

## NOTICE OF FILING

### Details of Filing

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*Sia Lagos*

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 59  
Rule 29.02(1)

**Affidavit**

No. VID 622 of 2021

Federal Court of Australia  
District Registry: Victoria  
Division: General

**PABAI PABAI AND GUY PAUL KABAI**

Applicants

**COMMONWEALTH OF AUSTRALIA**

Respondent

Affidavit of: **Brett David Orion Spiegel**  
Address: Level 3, 325 Flinders Lane, Melbourne VIC 3000  
Occupation: Legal Practitioner  
Date: 10 March 2023

I, **BRETT DAVID ORION SPIEGEL** of Level 3, 325 Flinders Lane, Melbourne in the State of Victoria, legal practitioner, affirm:

1. I am a Principal Lawyer in the firm of Phi Finney McDonald. I have the care and conduct of this proceeding on behalf of the Applicants and I am authorised to make this affidavit on their behalf.
2. I make this affidavit from my own knowledge unless otherwise stated. Where I make statements on the basis of information provided to me, I set out the source of my information and I believe that information to be true.
3. I make this affidavit in support of the Applicants' proposed orders regarding opt out.

Filed on behalf of	Pabai Pabai and Guy Paul Kabai, Applicants	
Prepared by	Brett Spiegel, Phi Finney McDonald	
Law firm	Phi Finney McDonald	
Tel	(03) 9134 7100	Fax
Email	[REDACTED]	
<b>Address for service</b>	Phi Finney McDonald, Level 3, 325 Flinders Lane, Melbourne VIC 3000	

## Location of Group Members

### Group member definition

4. "Group Members" is defined in paragraph 1 of the Further Amended Statement of Claim as including all persons who, at any time during the period from 1985 to the date the Further Amended Statement of Claim was filed, are of Torres Strait Islander descent and suffered loss and damage as a result of the alleged conduct of the Respondent.

### 2021 Census data concerning the residence of Torres Strait Islander people

5. I instructed Grahame Best, Senior Associate at Phi Finney McDonald (**PFM**), to oversee the development of the opt out process with the assistance of PFM lawyers. I am informed by Mr Best and believe that PFM's lawyers reviewed 2021 Census data released by the Australian Bureau of Statistics (**ABS**) to inform the proposed distribution method. This data, published on 31 August 2022, confirms the number of Torres Strait Islanders in Australia in 2021 and their state/territory of residence. I set out relevant extract of this data in the paragraph below.
6. National-level data is contained in the table entitled 'Table 3.1 Census counts by Indigenous status (detailed), Place of Usual Residence, State/Territory, 2011-2021'. This table provides that 33,765 people in Australia identify as Torres Strait Islander; of which:
  - a) 21,772 reside in Queensland;
  - b) 5,127 reside in New South Wales;
  - c) 2,083 reside in Victoria;
  - d) 1,625 reside in Western Australia;
  - e) 1,225 reside in Tasmania;
  - f) 994 reside in South Australia;
  - g) 692 reside in Northern Territory; and
  - h) 230 reside in Australian Capital Territory.

### **Steps taken to identify methods to outreach to group members**

7. I am informed by Mr Best and believe that, in order to determine how best to draw the Opt-Out Notice to Group Members' attention, PFM's lawyers:

- a) conducted extensive desktop research into print media, radio broadcasters and online sites with significant First Nations audiences;
- b) conducted extensive desktop research into community-facing entities in the Torres Strait including local councils;
- c) consulted Torres Strait Islanders involved in the Applicants' case including Uncle Pabai Pabai, Uncle Paul Kabai and Uncle Fred Pabai on the social and traditional media sources that Torres Strait Islanders in the Torres Strait frequently engage with;
- d) consulted Torres Strait Islanders involved in media communications in the Torres Strait, such as Aunty Jennifer Enosa, radio presenter for Radio4MW;
- e) reviewed 2021 Census data concerning the residence of Aboriginal and Torres Strait Islander people on mainland Australia and in the Torres Strait; and
- f) consulted First Nations Media Australia, the national peak body for First Nations broadcasting and media, on the most effective methods of reaching Torres Strait Islanders on mainland Australia.

#### **Scope of proposed distribution methods**

- 8. The proposed distribution methods are based on the research and consultation conducted by PFM lawyers, as set out in paragraph 7. In my view, based on this research and consultation, the proposed distribution methods are appropriately targeted towards reaching Torres Strait Islanders on mainland Australia and in the Torres Strait Islands.
- 9. The Applicants' Proposed Orders provide for the approval and distribution of three forms of notice:
  - a) a longform notice to Group Members to be posted to local councils in the Torres Strait and nearby areas;
  - b) a shortform advertisement to be printed weekly in two print newspapers and posted to Facebook groups utilised by Group Members; and
  - c) the text for a radio announcement to be broadcast weekly on radio stations in Queensland.
- 10. The geographical reach of the nominated entities (Annexure D), print media (Annexure E), social media (Annexure F) and radio broadcasters (Annexure G) is set out below.

