

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

Not Restricted

S ECI 2023 01227

ROBERT LAIRD KILAH

First Plaintiff

BRENDAN FRANCIS SINNAMON

Second Plaintiff

v

MEDIBANK PRIVATE LIMITED
(ACN 080 890 259)

Defendant

JUDGE: Attiwill J
WHERE HELD: Melbourne
DATE OF HEARING: 23 August 2024
DATE OF RULING: 23 August 2024 (*oral ex tempore*) 2 September 2024
(revised)
CASE MAY BE CITED AS: Kilah & Anor v Medibank Private Limited (No 2)
MEDIUM NEUTRAL CITATION: [2024] VSC 519

PRACTICE AND PROCEDURE - Group Proceedings - Soft class closure order - Only contested issue is when soft class closure period should expire - Whether appropriate or necessary to ensure that justice is done in this proceeding - Proceeding is at a relatively early stage and parties have agreed to attend an early mediation - *Supreme Court Act 1986 (Vic)* ss 33ZF, 33ZG - *Fox v Westpac; O'Brien v ANZ; Nathan v Macquarie* [2023] VSC 414; *Bradgate (Trustee) v Ashley Services Group Ltd* [2017] FCA 1591 - Soft class closure period should expire three months after first day of mediation.

PRACTICE AND PROCEDURE - Group Proceedings - Application for production of notices issued by the Australian Information Commissioner - Not an application for discovery - Production of notices will not likely assist an efficacious discovery process - *Supreme Court Act 1986 (Vic)* s 33ZF; *Civil Procedure Act 2010 (Vic)* s 48(1); *Supreme Court (General Civil Procedure) Rules 2015 (Vic)* r 32.01 - Application refused.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Plaintiffs	Mr A Hochroth with Ms R V Howe	Phi Finney McDonald Quinn Emanuel Urquhart & Sullivan
For the Defendant	Mr N P De Young KC with Ms J A Findlay and Ms A Martyn	King & Wood Mallesons

TABLE OF CONTENTS

INTRODUCTION	1
REGISTRATION, OPT-OUT AND SOFT CLASS CLOSURE	3
Are the orders appropriate or necessary?.....	3
What should the period be for the soft class closure order?	5
Relevant law.....	5
Plaintiffs' submission	8
Defendant's submission.....	10
Analysis.....	12
SHOULD MEDIBANK PRODUCE THE NOTICES FROM THE COMMISSIONER TO THE PLAINTIFFS?	16
Relevant law.....	16
Background	17
Plaintiffs' submission.....	18
Defendant's submission	19
Analysis	20
CONCLUSION	21

HIS HONOUR:

INTRODUCTION

- 1 This ruling concerns orders for registration, opt out and 'soft' class closure and also whether the defendant should be compelled to provide (not discover) particular documents.
- 2 This is a group proceeding brought under pt 4A of the *Supreme Court Act 1986* (Vic) (*Supreme Court Act*). The plaintiffs' claims arise from a cyber data breach in the defendant's information technology network, which resulted in substantial volumes of data, including the personal health claims data of customers collected by the defendant, being accessed by one or more hackers. The stolen data was later released on the dark web. The plaintiffs allege that the defendant failed to make disclosures to the market as to its cyber security and information technology controls and/or misled the market through public statements it made regarding its cyber security and information technology controls and its systems of risk oversight and management of its customers' personal and private information. The defendant denies the allegations against it.
- 3 A group member is defined in the consolidated statement of claim as all persons who or which:
 - (a) during the period 1 July 2019 to 25 October 2022 (inclusive) (**Relevant Period**):
 - (i) acquired an interest in, or entered into a contract to acquire an interest in, ordinary shares in Medibank (**MPL Shares**); and/or
 - (ii) acquired long exposure to MPL Shares by entering into equity swap confirmations in respect of MPL Shares (**MPL Equity Swaps**);
 - (b) have suffered loss or damage by, because of or resulting from the conduct of Medibank pleaded in this Statement of Claim;
 - (c) were not during the Relevant Period, and are not as at the date of this Statement of Claim, any of the following:
 - (i) any of the persons referred to in s 33E(2) of the *Supreme Court Act*;

- (ii) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth)) of Medibank;
- (iii) a related body corporate (as defined in s 50 of the *Corporations Act*) of Medibank;
- (iv) an associated entity (as defined in s 50AAA of the *Corporations Act*) of Medibank;
- (v) an officer or close associate (as defined in s 9 of the *Corporations Act*) of Medibank;
- (vi) an officer or employee of, or other legal practitioner engaged by, the solicitors for the plaintiffs in relation to this proceeding.

4 There are two issues to be determined.

5 First, the parties seek orders for registration, opt-out and soft class closure. The only substantive matter that remains in dispute is the period of time of the soft class closure. The plaintiffs seek that it be a period expiring three months after the first day of mediation. The mediation is proposed to commence no later than 31 March 2025. The defendant seeks that soft class closure continue until the day prior to the commencement of the initial trial of this proceeding. The proceeding has not been set down for trial.

6 Second, the plaintiffs initially sought an order in the following terms:

Pursuant to s 33ZF of the *Supreme Court Act 1986* (Vic), ss 48(1) and 55(1) of the *Civil Procedure Act 2010* (Vic) and/or r 34.01 of the *Supreme Court (General Civil Procedure) Rules 2015*, the defendant produce to the plaintiffs by **4.00 pm on 6 September 2024** the notices issued by the Australian Information Commissioner (**Commissioner**) under s 44 of the *Privacy Act 1988* (Cth) in respect of the Commissioner's investigations into the 2022 Data Incident commenced on or about 18 November 2022 and 1 December 2022 respectively.

7 At the hearing, the plaintiffs submitted that their application for the production of notices was not an application for discovery. The production of the notices was opposed by the defendant.

REGISTRATION, OPT-OUT AND SOFT CLASS CLOSURE

Are the orders appropriate or necessary?

- 8 The orders proposed by the parties reflect that they have agreed upon the following matters:
- (a) the date and time by which a group member may opt out of the proceeding pursuant to s 33J(1) of the *Supreme Court Act* is fixed at 4:00pm on 1 November 2024 (**Class Deadline**);
 - (b) the parties mediate the claims in the proceeding with such mediation to commence on or before 31 March 2025 (**Mediation**);
 - (c) under ss 33ZF and 33ZG of the *Supreme Court Act*, that any group member who wishes to obtain any benefit arising from any settlement (subject to Court approval) reached within a certain period (with the terms of the period in dispute between the parties) must register their interest in the proceeding by the Class Deadline;
 - (d) pursuant to ss 33ZF and 33ZG of the *Supreme Court Act*, and subject to any further order of the Court, any group member who does not register or opt out of the proceeding by the Class Deadline will remain a group member for all purposes, including being bound by any approved settlement agreement reached at the Mediation during the soft class closure period;
 - (e) the manner by which group members are to be notified of opt-out, Mediation, the registration requirement, the Class Deadline, including the timing of the soft class closure period; and
 - (f) the process by which group members may register their interest in participating the outcome of any settlement reached at Mediation including during the soft class closure period.
- 9 The parties have agreed to engage Computershare as the third party distribution agent. Computershare holds the defendant's share registry. The plaintiffs do not have

access to the defendant's share register. As at 18 August 2022, there were more than 200,000 shareholders in the defendant, holding between them 2.5 billion shares. As the identity and contact details of group members are more readily ascertainable based on information contained in the share registry, the parties propose the following method for distribution of the notices:

- (a) direct method: an email to all shareholders whose email addresses are held by Computershare, which will contain a link to the Opt-Out and Registration Notice or whose email is held by the plaintiffs' solicitors as at the date of the Opt-Out and Registration order being made;
- (b) indirect method: by posting the Notice to websites relevant to this proceeding and publishing the Notice in two prominent newspaper publications.

10 The parties have agreed to the proposed distribution process following an extensive consultation process. The parties also seek a soft class closure order. The parties are in agreement that a soft class closure order is necessary and appropriate but disagree on the timing of the class closure period.

11 Subject to shortly addressing the soft class closure period, in my view, the order for registration, opt-out and soft class closure is appropriate and necessary to ensure that justice is done in this proceeding. I accept the following evidence of Mr Scattini, partner at one of the plaintiffs' solicitors' firms, who gave evidence that, in his opinion, the plaintiffs' soft class closure proposal is appropriate:

Based on my experience in negotiating settlements of proceedings, I consider the plaintiffs' soft class closure proposal is appropriate for the following reasons:

- a. it crystallises the number of participating group members, and by obtaining data regarding their claimed losses (being integers the defendant reasonably contends that it requires to participate in a negotiation of these proceedings) the soft class closure process will increase the likelihood of the parties engaging in a successful Mediation...
- b. the methods of notifying the class of the Opt Out & Registration process involve different communication channels (including both direct and indirect methods) and in my view are sufficiently broad, and reflective

of current means by which likely group members receive and read important communications, so as to ensure that the notice will be ought to the attendance of a preponderance of the eligible group members;

- c. the registration process will obtain the necessary information to allow the parties to engage in the contemplated Mediation productively, without being unduly burdensome on group members;
- d. the registration period of 2 months affords group members with sufficient time to be informed of the requirement to register, and to complete the straightforward registration process; and
- e. group members who have previously registered their information with the plaintiffs' Lawyers are deemed registered under the proposal.

What should the period be for the soft class closure order?

Relevant law

12 The relevant law was not in dispute between the parties. It was common ground that the Court has power to make a soft class closure order.

13 Section 33J(1) of the *Supreme Court Act* provides that the Court must fix a date before which a group member may opt out of a group proceeding. Section 33X provides that notice must be given to group members of the right of the group members to opt out of the proceeding before a specified date, being the date fixed under s 33J(1). Section 33Y provides that the form and content of a notice under s 33X must be approved by the Court. Section 33ZF provides:

General power of court to make orders

In any proceeding (including an appeal) conducted under this Part the Court may, of its own motion or on application by a party, make any order the Court thinks appropriate or necessary to ensure that justice is done in the proceeding.

