

**SUPREME COURT OF VICTORIA
MONASH IVF CLASS ACTION**



DANIELLE BOPPING

MICHELLE LOUISE PEDERSEN

v

MONASH IVF PTY LTD (ACN 006 942 990)

ADELAIDE FERTILITY CENTRE PTY LTD trading as Repromed (ACN 116 453 126)

MONASH IVF GROUP LIMITED (ACN 169 302 309)

MONASH IVF AUCHENFLOWER PTY LTD (ACN 111 370 891)

PALANTROU PTY LIMITED (ACN 111 795 692)

HOBART IVF PTY LTD (ACN 610 573 889)

COMPASS FERTILITY PTY LTD (ACN 130 793 583)

FERTILITY AUSTRALIA PTY LTD (ACN 117 504 766)

(S ECI 2020 04761)

IMPORTANT NOTICE

ACTION MAY BE REQUIRED BY 28 NOVEMBER 2024

NOTICE OF PROPOSED SETTLEMENT IN MONASH IVF CLASS ACTION

The **Plaintiffs**, Ms Danielle Bopping and Ms Michelle Pedersen bring this class action against Monash IVF Pty Ltd, Adelaide Fertility Centre Pty Ltd (trading as Repromed), Monash IVF Group Limited (Monash IVF Group), Monash IVF Auchenflower Pty Ltd, Palantrou Pty Limited, Hobart IVF Pty Ltd, Compass Fertility Pty Ltd and Fertility Australia Pty Ltd (**the Defendants**).



The class action is brought by the Plaintiffs on their own behalf, and on behalf of **Group Members** (who are defined in section 2 below) who are alleged to have suffered harm as a result of the provision of the service of cell-free non-invasive pre-implantation genetic testing of their live embryos (**niPGT-A**) between May 2019 and October 2020.

On 20 August 2024, the parties agreed to settle the proceeding (**Proposed Settlement**). Under the Proposed Settlement the Defendants will pay the Plaintiffs and Group Members \$40 million plus \$16 million in legal costs in exchange for the Plaintiffs and Group Members discontinuing their claims against the Defendants and releasing the Defendants from further liability in relation to the claims brought in this class action. Further information about the Proposed Settlement is set out in section 3.

The Supreme Court will hear an application to approve the Proposed Settlement on **12 December 2024 at 10.30am**.

The Supreme Court has ordered that this notice be published to inform you about the Proposed Settlement. **This is an important legal document, and you should read this notice carefully as the matters set out below may affect your legal rights.**

This Notice applies to persons who were provided by one or more of the Defendants with niPGT-A between May 2019 and October 2020 and received an aneuploid result, suffering financial loss and / or psychiatric injury as a result.

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

1. What is the Monash IVF Class Action About?

The Plaintiffs issued this class action in the Supreme Court of Victoria against:

- (a) Monash IVF Pty Ltd (ACN 006 942 990);
- (b) Adelaide Fertility Centre Pty Ltd Trading As Repromed (ACN 116 453 126);
- (c) Monash IVF Group Limited (ACN 169 302 309);
- (d) Monash IVF Auchenflower Pty Ltd (ACN 111 370 891);
- (e) Palantrou Pty Limited (ACN 111 795 692);
- (f) Hobart IVF Pty Ltd (ACN 610 573 889);
- (g) Compass Fertility Pty Ltd (ACN 130 793 583); and
- (h) Fertility Australia Pty Ltd (ACN 117 504 766),

(the Defendants).

This class action is brought by the Plaintiffs on their own behalf and Group Members (defined in section 2).

The Plaintiffs allege that the Defendants should not have used niPGT-A, and did not warn them of certain alleged risks of niPGT-A.



In particular, the Plaintiffs allege that the Defendants did not warn them of the risk that niPGT-A might yield false positive results for aneuploidy and therefore a potentially erroneous determination that an embryo was aneuploidy and not suitable for transfer. It is alleged that the failure by the Defendants to give such a warning meant that the Plaintiffs and Group Members did not give proper informed consent for niPGT-A to occur.

The Defendants deny that they are liable to the Plaintiffs and Group Members.

