

OPT OUT NOTICE
FEDERAL COURT OF AUSTRALIA

UNLAWFUL DETENTION OF PEOPLE SEEKING ASYLUM CLASS ACTION
DBE17 (by his litigation guardian Marie Theresa Arthur) v the Commonwealth of Australia
(VID1392 of 2019)

ATTENTION:

YOU SHOULD READ THIS NOTICE CAREFULLY.

A COURT CASE HAS BEEN STARTED FOR YOU AND OTHER PEOPLE ABOUT YOUR TIME IN IMMIGRATION DETENTION IF YOU WERE DETAINED IN AUSTRALIA FOR 2 OR MORE WORKING DAYS BETWEEN **27 AUGUST 2011** AND **25 FEBRUARY 2020**.

THE COURT HAS ORDERED THAT WE SEND YOU THIS INFORMATION BECAUSE YOU NEED TO DECIDE WHETHER YOU WANT TO STAY IN THE CASE.

IF YOU HAVE ANY QUESTION ABOUT THIS NOTICE YOU SHOULD GET LEGAL ADVICE. YOU SHOULD **NOT** CONTACT THE COURT.

If you do not read English, this Notice is available in other languages on the following website under "Unlawful detention of people seeking asylum class action": <https://www.mauriceblackburn.com.au/class-actions/current-class-actions/unlawful-detention-of-people-seeking-asylum-class-action/>. You can also request a copy of the Notice in your language by contacting Maurice Blackburn Lawyers on 1800 930 956 or email asylumseekerclassaction@mauriceblackburn.com.au

1. Why am I getting this?

This notice is about a court case that has been started by a person known as “**DBE17**”. For legal reasons we cannot use his real name. He is under the age of 18, so this case was started for him by his litigation guardian Marie Theresa Arthur.

The case is in the Federal Court of Australia. It is against the Commonwealth of Australia (**the “Australian Government”**).

DBE17 claims that he and other people (“**group members**”) who were in immigration detention in Australia between 27 August 2011 and 25 February 2020 were *unlawfully* detained by the Australian Government. You are getting this notice because you may have been in immigration detention in Australia between 27 August 2011 and 25 February 2020. You may therefore be a group member.

2. The Australian Legal System

Australia’s legal system allows a person (called an “**applicant**”) to start a court case 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 something that the respondent has done, and if there is a proper basis for the applicant’s claim(s) or complaint(s) against the respondent.

All courts in Australia are independent of the parliament and members of parliament. 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 court case according to law.

3. What is a class action?

This court case is a “**class action**”. A class action is a court case that is started by one person (that is, the applicant) for a group of people (that is, the group members) against another person or entity (that is, the respondent).

In a class action, the applicant and the group members have similar claims or complaints against the respondent.

4. What is this class action about?

In this class action, DBE17 says that detention of unlawful non-citizens by the Australian Government is *lawful* only if:

- 1) The detention is at all times for the purposes of:
 - a) removal from Australia, including removal to a regional processing country (in this case, Nauru or Papua New Guinea);
 - b) receiving, investigating and deciding an application for a visa that would permit the unlawful non-citizen to enter and stay in Australia; or
 - c) deciding whether to allow a valid application for a visa.
- 2) The relevant purpose of detention is capable of fulfilment.
- 3) The relevant purpose of detention is at all times pursued and carried out as soon as reasonably practicable.

DBE17 claims that he and the group members were unlawfully detained by the Australian Government for one or both of the following reasons:

- a) DBE17 and those group members who arrived in Australia after 12 August 2012 and were required to be taken to Nauru or Papua New Guinea but were unlawfully detained because either:
 - i. the taking of those persons to those places was not reasonably practicable or capable of fulfilment; or
 - ii. the persons were taken to those places but not as soon as reasonably practicable.
- b) The Australian Government took too long to decide whether to give DBE17 and group members a visa to remain in Australia.

The Australian Government does not agree that DBE17 and group members were unlawfully detained and is defending the class action.

5. Are you a group member?

You are a group member if you:

- a) were detained in immigration detention for more than two working days in any part or parts of Australia between 27 August 2011 and 25 February 2020.
- b) were not detained because your Australian visa was cancelled.
- c) did not, at any time after arriving in Australia, return voluntarily to your home country or any other country where you resided before coming to Australia.
- d) were not at any time since 27 August 2011 removed from Australia to your home country or any other country where you resided and not returned to Australia;
- e) were not detained because your visa expired and you stayed in Australia without a valid visa, unless you were later granted a protection visa;
- f) did not receive, at any time, an adverse security assessment under the *Australian Security Intelligence Organisation Act 1979* (Cth).