14 Section 33ZG provides:

Order may specify a date by which group members must take a step

Without limiting the operation of section 33ZF, an order made under that section may –

- (a) set out a step that group members or a specified class of group members must take to be entitled to –
 - (i) any relief under section 33Z; or
 - (ii) any payment out of a fund constituted under section 33ZA; or
 - (iii) obtain any other benefit arising out of the proceeding –

irrespective of whether the Court has made a decision on liability or there has been an admission by the defendant on liability;

- (b) specify a date after which, if the step referred to in paragraph (a) has not been taken by a group member to whom the order applies, the group member is not entitled to any relief or payment or to obtain any other benefit referred to in that paragraph.

- 15 In *Fox v Westpac; O'Brien v ANZ; Nathan v Macquarie*¹ Nichols J explained what is meant by a soft class closure:²

The defendants are seeking what has become known in this area of discourse as 'soft class closure'. That expression does not appear in the Act, but is employed for convenience. It is commonly used to distinguish orders of the kind presently sought, from orders that would remove unregistered group members from the represented class (by amending the relevant group definition) or by which unregistered group members would not be permitted to benefit from any judgment in favour of the plaintiff, or any subsequent settlement. **Under the proposed orders, if the proceedings do not settle at the mediations to be held later this year, the claims of unregistered group members will still be determined in the proceedings and those group members would be bound by the result, and entitled to seek to benefit from any judgment delivered for the plaintiffs.** As Murphy and Lee JJ said in *Parkin v Boral*, orders of the kind presently sought, do not transmogrify an open class into a closed one, but demarcate between registered and unregistered group members, which demarcation only has an effect if a settlement is later reached and approved by the Court.

- 16 In *Anderson–Vaughan v AAI Ltd (No 2)*³ Delany J said:⁴

A soft class closure order is used to describe an order which requires group members to register as a precondition to an entitlement to share in a settlement reached at or following a mediation and prior to the commencement of the trial, being a settlement later approved by the Court. **A soft class closure order does not remove group members who do not register from the represented class and does not affect the entitlement of any unregistered group member to benefit from any judgment in favour of the plaintiff or any settlement arrived at after the commencement of the trial.**

- 17 The Full Court of the Federal Court of Australia in *Melbourne City Investments Pty Ltd v Treasury Wine Estates Limited*⁵ made the following observations on a class closure order:⁶

¹ [2023] VSC 414 (*Fox*).

² *Ibid* [12] (emphasis added) (citations omitted).

³ [2024] VSC 65.

⁴ *Ibid* [12] (emphasis added) (citations omitted).

⁵ [2017] FCAFC 98.

⁶ *Ibid* [74]-[75] (emphasis added) (citations omitted).

Having said this, if a class closure order operates to facilitate the desirable end of settlement, it may be reasonably adapted to the purpose of seeking or obtaining justice in the proceeding and therefore appropriate under s 33ZF of the Act. **The courts have accepted on numerous occasions that, in order to facilitate settlement, it is appropriate to make orders to require class members to come forward and register in order to indicate a willingness to participate in a future settlement, and to make orders that class members be bound into the settlement but barred from sharing in its proceeds unless they register...** An important aspect of the utility of a class proceeding is that they may achieve finality not only for class members but also for the respondent.

The rationale behind such class closure orders is that a requirement for class members to register their claims will facilitate settlement, because it allows both sides to have a better understanding of the total quantum of class members' claims, permits the settlement amount to be capped by reference to the number of class members, and assists in achieving finality (to the extent the Part IVA regime permits)...A class closure order that precludes class members, who neither opt out nor register, from sharing in a subsequent settlement may facilitate settlement, and therefore be reasonably adapted to the purpose of seeking or obtaining justice in the proceeding.

18 In *Fox*, Nichols J summarised the comprehensive consideration made by J Forest J in *Matthews v SPI Electricity Pty Ltd*⁷ of the Court's powers under ss 33ZG and 33ZF in respect of the class closure principles that inform the exercise of the power:⁸

- (a) The terms of s 33ZF make clear that it was the legislature's intention that the Court have a wide power to maintain close supervision over novel problems that may arise under Part 4A proceedings.
- (b) It is of particular note that s 33ZG specifically enables a court to impose such a requirement prior to judgment or settlement of the liability issue.
- (c) It is also relevant to an application of this kind, that s 49 of the *Civil Procedure Act 2010* (Vic) empowers a court to give any direction or make any order it considers appropriate to further the overarching purpose in relation to the conduct of a hearing of a civil proceeding.
- (d) It is within the Court's power to order class closure in the sense that a member of the class must take a positive step such as identifying himself or herself after receiving notice of class closure. It is also within the Court's power to terminate the entitlement to compensation of any group member who does not come forward and indicate a willingness to participate in a distribution (putative or actual) pursuant to either a settlement or judgment.
- (e) One of the fundamental bases for the class action provisions is achieving finality not only for the group members but also for the defendants to the proceeding.

⁷ (2013) 39 VR 255.

⁸ *Fox* (n 1), [18] (citations omitted).

- (f) It may be appropriate, to make orders for class closure prior to a settlement or judgment. Such a course may be warranted notwithstanding that there is no prospective settlement, but on the material available it is in the interests of the class as a whole, to require such a step to be taken. Relevant considerations include the point at which the case has reached, the attitude of the parties to such a step, and the complexity and likely duration of the case.
- (g) If, during a proceeding an order is to be made converting the nature of the class from open to closed, it should only be made where the group members have adequate notice of the proposed change and a reasonable amount of time in which to determine whether to join the closed class.
- (h) The point in time at which a class closure order is made, is important. Ultimately, it is a question of balance and judicial intuition, requiring a determination as to when it is appropriate and in the interests of group members as a whole to require a step to be taken which may promote a prospective settlement as against 'simply letting the case proceed, perhaps interminably, without requiring group members to lift a finger - even if that course leads to disaster'.

Plaintiffs' submission

19 The gist of the plaintiffs' submission is that it is neither necessary nor appropriate in order to facilitate the proposed early mediation and any settlement that may be reached at it, to exclude group members who have not registered at this early stage for participating in any settlement reached in different circumstances, potentially years from now. In support of that submission, the plaintiffs further submitted as follows:

- (a) first, the question of the length of class closure requires a fact specific answer and consideration of what is 'appropriate' to ensure justice is done in this proceeding. Caution should be exercised in relation to the particular form and scope of the class closure order having regard to when it was made;
- (b) second, the plaintiffs' proposal goes no further than is reasonably necessary for the purpose of seeking or obtaining justice in the proceeding by facilitating the desirable early resolution of the proceeding;
- (c) third, the orders sought by the plaintiffs do not preclude any further mediation or further settlement negotiations, in the future if the case does not settle at the early Mediation. If a further mediation or settlement negotiations are to occur

- closer to trial (and some time away) it is open to the parties to approach the Court for further registration of class closure orders;
- (d) fourth, the defendant's submission that the plaintiffs' proposal creates uncertainty because the defendant is facing multiple proceedings illustrates the point that the true purpose of the class closure order sought by the defendant is to cap the group and shut out group members of an opportunity to participate in any future settlement;
 - (e) fifth, assuming there is a future mediation, or settlement negotiations, closer to trial, it is speculative whether the process of approaching the Court for further class closure orders, and issuing notices, will be complex, problematic or costly as might be suggested by the defendant. Templates, systems and processes will already be in existence which can be used to issue further notices. Further costs associated with issuing further notices are likely to be trivial when considered in the context of the proceeding as a whole. The submission that the multiple notices are apt to confuse group members is speculative given the Court would have to approve any further notices and ensure that they are not confusing;
 - (f) sixth, the class closure orders are sought in aid of the early Mediation. Had the parties not agreed to an early mediation, it is unlikely that class closure orders would have been proposed at this early stage;
 - (g) seventh, it is not to the point that the orders sought by the defendant are similar to orders made in other proceedings in this Court. The Court must have regard to the particular circumstances of this case which are very different to the circumstances existing in other cases;
 - (h) eighth, the proceeding is at a relatively early stage. As with any complex litigation it is to be expected that the parties will expend significant costs on discovery, the preparation of evidence and trial preparation generally. These matters, together with the clarity regarding the strength and weaknesses of the parties' cases that inevitably emerge as discovery is reviewed, evidence

prepared and the case progresses, often shift the parameters of any settlement discussions that are held after (for example) the filing of expert evidence or closer to trial. Such shifting parameters may warrant a further formal mediation. Conducting settlement discussions on the basis of a class of registered group members that was closed at an early stage of the proceeding some 18 to 24 months prior risks unjustly shutting out group members from an opportunity to participate in a settlement that may be reached on very different footing from a settlement that is reached at an early mediation.

