

Your Reference:  
Our Reference: NRS:CKB:20230036



26 April 2023

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Dear potential Group Member,

**RE: CLASS ACTION – COVID-19 VACCINE RELATED INJURIES**

We act for the Lead Applicant and Group Members in a class action which has commenced in the Federal Court of Australia (“**FCA**”) relating to COVID-19 vaccine related injuries (“**the Class Action**”).

Thank you for registering your interest to be a Group Member of this Class Action. This correspondence formally invites you to engage N R Barbi Solicitor Pty Ltd as your solicitor as a Group Member in this Class Action.

**Attached** is a Costs Disclosure and Conditional Costs Agreement – Group Member (“**the Agreement**”). By signing the Agreement, you acknowledge that we have provided you with a costs disclosure statement in accordance with section 174 *Legal Profession Uniform Law (NSW)* setting out your rights in relation to legal costs and you have been informed of your right to seek independent legal advice and your cooling-off period of five (5) days.

In a Class Action, the initial stage involves a Court hearing the Lead Applicant’s claim and determining the factual and legal questions common to the Lead Applicant and the Group Members. The Court will also decide the compensation entitlement of the Lead Applicant. If the initial stage of the Class Action is successful, the Group Member’s claims will then be considered. It is important to note that simply registering your interest to be a Group Member does not entitle you to any compensation. We will notify you when further action or information may be required from you.

**Nature and Scope of the Matter**

The matter in which we have been engaged to act relates to the conduct of the Therapeutic Goods Administration, with the relevant respondents being (at least) the Australian Government, the Department of Health and Aged Care Secretary Dr Brendan Murphy and the Deputy Secretary of Health Products Regulation Group Adjunct Professor John Skeritt. The Class Action has been brought by a class of persons across Australian jurisdictions who are COVID-19 vaccine injured parties.

The procedural rules for class actions in the FCA are set out in:

1. Division 9.3 of the Federal Court Rules 2011 (Cth);
2. Part IVA of the *Federal Court of Australia Act 1976* (Cth); and
3. The Federal Court of Australia *Class Actions Practice Note GPN-CA*.

A copy of each of these documents is **attached** for your reference.

The action has been instituted by the Lead Applicant on their own behalf and on behalf of the Group Members – those who have similar claims to the applicant against the respondent. The relevant

legislation requires that there are at least seven class members, but not all members need to be named in the original application.

Class action proceedings typically function on an “opt-out” basis, meaning that all members who have elected to join the Class Action will be bound by the Class Action’s outcome unless they opt-out by a date set by the Court. An opt-out notice will become available on our website once the Court sets this date.

It is important to note that potential causes of action lie in negligence and malfeasance of the proposed respondents named above. If a class member opts out of the Class Action, they may be able to commence separate litigation in their State or Territory.

### **Independent Personal Injury Claims**

We confirm that we are not acting for you (or any applicant or Group Member) personally in relation to any such claim, including personal injury claims, and are only acting in relation to the Class Action.

You should be aware that any personal injury action would be subject to the substantive law, including time limitations applicable in your State or Territory. For the purposes of this correspondence, we are only able to advise on such limits in the State of Queensland by way of example.

Under the *Personal Injuries Proceedings Act 2002* (Qld) (“**PIPA**”), section 9 requires an applicant to:-

*“... give written notice of the claim, in the approved form, to the person against whom the proceeding is proposed to be started.”*

This must be done the earlier of:-

- (a) the day nine (9) months after the day the incident giving rise to the personal injury happened or, if the symptoms of the injury are not immediately apparent, the first appearance of symptoms of the injury; or
- (b) the day one (1) month after the day the claimant first instructs a law practice to act on their behalf in seeking damages for the personal injury and the person against whom the proceeding is proposed to be started is identified.

There may also be other critical dates that apply to separate claims by you, including application, review or appeal deadlines, and if you ultimately choose to opt out of the Class Action or wish to pursue another claim, you should seek legal advice in relation to same.

There are limited circumstances in which time restrictions and limitation periods may be extended, and you should also seek further and independent legal advice in this regard.

### **Implications of PIPA Requirements for This Matter**

Queensland legislation imposes the notification requirements referred to above (section 9, PIPA). Were the Class Action to be commenced in Queensland, Queensland-based tort litigants may be unable to comply with the section 9 requirements, given the time that has lapsed.

This may, of course, be overcome, as the procedural law that is applied is that of the jurisdiction where a matter is started. For example, counsel has been engaged in relation to the Class Action,

and he has advised that the New South Wales Court of Appeal has held that the requirements set out in section 9 of PIPA are procedural, meaning that Queensland-based tort litigants who are party to a matter instituted in New South Wales may not be subject to the provision.

Additionally, counsel has advised that commencing the proceedings in the New South Wales registry of the Federal Court minimises the potential for unnecessary interlocutory disruption and attack from the Commonwealth.

### **Initiating the Class Action**

The first step to institute class action proceedings is to file an originating application. Same has now been filed in the New South Wales registry of the Federal Court. Additional pre-application steps have also been taken to demonstrate that the applicants have taken genuine steps to resolve the matter before commencing the Class Action.

### **Costs**

Litigation of this nature is likely to take one (1) to three (3) years, and the legal costs associated with same can be significant. In this instance, Dr Melissa McCann has agreed to act as litigation funder, however there are costs risks, and you should seek independent legal advice prior to proceeding.

Shortly, the Court will set a date for a case management hearing or initial case conference, as the case may be. At this conference, the financial basis upon which the action is to be funded will be discussed and counsel will make application for a Special Costs Order which limits or removes the costs risk to the applicants.

At this stage, if any estimates have been provided in the enclosed documents, please note they are estimates only, not a quotation, and are subject to change.

We also note that all figures contained in the enclosed documents are inclusive of GST unless otherwise indicated.

### **Invoicing**

Although invoices from this office will be rendered to Dr McCann, copies may be sent to you from time to time.

It is standard practice for NR Barbi Solicitor Pty Ltd to render invoices electronically and by way of email. As such, you can expect, unless your access to the internet is limited or you do not use email, to receive any such invoices via email.

By signing the enclosed client agreement and relevant disclosure material, you consent to receive invoices from our office by email pursuant to section 330(7) of the *Legal Profession Act 2007*.

In the event that you do not wish to receive invoices electronically, please advise our office as a matter of priority. Acceptance of this offer, whether by execution, instructions or conduct, will constitute consent by you to receive invoices electronically, and only in circumstances where it is expressly indicated that you do not wish to receive invoices electronically will this consent be waived and invoices sent by post.

### **Next Steps**

If you wish to proceed as a Group Member in the Class Action on the basis outlined in this offer and the documents enclosed herewith, we kindly ask that you execute the **attached** document via DocuSign.

You may also choose to provide supporting material or other documents to this office at this time, and if that is the case, we encourage you to do so by emailing the writer, Natalie Strijland, at [natalie@nrbarbisolicitor.com.au](mailto:natalie@nrbarbisolicitor.com.au).

If you otherwise have any questions regarding this matter or any of the information contained in this offer, please call the writer on (07) 3358 5800.

Yours faithfully,

**N R BARBI SOLICITOR PTY LTD**



per: Natalie Strijland | Director  
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