If you are unsure whether or not you are a group member, you should contact Maurice Blackburn Lawyers on 1800 930 956 or email: asylumseekerclassaction@mauriceblackburn.com.au or seek your own legal advice without delay.

6. I am a group member and I want to stay in the class action – what do I need to do?

If you want to stay in the class action you do **not** need to do anything right now.

However, you can register your contact details on Maurice Blackburn Lawyers' website, the lawyers for DBE17, at <https://www.mauriceblackburn.com.au/class-actions/current-class-actions/unlawful-detention-of-people-seeking-asylum-class-action/>. This way any future notices about the class action can be sent to your preferred address, email or mobile number.

You will not have to pay any money now to stay in this class action: see more detail below at “8. Will I have to pay any money if I stay in the class action?”

Staying in the class action will not impact any visa you may have. If you have questions about your visa you should contact a migration agent.

If you stay in the class action, you will be “bound” by the result in the class action. This means you will have to accept the result and it will apply to you whether the class action wins or loses or settles.

- a) If the class action is successful, you may be entitled to a share of the judgment award or settlement amount. That is, you may get money.
- b) If the class action is unsuccessful or less successful than was hoped, you may get no or little money. However, you will not have to pay any money.

Whether or not the class action is successful, if you stay in it, you will not be able to later start your own court case against the Australian Government for the same complaints of unlawful detention explained above at “3. What is this class action?”

7. I am a group member but I don’t want to stay in the class action – what do I need to do?

If you do not want to stay in the class action you need to tell the Federal Court of Australia. This is called “opting out”.

If you opt out you will:

- a) not get any money from this class action regardless of its result;
- b) not be bound by the result of the class action and will be able, if you wanted to do so, to start your own court case about the same complaints of unlawful detention against the Australian Government, provided that you start the case within the legal time limits.

If you want to bring your own court case against the Australian Government, you should get advice from a lawyer about your case and the applicable time limit **before** opting out.

If you want to opt out, you must complete the opt out form at the end of this notice and email or post the form to:

The Registrar
Federal Court of Australia
Victorian District Registry
305 William Street
Melbourne VIC 3000
or
vicreg@fedcourt.gov.au

IMPORTANT:

The opt out form must get to the Registrar by no later than 4 December 2020. If not, your opt out will not count and you will still be a group member of this class action.

Each group member who wants to opt out should fill out a separate opt out form.

8. Will I have to pay any money if I stay in the class action?

You do not have to pay anything now to stay in the class action.

Maurice Blackburn Lawyers are running this class action on a 'conditional pro bono' basis. This means that they will only be paid if the class action is successful.

If the class action is successful, the money that Maurice Blackburn Lawyers will get for their legal services will be limited to the amount of money they can recover from the Australian Government or any other party.

You may need to pay something at the end of the case if you need personal legal advice to finalise your own claim. You can engage Maurice Blackburn Lawyers or other lawyers to do that work for you. You can get a copy of the terms on which Maurice Blackburn Lawyers are acting in the class action by contacting them.

9. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the statement of claim, and the defence, may be obtained by:

- (a) downloading them from <https://www.mauriceblackburn.com.au/class-actions/current-class-actions/unlawful-detention-of-people-seeking-asylum-class-action/>;
- (b) inspecting them between 9am and 5pm at one of the offices of Maurice Blackburn Lawyers, contact details for which are available from www.mauriceblackburn.com.au or by calling 1800 930 956;
- (c) by contacting a District Registry of the Federal Court (contact details are available www.fedcourt.gov.au) and paying the appropriate inspection fee; or
- (d) inspecting them on the Federal Court website at <https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions>.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Maurice Blackburn Lawyers on 1800 930 956 or email asylumseekerclassaction@mauriceblackburn.com.au or seek your own legal advice. You should not delay in making your decision.

ANNEXURE B

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. VID1392 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

DBE17 (by his Litigation Guardian Marie Theresa Arthur)

Applicant

The Commonwealth of Australia

Respondent

To: The Registrar
Federal Court of Australia
VIC District Registry
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000

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

Date: [eg 19 June 20..]

Your signature:

Your full name:

Date of birth:

Email address:

Phone number:

Circle one: Group Member OR legal guardian for the Group Member OR NOT a Group Member