Defendant's submission

20 The defendant submitted the following:

- (a) first, maintaining a registered set of group members who may participate in a settlement through the soft class closure to trial enhances the prospect of finality for group members and the defendant by settlement. This factor is particularly pertinent in the present case, in circumstances where the parties have agreed to participate in an early mediation of the proceeding, and, if unsuccessful, it can reasonably be anticipated that a further mediation may be ordered after evidence and before trial. The defendant's proposal will avoid dispute about likely participation rates in the course of settlement discussions;
- (b) second, consistent with s 49 of the *Civil Procedure Act*, enabling soft class closure to trial is a cost effective measure which avoids the risks of inefficiencies in the event that settlement is not reached after a first mediation. The risk of a further notice needing to be sent to group members is a real one. Multiple communications with group members is inefficient and undesirable, because it is apt to confuse group members, and because it is productive of unnecessary costs;
- (c) third, the plaintiffs' proposal generates greater uncertainty for the defendant and group members as to the identity of individual group members who wish to participate in any settlement. That is because it leaves open the prospect of

a further soft class closure process in the event that any proposed settlement is not finalised within three months following a first mediation;

- (d) fourth, there is no prejudice to the group members with the defendant's proposal. They will be given notice of the proposed soft class closure orders. In this context, there is no basis for the plaintiffs to contend that group members who wish to participate in the settlement are not likely to be captured by a single notice process. It is not apparent that there would be any disadvantage to group members which necessitates leaving open the prospect of a further class closure process, by contrast to the inefficiency and disadvantage that process would entail;
- (e) fifth, if any real prejudice to group members was established to arise with the length of the defendant's proposed class closure period in the future (by reason of any change to the group definition or otherwise), the form of order proposed by the parties remains 'subject to any further order of the Court' and could be revisited at such a time;
- (f) sixth, insofar as the plaintiffs contend that the defendant's proposed class closure period will provide the defendant with 'no incentive to continue settlement discussions until the plaintiffs have incurred the cost of expert and other evidence', that argument should not be accepted. There is no reason to infer that the defendant's proposed class closure period will disincentivise it from participating in settlement discussions in good faith, and continuing to engage in settlement discussions. To the contrary, the defendant's position is that a longer class closure period will facilitate ongoing settlement discussions after the first Mediation and avoid a scenario where ongoing discussions may be stymied by the uncertainty of participation rates;

- (g) finally, the order sought by the defendant is consistent with recent orders of this Court in the proceeding known as the Crown Resorts Shareholder Group Proceeding⁹ and in *Anderson-Vaughan v AAI Limited (No 2)* [2024] VSC 65.

Analysis

- 21 I consider it appropriate and necessary to ensure that justice is done in this proceeding to make an order for a soft class closure to take place from the time after the Class Deadline to three months after the first day of mediation. The mediation will be no later than 31 March 2025. This is in the interest of group members as a whole.
- 22 First, this proceeding is at a relatively early stage. It was commenced on 28 March 2023. On 6 September 2023, the proceeding was consolidated with another proceeding. Pleadings closed at the end of last year. There is a consolidated statement of claim, a defence and a reply. On 6 February 2024, the Court made a group costs order. There still remain substantial areas of dispute concerning the defendant's discovery. No orders have been made for evidence. The plaintiffs and defendant confirmed that they are likely to call expert evidence at the trial. The matter has not been set down for trial. The parties also confirmed that it is likely that the trial will not be set down for hearing until 2026 (at the earliest). I agree. In those circumstances, it is likely that the views of group members concerning the proceeding will evolve and possibly materially change over time. The defendant submitted that if the matter does not settle at the mediation then it can be reasonably anticipated that a further mediation may be ordered after evidence and before trial. As a result, group members who decide not to register by 1 November 2024 (i.e. the Class Deadline) may change their minds and wish to be entitled to obtain any benefit pursuant to any settlement that occurs more than three months after the first day of the Mediation (e.g. shortly prior to trial). The defendant's proposal would mean that those persons could not obtain any benefit pursuant to a settlement resulting from this further mediation. This is a

⁹ *Lieberman v Crown Resorts Ltd* (Supreme Court of Victoria, S ECI 2020 04566, commenced 11 December 2020) (*Lieberman*).

potential prejudice. As a result, I do not accept the defendant's submission that there is no prejudice to the group members with the defendant's proposal.

23 Second, it more likely that the plaintiffs' proposal will facilitate a settlement at the mediation (to be held no later than 31 March 2025) as it may focus the attention of the parties on the desirability of settling the proceedings at that mediation. The soft class closure order will provide the parties with certainty for the mediation and there are arguably increased incentives for the parties to reach settlement at that mediation given the temporal limits of the operation of the soft class closure order the Court will make.¹⁰

24 Third, the soft class closure order is being sought in circumstances where the parties have agreed to attend an early mediation. The parties are commended on their agreement to this course. It is not appropriate or necessary, however, in order to facilitate that mediation, to exclude group members from being entitled to obtain any benefit pursuant to any settlement that may occur much later and possibly shortly prior to a trial in 18 to 24 months time.

25 Fourth, I accept that there is a possibility that the proceedings will not settle at the mediation to be no later than 31 March 2025 or within three months after the first day of the mediation and that there may be subsequent settlement discussions and also a further mediation at a later date. In those circumstances, I accept that there may be uncertainty as to the identity of the group members who wish to participate in any settlement once the soft class closure period expires. The parties would, however, at least, have the information obtained as a result of the registration from the initial soft closure order. The Court also has the power to make a further soft class closure order to facilitate any subsequent settlement negotiations and mediation if the Court considers that it was appropriate or necessary to do so to ensure that justice is done in this proceeding. This would also mean:

¹⁰ See Damian Grave, Ken Adams, and Jason Betts, *Class Actions in Australia* (Thomson Reuters (Professional) Australia Limited, 3rd ed, 2022) 855-6.

- (a) disputes as to the likely participation rate for group members would not arise in those subsequent settlement negotiations and mediation;
- (b) the subsequent settlement negotiations and mediation would not, in effect, as submitted by the defendant, be stymied by the uncertainty of participation rates.

26 I accept that the defendant's proposal maximises the certainty as to the identity of the group members who wish to be entitled to obtain any benefit pursuant to any settlement prior to trial.

27 Fifth, I accept that if the Court considered it appropriate or necessary to make a further soft class closure order, then this would require a further notice to group members and also further costs and expense would be incurred. I do not accept, as submitted by the defendant, that multiple communications with group members concerning a soft class closure order is apt to confuse group members. Any further notice will be settled by the Court and would make it plain what group members have to do to be entitled to obtain any benefit pursuant to any settlement. The cost and expense of giving such notice is not significant in the context of the claims made in this proceeding. I do not consider, in the circumstances of this case, that the prospect of a further notice and the cost and expense of this further notice are significant factors that weigh in favour of the defendant's proposal.

28 Sixth, I accept that any soft class closure order would be made subject to further order.

I accept that this does provide some form of 'safety valve'. As Nichols J in *Fox* said:¹¹

If in the future any group member can show that, contrary to my expectations, their rights were in fact unfairly prejudiced, they will be at liberty to apply to be admitted back into the class from which they were excluded. The orders that I will make will include that 'safety valve'.

29 Justice Wigney in *Bradgate (Trustee) v Ashley Services Group Ltd*¹² also observed:¹³

Fifth, Ashley's submissions that group members who do not register at this early stage could nonetheless approach the Court for leave to participate in any

¹¹ *Fox* (n 1), [112].

¹² [2017] FCA 1591.

¹³ *Ibid*, [33].

future settlement, or that the Court could vary or discharge the class closure order to permit an unregistered group member or members to participate in any future settlement, have little merit. It is true that both those things could occur. **An unregistered group member in those circumstances, however, would most likely bear the burden or onus of demonstrating why, not having taken the active step of registering, they should be permitted to share in the settlement, or why the Court should make some other order in their case. Depending on the particular circumstances, that might be a very difficult burden to discharge.** To use the fact that an unregistered group member might make such an application to support the making of a class closure order in the first place would tend to shift or invert what the 'opt out' scheme of representative proceedings in the Federal Court Act plainly envisages as the passive involvement of group members, to a scheme which requires group members who do not take any active step to persuade the Court why they should nevertheless be permitted to participate in the proceeding.

- 30 The defendant submitted that if any real prejudice to group members was established to arise with the length of the defendant's proposed class closure period in the future, such as by change to the group member definition, then the order could be revisited at such a time. This highlights, in my view, the limited operation of the 'safety valve'.
- 31 Seventh, both parties relied upon decisions in other cases concerning the terms of soft class closure periods. In my view, the soft class closure periods ordered in other cases are not persuasive of what the Court should do in this case. The determination of what soft class closure period should be ordered is an exercise of discretion that must take into account the specific circumstances of the case before the Court. For example, the defendant relied upon the soft class closure order made by Nichols J in the group proceeding referred to as the Crown Resorts Shareholder Group Proceeding.¹⁴ In that case, her Honour made, inter alia, a soft class closure order on 7 June 2024 that extended to the commencement of the trial in circumstances in which the trial was scheduled to commence on a date not before 7 April 2026. The dispute concerning the soft class closure order between the parties in that case was confined. The plaintiff sought a soft class closure period that expired no later than 8 weeks before the commencement of trial whereas the defendant sought a soft class closure period that continued up to the commencement of the trial.

¹⁴ *Lieberman* (n 9).

32 Eighth, in the absence of an early mediation or any settlement negotiations, the Court would not have made the soft class closure order. This is because it would have not been appropriate or necessary to do so to ensure that justice is done in this proceeding.

33 As a result, I will exercise my discretion to order that the soft class closure period end three months after the first day of the mediation. As a result, I will make the soft class closure order by adopting the plaintiffs' proposal that the period should be 'at any time between the date of these orders and three months after the first day of mediation'.

SHOULD MEDIBANK PRODUCE THE NOTICES FROM THE COMMISSIONER TO THE PLAINTIFFS?

34 I have already referred in this ruling to the precise terms of the order sought by the plaintiffs against the defendant.

Relevant law

35 I have already set out s 33ZF of the *Supreme Court Act*. Section 48(1) of the *Civil Procedure Act* provides:¹⁵

Court's power to order and direct pre-trial procedures

- (1) In addition to any other power a court may have, a court may make any order or give any direction it considers appropriate to further the overarching purpose in relation to pre-trial procedures.

