

# NOTICE OF OPT OUT PROCEDURE

## SUPREME COURT OF NEW SOUTH WALES

*Evans v Health Administration Corporation*  
Proceedings No: 2017/00374456

### 1. Why is this notice important?

On 11 December, 2017 Tracy Evans commenced proceedings in the Supreme Court of New South Wales against Health Administration Corporation (which operates NSW Ambulance) and Waqar Malik for breach of confidence, breach of contract, invasion of privacy and false and misleading conduct. The proceedings have been brought as representative proceedings (otherwise known as a “class action”) by Ms Evans on her own behalf and on behalf of a group of other similarly affected people.

You have received this notice because you have been identified as a class member. The Supreme Court has ordered that this notice be provided to you. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** There are contact details below for the plaintiff’s solicitor if you have questions concerning this notice. Otherwise, if there is anything in this notice that you do not understand, you should seek legal advice.

### 2. What is a class action?

A class action is a case brought by one person on behalf of a group of people (**‘class members’**) who have similar claims against the defendants.

This case has been brought by Tracy Evans, who is bringing this matter to Court on behalf of all persons named in the Coloured List (described further below).

### 3. What is this class action about?

Between 14 January to 5 February, 2013 the NSW Ambulance obtained the services of Waqar Malik (**Mr Malik**) as an 'Injury Management Coordinator'.

Mr Malik was given access to personal and health information of both current and non-active employees and contractors (**‘the employees’**) of NSW Ambulance who had claims for work related injuries.

Mr Malik improperly collated the personal and health information of 130 employees in a coloured list (**the Coloured List**) which he sold or attempted to sell. Mr Malik was charged by NSW Police and has been convicted of an offence for the supply of the information.

The plaintiff is asking the Court to make a finding that the Health Administration Corporation and Mr Malik breached their obligations to the employees named in the Coloured List by or resulting in the unlawful access, downloading and/or disclosure of personal and health information.

The plaintiff alleges that the Health Administration Corporation (as the responsible legal entity for NSW Ambulance) is liable to compensate the employees named in the 'Coloured List' for breach of confidence, breach of contract, invasion of privacy and false and misleading conduct.

The plaintiff alleges that Mr Malik is liable to compensate the employees named in the 'Coloured List' for breach of confidence and invasion of privacy. The plaintiff also seeks orders requiring Mr Malik to deliver up or destroy any and all of the information that he still holds that was unlawfully obtained.

The Health Administration Corporation admits that Mr Malik improperly collated and disseminated information about the employees in the Coloured List, but it denies that the Health Administration Corporation has any legal liability to the plaintiff or the other employees in the Coloured List.

Mr Malik has so far not taken an active role in the proceedings.

#### **4. What does 'Opt Out' mean and what will happen if you choose to remain a class member?**

The plaintiff in a class action does not need to seek the consent of class members to commence a class action on their behalf. However, a person who is a class member can cease to be a class member by 'opting out' of the class action.

Unless you opt out you will be bound by any settlement or judgment of the class action. If the plaintiff is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the plaintiff and class members, although you may have to satisfy certain conditions before your entitlement arises.

If you have not opted out and the action is unsuccessful or not as successful as you might have wished, you will not be able to pursue the same claims and may not be able to pursue related claims against the defendants in other legal proceedings.

An explanation of how to 'opt out' is set out below in section 7 of this notice.

#### **5. Are you a class member?**

You are a class member if you are a person named in the 'Coloured List'. You have been sent this notice as you have been identified as someone whose name does appear in the 'Coloured List'.

If you are unsure about whether or not you are a class member, you should contact the plaintiff's solicitors, Centennial Lawyers on (02) 8097 5146 or email [nicolaj@justice.org.au](mailto:nicolaj@justice.org.au). Alternatively, you should seek your own legal advice.

## 6. Will you have to pay legal costs if you remain a class member?

You will **not be responsible for any legal costs** by remaining as a class member while the Court decides the main issues which are common to the class members.

