

ANNEXURE A



SUPREME COURT OF VICTORIA

IMPORTANT NOTICE

SEBASTIAN AGNELLO v HERITAGE CARE PTY LTD
(Proceeding number: S ECI 2020 03282)

EPPING GARDENS AGED CARE GROUP PROCEEDING
(CLASS ACTION)

THIS NOTICE IS SENT BY ORDER OF THE SUPREME COURT OF VICTORIA.

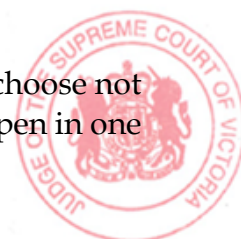
IT IS IMPORTANT THAT YOU READ THIS NOTICE CAREFULLY BECAUSE IT MAY
AFFECT YOUR LEGAL RIGHTS.

A. Why are you receiving this notice?

1. The purpose of this notice is to inform you of a class action (**Epping Gardens Class Action**) in the Supreme Court of Victoria (**the Court**) brought against Heritage Care Pty Ltd (ACN 106 873 796) trading as Epping Gardens (**Heritage Care**).
2. On 14 August 2020, Sebastian Agnello (the **Plaintiff**) commenced the Epping Gardens Class Action on his own behalf and on behalf of people with similar claims against Heritage Care (**Group Members**).
3. The Epping Gardens Class Action relates to services provided by Heritage Care around the time of an outbreak of the novel coronavirus disease (**COVID-19**) at the Epping Gardens residential aged care facility located at 25 Willandra Drive, Epping Victoria (the **Epping Gardens Facility**). The relevant period is between 26 February 2020 and 9 September 2020 (the **Relevant Period**).
4. The Supreme Court has ordered that this notice be published for the information of persons who might be Group Members in the proceeding and who may be affected by it.
5. You are receiving this notice because you have been identified as a potential Group Member in the Epping Gardens Class Action with the potential to receive compensation for loss you may have suffered.
6. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek independent legal advice or contact Carbone Lawyers (see contact details in Section H below).
7. The Court has referred this class action to mediation, which is to occur by no later than 2 December 2022 (the **Mediation**).
8. On 13 September 2022, the Court made orders requiring Group Members to register if they wish to receive any benefit or monetary compensation from any settlement (to be approved by the Court) of the Epping Gardens Class Action agreed at the Mediation or within six months after the conclusion of the Mediation (**Registration Orders**), or alternatively giving Group Members the right to opt out of the Epping Gardens Class Action (**Opt Out Orders**). Any settlement agreed at the Mediation or within six months after the conclusion of the Mediation will be subject to approval by the Court.

B. What is a class action?

9. A class action, also known as a group proceeding, is a proceeding brought by a plaintiff on their own behalf and on behalf of a class of people (known as group members) against a defendant, where the plaintiff and the group members have similar claims against the defendant.
10. Group members are 'bound' by the outcome in the class action unless they choose not to participate by 'opting out' of the class action. A binding outcome can happen in one



of two ways:

- (a) a judgment of the Court following a trial; or
- (b) a settlement at any time that is approved by the Court.

11. If there is a judgment or a settlement of the Epping Gardens Class Action, Group Members will not be able to pursue the same claims and may not be able to pursue similar or related claims against Heritage Care in separate legal proceedings unless they have 'opted out' of this class action.

C. What is the Epping Gardens Class Action about?

12. The Plaintiff alleges that Heritage Care breached its legal obligations and duties in relation to its provision of aged care services at the Epping Gardens Facility during the Relevant Period. The Plaintiff alleges that Heritage Care failed to meet the care needs of Epping Gardens residents between 26 February and 9 September 2020, including by failing to ensure adequate measures were in place to prevent an outbreak of COVID-19 at the Epping Gardens Facility, resulting in loss and damage to the Plaintiff and Group Members.
13. The claims made by the Plaintiff are set out in the 'Second Further Amended Statement of Claim' filed in the Court and dated 14 September 2022.
14. Heritage Care is defending the class action and has filed a defence.
15. Copies of the Second Further Amended Statement of Claim filed by the Plaintiff, and Amended Defence filed by Heritage Care and a Reply filed by the Plaintiff are available for download (see Section H below).