36 Rule 34.01 of the *Supreme Court (General Civil Procedure) Rules 2015 (Vic)* (the **Rules**) provides:

Powers of Court

- (1) At any stage of a proceeding, the Court may give any direction for the conduct of the proceeding which it thinks conducive to its effective, complete, prompt and economical determination.
- (2) A party may apply for directions on the hearing either of a summons filed for the purpose or of a summons for other relief.
- (3) The Court may, of its own motion, convene a directions hearing at any time.

¹⁵ See also s 55(1) of the *Civil Procedure Act*.

Background

37 The plaintiffs' application concerns notices issued by the Commissioner to the defendant under s 44 of the *Privacy Act 1988* (Cth) (*Privacy Act*). Section 44(1) provides:

Power to obtain information and documents

- (1) If the Commissioner has reason to believe that a person has information or a document relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person:
 - (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
 - (b) to produce the document to the Commissioner.

38 On 7 September 2023, Beach J in *McClure v Medibank Private Limited*¹⁶ (the **McClure Proceeding**) ordered the defendant to discover and produce to the applicants, inter alia, the following documents:

...the notices issued by the Office of the Australian Information Commissioner (OAIC) to the respondent under section 44 of the *Privacy Act 1988* (Cth) in respect of the Commissioner's investigation into the 'cyber incident' (the subject of the respondent's announcement to the ASX on 13 October 2022) commenced on 1 December 2022 under section 40(2) of the *Privacy Act* (Notices)

39 In *Medibank Private Ltd v Australian Information Commissioner*¹⁷ (the **Medibank Proceeding**), Beach J referred to the McClure Proceeding as follows:¹⁸

The Federal Court representative proceeding, being a proceeding under Part IVA of the *Federal Court of Australia Act 1976* (Cth) (the FCA Act), was filed on 7 February 2023 and later consolidated with another proceeding. The present version of the consolidated statement of claim alleges, as it does in the OAIC representative complaint, that Medibank failed to comply with various Australian Privacy Principles (APPs); see ss 13, 14 and 15 of the Act and Schedule 1. There are also several other causes of action that have been raised in the Federal Court representative proceeding only.

¹⁶ *McClure v Medibank Private Ltd* (Federal Court of Australia, VID64/2023, commenced 6 February 2023).

¹⁷ *Medibank Private Ltd v Australian Information Commissioner and Anor* [2024] FCA 117.

¹⁸ *Ibid* [4].

40 In the Medibank Proceeding, Beach J set out the circumstances concerning the notices given by the Commissioner to the defendant:¹⁹

24 Since 1 December 2022 and concerning the AIC [Australian Information Commissioner] own initiative investigation into the data breach, over 170,000 documents have been obtained pursuant to various compulsory notices issued under s 44 of the Act. Many of those documents have been reviewed. The AIC has also conducted various statutory examinations of many individuals.

25 Further, on 24 November 2023, the AIC served an additional notice on Medibank pursuant to s 44. The November notice included 32 items of documents to be produced in three tranches.

...

105 First, the notice of investigation issued by the AIC in respect of the AIC own initiative investigation stated that the AIC investigation will focus on the acts or practices of Medibank in relation to the data breach, and whether they constitute an interference with privacy or a breach of the APPs, and whether Medibank complied with APPs 1.2, 11.1 and 11.2. The notice also stated that that investigation may result in a determination under s 52(1A).

41 In the present case, the plaintiffs make allegations concerning the Australian Privacy Principles 1.2, 11.1 and 11.2. I refer to the consolidated statement of claim at, for example, Pt B3 (e.g. paras 32, 34 and 35, and also paras 124, 125, 131 and 141).

Plaintiffs' submission

42 The gist of the plaintiffs' submission is that the notices are sought because they are likely to provide insight into the repositories of documents held by the defendant and may significantly assist the plaintiffs in formulating requests and narrowing disputes about the remaining discovery categories. They submitted that production of the notices would be consistent with the overarching purpose by facilitating efficient and timely resolution of a dispute about discovery categories. They did not submit that the documents were discoverable by the defendant. The plaintiffs submitted the following:

- (a) first, the plaintiffs seek production of these notices to narrow the dispute about framing the categories of documents to be discovered by the defendant;

¹⁹ Ibid [24]-[25], [105].

- (b) second, the notices were required to be produced by the applicants in the McClure Proceeding pursuant to the orders made by Beach J;
- (c) third, the Court has power to direct a party to produce documents which will assist the efficacious discovery process;
- (d) fourth, production of notices will enable the plaintiffs to understand what documents the defendant has produced to the Commissioner, which may be convenient repositories from which discovery in these proceedings can be made. Identification of those repositories may assist in drawing further categories and in the parties reaching agreement as to the reasonable searches that should be made in respect of the categories currently under consideration.

Defendant's submission

43 The defendant submitted that the plaintiffs' reliance on the order made in the McClure Proceeding to produce notices issued by the Commissioner is flawed. In support, the defendant submitted the following:

- (a) first, the order made in the McClure Proceeding was made in circumstances where the defendant had filed an application seeking to resolve the multiplicity of proceedings as between the McClure Proceeding and a representative complaint and own motion investigation before the Commissioner under the *Privacy Act*. While the defendant's application to restrain the Commissioner from making, and enforcing a determination under the *Privacy Act* was subsequently unsuccessful, the Court accepted that there was an overlap between those proceedings. By contrast, this proceeding has a group membership limited to shareholders and persons who entered into equity swap confirmations and does not require the Court to determine whether there has been a breach of any Australian Privacy Principle which warrants compensation or an injunction;
- (b) second, the plaintiffs have conceded that the notices issued by the Commissioner do not fall within the scope of discovery and instead rely on

s 33ZF of the *Supreme Court Act*, provisions of the *Civil Procedure Act* and/or r 34.01 of the Rules, which is misconceived. It submitted that s 33ZF cannot be relied upon to do work beyond that done by the specific provisions of Pt 4A which the text and structure of the legislation show it was intended to supplement. As for the *Civil Procedure Act* and the Rules, production of the notices would not facilitate the overarching purpose including in circumstances where the defendant has already produced 51 documents pursuant to s 26 of the *Civil Procedure Act* and the parties are conducting discovery by categories formulated by reference to the issues in dispute in this proceeding;

- (c) third, the plaintiffs' assertion that the defendant has arguably acted inconsistently with its obligations to disclose documents which are critical to the resolution of the dispute under the *Civil Procedure Act* must be rejected.

Analysis

44 I am not satisfied that the production of the documents will likely assist an efficacious discovery process.

45 First, the plaintiffs submitted that their application for the production of notices was not an application for discovery. They submitted that the notices should be produced to, in effect, assist them in the discovery process (e.g. in formulating categories of documents to be discovered by the defendant).

46 Second, the plaintiffs are presently in a position to formulate requests for discovery by the defendant. This is because:

- (a) there are detailed pleadings. The issues in dispute are identified;
- (b) there is no evidence that the plaintiffs are, presently, experiencing any difficulties in formulating the categories. I refer to the plaintiffs' further submissions at paragraph 11 which sets out the information that the plaintiffs have used to draw the present categories. The plaintiffs' ability to draw the

categories was also confirmed by senior counsel for the plaintiffs at the hearing;
and

- (c) if the plaintiffs do experience such difficulties, then they also may engage a person with the experience or expertise to assist them (i.e. someone who is familiar with large corporate repositories).

47 Third, I am not satisfied that the production of the notices is likely to assist in an efficacious discovery process. I am concerned that the production of the notices, and their intended use by the plaintiffs, may in fact result in a more inefficient and drawn-out discovery process. This is because the plaintiffs intend to further formulate the categories by reference to a matter presently extraneous to this proceeding, namely the notices. There is a real risk that if production is ordered that the parties will be in dispute as to the relevance of categories in the notice rather than focusing on the real issues in dispute in this proceeding. This may further delay the discovery process. The investigation by the Commissioner concerns the acts or practices of the defendant in relation to the data breach, and whether they constitute an interference with privacy or a breach of the Australian Privacy Principles, and whether the defendant complied with certain Australian Privacy Principles. It is self-evident that the Commissioner has prepared the notices to advance the Commissioner's investigation and that there may be differences in what the Commissioner is seeking to achieve by issuing the notices and what are the real issues in dispute in this proceeding.

48 As a result, I will not order the defendant to produce the notices.

CONCLUSION

49 I will make orders in the form attached to this ruling.

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST**

S ECI 2023 01227

BETWEEN:

ROBERT LAIRD KILAH

First Plaintiff

BRENDAN FRANCIS SINNAMON

Second Plaintiff

- and -

MEDIBANK PRIVATE LTD (ACN 080 890 259)

Defendant

ORDER

JUDGE OF THE COURT: The Honourable Justice Attiwill

DATE MADE:

ORIGINATING PROCESS: Writ filed 28 March 2023

HOW OBTAINED: At the case management conference on 23 August 2024 and upon further email correspondence between the parties and the Court

ATTENDANCE: Mr A Hochroth with Ms R V Howe, counsel, for the plaintiffs
Mr N P De Young with Ms J A Findlay and Ms A Martyn, counsel, for the defendant

OTHER MATTERS: A. This order is signed by the Judge pursuant to r 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*.

THE COURT ORDERS THAT:

Class deadline

1. The time and date by which a group member may opt out of the proceeding pursuant to s 33J(1) of the *Supreme Court Act 1986* (Vic) (the **Act**) is fixed as **4:00pm (AEDT) on 1 November 2024 (Class Deadline)**.

Notice

2. The terms of the commencement, opt out and claim registration notice set out at:

- (a) Annexure A (**Notice**);
- (b) Annexure B (**Abridged Notice**); and
- (c) Annexure C (**Covering Email**),

to these orders are approved, pursuant to ss 33X(1)(a), 33X(5) and 33Y of the Act.

