

SUPREME COURT OF NEW SOUTH WALES
SYDNEY LIGHT RAIL NUISANCE CLASS ACTION
(2018/263841)

**IMPORTANT NOTICE
REGARDING YOUR RIGHTS TO REGISTER
FOR THE PURPOSES OF MEDIATION**

1. What is this Notice?

A class action has been commenced in the Supreme Court of New South Wales against Transport for NSW.

The action arises out of the construction of the Sydney Light Rail Project (the **Project**).

The Plaintiffs bring claims for damages arising from “public nuisance” and “private nuisance” against Transport for NSW in relation to the Project.

The Supreme Court of NSW has referred the class action to a mediation which is to occur by no later than 3 November 2021. The purpose of this notice is to:

- (a) inform you of the mediation and how it may affect your rights if you are a class member; and
- (b) invite you to register your interest in the class action if you have not already done so, and explain the reasons why you may wish to register. **If you wish to register your details in time for your claim to be taken into account in the mediation, you need to do so by 18 October 2021.**

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

You may be a potential class member. **You should read this notice carefully as it may affect your legal rights.**

Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything in it that you do not understand, you should seek legal advice.

2. What is a class action?

A class action is an action that is brought by one person (“**Plaintiff**”) on his or her own behalf and on behalf of a group of people (“**group members**”) against another person (“**Defendant**”) where the Plaintiff and the group members have similar claims against the Defendant.

Class members are “bound” by the outcome in a class action unless they have opted out of the proceeding. This means that:

- (a) if the class action is successful or settles, group members may be eligible to receive a

share of any Court-awarded damages, or settlement monies;

- (b) if the class action is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against the Defendant in separate legal proceedings unless they have opted out.

3. What is this Class Action?

This class action, the Sydney Light Rail Nuisance Class Action, is brought by the Plaintiffs on their own behalf and on behalf of all persons who are group members as defined in the proceeding.

In summary, the Plaintiffs allege in the Second Further Amended Statement of Claim in the class action that:

- (a) Transport for NSW is the NSW Government Agency which procured the design, and construction of the Project;
- (b) in 2015, it was announced that major construction on the Project was expected to start in September 2015 and to complete in mid-2018;
- (c) there were substantial delays to the construction of the Project;
- (d) Transport for NSW has substantially caused those delays through its conduct in failing to effectively plan and procure the Project, and in failing to finalise agreements with stakeholders such as utility providers (including Ausgrid) and local councils to complete the Project's design and scope of works prior to entering a contract for the construction of the Project;
- (e) the construction of the Project has substantially and unreasonably interfered with the enjoyment by the Plaintiffs and group members of their private property, by reason of damage to and obstruction of roadways and footpaths through road closures and erection of hoardings, excessive noise, vibration, dust, and light spillage, with these effects prolonged by reason of the delays;
- (f) the construction of the Project has also substantially and unreasonably interfered with the exercise of public rights by the Plaintiffs and group members, by reason of damage to and obstruction of roadways and footpaths through road closures and erection of hoardings, with these effects prolonged by reason of the delays.

The circumstances set out at (e) above are alleged to amount to "private nuisance". The Plaintiffs allege that private nuisance is an action available to persons with an interest in property where another person has caused substantial and unreasonable interference with that person's enjoyment of their property interest.

The circumstances set out at (f) above are alleged to amount to "public nuisance". The Plaintiffs allege that public nuisance is an action available to persons who are affected by a substantial and unreasonable interference with rights of the public if those persons suffer damage from that interference over and above damage suffered by the public generally.

The Defendant to the Class Action is Transport for NSW. The Defendant does not admit the allegations of nuisance and is defending the class action.

The Defendant has raised a number of other defences to the claim, including that it is not liable in nuisance because it was authorised to develop the Project under statute.

The Plaintiffs in response to this defence, allege that the Defendant is not entitled to rely upon these defences, by reason of the alleged conduct referred to in (d) above.

4. Are you a group member?

You are a group member if you:

- (a) hold, or have held, an interest in land in the vicinity of the Project and have suffered loss or damage by reason of the Defendant's alleged interference with your enjoyment of your interest in land; or
- (b) have suffered loss or damage by reason of the Defendant's alleged interference with public land through the carrying out of the Project (other than merely loss or damage in your capacity as a member of the general public).

In simple terms, you are likely to be a group member if you own land in the vicinity of the Project, own or operate a business in the vicinity of the Project, or live in the vicinity of the Project, and you have been adversely affected by the consequences of the construction of the Project.

