**Annexure “A”**

**OPT OUT NOTICE**

**FEDERAL COURT OF AUSTRALIA**

***Debrah Jackson v Carnival PLC t/as P&O Cruises Australia
(ABN 23 107 998 443)***

**“P&O Class Action”**

1. **Why is this notice important?**

A class action has been commenced in the Federal Court of Australia by Debrah Jackson against Carnival PLC trading as P&O Cruises Australia (ABN 23 107 998 443).

The action arises out of the P&O 7-day cruise on Pacific Aria that departed from Brisbane on 5 May 2017.

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 have been identified as a potential class member. **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. **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 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 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 to 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:

1. 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 may be 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;
2. in a *settlement* of a class action, where the settlement provides for compensation to class members it may 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 the 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).

1. **What is the P&O class action?**

This class action, the P&O Class Action, is brought by the Applicant, *Debrah Jackson*, on her own behalf and on behalf of all persons who are “class members” as defined in the proceeding.

The Applicant alleges in the Amended Statement of Claim in Federal Court proceedings QUD183/2023 that:

1. the Respondent operated a 7-day cruise on a ship called “Pacific Aria” which departed Brisbane on 5 May 2017;
2. prior to the departure a severe tropical cyclone had formed near Vanuatu and by 3 May 2017 had been named ‘Cyclone Donna’;
3. the Respondent undertook the Cruise without any change to the planned route or itinerary;
4. during the voyage Cyclone Donna increased in strength and intensity and began to track through Vanuatu and towards Noumea;
5. the voyage from Brisbane to Noumea was very rough with most shipboard activities and facilities being restricted or suspended;
6. the ship docked in Noumea for only one day;
7. the trips to Lifou Island and Port Villa were cancelled;
8. the return trip to Brisbane was very rough with most shipboard activities and facilities being restricted or suspended;

It is alleged that P&O did not deliver the facilities and benefits of the cruise that it had guaranteed (by operation of the Australian Consumer Law) to provide namely:-

1. a safe and enjoyable sea passage from Brisbane to Noumea, Lifou, Port Vila and return to Brisbane;
2. facilities to disembark and visit those ports;
3. facilities for relaxation including the Oasis and the Lido pool deck;
4. deck games, a deck for walking and viewing the sea (Promenade deck), rock climbing, a flying fox, a tennis court, a basketball court and the P&O Edge Adventure Park;
5. other shipboard activities and facilities;
6. a “stress less” experience;
7. an “escape to a remote island or local hideaway”;
8. a “dream holiday” which could be made an “event”;
9. the means of “floating away” from “troubles”;
10. the “fastest way to slow down”;
11. holiday enjoyment when a passenger took a “step onboard – no stress”.

P&O does not admit the allegations and is defending the proceedings.

1. **What is “Opt Out”?**

The Applicant in the 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 cease to be class members by opting out of the class action. An explanation of how class members are able to opt out is found below in the section headed “How can you opt out of the proceeding”.

1. **Are you a class member?**

You are a class member if:

1. you purchased, or someone purchased you a ticket for the 7-day Cruise from 5 May 2017 to 12 May 2017 on board the Pacific Aria; and
2. you were on board the Pacific Aria from 5 May 2017 and either left the vessel in Noumea or remained on the Pacific Aria for its return trip to Brisbane.

Please note that “class members” are called “group members” in the Amended Statement of Claim

If you are unsure whether or not you are a class member, you should contact Peter Carter at Carter Capner Lawyers on 1300 529 529 or seek your own legal advice without delay.

1. **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:

1. if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to you claim, you can engage Carter Capner Law or other lawyers to do that work for you. A copy of the terms on which the Applicant’s lawyers, Carter Capner Lawyers, are acting in the class action may be obtained from them in the numbers shown below;
2. 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 bale to be recovered from the Respondent; and
3. 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 provided that you register (see section below “How to remain a class member”)
4. **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 wish, you will not be able to pursue the same claims and may not be able to pursue related claims against the respondent in other legal proceedings.

1. **What class members need to do**
2. **How you 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 Carter Capner Law on 1300 529 529; or email P&Oclassaction@cartercapner.com.au; or register online via <https://cartercapner.com.au/travel-injuries/cruise-ship-injury-lawyers/> and clicking on REGISTER YOUR CLAIM so that future notices about the class action can be sent to your preferred address

1. **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 or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against the Respondent, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the Respondent, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

**If you wish to opt out** of the class action you **must** do so by completing a “**Notice of opting out by class member**” in the form shown below at **Annexure A** hereto (Form 21 of the Court’s approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form.

The “**Notice of opting out by class member**” can also be downloaded from the website of the Applicant’s lawyers by visiting <https://cartercapner.com.au/travel-injuries/cruise-ship-injury-lawyers/> and clicking on OPT-OUT FORM.

**IMPORTANT: the Notice must reach the Registrar by no later than 4:00PM on 31 May 2024** otherwise it will not be effective.

You should submit the Notice of opting out by class member if:

1. You qualify as a class member and you wish to opt out of the class action; or
2. You believe that you have been incorrectly identified as a class member, because you do not meet the criteria set out in the section headed “Are you a class member” above;

Each class member seeking to opt out should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

1. **Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the Application, the Amended Statement of Claim, the Defence, and the Reply, may be obtained by downloading them from the Applicant lawyer’s website by visiting <https://cartercapner.com.au/travel-injuries/cruise-ship-injury-lawyers/> and clicking on VIEW COURT DOCUMENTS.

1. **Final matters**

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Peter Carter at Carter Capner Law on 1300 529 529 or email P&Oclassaction@cartercapner.com.au or seek your own legal advice.

You should not delay in making your decision.

**The deadline to opt-out of the P&O Class Action is 5:00pm on 31 May 2024**

**Annexure A**

Form 21

Rule 9.34

**Opt Out Notice**

Federal Court of Australia No. **QUD 183 of 2023**

District Registry: Queensland

Division: General

**DEBRAH JACKSON**

Applicant

**CARNIVAL PLC T/AS P&O CRUISES AUSTRALIA (ABN 23 107 998 443)**

Respondent

**To: The Registrar**Federal Court of AustraliaQueensland District RegistryFederal Court of Australia Level 6, Harry Gibbs Commonwealth Law Courts119 North QuayBRISBANE QLD 4000

[name]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, is opting out of the representative proceeding.

Date: 2024

Signed by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Group Member/Lawyer for the Group Member