



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID816/2019

**PLAINTIFF M83A/2019** and another named in the schedule  
First Applicant

**SCOTT MORRISON** and others named in the schedule  
First Respondent

### **ORDER**

**JUDGE:** JUSTICE MORTIMER

**DATE OF ORDER:** 02 April 2020

**WHERE MADE:** Melbourne

#### **THE COURT ORDERS BY CONSENT THAT:**

##### ***Opt Out Notice to Group Members***

1. Pursuant to s 33X of the *Federal Court of Australia Act* 1976 (Cth) (**Act**), notice be given to Group Members of:
  - a) the commencement of the proceeding; and
  - b) their right to opt out of the proceeding,  
(**Notice**).
2. Pursuant to s 33Y(2) of the Act, the form and content of the Notice (being **Annexure A** to these orders) be approved.
3. Pursuant to ss 33J and 33ZF of the Act, 4:00pm (AEST) on 31 July 2020 be fixed as the date before which a Group Member may opt out of the proceeding (**Opt Out Deadline**).
4. The Applicants shall cause a copy of the Notice to be translated into each of the following languages:
  - i. Arabic
  - ii. Bengali
  - iii. Burmese
  - iv. Dari
  - v. French
  - vi. Hindi
  - vii. Indonesian

- viii. Kurdish
- ix. Malay
- x. Nepali
- xi. Pashto
- xii. Persian
- xiii. Rohingya
- xiv. Sinhala
- xv. Somali
- xvi. Tamil
- xvii. Urdu

(the **Translated Notices**).

5. On or before 22 May 2020, the Applicants shall cause a copy of the Notice to be sent to the last known contact details for each Group Member (as identified in the letter from the Australian Government Solicitor to Phi Finney McDonald dated 10 February 2020) according to the following procedure:
  - a) If an email address was provided for a Group Member, the Notice will be sent to a Group Member's email address;
  - b) If no email address was provided or if the email is returned undelivered, the Notice will be sent to a Group Member's postal address and by text message notification of the Notice;
  - c) If neither a postal address nor an email address was provided for a Group Member or if either the email or post is returned undelivered, the Notice will be sent by text message to a Group Member's telephone number.
6. On or before 22 May 2020, the Applicants shall cause a copy of the Notice and the Translated Notices, together with copies of the current Amended Originating Application, Further Amended Statement of Claim and Defence, to be displayed on the website of the Applicants' solicitors, <http://phifinneymcdonald.com/projects/>, and to remain continuously so displayed up to and including the Opt Out Deadline.
7. On or before 22 May 2020, the Applicants shall cause a copy of the Notice to be displayed in the Facebook group titled 'Aussie Diaspora Steps Up' hosted by Facebook through the domain <https://www.facebook.com/adsupusa/>.
8. The costs of distributing the Notice in accordance with these orders shall be paid in the first instance by the Applicants, but ultimately be costs in the cause.

***Opt Out***



9. The solicitors for the parties have leave to inspect the Court file and to copy any opt out forms filed.
10. Pursuant to s 33ZF of the Act, any Group Member who wishes to opt out of this proceeding must, before the Opt Out Deadline, post or email an opt out form to the Victorian District Registry of the Federal Court of Australia.
11. If, on or before the Opt Out Deadline, the solicitors for any party receives a notice purporting to be an opt out form referable to this proceeding, the solicitors must file the notice in the Victorian District Registry of the Federal Court of Australia within two days after receipt, and the notice shall be treated as an opt out form received by the Court at the time it was received by the solicitors.
12. Pursuant to s 33ZF of the Act, and subject to any further order of the Court, any Group Member who by the Opt Out Deadline does not opt out of this proceeding in accordance with Order 10 above will remain a Group Member for all purposes of this proceeding.
13. Any Group Member wishing to seek a variation of Order 12 in relation to themselves must post or email to the Applicants' solicitors, by no later than the Opt Out Deadline, written notice of the variation sought and a statement of the reasons for seeking the variation, and the solicitors shall forthwith notify the Respondents and the Court of the notice and the reasons.

