

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

S ECI 2022 03440

BETWEEN:

JORDAN BROWN

Plaintiff

- and -

STATE OF VICTORIA

Defendant

ORDER

JUDGE	The Honourable Justice Keogh
DATE MADE:	4 November 2024
ORIGINATING PROCESS:	Writ filed 1 September 2022
HOW OBTAINED:	By consent pursuant to Rule 59.07 of the <i>Supreme Court (General Civil Procedure) Rules 2015</i> .
ATTENDANCE:	N/A
OTHER MATTERS:	Nil.

THE COURT ORDERS THAT:

Opt out

1. Pursuant to s 33J(1) of the *Supreme Court Act 1986* (Vic) ('Act'), 4.00pm on 6 December 2024 ('Opt Out Date') is fixed as the time and date before which a Group Member may opt out of the proceeding.
2. Pursuant to s 33J(2) of the Act and r 18A.02 of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic), a Group Member may opt out of the proceeding by providing written notice to the Principal Registry of Supreme Court of Victoria in accordance with Form



18AB (as found at Schedule 1 of the Opt Out Notice) ('Opt Out Form') on or before the Opt Out Date.

3. By no later than 4.00pm on 9 December 2024, Phi Finney McDonald is to provide to the Supreme Court Registry copies of any Opt Out Forms received from Group Members by Phi Finney McDonald or Inner Melbourne Community Legal by the Opt Out Date. The Opt Out Form will be treated as having been received by the Court at the time it was received by Phi Finney McDonald or Inner Melbourne Community Legal.
4. The solicitors for the parties have leave to inspect the Court file and to copy any Opt Out Form(s) filed by group members.

Opt Out Notice

5. Pursuant to s 33X(1)(a) and 33Y of the Act, the form and content of the Opt Out Notice to Group Members, provided at Annexure A to these orders, is approved.
6. Pursuant to s 33Y(3) of the Act, on or before 8 November 2024, the Notice is to be distributed according to the following procedure:
 - (a) Phi Finney McDonald shall cause a copy of the Notice to be sent via email to the list of potential group members who have, at the date of this order, identified themselves to Phi Finney McDonald or Inner Melbourne Community Legal and for whom Phi Finney McDonald has a current email address.
 - (b) Phi Finney McDonald shall cause a copy of the Notice, together with copies of the Writ and Statement of Claim, Defence, Reply and these orders to be displayed on its website, <https://phifinneymcdonald.com/action/imarc-class-action/> and to remain continuously so displayed up to and including the Opt Out Date.
 - (c) The Registry of the Supreme Court of Victoria shall cause the Notice to be posted on the website of the Supreme Court of Victoria and made available for inspection at the Supreme Court of Victoria Registry and to remain continuously so displayed and available for inspection up to and including the Opt Out Date;
 - (d) A link to the Phi Finney McDonald website detailed in paragraph 6(b) shall be posted to:



- i. Inner Melbourne Community Legal website and social media platforms;
- ii. Police Accountability Project website and social media platforms;
- iii. Melbourne Activist Legal Support (MALS) website and social media platforms; and
- iv. Any message groups and distribution lists identified by MALS as relevant to this proceeding.

7. The costs of distributing the Notice are paid by the Plaintiff in the first instance and will subsequently be costs in the proceeding.

DATE AUTHENTICATED:

4 NOVEMBER 2024



THE HONOURABLE JUSTICE KEOGH



Annexure A
SUPREME COURT OF VICTORIA
Jordan Brown v State of Victoria (S ECI 2022 03440)

IMPORTANT NOTICE TO GROUP MEMBERS
PLEASE READ CAREFULLY

You are receiving this notice because you may be a group member in the group proceeding against Victoria Police in the Supreme Court of Victoria, arising from the protest at the IMARC conference in 2019.

The Court has issued this notice. **This notice contains important information about your legal rights. You should read it carefully.**

As explained in more detail in this notice:

- If you **wish to remain a group member** you **do not need to do anything** in response to this notice.
- If you **do not** wish to remain a group member, **you must visit <https://phifinneymcdonald.com/action/imarc-class-action/> and complete the opt out form by 4pm on 6 December 2024.**

If you have any questions, do not contact the Court. Contact the plaintiff's lawyers at Phi Finney McDonald or seek independent legal advice.

1 What is this notice about?

- 1.1 On 30 October 2019, there was a protest at the International Mining and Resources Conference (**IMARC Protest**) outside the Melbourne Convention and Exhibition Centre (**Convention Centre**) in Southbank. The Victorian Police were present at the protest and used pepper spray (also called "Oleoresin Capsicum or OC foam") on some protestors.
- 1.2 On 1 September 2022, one of the protestors, Mr Jordan Brown (**plaintiff**), commenced this group proceeding in the Supreme Court of Victoria against the State of Victoria (**defendant**) on behalf of protestors who were sprayed with OC foam at the IMARC Protest (**IMARC Group Proceeding**).
- 1.3 A group proceeding, also known as a class action, is a proceeding brought by someone on behalf of a group of people with similar claims against the defendant.
- 1.4 Mr Brown alleges that police officers' conduct at the IMARC Protest was an unreasonable, unlawful and disproportionate use of force constituting battery and assault, and also engaged and limited rights under the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
- 1.5 The details of the claim are set out in the Statement of Claim filed on 1 September 2022. You can access that document at <https://phifinneymcdonald.com/action/imarc-class-action/>.
- 1.6 You may be a group member in the IMARC Group Proceeding. You may have suffered loss or damage and be entitled to compensation if the group proceeding ends in a judgment or settlement.



