uniform Civil Procedure Rules 2005 (NSW) apply to representative proceedings.
5. The aim of this Practice Note is to facilitate the just, quick and cheap conduct of representative proceedings by ensuring that the issues in contest are identified at an early date and that representative proceedings are not unnecessarily delayed by interlocutory disputes.
6. In order to provide maximum flexibility in bringing the proceedings to trial and their prompt disposal at trial or as soon as practicable thereafter, the following practice notes will not apply save to the extent the judge managing particular proceedings orders to the contrary:
  - (a) SC Gen 9 (appointment of examiners),
  - (b) SC Gen 10 (single expert witnesses),
  - (c) SC Gen 11 (joint conferences of expert witnesses),
  - (d) SC CL 5 (urgent matters in the Common Law Division),
  - (e) SC CL 7 (Professional Negligence List),
  - (f) SC Eq 5 (expert evidence in the Equity Division),
  - (g) SC Eq 8 (urgent Matters in the Equity Division), and
  - (h) SC Eq 11 (disclosure in the Equity Division).
7. Any practitioner who anticipates problems in complying with any aspect of this Practice Note is to raise the matter with the Court as soon as practicable to comply with obligations imposed by the *Civil Procedure Act*, s 56.

## Commencement of proceedings

8. Representative proceedings are to be commenced in the Division of the Court appropriate to their subject matter in accordance with the *Supreme Court Act 1970* (NSW) and the Uniform Civil Procedure Rules.
9. Proceedings in the Equity Division are to be commenced in either the Commercial List or the Technology and Construction List by the filing of a Summons and List Statement in accordance with Practice Note SC Eq 3. Securities class actions are to be commenced in the Commercial List.
10. Proceedings in the Common Law Division are to be commenced by the filing of a Statement of Claim.
11. In addition to the requirements of Part 6, Division 4 of the Uniform Civil

Procedure Rules, an originating process must:

- (a) describe or otherwise identify the group members either by name or characteristic and indicate whether all group members are clients of the plaintiff's solicitor (closed class) or none or not all group members are clients of the plaintiff's solicitor (open class);
- (b) specify the nature of the claims and the relief sought by the representative party on his, her or its own behalf and on behalf of the group members;
- (c) specify the common questions of law or fact which are said to arise in the proceedings;
- (d) indicate whether the proceedings are commenced in the Common Law Division or the Equity Division; and
- (e) contain a notation that the proceedings are listed for an initial directions hearing in accordance with [15] below.

12. At the same time as the originating process is filed and served, the plaintiff's solicitor must file and serve a Class Action Summary Statement that:

- (a) provides basic information about the proceedings including:
  - (i) the law firm acting for the plaintiff;
  - (ii) the identity of any litigation funder, and how the defendant(s) and group members may obtain further information about the litigation funder;
  - (iii) if there is a litigation funder, how the litigation funding charges are to be calculated, the basis upon which litigation funding charges will be charged and whether the litigation funder will provide security for costs;
  - (iv) whether any other representative proceedings have been, or, to the solicitor's knowledge, are likely to be, filed in this or another state or federal jurisdiction that relate to the same subject matter as the present group proceeding;
  - (v) how and to whom legal fees and disbursements will be charged, including the impact of any funding arrangement; and
  - (vi) who the defendant group members may contact for further information (and should advise that group members will not be charged for such enquiries);
- (b) is clear, concise and uses simple language;
- (c) is no longer than two pages (excluding the annexure referred to at (e) below);
- (d) is in a form that is appropriate for publication on the Supreme Court website;

- (e) has annexed to it any litigation funding agreement (such agreement may be redacted to conceal any information which might reasonably be expected to confer a tactical advantage on the other party other than in relation to how the litigation funding charges are to be calculated, the basis upon which litigation funding charges will be charged and whether the litigation funder will provide security for costs or any adverse costs order).

In the event that the information in the Class Action Summary Statement alters at any point of time in the course of the proceedings, the solicitor for the plaintiff must file an Amended Class Action Summary Statement reflecting those changes as soon as possible.