Date that entry is stamped: 2 April 2020

*Sia Lagos*  
Registrar



## Schedule

No: VID816/2019

Federal Court of Australia

District Registry: Victoria

Division: General

Second Applicant	PLAINTIFF M83B/2019 BY HIS LITIGATION GUARDIAN, PLAINTIFF M83C/2019
Second Respondent	PETER DUTTON
Third Respondent	TONY BURKE
Fourth Respondent	MARTIN BOWLES
Fifth Respondent	MICHAEL PEZZULLO
Sixth Respondent	COMMONWEALTH OF AUSTRALIA



**ANNEXURE A**  
**NOTICE TO GROUP MEMBERS**

*Plaintiff M83A/2019 & Anor v Morrison & Ors (VID816/2019)*

**ATTENTION:**

A CLAIM IS BEING BROUGHT ON YOUR BEHALF ABOUT YOUR TIME IN NAURU IF YOU WERE TAKEN TO THE REPUBLIC OF NAURU FROM AUSTRALIA AFTER 3 AUGUST 2013.

If you do not read English, this Notice is available in other languages on the following website under “Nauru Class Action”: [phifinneymcdonald.com/projects/](http://phifinneymcdonald.com/projects/). You can also request a copy of the Notice in your language by emailing Phi Finney McDonald at [GMNauru@pfm.law](mailto:GMNauru@pfm.law) or by post at Level 4, 325 Flinders Lane, Melbourne, Victoria 3000.

*[a translation of the above paragraph into each of the languages listed in paragraph 4 of the orders to be inserted into the notice]*



*Plaintiff M83A/2019 & Anor v Morrison & Ors (VID816/2019)*

**Why am I getting this?**

1. Two people have brought a case in the Federal Court of Australia against the current and former Ministers and Secretaries of government departments responsible for immigration into Australia, being Hon. Scott Morrison MP, Hon. Peter Dutton MP, Hon. Tony Burke MP, Mr Martin Bowles and Mr Michael Pezzullo. The case alleges that those individual Ministers (at the time very senior members of the Australian Government) and Secretaries (at the time very senior officers of the Australian Public Service) each acted unlawfully in their roles as public officials, and at the time of so acting they decided to ignore whether their actions were unlawful (known in Australian law as “reckless indifference”). This is known as “mifeasance in public office”.
2. The Commonwealth of Australia (**Australia**) is also a party. The individual Ministers and Secretaries, and the Australian Government, are defending the case.
3. The case is a “class action”. This means that it is brought by a person or persons on behalf of a group of other people, called “group members”. The group members on behalf of whom this class action is brought are people who were taken to the Republic of Nauru from Australia after 3 August 2013.
4. You are getting this Notice because you might have been taken to Nauru from Australia after 3 August 2013, and you might therefore be a group member.
5. Being involved in the class action will not impact your visa status. If you have questions about your visa status you should contact a migration agent.
6. You do not have to pay to remain part of the class action. You will only pay something at the end of the case if you receive compensation or if you need personal legal advice to finalise your own claim. Any legal costs you may have to pay in relation to the class action will not be greater than the compensation you may receive. In other words, you will not be out of pocket for any legal expenses in the class action.



7. The lawyers running the case are Phi Finney McDonald (**PFM**). If you do not know if you are a group member, you can contact PFM by emailing [GMNauru@pfm.law](mailto:GMNauru@pfm.law) or speak to a lawyer of your choice. Please do not contact the Federal Court if you have questions.

### **The Australian legal system**

8. Australia's legal system allows a person (called an applicant) to make a claim for financial compensation against another person, or company or government (called a respondent) if the applicant believes he or she has suffered an injury or loss because of the respondent's conduct and if there is a proper basis for the claim(s).
9. All courts in Australia are independent of the government. The courts have clear rules for the procedures they follow. These include rules for preparing evidence and for applying legal principles to that evidence in order to decide the case according to law.

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

10. The class action alleges that each of the current and former Ministers responsible for immigration, and Secretaries of the government department responsible for Immigration, broke the law in their roles as public officials. To be successful in the class action, the two people who brought the case will need to show that:
  - (a) the Ministers and Secretaries each acted unlawfully when performing their roles;  
and
  - (b) the Ministers and Secretaries decided to ignore whether their actions were unlawful (known in Australian law as "reckless indifference").
11. The class action alleges that the unlawful actions were taken when applying for or requesting any extensions of the Regional Processing Centre visa (**RPC visa**) in Nauru, in four (4) ways:



