



## Annexure A

# OPT OUT NOTICE

FEDERAL COURT OF AUSTRALIA

ALI YASMIN V COMMONWEALTH OF AUSTRALIA - VID 328 OF 2020 AND VID 664 OF 2020

*This is a summary of an “opt out notice” in an Australian class action proceeding, which is set out in more detail in the pages below.*

An Indonesian man, Ali Yasmin, has brought legal claims against the Commonwealth of Australia as a class action.

A class action is a type of legal proceeding that is brought by one person (called “the applicant”) against another person (called “the respondent”), on their own behalf and on behalf of a group of people who have similar claims against the respondent (“class” or “group members”).

Mr Yasmin alleges that he was a child under 18 years’ old when he arrived in Australia on a people-smuggling boat in 2009. Australian government agencies performed a wrist x-ray on him, which they used to say that he was an adult. They then detained him in an adult prison.

Mr Yasmin claims that the Australian government knew that the wrist x-ray process was unreliable, and that the Australian government should have assessed his age properly which would have determined that he was, in fact, under the age 18. He also says the Australian government should have removed him back to Indonesia as soon as possible.

Mr Yasmin alleges negligence, racial discrimination and wrongful imprisonment by the Australian government.

He is bringing this legal claim on behalf of **all Indonesian people who arrived in Australia between 1 January 2007 and 31 December 2013 as children on people-smuggling boats, who were wrongly assessed as adults and who were detained by the Australian Government (the class members).**

You may be a class member if you fit this description.

If you are a class member, you will be bound by any judgment handed down by the Court or settlement reached with the Australian government **UNLESS** you formally “opt out” of (withdraw from) the proceeding.

To remain a class member, there is nothing you need to do, but you should contact Mr Yasmin’s lawyers who are:

1. **Ken Cush & Associates** – Email: [admin@kencush.com.au](mailto:admin@kencush.com.au) or Telephone: **+61 262579922** or WhatsApp: **+61 420 808 466**
2. **Semarindo Law Firm** – Email: [info@semarindolawfirm.com](mailto:info@semarindolawfirm.com) or Telephone: **+62 361 8450067** or **+62 82 234 541888**

**To “opt out” of the class action, you MUST fill out a form and send it to the Federal Court of Australia.** Instructions on how to do this are set out in the pages below.

[If you think you are a class member, please continue to read the pages below.](#)



## 1. Why is this notice important?

A class action has been commenced in the Federal Court of Australia by Ali Yasmin against the Commonwealth of Australia. The action alleges negligence, racial discrimination and wrongful imprisonment by officers and agencies of the Commonwealth of Australia against Indonesian children who arrived in Australia as unlawful non-citizens and were suspected of being involved in people smuggling offences under s. 232A of the *Migration Act 1958* (Cth).

The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the action.

**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 use the contact details in Section 9 of this notice, or alternatively seek your own legal advice.

## 2. What is a class action?

A class action is an action that is brought by one person ("applicant") on his or her own behalf and on behalf of a class of people ("class" or "group members") against another person ("respondent") where the applicant and the class members have similar claims against the respondent.

Class members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant is responsible for the costs.

Class members are "bound" by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways being either a *judgment* following a trial, or a *settlement* at any time. If there is a judgment or a settlement of a class action class members *will not* be able pursue the same claims and *may not* be able to pursue similar or related claims against the respondent in other legal proceedings. Class members should note that:

- (a) in a *judgment* following trial, the Court will decide various factual and legal issues in respect of the claims made by the applicant and class members. Unless those decisions are successfully appealed they bind the applicant, class members and the respondent. Importantly, if there are other proceedings between a class member and the respondent, it is likely that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
- (b) in a *settlement* of a class action, where the settlement provides for compensation to class members it is likely to extinguish *all* rights to compensation which a class member might have against the respondent which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against a respondent which are based in your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

## 3. What is this class action?

This class action, *Ali Yasmin v The Commonwealth of Australia*, is brought by the **Applicant**, Ali Yasmin, on his own behalf and on behalf of all persons who are "class members" as defined in the proceeding.



The Applicant alleges in the Consolidated Statement of Claim dated 19 February 2021 in Federal Court proceeding *Ali Yasmin v Commonwealth of Australia* – VID 328 of 2020 that from 1 January 2007 to 31 December 2013, officers and agencies of the Commonwealth of Australia committed acts of negligence, racial discrimination and wrongful imprisonment of a number of Indonesian children who arrived in Australia as an unlawful non-citizen in circumstances where they:

- i. were apprehended in Australia on a Suspected Illegal Entry Vessel ("SIEV"); and
- ii. were suspected of being involved in people smuggling offences under s. 232A of the *Migration Act 1958* (Cth); and
- iii. were detained by officers and agencies of the Commonwealth of Australia in immigration detention or adult correctional facilities.

The Applicant alleges that, in some cases, those Indonesian children were incorrectly assessed by the respondent as being over the age of 18 based on an x-ray of their wrist.

The respondent to the class action is the Commonwealth of Australia (**Commonwealth**). The Commonwealth does not admit the allegations and is defending the class action.