### **Assignment and management of proceedings**

13. Representative proceedings commenced in the Common Law Division will be assigned on their commencement to, and case managed by the Common Law Division Representative Proceedings List Judge. Proceedings in the Common Law Division will be made returnable for an initial directions hearing at 9:30am on the Friday after the expiration of 35 days from the filing and service of the originating process. Subsequent directions hearings will be scheduled to promote discussion between the parties and the presiding judge with a view to exploring the best method of managing the proceedings consistent with the overriding purpose.
14. Representative proceedings commenced in the Equity Division will be assigned to the Commercial or Technology and Construction List and generally will be case managed by the judge administering these lists and then heard by one of the judges assigned to these lists. Such proceedings will be made returnable for initial directions on the Friday after the expiration of 35 days from the filing and service of the originating process. If parties in such proceedings anticipate that a longer time is required for directions than may usually be afforded at a Friday directions hearing, they should notify the list judge’s associate to this effect.

### **The initial directions hearing**

15. The parties should be in a position to deal to the extent possible with the following matters at the initial directions hearing:
  - (a) whether there is any dispute that the proceedings are representative proceedings for the purpose of Part 10 of the *Civil Procedure Act*;
  - (b) any issue concerning the description of group members;
  - (c) any issue concerning the identification of the common questions of fact or law in the originating process;
  - (d) any other issues concerning the adequacy of the originating process and the pleadings/List Statement;
  - (e) a timetable for the service of defences, cross-claims and further

pleadings;

- (f) whether any security for costs will be sought and if so the amount, manner and timing of the provision of such security;
  - (g) any protocol for communication with group members who are not clients of the plaintiff’s solicitor (non-client group members);
  - (h) early disclosure of documents that are, or have been, in either party’s possession, custody, or control of which that party is aware and which that party considers, or ought reasonably consider, are critical to the resolution of the dispute;
  - (i) the likely extent of disclosure/discovery and the timing of that disclosure/discovery including whether before or after the completion of evidence; and
  - (j) any other matter which either party considers should be raised at this early stage of the proceedings, including any anticipated interlocutory disputes.
16. The initial directions hearing is to be attended by the legal representatives who are responsible for the conduct of the proceedings including, where possible, counsel retained in the proceedings.
17. The parties are to confer prior to the initial directions hearing in relation to the matters set out at [15] above and any other matters which a party intends to raise (including the likely role of any experts) and, no later than 24 hours prior to the initial directions hearing, the parties are to provide by email to the judge administering the class action list in the relevant Division of the Court a joint document of no more than 5 pages setting out the matters to be raised at the initial hearing and a short summary of the position of each party on those matters.
18. In an appropriate case, the Court may make an order that the plaintiff’s solicitor identify to the other parties the group members who are their clients. The Court may make orders concerning communications with non-client group members.

### **Subsequent directions hearings and further interlocutory steps**

19. Subsequent directions hearings will deal with the following matters:
- (a) any matters set out in [15] above not completely dealt with at the initial directions hearing;
  - (b) the form and content of the notice to group members advising of the commencement of the proceedings and their right to opt out of the proceedings before a specified date (*Civil Procedure Act*, ss 162, 175) (the Important Public Notice);
  - (c) the date before which a group member may opt out of the proceedings

(*Civil Procedure Act*, s 162);

- (d) the manner of publication and dispatch of the Important Public Notice;
  - (e) the scope of the initial trial including the common questions and issues of commonality to be dealt with at the initial trial;
  - (f) the steps necessary to prepare the matter for the initial trial, including:
    - (i) the resolution of any interlocutory disputes;
    - (ii) the appropriate platform, and any protocol, for the electronic document management for disclosure/discovery, document exchange and trial use;
    - (iii) the utility of any facilitated conferral in relation to discovery/disclosure;
    - (iv) whether it is necessary to establish a sub-group and appoint a person to be the sub-group representative party on behalf of the sub-group members;
    - (v) the provision of witness statements; and
    - (vi) the provision of expert evidence and the manner that such evidence will be taken.
  - (g) whether, and if so when, the matter should be referred to mediation;
  - (h) the date of the hearing of the initial trial; and
  - (i) such further directions as may be necessary.
20. To the extent possible, the parties are to confer prior to each subsequent directions hearing in relation to the matters which a party intends to raise and, no later than 24 hours prior to the directions hearing, the parties are to provide by email to the judge administering the class action list in the relevant Division of the Court a joint document of no more than 5 pages setting out the matters to be raised and a short summary of the position of each party on those matters
21. The form, content and manner of service of the Important Public Notice is required to be approved by the Court (*Civil Procedure Act*, s 176). No fewer than 7 days prior to the directions hearing at which it is anticipated that opt out will be considered, or at such other time as directed by the Court, the representative party should file and serve:
- (a) a draft Important Public Notice;
  - (b) draft short minutes of order with respect to the proposed manner and timing of giving the Important Public Notice;
  - (c) information as to the anticipated costs of giving the Important Public Notice in the manner proposed; and