Copies of the statements of claim filed by the Plaintiffs and the defence filed by the Defendants are available for download from the Supreme Court website at <https://www.supremecourt.vic.gov.au/areas/group-proceedings/monash-ivf>.

2. Are you a Group Member?

Group Members are those who:

- (a) were patients of any of the Defendants between May 2019 and October 2020 (inclusive); and who:
 - (i) received in vitro fertilisation (**IVF**) treatment provided by any of the Defendants; and/or
 - (ii) were provided the service of cell-free non-invasive pre-implantation genetic testing of their live embryos (fertilised eggs) for aneuploidy (**niPGT-A**) undertaken by or on behalf of any of the Defendants; and
 - (iii) had embryos classified by or on behalf of any of the Defendants as abnormal (aneuploid) as a result of niPGT-A testing; and
 - (iv) had embryos destroyed, alternatively discarded, or did not proceed to embryo transfer (implanting into the uterus for the purpose of, inter alia, achieving live pregnancy) (**transfer**) as a result of the niPGT-A testing indicating embryos were positive for aneuploidy; and
 - (v) received written or oral notification from any of the Defendants that the niPGT-A testing of embryos by or on behalf of any of the Defendants has been suspended;
- (b) were a spouse, or domestic partner of persons in (a);
- (c) suffered loss and/or damage by way of:
 - A. psychiatric injury (as defined below) or physical inconvenience as a result of:
 - (i) receipt of the notification in (a)(v) above; and/or
 - (ii) the destruction of, and/or the failure to transfer, an embryo classified as aneuploidy as a result of the niPGT-A testing (including without limitation, any psychiatric injury suffered as a result of the increased likelihood of the needless destruction of, or failure to transfer, an embryo incorrectly classified as aneuploidy as a result of the niPGT-A testing),
where “psychiatric injury in this group means nervous shock or another psychiatric or psychological injury, disturbance, disorder or condition which has been diagnosed as such in a diagnosis given to the person by a medical practitioner prior to 31 December 2021; and/or
 - B. financial loss as a result of:
 - (i) the niPGT-A testing; and/or
 - (ii) receipt of the notification in (a)(v) above; and/or



- (iii) the destruction of, and/or the failure to transfer, an embryo classified as aneuploidy as a result of the niPGT-A testing; or
- (d) are the legal personal representatives of the estates of any deceased persons who came within paragraphs (a) to (c) above; and
- (e) who have not opted out of the class action.

On 4 January 2023, an Opt Out and Registration Notice was provided to potential Group Members by email or letter from icourts mailing house and published on the Supreme Court and Margalit Injury Lawyers' websites.

Under the Opt Out and Registration Notice, Group Members had the option of registering to participate in the proceeds of any settlement of the proceeding before trial, opting out of the class action, or doing nothing.

The consequences of each option on a Group Member's rights to participate in any settlement were set out in the Opt Out and Registration Notice.

A copy of the Opt Out and Registration Notice can be viewed on the Supreme Court website at <https://www.supremecourt.vic.gov.au/areas/group-proceedings/monash-ivf>.

Persons who elected to register and filed a Registration Form annexed to the Opt Out and Registration Notice became **Registered Group Members**.

Persons who elected to opt out and filed a Notice of Opting Out By a Group Member annexed to the Opt Out and Registration Notice became **Former Group Members**.

People who did not register and did not opt out became **Unregistered Group Members**.

A small number of people who did not file a Registration Form by the date required in the Opt Out and Registration Notice subsequently expressed their desire to become Registered Group Members. The Court has approved the inclusion of those persons as Registered Group Members. This approval occurred before the Proposed Settlement.

Subject to the granting by the Court of any application by Former Group Members and Unregistered Group Members to participate in the Proposed Settlement the only Group Members entitled to receive part of the Settlement Sum are Registered Group Members.

Section 7 sets out information for Former Group Members and Unregistered Group Members who wish to make application to the Court to participate in the Proposed Settlement.

3. What is the Proposed Settlement?

Under the Proposed Settlement the Defendants have agreed to pay \$40,000,000 (forty million dollars) in full and final settlement of the Plaintiffs' and Group Members' claims plus a contribution to the Plaintiffs' legal costs of the proceeding fixed at \$16,000,000 (sixteen million dollars) (**Settlement Sum**), without admission of liability. Section 5 sets out who is bound by the Proposed Settlement.

