

# IMPORTANT NOTICE

FEDERAL COURT OF AUSTRALIA

BHP CLASS ACTION

*Vince Impiombato, and Klemweb Nominees Pty Ltd (as trustee for the Klemweb Superannuation Fund) v BHP Group Limited (VID649/2018)*

**IMPORTANT NOTICE TO GROUP MEMBERS  
PLEASE READ CAREFULLY**

This is an important Notice issued to you by the Federal Court of Australia about the BHP Class Action. The Notice is sent to you because you may be a “Group Member” in the BHP Class Action. You should read this Notice carefully as the matters set out in the Notice may affect your rights.

As explained at Section 5 below, you may do one of three things in response to this notice:

1. **Register:** If you wish to obtain compensation by participating in any settlement reached between the Joint Applicants and Respondent, before final judgment, you can register your interest in accordance with this Notice **by 4:00pm (AEDT) on 31 May 2024** (referred to as the “**Class Deadline**”).
2. **Opt out:** You can exclude yourself from the class action by opting out in accordance with this Notice by the Class Deadline, which will mean you will not be eligible to receive compensation in the event of a successful outcome, but you keep your right to make your own claim.
3. **Do nothing:** If you do nothing by the Class Deadline following receipt of this Notice and you have not already registered your claim, you will remain a “Group Member” in the Proceeding but, depending on what orders are later made by the Court, you may not be permitted to participate in any settlement reached between the Joint Applicants and Respondent before final judgment. This is because if an in-principle settlement is reached before final judgment, the Joint Applicants may apply to the Court as part of the settlement approval application for Court approval, for an order which, if made, will mean that Group Members who neither opted out nor registered (i.e. “do nothing”) will be bound by the settlement but will not be able to seek any benefit under the settlement.

**You should read this Notice carefully. If there is anything in this Notice that you do not understand, you should use the contact information at Section 8 below to make enquiries or seek independent legal advice. Do not contact the Federal Court with any questions about this Notice.**

## 1 KEY INFORMATION ABOUT THE BHP CLASS ACTION AND THIS NOTICE

1.1 The Joint Applicants in this class action, Vince Impiombato and Klemweb Nominees Pty Ltd (as trustee for the Klemweb Superannuation Fund), are bringing the BHP Class Action on behalf of persons who, between 8 August 2012 and 9 November 2015 (inclusive) (**Claim Period**) acquired an interest in fully-paid BHP Billiton Limited (**BHP Ltd**) shares and/or BHP Billiton Plc (**BHP Plc**) shares (**BHP Class Action**). BHP Billiton Limited and BHP Billiton Plc changed their names to BHP Group Limited and BHP Group Plc, respectively, effective 19 November 2018.

1.2 There is an unresolved dispute in the class action (see Section 8 below) about whether persons who acquired an interest in fully-paid BHP Ltd shares and/or BHP Plc shares only on secondary platforms (i.e. platforms *other than* the Australian Securities Exchange (**ASX**), London Stock Exchange (**LSE**) or Johannesburg Stock Exchange (**JSE**)) are included in the class or eligible to claim. For the avoidance of doubt, persons who made at least one acquisition on the ASX, LSE or JSE are part of the class action. The dispute may not ultimately be resolved until the conclusion of the class action.

Accordingly, if you have acquired BHP Ltd or BHP Plc shares during the Claim Period (on whatever platform), and you would be interested (if eligible) in participating in any settlement reached before judgment, then you should register – see section 5.2 for details.

1.3 The Joint Applicants are bringing the BHP Class Action with funding from G&E KTMC Funding LLC (**G&E KTMC**). The Joint Applicants' lawyers are Phi Finney McDonald and Maurice Blackburn.

1.4 The Federal Court of Australia has ordered that this Notice be published for the information of persons who may be affected by the BHP Class Action.

## 2 WHAT IS A CLASS ACTION?

2.1 A class action is an action that is brought by one or more persons ("applicant") on behalf of a class of people ("group members") against another person ("respondent") where the applicant and the group members have similar claims against the respondent.