#### 4. What is 'Opt Out'?

The Applicant in a class action does not need to seek the consent of class members to commence a class action on their behalf or to identify a specific class member. However, class members can stop being class members by opting out of the class action. An explanation of how class members can opt out is found below in Section 8(b) headed "How can you opt out of the proceeding".

#### 5. Are you a class member?

You are a class member if you:

- (a) are of Indonesian race, national and ethnic origin;
- (b) arrived in Australia between 1 January 2007 and 31 December 2013 in circumstances where you were:
  - (i) apprehended by Australian officers on a boat (a Suspected Illegal Entry Vehicle) and brought to Australia;
  - (ii) suspected of being involved in an offence of people smuggling under s 232A of the *Migration Act 1958* (Cth);
  - (iii) were under 18 years of age when you arrived; and
  - (iv) were unaccompanied by any adult who was able to act as your guardian;
- (c) were detained by or on behalf of the Australian government;
- (d) were not immigration cleared for the purposes of the *Migration Act*;
- (e) did not apply for a visa or to otherwise remain in Australia;
- (f) were investigated for alleged offences under the *Migration Act*;
- (g) remained without a guardian while in Australia;
- (h) were ultimately removed to Indonesia by the Australian government.

You may be a Group Member if you are listed as a Group Member in the Applicant's Consolidated Statement of Claim dated 19 February 2021.



If you are unsure whether or not you are a class member, you should contact Ken Cush & Associates on +61 2 6257 9922, WhatsApp on +61 420 808 466 or email [admin@kencush.com.au](mailto:admin@kencush.com.au) or seek your own legal advice without delay.

## 6. Will you be liable for legal costs if you remain a class member?

You will **not become liable for any legal costs** simply by remaining as a class member for the determination of the common questions. However:

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Ken Cush & Associates or other lawyers to do that work for you. A copy of the terms on which Ken Cush & Associates are acting in the class action may be obtained from them on the number/s shown below,
- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicant in running the class action but which are not able to be recovered from the Commonwealth; and
- (c) class actions are often settled out of court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer.

## 7. What will happen if you choose to remain a class member?

Unless you opt out, you will be bound by any settlement or judgment of the class action. If the class action is successful you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and class members, although you may have to satisfy certain conditions before your entitlement arises. If the action is unsuccessful or is not as successful as you might have wished, you will not be able to pursue the same claims and may not be able to pursue related claims against the Commonwealth in other legal proceedings.

## 8. What class members need to do

### (a) How you can remain a class member

If **you wish to remain** a class member there is **nothing you need to do** at the present time. The Applicant will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicant and the class members. However, you are invited to contact the Applicant's lawyers, Ken Cush & Associates, on the number below and register as a class member so that future notices about the class action can be sent to your preferred address.

### (b) How you can opt out of the class action

If **you do not wish to remain** a class member you must opt out of the class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you may be able to bring your own claim against the Commonwealth, provided that you issue Court proceedings within the time limit applicable to your claim or are able to obtain an extension of time. If you wish to bring your own claim against the Commonwealth, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.



To **opt out** of the class action you **must**, before **4.00pm AEDT on 1 March 2023**, complete and submit to the Registrar of the Federal Court of Australia a "Notice of opting out by class member" in the form attached as Schedule 1 to this notice.

**IMPORTANT: the Notice must reach the Registrar at the address on the Notice by no later than 4.00pm AEDT on 1 March 2023, otherwise it will not be effective.**

## 9. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the originating application, the statement of claim, and the defence and the reply (and any amended versions of these documents) may be obtained by:

- (a) downloading them from <https://www.kencush.com.au/>.
- (b) inspecting them between 9am and 5pm at one of the offices of Ken Cush & Associates, contact details for which are available from [www.kencush.com.au](http://www.kencush.com.au) or by calling +61 2 6257 9922 or WhatsApp on +61 420 808 466.
- (c) by contacting a District Registry of the Federal Court (contact details are available [www.fedcourt.gov.au](http://www.fedcourt.gov.au)) and paying the appropriate inspection fee; or
- (d) where appropriate arrangements have been made with the Court, 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 Ken Cush & Associates on +61 2 6257 9922, WhatsApp on +61 420 808 466 or email [admin@kencush.com.au](mailto:admin@kencush.com.au) or seek your own legal advice. You should not delay in making your decision.



Form 21  
Rule 9.34

**Schedule 1  
Opt out notice**

No. VID 328 of 2020  
No. VID 664 of 2020

Federal Court of Australia  
District Registry: Victoria  
Division: General

**ALI YASMIN**  
Applicant

**COMMONWEALTH OF AUSTRALIA**  
Respondent

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

**The Court has ordered that any person wishing to opt out of this class action must do so by 1 March 2023.**

The person named below, as a class member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth), that the person is opting out of the proceeding.

Name of class member	
Date of birth of class member	
Postal address of class member	
WhatsApp/Telephone contact	



If you are signing as the solicitor or representative of the class member:

Person completing this form	
Authority of person completing	
Postal address of person completing this form	
WhatsApp/Telephone contact	
Email address	

Date:

Signed by (print name)

Class member / Lawyer for class member / Class member representative