You might have to pay costs if the plaintiff wins the case and your personal claim for compensation requires work to be done that is specific to you, such as to calculate a compensation amount specific to you and to which you are entitled. At this time it is likely that you will be contacted by the plaintiff's solicitors, Centennial Lawyers, with a view to making arrangements about any further steps that need to be taken in relation to your personal claim for compensation.

If the case is successful and 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 requiring that an amount be deducted from the amount of compensation awarded or allocated to you as a contribution to the costs that Tracy Evans had to pay to run the case. The Court may also make an order for the Health Administration Corporation and/or Mr Malik to pay the legal costs of Ms. Evans in the event that she succeeds in the case.

## 7. What do class members need to do?

### (a) How you can remain a class member?

If you wish to remain a class member there is **nothing you need to do** at the moment.

### (b) How you can opt out of the class action?

If you **do not wish to remain** a class member you must 'opt out'. If you wish to bring your own claim against the Health Administration Corporation and/or Mr Malik, you should seek your own legal advice before opting out.

If you wish to **opt out** of the class action you **must** complete a Form 115 '**Opt Out Notice**' then return it to the Registrar of the Supreme Court of New South Wales at the address on the form and send a copy of the plaintiff's solicitor at PO Box 587, Woollahra NSW 1350. A blank Notice is attached if you wish to opt out.

**IMPORTANT: the Notice must reach the Registrar and the plaintiff's solicitor before 27 November 2018**, otherwise it will not be effective. Each person wishing to opt out should fill out a separate form.

## **8. Where can you obtain copies of relevant documents and further information about this notice?**

Copies of relevant documents, including the statement of claim and the defence may be obtained by downloading them from the website of Centennial Lawyers here:-

<https://www.centenniallawyers.com.au>

If there is anything you don't understand about this notice, you should contact the plaintiff's solicitors, Centennial Lawyers on (02) 8097 5146 or email [nicolaj@justice.org.au](mailto:nicolaj@justice.org.au) .

There will be no cost to you for contacting Centennial Lawyers in order to make an initial inquiry of this kind.

Alternatively, you should seek your own legal advice. You should not delay in making your decision.

## OPT OUT NOTICE

### COURT DETAILS

|             |                                  |
|-------------|----------------------------------|
| Court       | Supreme Court of New South Wales |
| Division    | Equity                           |
| Registry    | Sydney Registry                  |
| Case number | 2017/00374456                    |

### TITLE OF PROCEEDINGS

|                  |                                   |
|------------------|-----------------------------------|
| Plaintiff        | <b>Tracy Evans</b>                |
| Defendant        | Health Administration Corporation |
| Second Defendant | Waqar Malik                       |

### FILING DETAILS

Filed for \_\_\_\_\_, person opting out of representative proceedings

#Legal representative

#Legal representative reference

Contact name and telephone

Contact email [email address]

### OPT OUT NOTICE

Name of person opting out:

Address of person opting out:

I, a group member in these representative proceedings, opt out of the proceedings. I

understand that in opting out:-

1. I forego the right to share in any relief obtained by the representative party in the representative proceedings;
2. I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and
3. To the extent that I have a claim against the defendant(s), any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

**SIGNATURE**

#Signature of legal representative

#Signature of or on behalf of  
person opting out if not legally  
represented

Capacity [eg solicitor, authorised officer of person opting out,  
person opting out]

Date of signature

**NOTICE TO PERSON OPTING OUT**

You must, within the time specified in the notice to group members:

- 1 file this form in the registry of the court at the address below, or in the manner provided in the notice to group members; and
- 2 serve a copy of this form on the representative party at the address, or in the manner provided, in the notice to group members.

**REGISTRY ADDRESS**

Street address Supreme Court of NSW  
Law Courts Building, Queen's Square  
184 Phillip Street  
Sydney NSW 2000

Postal address Supreme Court of NSW  
GPO Box 3  
Sydney NSW 2001

Telephone 1300 679 272