2.2 The applicant 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 choose to cease to be group members by opting out of the class action. Information about how you can opt out of the BHP Class Action is found below in Section 5.

2.3 Group members in a class action are not individually responsible for the legal costs associated with bringing the class action. In a class action, only the applicant is (or joint applicants are) responsible for the costs.

2.4 If a class action is resolved — either by the Court delivering a judgment, or by an agreed settlement that is approved by the Court — the resolution binds all persons who are group members unless they have opted out of the class action. Once the BHP Class Action is resolved, group members will not be able to pursue the same claims against BHP in other legal proceedings, and may not be able to pursue similar or related claims.

2.5 If you consider that you have claims against BHP which are based on your individual circumstances or are 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.

### **3 WHAT IS THE BHP CLASS ACTION ABOUT?**

3.1 The BHP Class Action is brought by the Joint Applicants, Vince Impiombato and Klemweb Nominees Pty Ltd (as trustee for the Klemweb Superannuation Fund), on their own behalf and on behalf of all persons who are “Group Members”.

3.2 The Joint Applicants allege that BHP Group Ltd (**BHP**):

- (a) contravened its continuous disclosure obligations between 8 August 2012 and 9 November 2015 (inclusive) by failing to properly inform the ASX of BHP’s knowledge of the Fundão dam (located in the Germano mine in Minas Gerais, Brazil, operated by Samarco Mineração SA, a non-operated joint venture between BHP Billiton Brasil Ltda and Vale SA in Brazil) being at risk of failure, and knowledge that if the dam failed, serious adverse human, environmental, and financial consequences would likely result;
- (b) engaged in misleading or deceptive conduct by representing to the ASX (by publishing in its annual reports between FY11 – FY15) that:
  - (i) the primary consideration in every aspect of BHP’s business was the safety of its people and the safety and sustainability of the environment and the communities in which it, and its subsidiaries, carried on business; and
  - (ii) BHP had effective systems and processes in place to identify and effectively manage risks to the safety of its people and the safety and sustainability of the environment and the communities in which it, and its subsidiaries, carried on business, including the Samarco mining operation.

3.3 The BHP Class Action alleges that investors who acquired BHP Ltd or BHP Plc shares (on the ASX, LSE or JSE) in the Claim Period are entitled to compensation for loss and damage as they paid more for those shares than they would have paid as a consequence of BHP’s conduct. The BHP class action also alleges that some Group Members would not have purchased BHP Ltd or BHP Plc shares if BHP had complied with its obligations.

3.4 BHP denies the claims made against it and is defending the class action.

3.5 If you would like a copy of the pleadings (which may be subject to change) in the first instance you should contact the Joint Applicants’ lawyers by emailing [enquiries@bhpclassaction.com](mailto:enquiries@bhpclassaction.com).

### **4 ARE YOU A GROUP MEMBER IN THE BHP CLASS ACTION?**

4.1 You have been sent this Notice because you have been identified as someone who may be a Group Member in the BHP Class Action.

4.2 You are a Group Member in the BHP Class Action if:

- (a) during the Claim Period, you entered into a contract (whether by yourself or by an agent or trustee) to acquire an interest in fully paid up ordinary shares in BHP Ltd through trading on the ASX, or BHP Plc shares through trading on the LSE or on the JSE;
- (b) you have suffered loss or damage by or resulting from the conduct of BHP alleged at section 3.2; and
- (c) you are not:
  - (i) a related party, related body corporate, associated entity, director or officer or close associate of BHP; or
  - (ii) a Justice, Registrar, District Registrar, or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia.

4.3 If you are a Group Member (or may be a Group Member) because you meet the above description, you should read this Notice carefully as it will affect your rights.

4.4 If you are unsure whether or not you are a group member, you should contact the Joint Applicants' lawyers by email at [enquiries@bhpclassaction.com](mailto:enquiries@bhpclassaction.com) or seek your own legal advice without delay.