Longform notice to Group Members

11. The three local councils in Annexure D of the Applicants' Proposed Orders, to which the longform notice will be posted, cover the entirety of the Torres Strait and Northern Peninsula Area. These are the Torres Shire Council, Torres Strait Island Regional Council and Northern Peninsula Area Regional Council. The notice will be posted to each local office for each Council.
12. The Torres Shire Council has an office at the following location:
  - a) 68 Douglas St, Thursday Island, QLD 4875. Postal Address: P.O Box 171, Thursday Island, QLD 4875.
13. The Torres Strait Island Regional Council has offices at the following locations:
  - a) Boigu (Talbot Is.): Chamber St, Boigu Island, QLD 4875.
  - b) Dauan (Mt Cornwallis Is.): Main Rd, Duaun Island, QLD 4875.
  - c) Saibai (Saibai Is.): Cnr Main Rd & School Rd, Saibai Island, QLD 4875.
  - d) Mabuiag (Jervis Is.): Map Rd, Mabuiag Island, QLD 4875.
  - e) Badu (Mulgrave Is.): Cnr Ahmat St & Nona St, Badu Island, QLD 4875.
  - f) Arkai (Kubin) Community: Ikilgau Yabu, Kubin Community, Mua Island, QLD 4875.
  - g) Wug (St Pauls) Community: Oza Bosun Rd, St Pauls Community, Mua Is., QLD 4875.
  - h) Kirirri (Hammond Is.): 12 Francis Rd, Hammond Island, QLD 4875.
  - i) Iama (Yam Is.): Mosby St, Yam Island, QLD 4875.
  - j) Warraber (Sue Is.): Cnr Aikuru St & Garnier St, Warraber Island, QLD 4875.
  - k) Poruma (Cocnut Is.): Mimia St, Poruma Island, QLD 4875.
  - l) Masig (Yorke Is.): Cnr Dans Rd & Barneys Rd, Masig Island, QLD 4875.
  - m) Ugar (Stephen Is.): Randal St, Ugar Island, QLD 4875.
  - n) Erub (Darnley Is.): Road No. 5, Darnley Island, QLD 4875.
  - o) Mer (Murray Is.): Marou Gab Rd, Mer Island, QLD 4875.
  - p) Waibene (Thursday Is.): Torres Haus, 46 Victoria de, Thursday Island, QLD 4875.
  - q) Cairns Office: Level 3, 111-115 Grafton St, Cairns, QLD 4870.

14. The Northern Peninsula Area Regional Council has an office at the following location:
- a) Bamaga Head Office, 180 Adidi Street, Bamaga QLD 4876. Postal Address: PO Box 200, Bamaga QLD 4876
15. The longform notice will be accompanied by a cover letter requesting that each office post the notice at the council office and make copies available.
16. Based on my experience, from discussions with the Applicants, and the research and consultation set out in paragraph 7, I believe that the council offices are frequently used and attended by community members and are generally located around the centre of communities. I therefore believe that making the notice available in each council office is an appropriate method for it to come to the attention of community members.

Shortform advertisement in print media

17. The two print media publications in Annexure E of the Applicants' Proposed Orders are the Koori Mail and the Torres News.
18. I am informed by Mr Best and believe that the consultation set out at paragraph 8 identified that Torres Strait Islanders living in the Torres Strait and on the Australian mainland predominantly read these two newspapers.
19. The Koori Mail is a print newspaper published fortnightly and distributed nationally. On its website, it states that it is "wholly owned by five Bundjalung Aboriginal community organisations" and it reports on "the issues that matter to Aboriginal and Torres Strait Islander people." It is sold at metropolitan and regional newsagents in all states and territories. I am informed by Mr Best that the Koori Mail advised that each edition of the publication is read by 80,000 people. I am informed by Mr Best that the First Nations Media Australia advised that the Koori Mail is one of the largest and most widely available national First Nations news outlets.
20. The Torres News is a print newspaper published weekly and distributed in the Torres Strait and Northern Peninsula Area. It is also sold at newsagencies in Cairns, Mossman, Mareeba, Innisfail, Ingham, Palm Island, Townsville and Mackay.

Shortform advertisement on social media

21. The social media distribution outlets in Annexure F of the Applicants' Proposed Orders are all hosted on Facebook.



22. I am informed by Mr Best and believe that the consultation set out at paragraph 8 identified that Facebook is the most commonly used social media by Torres Strait Islanders.
23. Based on the desktop research set out at paragraph 8, PFM lawyers identified 17 private and public groups of Torres Strait Islanders generally and specific island-based communities. Below is a table containing each group's membership based on information reviewed by the Applicants' solicitors on Facebook.