- (d) a draft order as to the payment of costs of giving the Important Public Notice if not to be borne by the representative party alone.
22. The Important Public Notice should be prepared using plain and balanced language, giving a succinct description of the claims and defences in the proceedings. A sample Important Public Notice is annexed to this Practice Note at Annexure A. Sample short minutes of order are annexed to this Practice Note at Annexure B. These are samples only and the plaintiff’s representative should give consideration to the most effective means of communication having regard to the circumstances of the case including the number and characteristics of group members.
23. In complying with [21] of this Practice Note, the plaintiff’s legal representatives should propose an approach that will result in the Important Public Notice being distributed in a way that is most effective and efficient and should consider all forms of media, including social media. Different notices may be appropriate for different media. The Court may require the plaintiff’s legal representatives to indicate the approximate size of the group and other relevant characteristics such as geographical location of group members to the extent known in order to enable the Court to assess and determine how the Important Public Notice is to be disseminated.

### **Competing Class Actions**

24. In this practice note a *competing class action* is a class action in which the claims of group members in a representative proceeding (as that term is understood in s 157 of the *Civil Procedure Act*) are sought to be advanced in another class action (irrespective as to differences as to the time period to which the class actions relate or differences in the way any allegations of contraventions or breach are made in each class action).
25. Upon becoming aware that a competing class action has been filed in the Supreme Court of New South Wales, the Federal Court of Australia or in another court, the lawyers for the parties are to inform the Court of the development by contacting the associate to the presiding or list judge. Practitioners should familiarise themselves with any applicable protocol governing the competing class actions: see, for example, the Protocol for Communication and Cooperation between the Supreme Court of New South Wales and the Federal Court of Australia in Class Action Proceedings.

### **Interlocutory disputes**

26. In the event that an agreement cannot be reached in relation to the matters referred to in [15] and [19] above or any other interlocutory matter, the presiding or list judge (as the case may be):
- (a) after hearing from the parties may make such directions as he or she thinks appropriate; or
  - (b) direct that a motion and to the extent necessary a supporting affidavit be filed in respect of the matters in dispute and fix a date for an



interlocutory hearing on those matters.

### **Mediation and facilitated conferral**

27. As a matter of general practice, the proceedings will be referred by the Court to mediation at an appropriate time. Aspects of the proceedings, including interlocutory disputes, may also be referred to mediation or for facilitated conferral. The timing of any mediation or facilitated conferral will be determined with the assistance of the parties. In the event the parties are unable to agree on a mediator, the Court will select a mediator from persons nominated by the parties or as determined by the Court. Unless otherwise agreed or ordered, the costs of any mediation or facilitated conferral will be borne by each party equally.

### **Notice to group members**

28. Subject to directions of the Court, notice is to be given to group members of the following matters in a form and manner approved by the presiding judge:
- (a) amendment of the originating process varying the persons who may be group members (*Civil Procedure Act*, s 163(4));
  - (b) a motion seeking dismissal for want of prosecution (*Civil Procedure Act*, s 175(1)(b));
  - (c) proposed settlement or discontinuance of the proceedings (*Civil Procedure Act*, s 173);
  - (d) proposed withdrawal of the representative party (*Civil Procedure Act*, ss 174 and 175(1)(c));
  - (e) the bringing of money into court (*Civil Procedure Act*, ss 175(3) and 177(4)); and
  - (f) the need for proof of individual claims in respect of a fund (*Civil Procedure Act*, s 178(3)).