## 5 YOUR THREE OPTIONS IN RESPONSE TO THIS NOTICE

5.1 The Federal Court has ordered that this Notice be published for the information of persons who may be affected by the BHP Class Action. You have three options that you may elect to take in response to this Notice.

### OPTION 1 – REGISTER

5.2 Upon any in-principle settlement of the BHP Class Action reached before final judgment, the Joint Applicants may apply to the Court for an order which, if made, will mean that only Group Members who have registered by 4:00pm (AEDT) on 31 May 2024 in accordance with this Notice (**Registered Group Members**) will be permitted to seek any benefit under the settlement (subject to Court approval).

5.3 If you wish to be sure of having the opportunity to receive a share of any monies resulting from a settlement reached between the parties in the BHP Class Action, before final judgment, you should, **by 4.00pm (AEDT) on 31 May 2024** either:

- (a) submit your registration through the online portal accessible through the webpage <https://www.bhpclassaction.com>; or
- (b) enter into litigation funding agreement with G&E KTMC (**G&E KTMC Funding Agreement**) or enter into a retainer and costs agreement with Maurice Blackburn (**Maurice Blackburn Retainer Agreement**).

5.4 If you previously completed and returned a G&E KTMC Funding Agreement or a Maurice Blackburn Retainer Agreement in the BHP Class Action you do not have to take any further steps to register your claim. This is because you have already taken the steps necessary to register your claim and if any further information is required, you will be contacted by either Maurice Blackburn or Phi Finney McDonald.

5.5 The implications of registering for the class action are as follows:

- (a) you may be eligible to receive compensation as part of any settlement prior to judgment (provided that it is approved by the Court and you satisfy any eligibility requirements); and
- (b) you will be bound by any resolution of the class action (meaning that you will not be permitted to bring any future claims related to the subject matter litigated in the BHP Class Action).

5.6 If you have any difficulty registering via the webpage <https://www.bhpclassaction.com>, please contact the Joint Applicants' lawyers by email at [enquiries@bhpclassaction.com](mailto:enquiries@bhpclassaction.com) so that arrangements can be made to assist you to register your claim.

### OPTION 2 – OPT OUT AND CEASE TO BE A GROUP MEMBER

5.7 If you do not want to remain a Group Member in the BHP Class Action, you should opt out by 4:00pm (AEDT) on 31 May 2024. You must complete the Opt Out Notice located at Schedule 1 of this Notice.

5.8 If you opt out of the BHP Class Action, you:

- (a) will not be bound by any order, judgment or settlement in the BHP Class Action;
- (b) will not be entitled to share in the benefit of any order, judgment or settlement in the BHP Class Action; and
- (c) will be able to commence separate proceedings against BHP on your own behalf outside of the BHP Class Action provided you issue those proceedings within the time limit applicable to your claim. **You should seek your own legal advice about your claim and the applicable time limit prior to opting out.**

5.9 Each Group Member seeking to opt out should fill out a separate Opt Out Notice form located at Schedule 1 to this Notice. Opt Out Notice forms must be submitted directly to the Victorian District Registry of the Federal Court of Australia:

- (a) by post to: Owen Dixon Commonwealth Law Courts Building, 305 William Street Melbourne VIC 3000; or
- (b) by email at [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au)

before 4:00pm (AEDT) on 31 May 2024.

5.10 If you are opting out on behalf of a company or business, please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

5.11 Opt Out Notice forms received after 4:00pm (AEDT) on 31 May 2024 will not be accepted without leave of the Court and you will be treated as having not responded to this Notice.

### **OPTION 3 – DO NOTHING**

5.12 If an in-principle settlement is reached before final judgment, the Joint Applicants and/or BHP may apply to the Court as part of the settlement approval application, for an order which, if made, will mean that Group Members who neither opted out nor registered (i.e. “do nothing”) will be bound by the settlement but will not be able to seek any benefit under the settlement.