You are excluded from being a group member if you are an officer or employee of the Defendant, a judge or registrar of the Supreme Court of NSW or the High Court of Australia, or an officer or employee of, or other legal practitioner engaged in connection with this proceeding by Mitry Lawyers.

You are not a group member if you have opted out of this proceeding. A notice advising of the right to opt out was previously published in 2019. The deadline to opt out was 8 November 2019.

If you are unsure whether you are a group member, you should contact Mitry Lawyers on 02 9283 9035 or email sydneylightrail@mitry.com.au or seek your own legal advice without delay.

5. The Mediation

The Court has ordered that the parties engage in a mediation to occur no later than 3 November 2021. A mediation involves discussions between the parties which can lead to the settlement of the dispute on behalf of all class members, including you.

Before any settlement that may be reached at the mediation becomes effective, the Court must assess that it is a fair and reasonable compromise of the claims against the Defendant and must approve its terms as being in the interests of group members.

If the mediation does not result in a settlement, then the class action will continue.

If you have not already done so, you may wish to register your claim for the purposes of the mediation. If you wish to register, you should fill out the enclosed 'Group Member Registration Form' and return it to the Plaintiffs' solicitors, Mitry Lawyers, no later than 5:00 PM on 18 October 2021.

6. Why register?

It is not compulsory for you to register your claim. However, there are a number of reasons why you may wish to register now:

- (a) Firstly, it allows Mitry Lawyers to confirm that you are a group member and to contact you if you become eligible to receive compensation. You may become eligible to receive

compensation in the event that the class action settles at mediation, or if there is a favourable judgment. Registration will also allow you to receive updates on the progress of the class action from Mitry Lawyers if you wish to.

- (b) Secondly, there is no cost to register and it does not render you liable to pay any costs. You may, if you wish, also choose to enter into a retainer and costs agreement with Mitry Lawyers, but do not have to do so.
- (c) Thirdly, registration enables Mitry Lawyers to make an assessment about the size of your claim. Unless a sufficient number of class members register, it may be harder to reach a settlement, and there is a risk that the settlement may be lower (and produce less return for class members, including you), because there was insufficient information to assess the total claim size accurately.
- (d) Fourthly, in the event of a successful settlement or judgment, there is a risk that Mitry Lawyers will not know about your claim or how to contact you, if you have not registered.

Your registration must be completed and received by Mitry Lawyers before 5:00 PM on 18 October 2021. If you do not send in a registration form before that time, there is a risk that the Plaintiffs will not be able to take account of your claim in assessing the total claim size for the purpose of the mediation.

If you have already entered into a retainer agreement with Mitry Lawyers in relation to this class action, you need not, and should not, register. Mitry Lawyers may be in contact with you separately in relation to the mediation if they need further information from you.

Along with the completed 'Group Member Registration Form', you should provide any information to substantiate your claim, including financial information. The information you provide to Mitry Lawyers will be used by Mitry Lawyers, and all or some of the information may also be provided to the Defendant prior to the Mediation to enable the Defendant to have sufficient information about all the claims against it to settle the class action.

7. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the second further amended statement of claim and the defence, may be obtained by:

- (a) downloading them from www.mitry.com.au/sydneylightrail;
- (b) inspecting them between 9am and 5pm at the offices of Mitry Lawyers, contact details for which are available from www.mitry.com.au or by calling (02) 9283 9035;
- (c) Downloading them from the Supreme Court of NSW website at http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Light-Rail-Nuisance-Class-Action.aspx; or
- (d) Inspecting them by visiting the Registry of the Supreme Court of NSW at Level 5, Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW 2000.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Mitry Lawyers on (02) 9283 9035 or email sydneylightrail@mitry.com.au or seek your own legal advice. You should not delay in making your decision.

GROUP MEMBER REGISTRATION FORM

“Sydney Light Rail Nuisance Class Action”

Supreme Court of New South Wales proceeding No. 2018/263841

To: Mitry Lawyers
Level 1
167 Castlereagh Street
Sydney NSW 2000
Attention: Rick Mitry

sydneylightrail@mitry.com.au
(02) 9283 9035

Name of group member:
Person completing this form (print):
Authority of person completing this (e.g., company director, lawyer)
Telephone contact:
Postal address
List of documentation supporting the group member’s damages claim (Please attach copies of any Supporting documentation to this form)

Date:

Signed by [Name]

[Insert capacity e.g. group member / Lawyer for the group member]

