

IMPORTANT NOTICE

SUPREME COURT OF NEW SOUTH WALES

SYDNEY LIGHT RAIL NUISANCE CLASS ACTION

(2018/263841)

1. Why is this notice important?

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

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

The Plaintiff brings 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 ordered that this notice be published for the information of persons who might be members of the class on whose behalf the 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 the 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.

If you consider that you have claims against a Defendant which are based in your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

3. What is this class action?

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

In summary, the Plaintiff alleges in the Further Amended Statement of Claim in the Supreme Court of NSW proceeding *Rosa Maria Colagrossi v Transport for NSW* (2018/263841) 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 have been substantial delays to the construction of the Project. Construction of the Project is currently scheduled to be completed in May 2020;
- (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 into a contract for the construction of the Project;
- (e) the construction of the Project has substantially and unreasonably interfered with the enjoyment by the Plaintiff 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 Plaintiff 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 Plaintiff alleges that private nuisance is an action available to persons with an interest in property where another person has caused a

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 Plaintiff alleges 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 Plaintiff in response to this defence, alleges 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 these proceedings by Mitry Lawyers.

If you are unsure whether or not 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. What is 'Opt Out'?

The Plaintiff in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found below in the section headed "How can you opt out of the proceeding".

6. Will you be liable for legal costs if you remain a group member?

A group member will **not become liable for any legal costs** simply by remaining as a group member for the determination of the common questions. However:

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Mitry Lawyers or other lawyers to do that work for you. A copy of the terms on which Mitry Lawyers are acting in the class action may be obtained directly from them. You will be responsible to pay those legal costs; and
- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may be asked to make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Plaintiff in running the class action where not all of the legal costs have been recovered from the Defendant.

7. What Group Members need to do

If you fall within the definition of group member in this class action, you must choose one of the following two options:

Option A: Remain in the class action – NO ACTION required

If you want to remain a group member, then you do not need to take any action at all. You will remain a group member and be bound by any order, judgment or settlement in the class action.

Option B: Opt out of the class action – ACTION required

If you do not wish to be a group member, then you must complete the form called "Opt Out Notice" which is shown below. If you opt out then you will cease to be a group member and the class action will not affect your legal rights.

If you wish to opt out you must do so by sending your Opt Out Notice to the Supreme Court of NSW so that it is received before **4pm on 8 November 2019**. The notice will not be effective if it arrives after that time.

8. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the 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.

OPT OUT NOTICE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	Representative Proceedings
Registry	Sydney Registry
Case number	2018/263841

TITLE OF PROCEEDINGS

Plaintiff	Rosa Maria Colagrossi
-----------	------------------------------

Defendant	Transport for New South Wales
-----------	--------------------------------------

FILING DETAILS

Filed for	[name] , person opting out of representative proceedings
#Legal representative	[solicitor] [firm]
#Legal representative reference	[reference number]
Contact name and telephone	[name] [telephone]
Contact email	[email address]

OPT OUT NOTICE

[Name of person opting out]

[Address of person opting out]

I, [insert name], 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