3. Pursuant to s 33Y of the Act, the Notice be given to group members between **5 September 2024 and 10 September 2024**, according to the following procedure:

- (a) By **4:00pm on 3 September 2024**, the parties are to jointly engage Computershare Communication Services Pty Ltd (**Computershare**) to act as the agent in respect of the distribution of the Notice and are to send Computershare a copy of this order;
- (b) By **4:00pm on 3 September 2024**, the defendant is to instruct Computershare to prepare a list of contact details (including the last known postal address and/or email address) of all persons who acquired shares in the defendant (**Medibank Shares**) during the period 1 July 2019 to 25 October 2022 (inclusive), including those security holders whose qualifying transactions were recorded on the register within the two-day settlement window following 25 October 2022 (**Confidential List of Shareholders**).
- (c) The defendant shall instruct Computershare to, by **4:00pm on 4 September 2024**, provide the parties with:
 - (i) the Confidential List of Shareholders identifying:
 - (A) the total number of persons who comprise the Confidential List of Shareholders;
 - (B) the total number of persons who have an email address recorded on the Confidential List of Shareholders;
 - (C) the total number of persons who only have a postal address recorded on the Confidential List of Shareholders; and
 - (ii) an itemised estimate of Computershare's costs to distribute the Notice in accordance with the instructions in this order.
- (d) The defendant shall instruct Computershare to, between **5 September 2024 and 10 September 2024**:
 - (i) cause the Covering Email and Notice to be sent by email during business hours to any person on the Confidential List of Shareholders in respect of whom there is an email address recorded;
 - (ii) if no email address is recorded on the Confidential List of Shareholders, cause the Notice to be sent by prepaid ordinary post to the address recorded

for the person on the Confidential List of Shareholders.

- (e) The defendant shall instruct Computershare to:
 - (i) where Computershare receives an email delivery failure notification, attempt a second delivery to the intended email recipient during business hours within five business days of becoming aware of such a delivery failure (**second email notification**);
 - (ii) if Computershare receives further email delivery failure notifications to the second email notification, provide a report to the parties, between six and seven business days of sending all Covering Emails and Notices out pursuant to the instructions set out in paragraph 3(d)(i) of this order, setting out:
 - (A) the number of delivery failure notifications received to the second email notification (i.e., the recipients for whom there is a ‘bounce-back’ notification);
 - (B) of the group members for whom delivery failure notifications were received, the number of group members for whom Computershare holds an address located (a) in Australia, and (b) overseas;
 - (C) an itemised estimate of Computershare’s costs for the postal distribution of the Notice to the addresses identified in accordance with paragraph 3(e)(ii)(B) of this order;
 - (iii) cause the Notice to be sent by prepaid ordinary post to the relevant person at the address recorded for that person on the Confidential List of Shareholders within seven business days of providing the report at paragraph 3(e)(ii) of this order;
 - (iv) notify the parties within two business days of becoming aware that its costs of postal distribution of the Notice are likely to exceed its estimate under paragraph 3(e)(ii)(C) of this order by more than 10%.
- (f) The subject line of any email sent in accordance with paragraphs 3(d)(i) or 3(e)(i) of this order shall be: “Important Class Action Court Notice – Kilah & Anor v Medibank Private Limited S ECI 2023 01227”.
- (g) The plaintiffs are to cause, between **5 September 2024 and 10 September 2024**, the Abridged Notice to be published once in each of the following newspapers:
 - (i) the Australian; and
 - (ii) the Australian Financial Review.
- (h) Between **5 September 2024 and 10 September 2024**, the plaintiffs shall cause

a copy of the Notice to be sent by email during business hours to each group member who has, at the date of this order, identified themselves to Quinn Emanuel Urquhart & Sullivan and/or Phi Finney McDonald (**Plaintiffs' Lawyers**) and for whom the Plaintiffs' Lawyers have a current email address.

- (i) By **5 September 2024**, the Commercial Court Registry of the Supreme Court of Victoria shall cause the Notice to be displayed on the website of the Supreme Court of Victoria (and to remain continuously so displayed up to and including the conclusion of the proceeding) and made available for inspection at the Commercial Court Registry of the Supreme Court of Victoria (and to remain continuously so available up to and including the conclusion of the proceeding).
 - (j) By **5 September 2024**, the plaintiffs shall cause a copy of the Notice and this order to be displayed on the websites of the Plaintiffs' Lawyers at <https://mplshareholderclassaction.com.au/> and <https://phifinney-mcdonald.com/action/medibank-shareholder-class-action/>, and to remain continuously so displayed up to and including the conclusion of the proceeding.
 - (k) The Notice, Abridged Notice and Covering Email may be amended by agreement between the parties by **4:00pm on 3 September 2024** in order to correct any typographical error, or any postal, website or email address or telephone number.
 - (l) If the Notice is amended in accordance with paragraph 3(k) of this order, the Plaintiffs' Lawyers shall forthwith provide a copy of the amended Notice to the Commercial Court Registry of the Supreme Court of Victoria by **4:00pm on 3 September 2024**.
4. The costs of distributing the Notice, the Abridged Notice and Covering Email (including any disbursements incurred) in accordance with paragraph 3 of this order is paid by the plaintiffs in the first instance, but on the basis that those costs will subsequently be costs in the proceeding.
 5. The defendant shall instruct Computershare to, by **24 September 2024**, provide the parties with a report containing the following information:
 - (a) the total number of emails sent to persons in the Confidential List of Shareholders;
 - (b) the number of emails marked delivered to the recipient;
 - (c) the number of emails marked undelivered (i.e., the recipients for whom there is a 'bounce-back' notification);
 - (d) the number of notices sent by post; and
 - (e) the number of postal notices returned undelivered.

Opt Out

6. Pursuant to s 33J(2) of the Act, any group member who wishes to opt out of this proceeding must, before the Class Deadline:
 - (a) submit a completed 'Opt Out Notice' in the form of Schedule 2 to the Notice (**Opt Out Form**) to the Commercial Court Registry of the Supreme Court of Victoria by email or post; or
 - (b) complete and submit the **Online Opt Out** through the Supreme Court of Victoria website at: <https://www.supremecourt.vic.gov.au/areas/group-proceedings/medibank-private/opting-out>.
7. Each group member who wishes to opt out of the group proceeding in accordance with paragraph 6 of this order must complete the Opt Out Form or Online Opt Out either:
 - (a) by personally signing or personally affixing their electronic signature;
 - (b) in the case of a corporation who is a group member, by a director of the corporation personally signing or personally affixing their electronic signature;
 - (c) by the group member's solicitor personally authorised to act on behalf of the group member personally signing or personally affixing their electronic signature as that group member's solicitor;
 - (d) in the case of an executor of an estate which is a group member, by the executor personally signing or personally affixing their electronic signature; or
 - (e) in the case of a person holding a power of attorney for a group member, by the attorney personally signing or personally affixing their electronic signature.
8. If, on or before the Class Deadline, the solicitors for any party or the defendant receive a notice purporting to be an Opt Out Form referable to this proceeding, they shall forthwith provide the notice to the Commercial Court Registry of the Supreme Court of Victoria within seven days of receipt of the notice with a notation specifying the date it was received and the notice is to be treated as an Opt Out Form received by the Court at the time it was received by the solicitors or the defendant, as relevant.
9. The defendant is to instruct Computershare to, if, on or before the Class Deadline, it receives a notice purporting to be an Opt Out Form referable to this proceeding, forthwith provide the notice to the Commercial Court Registry of the Supreme Court of Victoria within seven days of receipt of the notice with a notation specifying the date it was received and the notice is to be treated as an Opt Out Form received by the Court at the time it was received by Computershare.
10. The solicitors for the parties have leave to inspect the Court file and to copy any Opt Out Form(s) filed by group members.

Claim Registration

11. Pursuant to ss 33ZF and 33ZG of the Act, any group member who wishes to obtain any benefit arising from any settlement of the proceeding (subject to Court approval) reached at any time between the date of these orders and three months after the first day of mediation must register their claim by the Class Deadline by completing and submitting a **Registration Form** hosted by the Plaintiffs' Lawyers at <https://phifinney-mcdonald.com/action/medibank-shareholder-class-action/> or by posting or emailing a Registration Form in the form of Schedule 1 to the Notice to medibankshareholders@phifinney-mcdonald.com, using their best endeavours to include the following information (as applicable):

- (a) the group member's name (or names in the case of joint security holders), telephone number and address and/or email address;
- (b) any relevant Holder Identification Number (**HIN**) or Security Reference Number (**SRN**) or equivalent reference number in respect of Medibank Shares or equity swap confirmations in respect of Medibank Shares (**Medibank Equity Swaps**);
- (c) the number of Medibank Shares held by the group member at the close of trade on 25 October 2022 (or, in the case of Medibank Equity Swaps, the number of Medibank Shares to which the equity swap relates);
- (d) details of the group member's acquisition(s) of an interest in Medibank Shares during the period 1 July 2019 to 25 October 2022 (inclusive), including the type of securities acquired (that is, Medibank Shares or Medibank Equity Swaps), date of acquisition(s), quantity acquired and the price at each acquisition;
- (e) details of the group member's sale(s) and/or disposal(s) of Medibank Shares during the period 1 July 2019 to 25 October 2022 (inclusive), including the type of securities sold/disposed, date of each sale(s)/disposal(s), quantity sold/disposed and the price at each sale/disposal;
- (f) whether the group member's interest in the Medibank Shares acquired is beneficially held and if not the identity of the person or entity on whose behalf the Medibank Shares were acquired (**Beneficial Owner**); and
- (g) in respect of Medibank Equity Swaps:
 - (i) copies of the instruments and documents for each equity swap and related transaction (including any back-to-back transaction);
 - (ii) details of all other arrangements entered into in connection with each equity swap; and