- (c) Australian officers did not have the power under Australian law to apply for or request any extensions of the RPC visa given to group members;
  - (d) Australian officers were obliged to, but did not, give procedural fairness to group members in the process of applying for or requesting extensions of the RPC visas;
  - (e) Australian officers could only lawfully apply for, or request extensions of, the RPC visas if group members would be treated in accordance with human rights standards, but this was not the case;
  - (f) For group members who were children, Australian officers could only lawfully apply for, or request extensions of, the RPC visas if such group members would be treated in accordance with human rights standards relating to children, but this was not the case.
12. The class action alleges that the Ministers and Secretaries who have been sued are responsible for the actions of the Australian officers applying for and requesting extensions of RPC visas because when the Ministers and Secretaries performed their roles they decided to ignore their powers to prevent the unlawful conduct of the officers.
13. The class action alleges that the Ministers and Secretaries who have been sued in the class action, and the Commonwealth which they represented, should pay compensation to group members because group members were taken to Nauru unlawfully and suffered harm and loss as a consequence of being taken to Nauru.
14. The detailed allegations against the Respondents are set out in the Applicants' Further Amended Statement of Claim. A copy of the Further Amended Statement of Claim and the Respondents' Defence are available to view on PFM's website: [phifinney-mcdonald.com/projects/](http://phifinney-mcdonald.com/projects/).
15. The class action seeks damages for the unlawful actions by Ministers and Secretaries, to compensate people who were taken to Nauru after 3 August 2013 for their personal injury, loss of income and false imprisonment.





### **I want to remain part of the class action – what do I need to do?**

16. If you want to remain part of the class action you do not need to do anything right now. You are part of the class action unless you tell the Federal Court of Australia you do not want to remain part of it. The next section of this document tells you about what to do if that is the case.
17. Group members are "bound" by the outcome in the class action, unless they have opted out of the proceeding. This means you will be bound by the result whether the class action wins, loses or settles.
  - (g) If the class action is successful, you may be entitled to a share of the judgment award or settlement amount.
  - (h) If the action is unsuccessful or less successful than was hoped, you may get no or little money and you will not be able to sue the individual Ministers or Secretaries in this case for the same allegations of unlawful conduct explained above. Also, you will not have to pay any money.
18. You do not have to pay to remain part of the class action when the issues common to all group members are decided. You will only pay something at the end of the case if you receive compensation or if you need personal legal advice to finalise your own claim. Any legal costs you may have to pay in relation to the class action will not be greater than the compensation you may receive. In other words, you will not be out of pocket for any legal expenses in the class action.
19. If you want to, you can contact PFM by emailing [GMNauru@pfm.law](mailto:GMNauru@pfm.law) so that future updates can be sent to your preferred address or email.

### **I do not want to remain part of the class action – what do I need to do?**

20. If you do not want to remain part of the class action you need to tell the Federal Court. This is called "opting out". If you want to opt out, you must complete the form at the



end of this Notice and email or post the form **before 4:00 pm (AEST) on Friday 31 July 2020**, to:

The Registrar  
Federal Court of Australia  
Victorian District Registry  
305 William Street  
Melbourne VIC 3000

or

[vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au)

21. If you opt out you will not receive any compensation from the class action.
22. Each Group Member that does not want to remain part of the class action must complete a separate opt out form. You cannot complete an opt out form as a family.

**Where can you obtain copies of relevant documents?**

23. Copies of relevant documents, including the application, the statement of claim, and the defence or defences, may be obtained by:
  - (i) downloading them from PFM's website: [phifinneymcdonald.com/projects/](http://phifinneymcdonald.com/projects/)
  - (j) inspecting them on the Federal Court website at [www.fedcourt.gov.au](http://www.fedcourt.gov.au).

**Where can I get more information?**

24. If you need further information, including if you need this Notice translated into another language, you can:
  - (k) go to the website at <http://phifinneymcdonald.com/projects/>; or
  - (l) contact PFM by emailing [GMNauru@pfm.law](mailto:GMNauru@pfm.law).



**Only use this form if you DO NOT want to remain part of the class action**

Form 21  
Rule 9.34

## **OPT OUT NOTICE**

No. VID816 of 2019

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Plaintiff M83A/2019**

First Applicant

**Plaintiff M83B/2019 (by his litigation representative, Plaintiff M83C/2019)**

Second Applicant

**Scott Morrison & Ors (in accordance with the attached schedule)**

Respondents

To:

The Registrar  
Federal Court of Australia  
Victoria District Registry  
305 William Street  
Melbourne VIC 3000

or

vicreg@fedcourt.gov.au

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

Date:

Your signature:

Your full name:

Date of birth:

Email address:

Phone number:

Circle one: Group Member OR legal guardian for the Group Member