D. Are you a Group Member?

16. You are a Group Member of the Epping Gardens Class Action if:
- (a) you:
 - (i) were at any time during the period 26 February 2020 to 9 September 2020 a resident at the Epping Gardens Facility (**Resident**);
 - (ii) are a partner, son-in-law or daughter-in-law, sibling, child, grandchild, cousin, niece, or nephew of a Resident; and/or
 - (iii) are the legal personal representative of the estate of a Resident; **and**
 - (b) you were not, and are not, any of the following:
 - (i) a Minister of the Commonwealth, a State or a Territory; or



- (ii) a body corporate established for a public purpose by a law of the Commonwealth, a State or a Territory, other than an incorporated company or association; or
 - (iii) any judge, magistrate or other judicial officer of the Commonwealth, a State or a Territory; or
 - (iv) any other officer of the Commonwealth, a State or a Territory, in his or her capacity as an officer; **and**
- (c) you suffered legally recognised 'loss or damage' by reason of the alleged conduct of Heritage Care as pleaded in the Second Further Amended Statement of Claim.

17. For the purpose of 16(c) above, 'Loss or damage' means any one or more of:

- (i) personal injury or death, whether by contracting COVID-19 or otherwise;
- (ii) pain and suffering;
- (iii) mental or nervous shock;
- (iv) disappointment and distress;
- (v) injured feelings;
- (vi) funeral expenses;
- (vii) medical and like expenses;
- (viii) other economic loss consequent on personal injury or death.

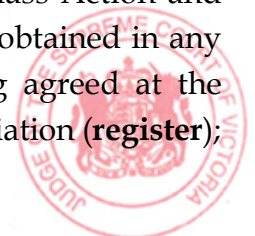
18. If you do not fit the above description, you may disregard this notice. **If you fit the above description, you should read this notice carefully as it will affect your rights.**

19. If you are unsure whether or not you are a Group Member, you should:

- (a) contact Carbone Lawyers by phone on 1800 369 888 or by email at eppinggardensclassaction@carbonelawyers.com.au; or
- (b) seek your own legal advice without delay.

20. This notice provides important information about:

- (a) what you need to do to participate in the Epping Gardens Class Action and share in any benefit or monetary compensation that might be obtained in any settlement (to be approved by the Court) of the proceeding agreed at the Mediation or within six months after the conclusion of the Mediation (**register**);



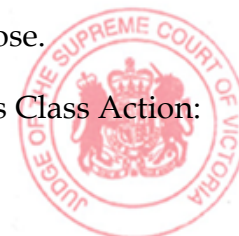
- (b) what you need to do if you want to remove yourself from participating in the Epping Gardens Class Action (**opt out**); and
- (c) how your rights are affected if you neither register nor opt out (**do nothing**).

E. Will you be liable for legal costs if you remain a Group Member?

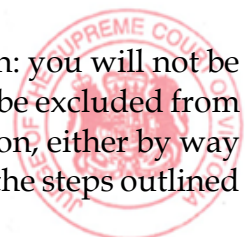
21. You will not become liable for any 'out of pocket' legal costs simply by remaining as a Group Member. However:
- (a) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs that are incurred by the Plaintiff in running the class action but which are not recovered from Heritage Care;
 - (b) if, following determination by the Court of the issues in the class action which are common to all Group Members, you choose to participate in a hearing regarding questions concerning your individual claim, you can engage Carbone Lawyers (if you have not done so already) or other lawyers to do that work for you. You will be told about this well in advance and will be able to choose whether to participate in the hearing of your individual claim, at which time information about legal costs will be provided to you. If you decide not to participate, you will not have any liability for legal costs out of your own pocket.
22. Note that class actions are often settled out of court. If that occurs in this proceeding, you may be able to claim from the settlement amount without retaining a lawyer, but subject to the information set out below.