5.13 In other words, if you do nothing following receipt of this Notice and have not already registered your claim (in accordance with the procedure set out above), you will remain a Group Member but, if the Court makes the order referred to at paragraph 5.12 above, you will likely not be able to receive a share of any settlement monies resulting from a settlement reached between the parties in the BHP Class Action before final judgment. The practical implications of doing nothing in response to this Notice are as follows:

- (a) if a settlement reached before final judgment between the Joint Applicants and BHP is approved by the Court, and if the Court makes the order foreshadowed in paragraph 5.12 above, you will not be entitled to participate in that settlement. Further, you will be bound by the terms of the settlement (despite not being eligible to participate in the settlement). This means that your right to bring a claim against BHP (and potentially its related entities and officers) for matters related to those canvassed in the BHP Class Action will be extinguished;
- (b) if there is no settlement before final judgment, and subject to the resolution of the matters in Section 8 below, you will remain a Group Member and will be bound by the final judgment. In the event that the Court finds for the Joint Applicants and Group Members, you will be entitled to obtain compensation and/or damages (if you satisfy the eligibility criteria set down by the Court).

5.14 Consequently, if you do not want to risk missing out on the option to participate in any settlement of the BHP Class Action reached before final judgment, you should register your claim as per Option 1 above.

## 6 FUNDING OF THE BHP CLASS ACTION

- 6.1 The Joint Applicants are bringing the BHP Class Action with funding from G&E KTMC. Pursuant to the financial terms and funding terms for the BHP Class Action, G&E KTMC is exclusively responsible for adverse costs orders and security for costs and has agreed to pay:
- (a) all disbursements incurred in the BHP Class Action;
  - (b) Phi Finney McDonald under its current terms of engagement for performing legal work;
  - (c) premiums associated with after-the-event insurance arrangements procured for the BHP Class Action.
- 6.2 Maurice Blackburn is performing its legal work on a No Win, No Fee basis, charging a 6.25% uplift in the event the class action is successful.
- 6.3 Group Members who have either entered into the G&E KTMC Funding Agreement or the Maurice Blackburn Retainer Agreement are known as **Funded Group Members**. Group Members who have not entered into either the G&E KTMC Funding Agreement or the Maurice Blackburn Retainer Agreement are known as **Unfunded Group Members**.

## 7 LEGAL COSTS

- 7.1 Funded Group Members and Unfunded Group Members are not, and will not become, liable for any “out of pocket” costs by participating in the BHP Class Action.
- 7.2 In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party (**adverse costs order**). In this class action, it is only the Joint Applicants that face the risk of an adverse costs order if the action fails. As a Group Member, an adverse costs order will not be made against you. If the class action is unsuccessful, pursuant to the financial terms and funding terms for the BHP Class Action, G&E KTMC will meet any adverse costs order which may be made against the Joint Applicants in the BHP Class Action.
- 7.3 However, if the class action is successful (that is, if compensation is recovered for Group Members), pursuant to the G&E KTMC Funding Agreement, G&E KTMC will be entitled to recover:
- (a) legal costs, disbursements and other litigation expenses;
  - (b) costs and premiums paid or payable under the after-the-event insurance arrangements procured for the BHP Class Action;
  - (c) eighteen percent (18%) of any compensation to which Group Members who have entered into the G&E KTMC Funding Agreement become entitled, after the deduction of the amounts described in subparagraphs (a) and (b) above, as commission for funding the BHP Class Action.
- 7.4 Further, if the class action is successful, Maurice Blackburn pursuant to the Maurice Blackburn Retainer Agreement, will be entitled to recover its legal costs together with a 6.25% uplift on those costs.
- 7.5 In the event of a successful outcome, one of G&E KTMC, Maurice Blackburn or the Joint Applicants will seek an order that G&E KTMC’s entitlements pursuant to the G&E KTMC Funding Agreement (as outlined in paragraph 6.6 above) and Maurice Blackburn’s entitlement pursuant to the Maurice Blackburn Retainer Agreement, be paid out of the total amount recovered for all Group Members. The effect of such an order would be to share the liability for payment of G&E KTMC and Maurice Blackburn’s entitlements on a pro rata basis between all Group Members who have benefited from the action, so that all Registered Group Members are in the same position, regardless of whether they are Funded Group Members or Unfunded Group Members who have registered through the online registration portal. These costs will never exceed the amount of compensation to which you may otherwise become entitled.