### **Issues remaining following the determination of the common questions**

29. Following determination of the common questions after the initial trial, directions will be made to address outstanding matters including:
- (a) referral of the remaining claims to mediation and associated registration by group members and/or provision of information to facilitate that mediation;
  - (b) determination by the Court of a sample of further group member claims or referring those claims to an appropriately qualified referee;
  - (c) requiring remaining group members to commence separate proceedings for the determination of their claims.

The parties’ legal representatives should give careful consideration to such further directions prior to a directions hearing to be convened after the making of orders following the initial trial.

### **Third party access to Court files and placing documents on the website**

30. Access to the Court file by third parties will be under the control of the presiding judge.
31. The Supreme Court website lists some details of class actions currently before the Court and provides links to some of the documents that have been filed including the pleadings and Important Public Notices relating to opting out of proceedings. The presiding judge will decide which documents will be available on the website.

### **Settlement Approval**

32. Unless otherwise ordered, an application for approval by the Court of a settlement or discontinuance of proceedings must be made by notice of motion in the proceedings.
33. The Court will usually not determine an application for approval of a proposed settlement or discontinuance unless a notice, approved by the Court, has been given to group members.
34. At the first return of the notice of motion for approval, the Court will usually make orders concerning:
  - (a) the confidentiality of evidence filed in support of an approval application (typically, a confidential opinion provided by counsel for the applicants);
  - (b) the timetable for any evidence and other material to be filed; and
  - (c) the wording of the proposed notice to group members.
35. At the second return of the notice of motion, the Court will usually make orders concerning the proposed settlement itself, any scheme for distribution of the settlement and issues concerning costs.
36. The notice to group members advising of the proposed settlement, which must be approved by the Court, should contain the following:
  - (a) a statement that the group members have legal rights that may be affected by the proposed settlement;
  - (b) a statement that an individual group member may be affected by a decision whether or not to remain as a group member (in the event that the opt out date has not already passed or where there is a further opportunity to opt out);
  - (c) a brief description of the factual circumstances giving rise to the

- litigation;
- (d) a description of the legal basis of the claims made in the proceedings and the nature of relief sought;
  - (e) a description of the group members on whose behalf the proceedings were commenced;
  - (f) information on how a copy of the statement of claim and other legal documents may be obtained;
  - (g) a summary of the terms of the proposed settlement;
  - (h) information as to any order sought relating to the conduct and/or funding of the class action which would impose any obligation on group members;
  - (i) information on how to obtain a copy of the settlement agreement (except where confidentiality provisions in the settlement agreement preclude disclosure at that time);
  - (j) an explanation of who will benefit from the settlement, including an explanation as to how group members or sub-groups will benefit relative to each other;
  - (k) where all group members are not eligible for settlement benefits - an explanation of who will not be eligible and the reasons for such ineligibility;
  - (l) an explanation of the Court settlement approval process;
  - (m) details of when and where the Court hearing will be and a statement that the group member may attend the Court hearing;
  - (n) an outline of how objections or expressions of support may be communicated, either in writing or by appearing in person or through a legal representative at the hearing;
  - (o) an outline of any steps required to be taken by persons who wish to participate in the settlement (in the event that affirmative steps are required);
  - (p) an outline of the steps required to be taken by persons wishing to opt out of the settlement; and
  - (q) information on how to obtain legal advice and assistance.
37. The material filed by the plaintiff in support of an application to approve a settlement will usually be required to address at least the following matters:
- (a) the complexity and likely duration of the litigation;
  - (b) the stage of the proceedings and the likely duration and costs of