F. What options do you have?

23. At this stage, Group Members have **four options**:
- (a) register;
 - (b) do nothing;
 - (c) opt out; or
 - (d) apply to the Court to challenge or vary the Registration Orders and/or Opt Out Orders.
24. **If you wish to register, opt out, or apply to the Court to vary the Registration Orders and/or Opt Out Orders, then you must do so by 4pm (AEST) on 7 November 2022 (the Deadline).**
25. There are different consequences depending on which option you choose.
26. For Group Members who **register** to participate in the Epping Gardens Class Action:



- (a) if the parties agree to settle the Epping Gardens Class Action at the Mediation or within six months after the conclusion of the Mediation, and the settlement agreement is approved by the Court, then you will be entitled to participate in that settlement and will be bound by that settlement (including any releases given to Heritage Care, its related entities and/or its past and present directors and officers in the settlement agreement);
- (b) if the parties **do not agree to settle** the Epping Gardens Class Action at the Mediation or within six months after the conclusion of the Mediation, then the Epping Gardens Class Action will proceed. You will remain a registered Group Member. You will be entitled to participate in any subsequent settlement or judgment.
27. If you wish to register, you will need to follow the steps outlined below in Section 2, Option 1.
28. For Group Members who **do nothing** (i.e. neither register to participate in the Epping Gardens Class Action nor opt out of the proceeding):
- (a) you will be bound by any judgment or settlement of the Epping Gardens Class Action, but you will not be entitled to receive any benefit or monetary compensation from any settlement (to be approved by the Court) of the Epping Gardens Class Action agreed at the Mediation or within six months after the conclusion of the Mediation. Being bound by any settlement of the Epping Gardens Class Action agreed at the Mediation or within six months after the conclusion of the Mediation (that is approved by the Court) means that you will be bound by any releases provided to Heritage Care, its related entities, its directors and officers and its former directors and officers in that settlement agreement;
- (b) if the parties **do not agree to settle** the Epping Gardens Class Action at the Mediation or within six months after the conclusion of the Mediation, you will remain a Group Member. You may have your claim considered at any further mediation or as part of any settlement that takes place at some later time, or, if the matter does not settle but proceeds to trial and a successful judgment is obtained, you may be entitled to share in any monetary compensation that is obtained.
29. The Plaintiff in a class action does not need to seek the consent of group members to commence a class action on their behalf. However, group members can cease to be group members by '**opting out**' of the class action. If you do not want to continue to be a Group Member, you can opt out now.
30. For Group Members who **opt out** of the Epping Gardens Class Action: you will not be bound by any judgment in, or settlement of, the class action, and will be excluded from receiving any monetary compensation that results from the class action, either by way of judgment or settlement. If you wish to opt out, you need to follow the steps outlined



below in Section 2, Option 3.

31. Further information about each of the four options is contained in Section 2 below.

G. Where can you obtain further information?

32. Copies of relevant documents, including the Second Further Amended Statement of Claim, the Amended Defence and the Reply can be obtained by:

- (a) telephoning Carbone Lawyers on 1800 369 888 and requesting that a copy be posted or emailed to you;
- (b) inspecting these documents by visiting the Registry of the Supreme Court of Victoria in Melbourne at Level 2, 436 Lonsdale Street, Melbourne; or
- (c) downloading these documents from the Supreme Court website:
<https://www.supremecourt.vic.gov.au/law-and-practice/specialist-lists-of-the-court/group-proceedings-class-actions/epping-gardens-aged> .

