

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.

THIS NOTICE IS AN IMPORTANT UPDATE ABOUT A COURT CASE THAT WE INFORMED YOU ABOUT LAST YEAR. THAT CASE WAS STARTED FOR PEOPLE WHO WERE DETAINED IN IMMIGRATION DETENTION IN AUSTRALIA FOR MORE THAN TWO WORKING DAYS BETWEEN **27 AUGUST 2011** AND **25 FEBRUARY 2020**. YOU RECEIVED THE NOTICE LAST YEAR BECAUSE YOU MAY BE ONE OF THOSE PEOPLE. YOU MAY HAVE RESPONDED TO US ABOUT THE CASE. EVEN IF YOU DID NOT, THIS NOTICE MAY AFFECT YOU.

THE COURT HAS ORDERED THAT WE SEND YOU THIS NOTICE BECAUSE IT IS ABOUT A PROPOSED DISCONTINUANCE OF THE COURT CASE.

IF YOU HAVE ANY QUESTIONS 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 the languages below by contacting Maurice Blackburn Lawyers on 1800 930 956 or email asylumseekerclassaction@mauriceblackburn.com.au

1. Why am I getting this?

This notice is an important update about a court case we informed you about last year that was 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"**).

The case is a "class action". 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 in the class action that DBE17 started.

A 'Notice to potential group members' about this court case was sent last year and some recipients have contacted Maurice Blackburn about the case. Even if you did not, this Notice might affect you and your legal rights. The purpose of this Notice is to provide an update on the case and to let possible group members know that, because of a change in the law, DBE17 proposes to no longer run the case.

On 23 June 2021, the High Court of Australia decided a different case called *Commonwealth of Australia v AJL20* [2021] HCA 21. The High Court is the highest Court in Australia and all other Courts must follow its decisions about the law. Although the *ALJ20* case is not exactly the same as this one, it deals with some legal issues that are critical to the success of claims made on your behalf in this class action. The High Court's reasoning and decision on those legal issues have affected the chances of this class action succeeding. After considering what the High Court decided, the lawyers for DBE17 have concluded that it is in DBE17's interests that the class action not continue. This is called "discontinuance".

Normally, when someone discontinues a case, they must pay the other side's legal costs. An agreement has been reached with the Australian Government under which, if the discontinuance is approved, it will not seek legal costs against DBE17.

A discontinuance of a class action must be approved by the Court. DBE17 will ask the Court to approve his proposed discontinuance. If it is approved, it means the class action finishes, and no group member will receive any compensation from it. There will not be any legal costs which you will have to pay.

If it was possible for you to bring your own claim against the Australian Government for unlawful detention, and any time limit for bringing that claim was suspended while the class action was pending, that time limit will recommence to run if the Court approves the discontinuance of the class action.

If you think you may wish to bring your own claim against the Australian Government, you should obtain independent legal advice immediately.

2. What do I need to do?

There is nothing you need to do **if you do not oppose the discontinuance.**

If you wish to ask the Court not to approve the discontinuance, you must, by 9 November 2021:

- a. send a written notice to Maurice Blackburn, addressed to the Asylum Seeker Class Action Team, at Level 21, 380 La Trobe Street, Melbourne VIC 3000 or asylumseekerclassaction@mauriceblackburn.com.au that you wish to oppose the settlement and providing reasons why; and
- b. file with the Court written submissions stating that you wish to oppose the discontinuance and providing reasons why and any evidence upon which you may wish to rely in support of your objection; and
- c. attend (or send a representative to) the hearing on 30 November 2021 when the Federal Court will consider whether to approve the settlement and you or your representative may make oral submissions in support of your objection. Depending on the Directions issued by the Victorian Chief Health Officer relating to relevant pandemic restrictions, the hearing will take place either at:

Victoria Registry
Federal Court of Australia
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000

or

Online via a Microsoft Teams videoconference.

You or your representative will need to be in a position on 30 November 2021 to explain to the Court why you consider that the discontinuance should not be approved. You should also be in a position to inform the Court whether you are willing to become a 'representative applicant' and take over the conduct of the class action.

If you think you might wish to oppose the proposed discontinuance of the class action, you should obtain independent legal advice immediately.

3. 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, if permitted by the relevant location's pandemic restrictions, 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.