- (iii) details of any other trading in, or other transactions relating to, Medibank Shares that affect or may affect the calculation of loss under each equity swap.
12. A group member who registers pursuant to paragraph 11 of this order is a **Registered Group Member**. A group member is also deemed to be a Registered Group Member if, by the date of these orders, the group member has already registered their interest with the Plaintiffs' Lawyers in connection with this proceeding.
 13. Group members who are deemed to have registered by the operation of paragraph 12 of this order are required to submit to the Plaintiffs' Lawyers as soon as practicable, but in any event by no later than the Class Deadline, using their best endeavours and to the extent that they have not already done so, the same information as other group members are required to submit, using their best endeavours, pursuant to paragraph 11 above.
 14. For the avoidance of doubt, failure by a group member to provide all the information required in paragraph 11 above will not render the group member's registration invalid provided the group member is identifiable based on the information provided.
 15. Pursuant to ss 33ZF and 33ZG of the Act, and subject to any further order of the Court, any group member who by the Class Deadline does not register or opt out of the proceeding in accordance with these orders:
 - (a) will remain a group member in this proceeding for all purposes, including for the purpose of being bound by any judgment in this proceeding and being bound by the terms (including releases) of any approved settlement agreement in the proceeding; and
 - (b) shall not, without leave of the Court, be entitled to obtain any benefit pursuant to any settlement (subject to the approval of the Court) of this proceeding reached at any time between the date of these orders and three months after the first day of mediation.
 16. Any group member wishing to seek a variation of paragraphs 11 to 14 of this order must file with the Court or the Plaintiffs' Lawyers by no later than the Class Deadline written notice of the variation sought and a statement of the reasons for seeking the variation, and the Plaintiffs' Lawyers must forthwith notify the defendant and the Court of any notice they receive.
 17. By **4:00pm on 13 December 2024**, the plaintiffs must:
 - (a) deliver to the solicitors for the defendant, on a de-identified basis (anonymising identities and redacting information that would tend to identify the Registered

Group Member, any Beneficial Owner of the Medibank Shares and/or any MPL equity swap transaction counterparty), a list of the Registered Group Members, containing (if available):

- (i) a unique identification number for each Registered Group Member;
 - (ii) where a Registered Group Member has acquired an interest in Medibank Shares on behalf of a Beneficial Owner, a unique beneficial owner identification number for each Beneficial Owner;
 - (iii) the information listed in paragraph 11(b) to 11(g) of this order for each Registered Group Member; and
 - (iv) any amendments to the information as notified to the Plaintiffs' Lawyers by that date;
- (b) file confidentially on RedCrest a list of Registered Group Members which shall contain, if available:
- (i) a unique identification number for each Registered Group Member;
 - (ii) the information listed in paragraph 11 of this order for each Registered Group Member; and
 - (iii) any amendments to the information as notified to the Plaintiffs' Lawyers by that date.
18. The list of Registered Group Members provided to the defendant in accordance with paragraph 17(a) of this order, and any information contained therein, is to be kept confidential by the defendant to:
- (a) the defendant's legal advisers;
 - (b) those officers and employees of the defendant who have the conduct of this proceeding on behalf of the defendant;
 - (c) the defendant's insurers (and their legal advisers), if any; and
 - (d) experts retained by the defendant in the proceeding.

Mediation

19. The proceeding is referred to a mediator to be agreed between the parties, or in default of agreement by 1 November 2024 to be appointed by the Court, such mediation to be completed by **31 March 2025**.
20. Subject to the terms of this order, the Plaintiffs' Lawyers must, after consultation with all parties, deliver to the mediator a copy of this order, all pleadings (including requests for further and better particulars) and a copy of any other necessary information, and take all steps necessary to ensure that the mediation commences as soon as practicable.
21. The mediation be attended by those persons who have the ultimate responsibility for

deciding whether to settle the dispute and the terms of any settlement and the lawyers who have ultimate responsibility to advise the parties in relation to the dispute and its settlement.

22. By **7 April 2025**, the mediator report back to the Court whether the mediation is finished.
23. By **4:00pm on 24 March 2025**, the solicitors for the parties shall each individually prepare and give to their respective clients a memorandum setting out:
 - (a) the estimated total cost and disbursements incurred to date;
 - (b) the estimated total cost and disbursements from the date of the memorandum onwards until the completion of the trial, including the mediation; and
 - (c) the estimated total cost and disbursements payable to the other party if their clients are not successful at trial.

General

24. Costs reserved.
25. Liberty to apply.

DATE AUTHENTICATED:

ANNEXURE A – NOTICE

SUPREME COURT OF VICTORIA



NOTICE TO GROUP MEMBERS:

REGISTRATION & OPT OUT

NOTICE

MEDIBANK SHAREHOLDER CLASS ACTION

Robert Laird Kilah & Brendan Francis Sinnamon v Medibank Private Limited
(S ECI 2023 01227)

THIS NOTICE IS SENT BY ORDER OF THE SUPREME COURT OF VICTORIA.
IT IS IMPORTANT THAT YOU READ THIS NOTICE CAREFULLY BECAUSE IT MAY
AFFECT YOUR LEGAL RIGHTS.

THE CLASS DEADLINE IS 1 NOVEMBER 2024

SUMMARY

- A. This notice has been issued pursuant to an order of the Supreme Court of Victoria. It is about a class action called the Medibank Shareholder Class Action (**Medibank Class Action**).
- B. If you have been sent this notice, you may be a Group Member in the Medibank Class Action, if you acquired an interest in shares in Medibank Private Limited (ASX: MPL) (**Medibank**) or acquired long exposure to Medibank shares by entering into equity swap confirmations in respect of Medibank shares during the period 1 July 2019 to 25 October 2022 (inclusive).
- C. The claim arises from a cyber data breach in Medibank's information technology (IT) network, which resulted in substantial volumes of data, including the personal and health claims data of customers collected by Medibank, being accessed by one or more hackers. The stolen data was later released on the dark web. The Plaintiffs allege that Medibank failed to make disclosures to the market as to its cybersecurity and IT controls and/or misled the market through public statements it made regarding its cybersecurity and IT controls and its systems of risk oversight and management of its customers' personal and private information. Medibank denies these allegations and is defending the claims. Further details of the claims made in the proceeding can be found in section A below.
- D. If you wish to be eligible to take part in any settlement reached between the Plaintiffs and Medibank at an upcoming mediation, you must register your claim with the lawyers for the Plaintiffs by **4:00pm AEDT on 1 November 2024**. The Court has ordered that the parties attend a mediation by 31 March 2025. A mediation allows the parties to explore whether they can reach agreement about the outcome of the action (subject to Court approval).

YOUR OPTIONS

- E. Your options on how to respond to this notice are set out below. These three options are:
- (a) **OPTION 1: Register** → The deadline to register your claim is **4:00pm AEDT on 1 November 2024**. If you do not register by the deadline, you will remain a Group Member in the Medibank Class Action but, subject to further order of the Court, you will not be entitled to obtain any benefit pursuant to any settlement reached by the parties at any point up to three months after the first day of mediation. Registering your claim is cost free. At no stage will you be liable for any out of pocket costs by registering your claim. Click here to register <https://phifinney-mcdonald.com/action/medibank-shareholder-class-action/> or alternatively submit a Registration Form (found at Schedule 1 of this Notice) by email to medibankshareholders@phifinney-mcdonald.com or by post to Phi

Finney McDonald, Level 3, 325 Flinders Lane, Melbourne VIC 3000.

- (b) **OPTION 2: Opt Out** → If you no longer wish to be a Group Member of the Medibank Class Action, you can opt out of the class action. The deadline to opt out is **4:00pm AEDT on 1 November 2024**. The Online Opt Out form is available to complete online at <https://www.supremecourt.vic.gov.au/areas/group-proceedings/medibank-private/opting-out> or you can email or post an Opt Out Form (found at Schedule 2 of this Notice) to the Commercial Court Registry of the Supreme Court of Victoria.
- (c) **OPTION 3: Do nothing** → If you do nothing in response to this Notice you will remain a Group Member of the Medibank Class Action but, subject to any further order of the Court, you will not be entitled to obtain any benefit pursuant to any settlement reached at any point up until three months after the first day of mediation.

If you have any questions, you should contact the lawyers conducting the Medibank Class Action whose contact details are set out below or alternatively, obtain your own legal advice.

A. WHAT IS THE CLASS ACTION ABOUT?

1. The Plaintiffs, Mr Robert Kilah and Dr Brendan Sinnamon, have commenced a class action on behalf of themselves and all shareholders who acquired an interest in Medibank shares or acquired long exposure to Medibank shares by entering into equity swap confirmations in respect of Medibank shares during the period 1 July 2019 to 25 October 2022 (inclusive) (**Claim Period**).
2. The Plaintiffs' claims relate to a series of announcements made by Medibank from October 2022 about a major cyber incident in its network that resulted in a data breach of customer information.
3. In broad terms, the Plaintiffs allege that during the Claim Period, Medibank:
 - (a) failed to comply with its continuous disclosure obligations as an ASX-listed company to disclose information to investors about the adequacy of privacy and information security controls; and
 - (b) breached relevant provisions of the *Corporations Act 2001* (Cth), the *Australian Securities and Investment Commission Act 2001* (Cth) and the *Competition and Consumer Act 2010* (Cth) by making misleading or deceptive representations to the market about the adequacy of its privacy and information security controls(**Medibank's alleged misconduct**).

4. The Plaintiffs allege that, by reason of Medibank's alleged misconduct, the price of Medibank shares was inflated throughout the Claim Period, and the Plaintiffs and Group Members suffered loss and damage following Medibank's announcements about the 2022 cyber incident to the market.
5. Medibank denies the allegations and is defending the Medibank Class Action.
6. The Court has ordered there be a mediation by no later than 31 March 2025.

B. ARE YOU A GROUP MEMBER IN THE MEDIBANK CLASS ACTION?

If you received this notice, it is because Medibank's shareholder records, obtained from the Share Registry, indicate that you meet the criteria below and may be a Group Member.