Under the Proposed Settlement, the Settlement Sum will be paid in instalments in the following amounts, on the following dates:

- (a) \$8,000,000 by 28 October 2024;



(b) \$12,000,000 by 27 December 2024;

(c) \$15,000,000 by 26 March 2025;

(d) \$21,000,000 by 2 July 2025.

The Proposed Settlement cannot take effect without Court approval. The Plaintiffs will ask the Court to approve:

(a) the Proposed Settlement;

(b) the payment of the Plaintiffs' legal costs from the Settlement Sum; and

(c) a scheme for the distribution of the balance of the Settlement Sum to the Registered Group Members (**Settlement Distribution Scheme**).

Legal Costs

If the Proposed Settlement is approved, the Plaintiffs' legal costs payable to Margalit Injury Lawyers, including the costs of Margalit Injury Lawyers administering the Settlement Distribution Scheme, will be paid from the Settlement Sum.

The Plaintiffs' legal costs will be assessed by an independent costs assessor and the assessment will be provided to the Court.

Only legal costs approved by the Court will be payable from the Settlement Sum.

If the Plaintiffs' legal costs do not exceed \$16 million, any remaining amount will be added to the \$40,000,000 component of the Settlement Sum and be distributed pursuant to the Settlement Distribution Scheme.

If the Plaintiffs' legal costs exceed \$16 million, the Plaintiffs will ask the Court to approve payment of the excess from the \$40,000,000 component. Margalit Injury Lawyers does not expect the Plaintiffs' legal costs to exceed the amount of \$16 million allocated in the Settlement Sum. Any excess can only be paid to Margalit Injury Lawyers from the Settlement Sum with Court approval.

If you want to seek your own advice on the Proposed Settlement, you are responsible for your own costs in obtaining that advice.

Plaintiffs' Reimbursement Payment

The Court will also be asked to approve an amount to be deducted from the Settlement Sum to be paid to the Plaintiffs for the personal burden of being the lead Plaintiffs, a role which has benefited Group Members as a whole. This amount is in addition to any amount they may be entitled to by way of compensation under the Settlement Distribution Scheme.

Margalit Injury Lawyers has determined that a fair and reasonable amount for each plaintiff is \$50,000, however, this amount must be approved by the Court.

No amount will be paid out of the Settlement Sum for a Plaintiffs' Reimbursement Payment without prior approval by the Court.



Distribution of the Balance of the Settlement Sum

If the Proposed Settlement is approved, the Settlement Sum, minus any amount the Court approves to be paid for the Plaintiffs' legal costs and for the Plaintiffs' Reimbursement Payment, will be distributed to Registered Group Members in accordance with the Settlement Distribution Scheme.

Under the Settlement Distribution Scheme, the amounts payable to the Plaintiffs and each Registered Group Member will be determined by Tim Tobin SC (with assistance from legal practitioners qualified in personal injury and compensation law) based on the information Margalit Lawyers has obtained from the Plaintiffs and Registered Group Members and any further information Mr Tobin deems necessary.

Because the Settlement Sum is payable by the Defendants in instalments, it may take up to 12 months before Registered Group Members receive any payment under the Settlement Distribution Scheme.

You may request a copy of the Settlement Distribution Scheme from Margalit Injury Lawyers on a confidential basis.

4. The Process for Settlement Approval

The Proposed Settlement will only take effect if it is approved by the Court. In deciding whether to approve the Proposed Settlement, the Court will consider whether it is fair and reasonable and in the interests of the Group Members as a whole.

The hearing of the Plaintiffs' application for approval of the Proposed Settlement, payment of the Plaintiffs' legal costs, any objections to the Proposed Settlement and any applications for reinstatement is on 12 December 2024 at 10.30am.

Group Members are entitled to attend the hearing.

All Registered Group Members and Unregistered Group Members are entitled to object to the Proposed Settlement. Information on how to object the Proposed Settlement is provided at section 6 of this Notice.

5. Participation in the Proposed Settlement

The rights of persons to participate in the Proposed Settlement depend on whether the person is a Registered Group Member, Unregistered Group Member, or Former Group Member.