- proceedings if maintained to judgment;
  - (c) the risks of establishing liability, loss and/or damage;
  - (d) the risks of maintaining a viable class action;
  - (e) the ability of the defendant (to the extent known to the plaintiff) to withstand a judgment of a greater monetary amount than the settlement;
  - (f) the “best recovery” from the litigation;
  - (g) the reasonableness of the settlement both *inter partes* and *inter se* in light of all the attendant risks and costs of litigation and in light of the best recovery;
  - (h) the reasonableness of any amounts proposed to be deducted from the settlement amount including on account of legal fees and/or amounts paid to any litigation funder;
  - (i) the manner in which the amount offered to each group member is to be calculated and, if possible, the amount offered or to be offered to each group member;
  - (j) whether group members are treated the same or differently and, if so, why;
  - (k) the terms of any advice received from counsel or independent expert in relation to the issues arising in the proceedings;
  - (l) the attitude of the group members to the settlement;
  - (m) how the settlement process will be administered, supervised, monitored or audited;
  - (n) the proposed measures that are to be taken in the settlement distribution scheme to ensure a just, efficient, timely and cost-effective outcome for group members;
  - (o) how group members will be kept informed of the settlement distribution scheme, including measures to ensure ease of access to these communications for group members.
38. Where a proposed settlement contemplates that any part of the payments to be made to group members will be applied toward reimbursement of the unrecovered legal costs of the proceeding, or toward payment of litigation funding charges, the Court:
- (a) will usually require that the material filed in support of the application demonstrates that reasonable steps were taken to alert group members to the likelihood of such deductions as soon as practicable, so that group members were, at the relevant time, able to take such steps as may have been practicably available to them to negotiate as to legal costs or as to litigation funding charges as applicable, or to

- remove themselves from the class action;
- (b) may appoint a referee to determine:
- (i) in relation to legal costs, whether the claimed costs are reasonable and proportionate in all the circumstances; and
  - (ii) in relation to litigation funding charges, whether the charges ought reasonably and properly to be allowed.
39. The approving judge may appoint a contradictor or an *amicus curiae* and may direct that the costs and expenses associated with the appointment be paid out of the settlement sum.
40. On any application for Court approval of a settlement, the parties will need to persuade the Court that the scheme proposed for the distribution of settlement monies is the most cost effective and efficient in the particular circumstances of the case. The material provided to the Court on the approval application should include material as to the options available and the estimated cost of each option. Where it is proposed that the plaintiff’s solicitor is to administer the settlement distribution, the material should address why the plaintiff’s solicitor should be appointed to administer the settlement, the cost effectiveness of the proposal and an estimate of the cost of a third party administering the settlement distribution.
41. The Court will require to be advised of the performance of the settlement (including any steps in the settlement distribution scheme) and the costs incurred in administering the settlement in order that it may be satisfied that distribution of settlement monies to the plaintiff and group members occurs as efficiently and expeditiously as practicable. At the discretion of the judge overseeing the settlement approval process, the scheme administrator may comply with this obligation by filing affidavits at regular intervals.
42. The plaintiff or their representatives should inform the presiding or list judge (as the case may be) as soon as practicable after the settlement (including any distribution) has been completed so that final orders can be made disposing of the proceedings.

**A S Bell**

Chief Justice of New South Wales  
24 July 2024

**Related information**

See also:

*Civil Procedure Act 2005*

*Supreme Court Act 1970*

*Uniform Civil Procedure Rules 2005*

### **Amendment history**

24 July 2024: This Practice Note replaced the previous version of SC Gen 17 that was issued on 31 July 2017.

31 July 2017: This Practice Note replaced the previous version of SC Gen 17 that was issued on 27 July 2017.

27 July 2017: This Practice Note replaced the previous version of SC Gen 17 that was issued on 12 August 2014.

12 August 2014: This Practice Note replaced the previous version of SC Gen 17 that was issued on 22 February 2011.

22 February 2011: This Practice Note was issued on 22 February 2011 and commenced on 4 March 2011.

## ANNEXURE A

### IMPORTANT PUBLIC NOTICE

REPRESENTATIVE ACTION REGARDING [GENERIC NAME] CLASS ACTION

[TITLE OF PROCEEDING (File Number)]

The Supreme Court of New South Wales has issued this notice regarding a class action concerning [Defendant].

You have been identified as a potential group member whose rights might be affected.

#### Stay In or Opt Out

1. If you **do NOT wish to participate** in the class action, then you must “opt out” by [deadline].
2. If you do not “opt out” by the deadline, you will remain as a participant. Accordingly, if you wish to remain a group member in the class action then **you do not need to do anything** in response to this notice.
3. If you have any questions after reading this notice, please contact [the Plaintiff’s lawyers] at [email] or [phone], or seek independent legal advice.

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

- 1.1. A class action is a Court proceeding brought by the **Plaintiff(s)** on behalf of themselves and other people with similar claims (**group members**) against one or more **Defendants**.
- 1.2. The Plaintiff(s) can commence a class action without the permission of group members. However, the Plaintiff(s) is/are required to notify potential group members of their right to opt out of the class action. This opt out process is governed by legislation and closely supervised by the Court.