7. You are a Group Member if you meet the following criteria:
 - (a) If, during the Claim Period (1 July 2019 to 25 October 2022 (inclusive)), you:
 - (i) acquired an interest in, or entered into a contract to acquire an interest in, ordinary shares in Medibank (**MPL Shares**); and/or
 - (ii) acquired long exposure to MPL Shares by entering into equity swap confirmations in respect of MPL Shares (**MPL Equity Swaps**);
 - (b) if you have suffered loss or damage by, because of or resulting from the alleged misconduct of Medibank as pleaded in the Consolidated Statement of Claim; and
 - (c) if you were not, during the Claim Period, and are not as at 3 October 2023, any of the following:
 - (i) any of the persons referred to in s 33E(2) of the *Supreme Court Act 1986* (Vic);
 - (ii) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth)) of Medibank;
 - (iii) a related body corporate (as defined in s 50 of the *Corporations Act*) of Medibank;
 - (iv) an associated entity (as defined in s 50AAA of the *Corporations Act*) of Medibank;
 - (v) an officer or close associate (as defined in s 9 of the *Corporations Act*) of Medibank;
 - (vi) an officer or employee of, or other legal practitioner engaged by, the solicitors for the plaintiffs in relation to this proceeding.

8. The full Group Member definition appears at paragraph 1 of the Plaintiffs' Consolidated Statement of Claim, a copy of which is available at <https://www.supremecourt.vic.gov.au/areas/group-proceedings/medibank-private>.
9. If you meet the above criteria, you are a Group Member in the Medibank Class Action and you should read this Notice carefully as it will affect your rights.

C. OPTIONS
OPTION 1 – REGISTER

10. If you wish to obtain any benefit pursuant to any settlement reached by the parties at any point up until three months after the first day of mediation, you must register your claim.
11. It is free to register. You will not be liable for any upfront or “out of pocket” costs by registering your claim.
12. To register, you must complete and submit a Registration Form by **4.00pm AEDT on 1 November 2024**.
13. The Registration Form is available to complete online at <https://phifinney-mcdonald.com/action/medibank-shareholder-class-action/> or by submitting a Group Member Registration Form found at **Schedule 1** of this Notice by email to medibankshareholders@phifinney-mcdonald.com or by post to Phi Finney McDonald, Level 3, 325 Flinders Lane, Melbourne VIC 3000.
14. If you have previously registered your interest in the Medibank Class Action with Phi Finney McDonald (**PFM**) and Quinn Emanuel Urquhart & Sullivan (**Quinn Emanuel**) (collectively, the **Plaintiffs' Lawyers**), you do not need to register again, but you may be contacted by a representative of the Plaintiffs' Lawyers to ensure that you have provided all the information that is necessary in order to complete your registration.
15. If you do not register by the deadline of **4.00pm AEDT on 1 November 2024** and a settlement is reached between the Plaintiffs and Medibank at any point up until three months after the first day of mediation, you will remain a Group Member but you will not be entitled to obtain any benefit pursuant to the settlement, even if you would otherwise have had an eligible claim, subject to further order of the Court.

OPTION 2 – OPT OUT AND CEASE TO BE A GROUP MEMBER

16. If you do not want to remain a Group Member in the Medibank Class Action, you must opt out by **4.00pm AEDT on 1 November 2024**.
17. If you wish to opt out, you can do so by:
 - (a) completing and submitting an “Online Opt Out” through the Supreme Court of Victoria website at: <https://www.supremecourt.vic.gov.au/areas/group-proceedings/medibank-private/opting-out>; or
 - (b) completing an Opt Out Form found at **Schedule 2** of this Notice and returning a copy of the completed notice to the Commercial Court Registry of the Supreme Court of Victoria:
 - (i) by post to:
Commercial Court Registry
Supreme Court of Victoria
210 William Street
Melbourne, Victoria 3000
 - or,
 - (ii) by email at medibankclassaction@supcourt.vic.gov.au
18. If you wish your opt out to be valid and effective, you must complete the Opt Out Form or the Online Opt Out either:
 - (a) by personally signing or personally affixing your electronic signature;
 - (b) in the case of a corporation who is a group member, by a director of the corporation personally signing or personally affixing their electronic signature;
 - (c) by your solicitor personally authorised to act on your behalf personally signing or personally affixing their electronic signature as your solicitor;
 - (d) in the case of an estate of a group member who is now deceased, by the executor personally signing or personally affixing their electronic signature; or
 - (e) in the case of a person holding a power of attorney for you, by the attorney personally signing or personally affixing their electronic signature and details of the power of attorney.
19. If you opt out of the Medibank Class Action:
 - (a) you will not be bound by any order, judgment, or settlement in the Medibank Class Action;
 - (b) you will not be entitled to share in the benefit of any order, judgment, or settlement in the Medibank Class Action; and
 - (c) you may be able to commence separate proceedings against Medibank on your own behalf to claim compensation outside of the Medibank Class Action provided you issue those proceedings within the time limit applicable to your claim.

20. If you are unsure on how opting out will affect your rights, you should seek independent legal advice about your claim and the applicable time limit prior to opting out.
21. Each Group Member seeking to opt out should fill out a separate Opt Out Form or Online Opt Out.
22. Opt Out Forms or Online Opt Outs received after **4.00pm AEDT on 1 November 2024** will not be accepted without leave of the Court and you will be treated as having not responded to this Notice.

OPTION 3 – DO NOTHING IN RESPONSE TO THIS NOTICE

23. If you do nothing in response to this Notice (i.e. neither register, nor opt out), you will remain a Group Member in the Medibank Class Action.
24. The practical implications of doing nothing in response to this Notice are that:
 - (a) If a settlement is reached between the Plaintiffs and Medibank at any point up until three months after the first day of mediation and the settlement is approved by the Court, you will not be entitled to obtain any benefit pursuant to any settlement, without leave of the Court. You will, however, be bound by the settlement, including any terms releasing Medibank in respect of matters related or similar to the claims the subject of the Medibank Class Action (despite not being eligible to seek any benefit). This means that your right to bring your own claim against Medibank for matters related or similar to the claims that are the subject of the Medibank Class Action will be extinguished.
 - (b) If no settlement is reached between the Plaintiffs and Medibank before trial, you will be bound by the final judgment, and you will be entitled to obtain compensation and/or damages (if you satisfy the eligibility criteria set down by the Court) in the event that the Court finds in favour of the Plaintiffs and Group Members. If the Medibank Class Action is unsuccessful, or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceedings.

D. FUNDING OF THE MEDIBANK CLASS ACTION

25. The Court has made a Group Costs Order in the Medibank Class Action at a rate of 27.5% inclusive of GST, subject to further order.
26. Quinn Emanuel and PFM are financing the plaintiffs' legal costs in the Medibank Class Action.
27. A Group Costs Order is an order of the Court permitting the legal costs payable

to the Plaintiffs' Lawyers to be calculated as a percentage of the amount of any award or settlement sum if the Medibank Class Action is successful – that is, if money is paid by Medibank to resolve the claims of the Plaintiffs and Group Members in the case. This can happen: (a) if the Plaintiffs and Medibank settle the case in principle at mediation and the Court approves the settlement, or (b) through a judgment after the case is heard by the Court in a trial, or otherwise.

28. If the Medibank Class Action is successful:

- (a) The Plaintiffs' Lawyers will be paid 27.5% (inclusive of GST), subject to any further order, as legal costs of the amount of any award of damages or any settlement sum approved by the Court, prior to those damages or that settlement sum being distributed to Group Members.
- (b) The Court will assess whether the costs proposed to be deducted from any settlement sum are fair and reasonable. You will be given a notice at that time informing you of the amount which is proposed to be deducted and given an opportunity to tell the Court if you agree or disagree with what is proposed.

29. If the Medibank Class Action is unsuccessful:

- (a) Group Members will not pay any costs.
- (b) An adverse costs order will not be made against you as a Group Member. In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party. In class actions, only the plaintiff faces the risk of an adverse costs order if the action fails. The effect of the Group Costs Order is that, if the Medibank Class Action is unsuccessful, the Plaintiffs' Lawyers will be liable to pay any costs payable to Medibank in the proceeding and will not be entitled to recover from the Plaintiffs or Group Members any legal costs or disbursements incurred or paid on their behalf in relation to the Medibank Class Action.

E. OTHER MATTERS

30. Please consider the matters addressed in this Notice carefully.

31. If you wish to seek further information about the Medibank Class Action, you can visit <https://www.supremecourt.vic.gov.au/areas/group-proceedings/medibank-private>; <https://mplshareholderclassaction.com.au/> and <https://phifinney-mcdonald.com/action/medibank-shareholder-class-action/>

32. If there is any information in this notice that you are unsure about, or you have any questions or comments about the Notice, you can contact the Plaintiffs' Lawyers by:
 - (a) emailing medibankshareholders@phifinneymcdonald.com; or
 - (b) by telephone on (02) 9146 3500 (QE) and (03) 9134 7100 (PFM).
33. You may also seek your own legal advice. You should not delay in making your decision.
34. The Supreme Court should **not** be contacted for legal advice.

SCHEDULE 1

OPTION 1: REGISTER TO PARTICIPATE
MEDIBANK CLASS ACTION

GROUP MEMBER REGISTRATION FORM

COMPLETE THIS FORM IF YOU WANT TO **REGISTER** FOR THE MEDIBANK CLASS ACTION. YOU MAY REGISTER ONLINE VIA

<https://phifinneycdonald.com/action/medibank-shareholder-class-action/>

OR

COMPLETE AND RETURN THIS FORM TO PHI FINNEY McDONALD AT ONE OF THE ADDRESSES BELOW.