If the Proposed Settlement is approved, only Registered Group Members will be entitled to participate in the settlement and receive compensation under the Settlement Distribution Scheme.

Unregistered Group Members and Former Group Members will not be entitled to participate in the settlement or receive compensation under the Settlement Distribution Scheme.



Registered Group Members and Unregistered Group Members will be bound by the approved settlement and will not be able to bring any further claims against the Defendants for any injury and / or financial loss suffered as a result of the niPGT-A.

Former Group Members will not be bound by the Proposed Settlement.

If you are an Unregistered Group Member or Former Group Member you have a right to make application to the Supreme Court of Victoria to participate in the Proposed Settlement. You must comply with the application requirements in section 7 of this Notice.

If you are unsure whether you are a Registered Group Member, Unregistered Group Member, or Former Group Member please contact Margalit Injury Lawyers on 03 9133 0288 or seek your own legal advice immediately.

6. Objections to the Settlement

Any Registered or Unregistered Group Member may object to the settlement. If you wish to object to the settlement you must comply with the requirements set out in section 7 of this Notice.

7. What You Must Do

There are four options which you must consider. Please read all options.

Option 1	You are a Registered Group Member and you do not object to the Proposed Settlement You do not need to do anything.
Option 2	You are an Unregistered Group Member or Former Group Member and you do not wish to participate in the Proposed Settlement You do not need to do anything.
Option 3	You are an Unregistered Group Member or Former Group Member and you do wish to participate in the Proposed Settlement. You must apply to the Court. If you wish to make an application, you should obtain your own legal advice about this issue as soon as possible. You must make an application in the form set out in Annexure 1 to this Notice by 4.00pm on 28 November 2024 to the Supreme Court of Victoria by sending a copy of your application to the Supreme Court of Victoria at the following email address:



	<p>The Supreme Court of Victoria, Principal Registry- cldgroupproceedings@supcourt.vic.gov.au</p> <p>You should include in your application:</p> <ul style="list-style-type: none"> - an affidavit in support of your application, including any evidence on which you rely; and - a written submission for the Court setting out why you should be granted permission to participate in the Proposed Settlement. <p>You may also attend Court on 12 December 2024 to argue your application.</p>
<p>Option 4</p>	<p>You wish to object to the Proposed Settlement</p> <p>You must complete the “Notice of Objection to Proposed Settlement” which is Annexure 2 to this Notice.</p> <p>Only Unregistered Group Members and Registered Group Members are entitled to object to the Proposed Settlement.</p> <p>However, if you are a Former Group Member who has made application to the Court to participate in the Proposed Settlement under Option 3 and you object to the Proposed Settlement you should file a “Notice of Objection to Proposed Settlement”. Your objection will be considered if the Court grants your application.</p> <p>You must file your objection by 4.00pm on 28 November 2024 by sending a copy of the completed Notice of Objection to Proposed Settlement to the Supreme Court of Victoria at the following email address:</p> <p style="padding-left: 40px;">The Supreme Court of Victoria, Principal Registry- cldgroupproceedings@supcourt.vic.gov.au</p> <p>You should include with your Notice of Objection to Proposed Settlement:</p> <ul style="list-style-type: none"> - an affidavit in support of your objection, including any evidence on which you rely; and - a written submission for the Court setting out the basis of your objection. <p>You may also attend Court on 12 December 2024 to argue your objection.</p>



If you are not sure what to do, you should contact Margalit Injury Lawyers or seek independent legal advice.

When will any applications and objection(s) be Considered?

The Court has ordered that any applications to participate in the Proposed Settlement and objections to the Proposed Settlement will be considered by the Court at the Supreme Court, Melbourne, Victoria on 12 December 2024 at 10.30am.

8. Where Can You Obtain Copies of the Relevant Documents?

Copies of relevant documents, including the statements of claim filed by the Plaintiffs and the defence filed by the Defendants, can be obtained by:

- (a) downloading them from <https://margalitlawyers.com.au/monash-ivf-class-action/>;
- (b) telephoning Margalit Injury Lawyers on (03) 9133 0288 and requesting that a copy be posted or emailed;
- (c) inspecting them by visiting the Registry of the Supreme Court of Victoria in Melbourne at Ground Floor, 450 Little Bourke Street, Melbourne; or
- (d) locating them on the Supreme Court website at: <https://www.supremecourt.vic.gov.au/areas/group-proceedings/monash-ivf>

9. Address for Questions

If you have any questions about the Proposed Settlement, this notice, or your status as a Group Member you can contact Margalit Injury Lawyers at any time or seek your own independent legal advice.