#### 2. The [Generic Name] Class Action

- 2.1. This class action was commenced by the Plaintiff(s) against [Defendant(s) name(s)]. The claim seeks to recover compensation for group members who are [group member definition].
- 2.2. The Plaintiff alleges that [Summary of Claim]. [Defendant Name] does not admit the allegations against it and is defending the claim [if this is the case]. [Defendant Name] has also claimed contribution from other parties [if this is the case].
- 2.3. The proceedings are being funded by [insert name of funder]. If the class action is unsuccessful, [name of funder] will have to pay the class's legal costs and the defendant's legal costs. If the class action is successful [name of funder] will seek a Court order that a portion of the compensation be used to pay its legal costs, and a further portion to reward it for bearing the risks of the litigation (**commission**). The funding agreement provides for a commission of [insert] but the eventual rate will be decided by the Court.

### 3. Group Membership – Stay In or Opt Out

- 3.1. You are a group member in the [Generic Name] Class Action if you [insert group member definition] in simple terms.

#### **STAY IN - AUTOMATIC**

- 3.2. If you are a group member and **wish to participate** in the [Generic Name] Class Action, then **you do not need to do anything in response to this notice**. This notice informs you of the steps you must take if you **DO NOT** wish to participate.
- 3.3. If you participate in the class action:
- (a) you will be bound by any outcome (such as a settlement or judgment following trial);
  - (b) you will be entitled to share in any compensation that is agreed by or ordered against the Defendant, subject to satisfying any requirements designed to prove your eligibility;
  - (c) you will not be able to pursue any individual claim against the Defendant relating to the same or similar event or subject matter; even if any settlement or judgment is not to your satisfaction;
  - (d) you will not be required to make any out-of-pocket contribution towards the cost of running the class action. However, your pro rata share of those costs and



commission may be deducted from your compensation (if any) prior to distribution. All legal costs and commission will be scrutinised and approved by the Court;

- (e) you will not be responsible for paying the Defendant's legal costs in the event that the class action is unsuccessful.

- 3.4. The Court may require you to take further steps in the future to confirm your participation in the class action or to claim damages. Please carefully review any further notices you receive.
- 3.5. If you are unsure whether or not you are a group member, please contact [the Plaintiff's lawyers] at [email] or [phone] or seek independent legal advice, as soon as possible, but by no later than [1 week before deadline].
- 3.6. You may, but need not, contact the Plaintiff's lawyers even if you do not wish to retain them in order to "register" as a Group Member to ensure that future notices about the representative proceeding can be sent to you, or your legal representative, directly.

### **OPT OUT - OPTIONAL**

3.7. If you are a group member and **do not wish to participate** in the [Generic Name] Class Action, then you **must** opt out by [insert] by no later than [deadline]. The process to opt out is set out below.

3.8. If you opt out and therefore do not participate in the class action:

- (a) you will not be bound by any outcome in the class action;
- (b) you will not be entitled to share in any compensation that is agreed by or ordered against the Defendant in the class action;
- (c) you are free to pursue any individual claim against the Defendant relating to the same or similar event or subject matter;
- (d) the running of any limitation period suspended by the commencement of the representative proceedings will recommence.

3.9. [If you opt out, it is unlikely that you will be able to change your mind, and seek to become a group member in the class action again at a later stage.]

### **How to opt out**

3.10. Each group member who wishes to opt out of the [Generic Name] Class Action, should fill out a separate Opt Out Notice located at Schedule 1 to this notice. 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). If you wish to opt out on behalf of more than one group member, complete a separate form for each.

3.11. Opt Out Notices must be submitted directly to the Court and also to Plaintiff's solicitor:

- (a) by post to: [postal address]; or
- (b) by email at [email address]
- (c) before [deadline].

3.12. Opt Out Notices received by the Court and Plaintiff's solicitor after the [deadline] will not be accepted without leave of the Court and you will be treated as having not responded to this notice (in other words you will remain a group member in the [Generic Name] Class Action).