IF YOU WISH TO **OPT OUT OF THE MEDIBANK CLASS ACTION** YOU MUST COMPLETE AN OPT OUT FORM- SEE **OPTION 2.**

A. CONTACT / IDENTIFICATION DETAILS

Name of person completing this form:	
Email address:	
Postal address:	
Telephone number:	
Holder Identification Number (HIN) or Securityholder Reference Number (SRN):	
Are you filling out this form on behalf of a company, SMSF or someone else who is or was a holder of Medibank Securities?	<input type="checkbox"/> Yes – I am filling this out on behalf of a company, SMSF or another person or entity who is or was the owner of, or beneficially entitled to, Medibank Securities. <input type="checkbox"/> No – I am filling this out for myself, and I am or was the owner of, or beneficially entitled to, Medibank Securities.
If Yes to the above, in what capacity do you represent the person or entity who owned or was beneficially entitled to Medibank Securities? (ie. Director of company, trustee of trust, solicitor for the person or entity, person authorised to act by power of attorney)	

If Yes to the above, name of company entity or person who owned or was beneficially entitled to the securities and on whose behalf this form is being completed?	
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B. HOLDING DETAILS

Opening balance:

Number of Medibank Shares held (or in the case of Medibank Equity Swaps, the number of Medibank Shares to which the equity swap relates) as at the commencement of trading on 1 July 2019:	
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Closing balance:

Number of Medibank Shares held (or in the case of Medibank Equity Swaps, the number of Medibank Shares to which the equity swap relates) as at the close of trading on 25 October 2022:	
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Medibank Equity Swaps

An equity swap is a derivative contract where two parties exchange the return on an underlying equity asset, like a stock or stock index, for the return on another asset, usually a fixed or floating interest rate.

If you are a holder of Medibank Equity Swaps, when returning this form (via post or email) please also provide:

- (a) copies of the instruments and documents for each equity swap and related transaction (including any back-to-back transaction);
- (b) details of all other arrangements entered into in connection with each equity swap; and
- (c) details of any other trading in, or other transactions relating to, Medibank Shares that affect or may affect the calculation of loss under each equity swap.

C. SIGNATURE

Signature of person completing form:

Name of person completing form:

Date of signature:

D. DELIVERY INSTRUCTIONS

Please return the completed form by email or post to the following address, so that it is received by no later than **4.00 pm (AEDT) on 1 November 2024**:

Email: medibankshareholders@phifinneymcdonald.com

Post: Phi Finney McDonald
 Level 3, 325 Flinders Lane,
 Melbourne VIC 3000

By signing and sending this form to Phi Finney McDonald, you acknowledge that:

- you are the registrant or are acting on behalf of and with the authority of the registrant;
- the information you have provided above is true and correct to the best of your knowledge; and
- you have read and understood the Phi Finney McDonald Privacy Policy, found at: <https://phifinneymcdonald.com/privacy-policy/>

SCHEDULE 2

MEDIBANK SHAREHOLDER CLASS ACTION

Robert Laird Kilah & Brendan Francis Sinnamon v Medibank Private Limited
(S ECI 2023 01227)

OPTION 2: NOTICE OF OPTING OUT BY GROUP MEMBER (OPT OUT FORM)

Only complete this form if you wish to **OPT OUT** of the Medibank Class Action. If you Opt Out, you will no longer be a Group Member of the Medibank Class Action.

To: Commercial Court Registry
Supreme Court of Victoria
210 William Street
Melbourne Victoria 3000
medibankclassaction@supcourt.vic.gov.au

I, [*print name*]....., am
(select **one** option only)

- a group member;
- a director of [*company*]which is a group member; or
- an Executor for the Estate of [*print name*]which is a group member; or
- a power of attorney for [*print name*]..... who/which is a group member; or
- a solicitor acting for [*print name*] who/which is a group member.

in the above group proceeding, and give notice under section 33J(2) of the *Supreme Court Act 1986* (Vic) that I am **opting out** of this proceeding (if a group member) or on behalf of the group member whom I represent (if I am a representative of that group member).

Date:	
Signature of group member, director of group member, Executor, power of attorney or solicitor for group member:	
Email address of group member:	
Postal address of group member:	

If you would like to **opt out** of the Medibank Class Action, please complete this form online via the Supreme Court of Victoria website **OR** return this completed form to the Supreme Court of Victoria by email or by post, at the addresses on this form, by **4:00pm AEDT on 1 November 2024**.

ANNEXURE B – ABRIDGED NOTICE

REGISTRATION & OPT OUT NOTICE

MEDIBANK SHAREHOLDER CLASS ACTION

THIS NOTICE IS VERY IMPORTANT AND IS ISSUED PURSUANT TO AN ORDER OF THE SUPREME COURT OF VICTORIA – PLEASE READ IT CAREFULLY

A Registration & Opt Out Notice has been issued to Group Members in the Medibank Shareholder class action (**Medibank Class Action**), pursuant to an order of the Supreme Court of Victoria. **You can access the Notice at <https://phifinneymcdonald.com/action/medibank-shareholder-class-action/>.** You should read the Notice carefully as it contains important information about your legal rights. This is an abridged version of that Notice.

AM I PART OF THE MEDIBANK CLASS ACTION?

If you acquired an interest in shares in Medibank Private Limited (ASX: MPL) (**Medibank**), or acquired long exposure to Medibank shares by entering into equity swap confirmations in respect of Medibank shares during the period 1 July 2019 and 25 October 2022 (inclusive), you may be a Group Member of the Medibank Class Action. A detailed description of the people who are group members can be found in the Notice.

WHAT IS THE NOTICE ABOUT?

The Court has ordered that the parties attend a mediation by 31 March 2025. At that mediation the parties will explore whether they can reach agreement about the outcome of the Medibank Class Action.

WHAT ARE MY OPTIONS?

Your options on how to respond to the Notice are set out below. These three options are:

OPTION 1: Register → The deadline to register your claim is **4:00pm AEDT on 1 November 2024**. If you do not register by the deadline, you will remain a Group Member in the Medibank Class Action but, subject to further order of the Court, you will not be entitled to obtain any benefit pursuant to any settlement reached by the parties at any point up to three months after the first day of mediation. Registering your claim is cost free. At no stage will you be liable for any out of pocket costs by registering your claim. You may register at <https://phifinneymcdonald.com/action/medibank-shareholder-class-action/> or alternatively submit a Registration Form (found at Schedule 1 of the Notice) by email to medibankshareholders@phifinneymcdonald.com or by post to Phi Finney McDonald, Level 3,

325 Flinders Lane, Melbourne VIC 3000.

OPTION 2: Opt Out → If you no longer wish to be a Group Member of the Medibank Class Action, you can opt out of the class action. The deadline to opt out is **4:00pm AEDT on 1 November 2024**. The Online Opt Out form is available to complete online at <https://www.supremecourt.vic.gov.au/areas/group-proceedings/medibank-private/opting-out> or you can email or post an Opt Out Form (found at Schedule 2 of the Notice) to the Commercial Court Registry of the Supreme Court of Victoria.

OPTION 3: Do nothing → If you do nothing in response to the Notice you will remain a Group Member of the Medibank Class Action but, subject to any further order of the Court, you will not be entitled to obtain any benefit pursuant to any settlement reached at any point up until three months after the first day of mediation.

If you have any questions, you should contact the Plaintiffs' Lawyers by email at medibankshareholders@phifinney-mcdonald.com or by telephone on (02) 9146 3500 and (03) 9134 7100 or alternatively, obtain your own legal advice.

ANNEXURE C – COVERING EMAIL

Covering Email

Subject: Important Class Action Court Notice – Kilah & Anor v Medibank Private Limited S ECI 2023 01227

This email and the attached Registration & Opt Out Notice contain important information that may affect your legal rights. Please read them carefully and consider your options.

You are receiving these documents because you have been identified as a person who may be a Group Member in the Medibank Class Action.

The Court has made orders that:

1. there is to be a mediation in the Medibank Class Action completed by 31 March 2025. Any person who wishes to obtain any benefit pursuant to any settlement of this class action at any time between now and three months after the first day of the mediation must complete a Registration Form by **4:00pm AEDT on 1 November 2024**. You can complete the Registration Form here <https://phifinney-mcdonald.com/action/medibank-shareholder-class-action/>. You can also email or post the Registration Form which is explained in the Registration & Opt Out Notice; and
2. any person who does not wish to participate in the class action must opt out of the class action by **4:00pm AEDT on 1 November 2024**. The Online Opt Out form is available to complete online at <https://www.supremecourt.vic.gov.au/areas/group-proceedings/medibank-private/opting-out>. You can also email or post an Opt Out Form which is explained in the Registration & Opt Out Notice.

These matters are further explained in the Registration & Opt Out Notice attached to this email.

The Registration & Opt Out Notice includes information about:

1. how to determine whether you are an eligible Group Member;
2. if you are an eligible Group Member:
 - a. how to register your claim to participate in any settlement reached between the parties in the class action at any time between now and three months after the first day of the mediation;
 - b. your right to opt out of the class action;
 - c. what happens if you choose to do nothing in response to the Registration & Opt Out Notice.

The deadline to register your claim or opt out of the class action is **4:00pm AEDT on 1 November 2024**.

If there is anything you do not understand in the Registration & Opt Out Notice, or if you have any questions, you may seek independent legal advice or contact the lawyers for the Plaintiffs by email: medibankshareholders@phifinneymcdonald.com or phone (02) 9146 3500 (QE) and (03) 9134 7100 (PFM). Any questions you have concerning the matters contained in the Registration & Opt Out Notice should not be directed to the Court.

CERTIFICATE

I certify that this and the 49 preceding pages are a true copy of the revised reasons for ruling of Attiwill J of the Supreme Court of Victoria delivered on 2 September 2024.

DATED this 2nd day of September 2024.