33. Please consider the matters in this Notice carefully. If you are not sure whether you are a Group Member or want further information, you should contact Carbone Lawyers on 1800 369 888 or email eppinggardensclassaction@carbonelawyers.com.au, or seek your own legal advice.

34. You should not delay in making your decision, as the deadline for opting out and registering is **4pm (AEST) on 7 November 2022**.

35. This notice is published pursuant to Orders made by the Supreme Court on 13 September 2022.

SECTION 2

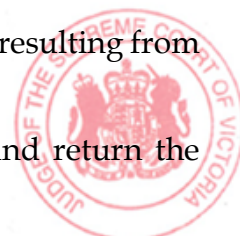
Your Options

Option 1: Register your interest to participate in a settlement

36. If you wish:

- (a) to make a claim for any loss you may have suffered as a result of Heritage Care's alleged conduct; and
- (b) for your claim to be considered at any negotiations in connection with a settlement at Mediation or within six months after the conclusion of the Mediation; and
- (c) for you to receive a share of any benefit or monetary compensation resulting from any settlement (to be approved by the Court),

you must complete the Registration Form attached as Schedule A1 and return the Registration Form by **4pm (AEST) on 7 November 2022 (Deadline)**.



37. Before the Deadline, please return the Registration Form to Carbone Lawyers by either:

(a) Emailing the form to Carbone Lawyers at:

eppinggardensclassaction@carbonelawyers.com.au

(b) Posting the form to Carbone Lawyers at:

PO Box 13203

Law Courts VIC 8010

38. Failure to provide all of the information requested in the Registration Form will not invalidate your registration, but you may be asked to provide some or all of the information after you have registered.

39. Registration Forms received after the Deadline will not be accepted and, subject to any order of the Court, you will be treated as having not responded to this Notice unless you have completed and submitted an Opt Out Notice in accordance with Option 3. If you have difficulties in completing the Registration Form, you can contact Carbone Lawyers for assistance.

Option 2: Do nothing

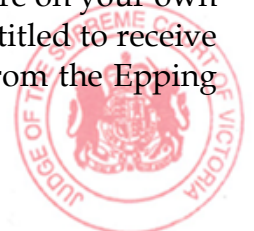
40. If you do nothing (i.e., neither register to participate in the Epping Gardens Class Action nor opt out of it), you will remain a Group Member in the Epping Gardens Class Action and will be bound by any judgment or settlement of the class action. However, if the parties agree to settle the class action at the Mediation or within six months after the conclusion of the Mediation, and the settlement agreement is approved by the Court, you will not be entitled to make a claim for part of any benefit or monetary compensation without the leave of the Court, and you will be bound by the terms of that settlement, which may include releases of Heritage Care and its related entities (including its directors and officers and former directors and officers).

41. If you consider that you have claims against Heritage Care which are based on your individual circumstances, it is important that you seek independent legal advice about whether you should remain a Group Member, before the Deadline.

Option 3: Opt out of the class action

42. If you do not wish to remain a Group Member, you must opt out of the class action by completing the 'Opt Out Notice' below and returning it to the Supreme Court of Victoria at the address on the form by the Deadline.

43. If you opt out, you will not be bound by any order, judgment or settlement in the class action and you will be able to bring your own claim against Heritage Care on your own behalf should you so wish. However, if you opt out, you will not be entitled to receive any distribution from any damages award or settlement sum arising from the Epping Gardens Class Action.



44. If you wish to bring your own claim against Heritage Care, you should seek your own legal advice about your claim and the applicable time limits that apply to bringing a claim before opting out.
45. If you want to opt out, you must send your Opt Out Notice to the Supreme Court so that it arrives before **4pm (AEST) on 7 November 2022**. Opt Out Notices received after this time will not be accepted, and you will remain a Group Member in the Epping Gardens Class Action. If you do not opt out and also do not register, you will not be permitted to make a claim for a part of any settlement (to be approved by the Court) of the Epping Gardens Class Action agreed at the Mediation or within six months after the conclusion of the Mediation.