<b>Group</b>	<b>Members</b>	<b>Link</b>
Badu Community Information	2,768	<a href="https://www.facebook.com/groups/189077631495076/members">https://www.facebook.com/groups/189077631495076/members</a>
Boigu Community	1,005	<a href="https://www.facebook.com/groups/368633357456130">https://www.facebook.com/groups/368633357456130</a>
Cairns Indigenous Network	2,100	<a href="https://www.facebook.com/groups/989307267826205">https://www.facebook.com/groups/989307267826205</a>
Dauan Island Noticeboard	338	<a href="https://www.facebook.com/groups/544925932348014">https://www.facebook.com/groups/544925932348014</a>
Erub Community Social Group	325	<a href="https://www.facebook.com/groups/2754184854878462">https://www.facebook.com/groups/2754184854878462</a>
Iama Island Community Notice Board	423	<a href="https://www.facebook.com/groups/759068654623977">https://www.facebook.com/groups/759068654623977</a>
Hammond Island Community	452	<a href="https://www.facebook.com/groups/439041083319706">https://www.facebook.com/groups/439041083319706</a>
Mabuyag Notice Board	882	<a href="https://www.facebook.com/groups/2249056831842789">https://www.facebook.com/groups/2249056831842789</a>
Masig Noticeboard	NA	<a href="https://www.facebook.com/masig.noticeboard">https://www.facebook.com/masig.noticeboard</a>

Mer Island Community Noticeboard	988	<a href="https://www.facebook.com/groups/1447402788809367">https://www.facebook.com/groups/1447402788809367</a>
NPA Community Noticeboard	2,100	<a href="https://www.facebook.com/groups/490268491120648">https://www.facebook.com/groups/490268491120648</a>
Northern Peninsula Area Regional Council	3,000	<a href="https://www.facebook.com/NorthernPeninsulaAreaRegionalCouncil">https://www.facebook.com/NorthernPeninsulaAreaRegionalCouncil</a>
Poruma Digital Noticeboard	626	<a href="https://www.facebook.com/profile.php?id=100079276855173">https://www.facebook.com/profile.php?id=100079276855173</a>
Saibai Island (Mother Land)	550	<a href="https://www.facebook.com/groups/424247910955124">https://www.facebook.com/groups/424247910955124</a>
Seisia Community Noticeboard	128	<a href="https://www.facebook.com/SeisiaCommunityNoticeboard">https://www.facebook.com/SeisiaCommunityNoticeboard</a>
Thursday Island Events and Promotions	1,190	<a href="https://www.facebook.com/groups/1586409081654728/members">https://www.facebook.com/groups/1586409081654728/members</a>
Torres Shire Council	7,000	<a href="https://www.facebook.com/torresshire">https://www.facebook.com/torresshire</a>
Torres Strait Islanders	8,300	<a href="https://www.facebook.com/groups/413878296045438">https://www.facebook.com/groups/413878296045438</a>
Torres Strait Island Regional Council	9,100	<a href="https://www.facebook.com/TorresStraitIslandRegionalCouncil">https://www.facebook.com/TorresStraitIslandRegionalCouncil</a>
Warraberalgal Online Community Notices	393	<a href="https://www.facebook.com/people/Warraberalgal-Online-Community-Notices">https://www.facebook.com/people/Warraberalgal-Online-Community-Notices</a>



24. I am informed by Mr Best and believe that PFM lawyers reviewed a sample of members of these groups which showed that the members reside all across the Australian mainland, as evidenced by their Facebook profiles.

Radio announcements in Queensland

25. I am informed by Mr Best and believe that the desktop research and consultation set out at paragraph 8 identified that the radio distribution outlets in Annexure G of the Applicants' Proposed Orders broadcast to areas with significant Torres Strait Islander audiences and are widely listened to by Torres Strait Islanders.
26. I am informed by Mr Best and believe that Radio4MW TSIMA is a 24-hour radio service broadcast across the Torres Strait and Northern Peninsula Area. It also livestreams online. Radio4MW states that 80% of remote community members residing in the Torres Strait region are weekly listeners and its broadcast has an estimated reach of 60,000 Torres Strait Islander people around Australia.
27. I am informed by Mr Best and believe that Bimma Bippera Media (BBM) is a First Nations radio service that broadcasts in Cairns and surrounding areas. BBM states that the station has a potential daily reach of 150,000 listeners.
28. I am informed by Mr Best and believe that 4K1G Radio is a broadcast radio station based in Townsville that provides Aboriginal and Torres Strait Islander news, information, views and music.
29. I am informed by Mr Best and believe that 4BSN Black Star Network is a First Nations community radio station that broadcasts to regions including the Bamaga, Injinoo, New Mapoon, Seisia and Umagico.

Proposed methods for Group Members to submit notices of their intention to opt out

30. I am informed by Mr Best and believe that the consultation and desktop research set out at paragraph 8 identified that the requirement to fill out and post a hard copy opt out form would be a significant barrier to some Group Members living in the Torres Strait from participating in the opt out process.
31. Proposed orders 3 and 4 therefore contemplate that Group Members can also opt out via email to PFM lawyers stating an intention to opt out. PFM lawyers would then complete and lodge the opt out form on behalf of the Group Member.



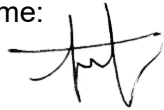
Affirmed by the deponent  
at Melbourne  
in Victoria  
on 10 March 2023

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Signature of deponent

Before me:



Signature of witness

Grahame Best

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria).

The requirements for witnessing by audio-visual link under section 12 of the Electronic Transactions (Victoria) Act 2000 have been met.