

SUPREME COURT OF NEW SOUTH WALES

GARFIELD MARIO FERNANDEZ & APIKALI FOTU

v

STATE OF NSW and NSW LOCAL HEALTH DISTRICTS

PROCEEDINGS NO: 2018/00263134

IMPORTANT NOTICE

PUBLIC HOSPITAL SERVICE CHARGE CLASS ACTION

On 27 August 2018, Garfield Fernandez and Apikali Fotu (**Plaintiffs**), commenced representative proceedings referred to in this notice as a “class action” in the Supreme Court of New South Wales against the State of NSW and NSW Local Health Districts (**Defendants**).

A list of the Defendants is in Annexure A to this notice.

The class action is brought by the Plaintiffs on their behalf, and on behalf of all persons who guaranteed the payment of fees for persons who were patients in Public Hospitals in New South Wales, where those patients were ineligible for Medicare Benefits.

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

If you think you may be a group member because you provided a guarantee for the public hospital charges of a patient who was ineligible for Medicare benefits you should read this notice carefully as it may affect your rights.

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. What is a Class Action?

This class action is brought by the Plaintiffs on their own behalf and on behalf of group members against the Defendants, where the Plaintiffs and the group members have similar claims against the Defendants.

Group members are bound by any judgment or settlement entered into in the class action unless they have opted out of the proceedings. This means that:

- (a) If the class action is successful or settles, group members may be eligible for a share of any Court-awarded damages or settlement monies;
- (b) If the class action is unsuccessful, group members are bound by that result; and
- (c) Regardless of the outcome of the class action, group members will not be able to pursue their claims against the applicable defendant in separate legal proceedings unless they have opted out.

2. What is the Public Hospital Service Charges Class Action?

The Plaintiffs each allege that when a person they knew was treated as a patient in a NSW Public Hospital they were required by the Hospital to provide a guarantee that the patient's fees would be paid to the Hospital. The Plaintiffs claim that they should not have been asked to provide a guarantee as the Hospitals may have an obligation to provide care and treatment to all patients who need treatment, including those who are not eligible for Medicare benefits. The Plaintiffs also claim that the applicable defendant contravened provisions of the Australian Consumer Law when obtaining the guarantee.

The Plaintiffs' claims are made on their own behalf and on behalf of group members. The allegations are detailed in the Amended Statement of Claim filed on 17 October 2018 (**Amended Statement of Claim**). The Defendants to the class action are the State of NSW and all of the Local Health Districts operating in New South Wales. The Defendants reject the allegations and are defending the class action on various grounds.

3. Are you a Group Member?

You are a group member in the class action if:

- (a) You signed a document at a NSW Public Hospital from 4 March 2011 onwards, which guaranteed that you would make payment for public hospital service charges if the patient did not make payment. The patient was not eligible for Medicare benefits.
- (b) You are not a group member if you were the patient in respect of whom the guarantee was provided.

4. What is Opt Out?

The Plaintiff in a class action does not need to seek the consent of group members to commence a class action on their behalf. However, group members can cease to be group members by opting out of the class action.

An explanation of how group members are able to “opt out” is found in Section 7, Option ‘B’, below.

5. Limitation period

Limitation periods are set by statute. If a person with an entitlement to claim does not commence legal proceedings by the time a limitation period expires, they may be barred from making a claim.

The commencement of this class action suspended the limitation period for all group members who have not opted out. The time limit will begin to run again for group members who opt out.

That means that if you wish to opt out but still want to recover from a Defendant, you may need to commence your own case as a matter of urgency. It is important that you seek legal advice as a priority before deciding to opt out.

6. Will you be Liable for Costs?

Group members will not become liable for any legal costs simply by remaining as group members.

However, if the class action is successful and there is a judgment or settlement that results in monies becoming payable to group members, then:

- (a) The Plaintiffs will be requesting the Court to order the Defendants to refund any amounts found to be owing directly to class members.
- (b) If the preparation or finalisation of your claim requires work to be done in relation to issues that are specific to your claim, you can engage Legal Aid NSW or other solicitors to do that work for you. You may be liable for costs associated with the determination of issues concerned only with your claim.
- (c) Class actions are often settled out of court. If this occurs in this class action, you may be able to claim from the settlement amount without retaining a lawyer.

7. What Group Members Should Do?

If you fit the definition of a “group member” in the representative proceeding, you must choose one of the following two options:

Option A – Remain in class action – no action required

If you do nothing (you do not complete an opt out notice), you will remain a group member and remain bound by any order, judgment or settlement in the representative proceeding.

It is very important that you act promptly in deciding what you want to do. If you are not sure whether you are a group member, or you want further information or advice, you can contact your own solicitor or send an email to matthew.turner@legalaid.nsw.gov.au.

Option B – “Opting Out”

If you do not wish to be a group member, then you must complete the Form “**Opt Out Notice**” below. If you “opt out” then *you will cease to be a group member*. The class action will not affect your rights.

If you wish to “opt out” you must do so by sending your Opt Out Notice to the Supreme Court **before the closure date of 22 August 2019**.

You must send the “Opt Out Notice” to the Registry so that it arrives **before** that deadline.

8. Where you can obtain copies of relevant documents

Copies of relevant documents, including the Amended Statement of Claim and Defence, may be obtained by:

- (a) Downloading them from the Supreme Court at http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Public-Hospital-Service-Charges-Class-Action.aspx.
- (b) Inspecting them by visiting the Registry of the Supreme Court at Level 5, Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW 2000.
- (c) Downloading them from the Legal Aid website: www.legalaid.nsw.gov.au.

Please consider the above matters carefully. If you are not sure whether you are a group member or want further information, you should seek your own legal advice or email matthew.turner@legalaid.nsw.gov.au. You should not delay in making your decision, as the deadline for opting out is 22 August 2019.

This Notice is published pursuant to Orders made by the Supreme Court on 31 May 2019.

ANNEXURE A

LIST OF DEFENDANTS

First Defendant	State Of NSW
Second Defendant	Western Sydney Local Health District(LHD)
Third Defendant	South Western Sydney Local Health District
Fourth Defendant	Sydney Local Health District
Fifth Defendant	Northern Sydney Local Health District
Sixth Defendant	Nepean Blue Mountains Local Health District
Seventh Defendant	Illawarra Shoalhaven Local Health District
Eighth Defendant	Central Coast Local Health District
Ninth Defendant	Far West Local Health District
Tenth Defendant	Hunter New England Local Health District
Eleventh Defendant	Mid North Coast Local Health District
Twelfth Defendant	Murrumbidgee Local Health District
Thirteenth Defendant	Northern NSW Local Health District
Fourteenth Defendant	Southern NSW Local Health District
Fifteenth Defendant	Western NSW Local Health District
Sixteenth Defendant	South Eastern Sydney Local Health District