Option 4: Apply to challenge or vary the Registration and/or Opt Out Orders

46. If you wish to apply to the Court to challenge or vary the Registration Orders and/or Opt Out Orders, you must send a written notice to Carbone Lawyers setting out the challenge or variation you wish to make and the reasons for that challenge or variation. You may then be required to attend the Court at a later date to have your application heard.
47. Any notice applying to challenge or vary the Registration Orders and/or Opt Out orders must be delivered to Carbone Lawyers before **4pm (AEST) on 7 November 2022**. Any notice applying to challenge or vary the orders received after this time will not be accepted.



Rule 18A.04

Form 18AB

NOTICE OF OPTING OUT BY A GROUP MEMBER

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

S ECI 2020 03282

BETWEEN:

SEBASTIAN AGNELLO

Plaintiff

and

HERITAGE CARE PTY LTD (ACN 106 873 796)

Defendant

To: The Prothonotary, Supreme Court of Victoria Registry,
Level 2, 436 Lonsdale Street, Melbourne VIC 3000

Carbone Lawyers
302 King Street
Melbourne VIC 3000

Arnold Bloch Leibler
Chifley Tower, Level 24/2 Chifley Square
Sydney NSW 2000



I, [*print name*],
 a group member in the above group proceeding, give notice under section 33J(2) of
 the **Supreme Court Act 1986** that I am opting out of this proceeding.

Date:	
Signature of group member or the group member's solicitor:	
Address of group member:	

Please return this notice by 4pm (AEST) on 7 November 2022 to:
 The Group Proceedings Coordinator

By mail:
 Supreme Court of Victoria Registry,
 Level 2, 436 Lonsdale Street,
 Melbourne VIC 3000

Or by email:
cldgroupproceedings@supcourt.vic.gov.au



**SCHEDULE 1: REGISTRATION FORM
EPPING GARDENS AGED CARE CLASS ACTION (PROCEEDING NO: S ECI
2020 03282)**

To register for the Epping Gardens Class Action, please provide the information requested below.

Details of the group member

Name of Group Member (print):

Address of Group Member:

Email of Group Member:

1. Please indicate the type of Group Member:

- A resident of the Epping Gardens Facility between 26 February 2020 and 9 September 2020 (**Resident**);
- The partner, son-in-law or daughter-in-law, sibling, child, grandchild, cousin, niece, or nephew of a Resident; and/or
- The legal personal representative of the estate of a Resident.

Please note that you **must** meet one of the above criteria in order to register.

2. If you are a family member or legal personal representative of a Resident, please provide the Resident's name:

3. Please specify the dates that the Resident lived at the Epping Gardens Facility:

..... to

4. Please explain the type of loss and damage the Group Member has allegedly suffered by reason of the alleged conduct of Heritage Care between 26 February and 9 September 2020, having regard to the below options:

.....
.....
.....
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.....

- personal injury or death, whether by contracting COVID-19 or otherwise
- pain and suffering
- mental or nervous shock

- disappointment and distress
- injured feelings
- funeral expenses
- medical and like expenses
- other economic loss consequent on personal injury or death

5. Please provide any further details and/or supporting documents you have in relation to the alleged loss and damage identified in response to question 4. This can be included as a separate document if you require more space.

.....

The abovenamed Group Member registers as a Group Member entitled to participate in any settlement of the proceeding.

Details of person completing this form

Dated: 2022

Signed:

Name:

Telephone:

Email:

Postal address

.....

Please return the Registration Form to Carbone Lawyers by either:

- (i) Emailing the form to:
eppinggardensclassaction@carbonelawyers.com.au
- (ii) Posting the form to Carbone Lawyers at: **PO Box 13203, Law Courts VIC 8010**

**IMPORTANT: Please ensure that you return the Registration Form to Carbone
Lawyers by no later than 4pm (AEST) on 7 November 2022.**