- 7.6 The Court will assess whether the costs proposed to be deducted are fair and reasonable. You will be given a notice at that time informing you of the amount which it is proposed to be deducted and given an opportunity to tell the Federal Court of Australia if you agree or disagree with what is proposed.

## 8 DISPUTATION ABOUT ELIGIBILITY

- 8.1 On 3 November 2023, the Federal Court of Australia delivered judgment in *Impiombato v BHP Group Limited (No 4)* [2023] FCA 1354, determining that the group member definition in the Applicants' consolidated originating application dated 16 August 2019 and amended consolidated statement of claim dated 7 September 2020 only includes persons who, during the Claim Period, acquired shares in BHP Ltd through trading on the ASX; and/or in BHP Plc through trading on the LSE or JSE.
- 8.2 The decision of the Court is subject to an application for leave to appeal, which has not yet been determined.
- 8.3 The Joint Applicants have also filed an application seeking to amend the Group Member definition to include persons who acquired shares in BHP Ltd or BHP Plc during the Claim Period regardless of the platform on which shares were acquired. That has also not been determined yet.
- 8.4 Accordingly, there is an unresolved dispute about whether persons who acquired an interest in fully-paid BHP Ltd shares and/or BHP Plc shares **only** on secondary platforms (i.e. platforms *other than* the ASX, LSE or JSE such as Chi-X Australia, now known as Cboe Australia) are included in the class action. Persons who made at least one acquisition on the ASX, LSE or JSE in the Claim Period are included in the class action. Although the issue may not ultimately be resolved until the conclusion of the class action, if you have acquired BHP Ltd or BHP Plc shares during the Claim Period, and you would be interested (if eligible) in participating in any settlement reached before judgment, then you should register in accordance with the instructions in Section 5.2 above. This is because you may still be eligible to participate in the class action, irrespective of the platform on which your shares were acquired and irrespective of whether you know which platform your shares were acquired. If you register and further information about trading platform is required, you will be contacted by either Maurice Blackburn or Phi Finney McDonald at the appropriate time.

## 9 FURTHER QUESTIONS ABOUT THE BHP CLASS ACTION

- 9.1 Please consider the above matters carefully.
- 9.2 If there is anything within this Notice that you do not understand, or if you have any questions or comments about the Notice, you should contact the Joint Applicants' lawyers by emailing [enquiries@bhpclassaction.com](mailto:enquiries@bhpclassaction.com), or seek independent legal advice. You should not delay in making your decision.

**Schedule 1**

Form 21  
Rule 9.34

**Opt out notice**

**Only complete this form if you wish to opt out of the BHP Class Action**

No. VID649 of 2018

Federal Court of Australia  
District Registry: Victoria  
Division: General

**VINCE IMPIOMBATO, AND KLEMWEB NOMINEES PTY LTD (AS TRUSTEE FOR THE KLEMWEB SUPERANNUATION FUND)**

Joint Representative Applicants

**BHP GROUP LIMITED (ACN 004 028 077)**

Respondent

To: The Registrar  
Federal Court of Australia  
Victorian District Registry  
305 William Street  
MELBOURNE VIC 3000

\_\_\_\_\_ (print name), a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [he, she, they, I or it] (circle as appropriate) is opting out of the representative proceeding.

Signed: .....

Name .....

Date: .....

Group Member / Lawyer for the Group Member (circle as appropriate)

**[you are required to also complete the next page]**

**Group Member details**

Telephone .....

Email .....

ACN/ABN (if a company or trustee) .....

HIN/SRN .....

If the shares were acquired on behalf of another person/entity, name of that person/entity:

.....

**If you are signing as the solicitor or representative of the Group Member:**

Name .....

Capacity .....

Address .....

Telephone .....

Email .....