#### **4. Further information regarding the [Generic Name] Class Action**

- 4.1. Please consider the above matters carefully and seek your own legal advice if required.
- 4.2. If you are unsure about anything in this notice, or if you would like to request a copy of documents filed with the Court by the parties in the [Generic Name] Class Action, please contact [the Plaintiff's lawyers] at [email] or [phone].

## OPT OUT NOTICE

### COURT DETAILS

Court Supreme Court of New South Wales  
#Division  
#List  
Registry Sydney Registry  
Case number

### TITLE OF PROCEEDINGS

[First] plaintiff [name]

#Second plaintiff #Number of  
plaintiffs (if more than two)

[First] defendant [name]

#Second defendant #Number  
of defendants (if more than  
two)

### FILING DETAILS

Filed for [name], person opting out of representative  
proceedings

#Legal representative [solicitor] [firm]

#Legal representative [reference number]  
reference

Contact name and telephone [name] [telephone]

Contact email [email address]

### OPT OUT NOTICE

Name of person opting out  
Address of person opting out

I, a group member in these representative proceedings, opt out of the  
proceedings. I understand that in opting out:

- 1 I forego the right to share in any relief obtained by the representative party in the representative proceedings;
- 2 I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and

- 3 To the extent that I have a claim against the defendant(s), any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

## SIGNATURE

#Signature of legal representative

#Signature of or on behalf of  
person opting out if not legally  
represented

Capacity [eg solicitor, authorised officer of person opting  
out, person opting out]

Date of signature

## NOTICE TO PERSON OPTING OUT

You must, within the time specified in the notice to group members:

- 1 file this form in the registry of the court at the address below, or in the manner provided in the notice to group members; and
- 2 serve a copy of this form on the representative party at the address, or in the manner provided, in the notice to group members.

## REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

## SIGNATURE

#Signature of legal representative

#Signature of or on behalf of  
person opting out if not legally  
represented

Capacity

[eg solicitor, authorised officer of person opting  
out, person opting out]

Date of signature

## NOTICE TO PERSON OPTING OUT

You must, within the time specified in the notice to group members:

- 3 file this form in the registry of the court at the address below, or in the manner provided in the notice to group members; and
- 4 serve a copy of this form on the representative party at the address, or in the manner provided, in the notice to group members.

## REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

## ANNEXURE B

### IMPORTANT PUBLIC NOTICE

#### SAMPLE SHORT MINUTES OF ORDER

1. Pursuant to section 162(1) of the Civil Procedure Act 2005 (NSW), the date of [INSERT DATE] is fixed as the date by which a Group Member may opt out of this proceeding (Opt Out Date).
2. Pursuant to sections 175 and 176 of the Civil Procedure Act 2005 (NSW), the form and content of the Important Public Notice attached as Schedule A is approved (Notice).
3. Pursuant to section 176(2) of the Civil Procedure Act 2005 (NSW), the Notice be given to Group Members according to the following procedure: [PROCEDURE TO BE INSERTED]
4. The Registrar of the Supreme Court of New South Wales shall cause a copy of the Notice to be displayed on the Supreme Court website from [INSERT DATE] until the final disposition of this proceeding.
5. Pursuant to sections 162(2) and 183 of the Civil Procedure Act 2005 (NSW), any Group Member wishing to opt out of the proceedings must, before the Opt Out Date, file a completed 'opt out notice' in the form set out in Annexure A to Schedule A of these orders in the Registry of the Supreme Court of New South Wales and serve a copy on the solicitors for the plaintiff (being [INSERT NAME OF PLAINTIFF'S SOLICITOR]).
6. If, on or before the Opt Out Date, the solicitors for any party receives a notice purporting to be an opt out notice referable to this proceeding, the solicitors shall file that notice with the Registry of the Supreme Court of New South Wales, within 3 days after receipt, and the notice shall be treated as an opt out notice received by the Court at the time it was received by the solicitors.
7. The costs of, and incidental to, the procedure set out in order 3 above (including, without limitation, costs incurred in addressing enquiries by group members and members of the public in relation to the Notice) shall be paid in the first instance by the plaintiff but shall be costs in the cause.
8. The solicitors for the parties to the proceeding have leave to inspect the Court file and copy any opt out notices filed.
9. The matter is listed for further directions on [INSERT DATE].