- 1.7 The Supreme Court has ordered that this Notice be published for the information of persons who may be affected by the IMARC Group Proceeding.
- 1.8 **You should read this Notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.
- 1.9 The plaintiff's lawyers are Phi Finney McDonald and Inner Melbourne Community Legal. They are representing the plaintiff on a no win no fee basis.

2 Are you a group member?

- 2.1 You are a group member if you:
- (a) were present at the IMARC Protest at the Convention Centre in Southbank, Melbourne on 30 October 2019, between 11.44am and 12.35pm; and
 - (b) suffered harm as a result of being sprayed with OC foam by police officers between around 12.10 to 12.35pm.
- 2.2 While the above group member definition covers harm from OC foam sprayed from around 12:10pm to 12:35pm, the plaintiff and the defendant have agreed that OC foam was sprayed at protesters between around 12:31pm to 12:33pm only.
- 2.3 At the protest, two people climbed the Convention Centre poles. These two people are not included as group members.
- 2.4 If those criteria apply to you, you are automatically a group member and you do not need to do anything to participate in the case.

3 What is opt out?

- 3.1 The plaintiff does not need to seek the consent of group members to commence a group proceeding. Group members are bound by any judgment or settlement in the group proceeding. This means that if you choose to stay in the case:
- (a) if the group proceeding is successful or settles, you may be eligible for a share of any settlement of Court-awarded damages;
 - (b) if the group proceeding is unsuccessful, you are bound by that result; and
 - (c) regardless of the outcome of the group proceeding, you will not be able to pursue your claim against the defendant in separate legal proceedings, unless you have opted out.
- 3.2 However, if you choose to opt out, you are no longer part of the group proceeding and so you will not get a share of any payment after a successful settlement or judgment. But you will be free to start the same case or a similar case against the defendant if you want to, even if the group proceeding is unsuccessful.

4 Will you be liable for legal costs if you stay in the case?

- 4.1 You won't have to pay any money to stay in the case, and there are no circumstances in which you would need to pay anything "out of pocket". Group members are not legally liable for the legal



costs associated with bringing the proceedings. Only the plaintiff is responsible for the legal costs up to the point where the Court issues judgment in respect of the plaintiff's claim.

- 4.2 The plaintiff's lawyers, Phi Finney McDonald and Inner Melbourne Community Legal, are representing the plaintiff on a no win no fee basis. This means that Phi Finney McDonald and Inner Melbourne Community Legal can only seek payment of legal costs if there is a successful settlement or judgment in the plaintiff's favour.
- 4.3 If there is a judgment or settlement that results in compensation to group members, then the Court may order that some of that compensation be used to help pay a share of the legal costs incurred by the plaintiff in running the group proceeding which are not able to be recovered from the defendant. Alternatively, the Court may order that the costs incurred by the plaintiff are to be paid by the defendant separately to any settlement or judgment amount.

5 Your Options

5.1 If you fit the definition of a "group member" the following two options are available to you:

Option 1: Do Nothing and Remain a Group Member

- (a) If you wish to remain a group member in the IMARC Group Proceeding there is nothing you need to do.
- (b) The plaintiff will continue to bring the proceeding on your behalf up to the point where the Court issues judgment in respect of the plaintiff's claim.
- (c) You can sign up for email updates about the IMARC Group Proceeding by emailing classaction@phifinney-mcdonald.com.

Option 2: Opt Out

- (a) If you do not wish to be a group member you must opt out.
- (b) If you opt out, you will not be bound by any order, judgment or settlement. You will be free to commence your own claim against the defendants, provided you commence that proceeding within the applicable time limit. You should seek your own legal advice about your claim and the applicable time limit before opting out.
- (c) To opt out you must fill out the Opt Out Form at Schedule 1 of this Notice and submit it by **4pm on 6 December 2024** to the Registry of the Supreme Court of Victoria by email to principalregistry@supcourt.vic.gov.au or post to:

Principal Registry
Supreme Court of Victoria
450 Little Bourke Street
Melbourne Victoria 3000

6 Where can you get more information or ask questions?

6.1 You can obtain copies of relevant documents by:



- (a) downloading them from Phi Finney McDonald's website at <https://phifinneymcdonald.com/action/imarc-class-action/>;
- (b) emailing Phi Finney McDonald at classactions@phifinneymcdonald.com;
- (c) inspecting them by visiting the Registry of the Supreme Court of Victoria in Melbourne at 450 Little Bourke Street, Melbourne; or
- (d) downloading them from the Supreme Court website at <https://www.supremecourt.vic.gov.au/areas/group-proceedings/imarc-protest-group-proceeding-class-action>.

6.2 If there is anything you are unsure about you can contact the plaintiff's solicitors Phi Finney McDonald on (03) 9134 7100 or classaction@phifinneymcdonald.com, or seek your own legal advice.



Rule 18A.04

Schedule 1

NOTICE OF OPTING OUT BY GROUP MEMBER

IN THE SUPREME COURT OF VICTORIA

AT MELBOURNE

COMMON LAW DIVISION

GROUP PROCEEDINGS LIST

S ECI 2022 03440

BETWEEN:

JORDAN BROWN

Plaintiff

and

STATE OF VICTORIA

Defendant

To: Principal Registry, Supreme Court of Victoria
450 Little Bourke Street
Melbourne VIC 3000

I, (print name)..... , a group member in the
above group proceeding, give notice under section 33J(2) of the **Supreme Court Act 1986**
that I am opting out of this proceeding.

Dated:

Signature of group member or the group member's solicitor:

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Address and email address of group member:

.....

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