Contact details for Margalit Injury Lawyers

Monash IVF Class Action
Margalit Injury Lawyers
Suite 4, 107-111 High Street
Prahran VIC 3181
Telephone: (03) 9133 0288
Email: classaction@margalitlawyers.com.au

Contact details for the Supreme Court of Victoria

Note: Questions you have concerning the matters contained in this notice should **not** be directed to the Court.

Principal Registry
Supreme Court of Victoria
450 Little Bourke Street



Melbourne VIC 3000
Telephone: (03) 8600 2000
Email: cldgroupproceedings@supcourt.vic.gov.au



SUPREME COURT OF VICTORIA



Annexure 1

Danielle Bopping & Michelle Pedersen v Monash IVF Pty Ltd & Ors

(S ECI 2020 04761)

Monash IVF Class Action

APPLICATION TO PARTICIPATE IN PROPOSED SETTLEMENT

YOU SHOULD ONLY COMPLETE THIS APPLICATION IF:

- A. YOU ARE NOT A REGISTERED GROUP MEMBER; AND**
- B. YOU WISH TO PARTICIPATE IN THE PROPOSED SETTLEMENT OF THE MONASH IVF CLASS ACTION.**

THE COURT WILL CONSIDER ALL APPLICATIONS RETURNED BY 28 NOVEMBER 2024.

IF YOU HAVE ALREADY REGISTERED FOR THE CLASS ACTION YOU DO NOT NEED TO COMPLETE THIS APPLICATION

To: The Supreme Court of Victoria

A. Details

Name:	
If nominating a contact person, please state the contact's name and relationship to the above person:	



Telephone number:	
Postal address:	
Email address:	

B. Ground(s)

I am not a registered group member because (please tick the option which applies to you):

- I opted out of the proceeding.
- I did not register in accordance with the Opt Out and Registration Notice.

The ground(s) for my application to be permitted to participate in the Proposed Settlement are as follows (set out in the space below any submissions you wish to make – you may attach additional pages if necessary):

C. Evidence or submissions (please tick the below options that apply to you)

- I attach evidence (by way of affidavit) in support of my application.
- I attach submissions in support of my application (limited to 2 pages).
- I do not attach any evidence or submissions in support of my application but wish for my application to be considered based on my submission set out above.

D. Attendance at hearing at 10:30am AEDT on 12 December 2024 (please tick one of the below three options)

- I intend to appear at the settlement approval hearing, and I will appear on my own behalf.
- I intend to appear at the settlement approval hearing, and I will be represented by a lawyer.
- I do not intend to appear at the settlement approval hearing but wish for my submission to be considered in my absence.



Signed:

Date:



SUPREME COURT OF VICTORIA



Annexure 2

Danielle Bopping & Michelle Pedersen v Monash IVF Pty Ltd & Ors

(S ECI 2020 04761)

Monash IVF Class Action

NOTICE OF OBJECTION TO PROPOSED SETTLEMENT

YOU SHOULD COMPLETE THIS NOTICE IF YOU DO NOT WANT THE COURT TO APPROVE THE PROPOSED SETTLEMENT OF THE MONASH IVF CLASS ACTION. THE COURT WILL CONSIDER ALL NOTICES OF OBJECTION RETURNED BY 28 NOVEMBER 2024.

YOU CAN OBJECT TO THE PROPOSED SETTLEMENT EVEN IF YOU ALSO WISH TO PARTICIPATE IN THE SETTLEMENT.

YOU ARE UNABLE TO OBJECT TO THE PROPOSED SETTLEMENT IF YOU HAVE OPTED OUT OF THE MONASH IVF CLASS ACTION

To: The Supreme Court of Victoria

The person identified below:

1. is a Group Member in this class action; and
2. wishes to object to the Proposed Settlement of the class action.

A. Group Member details

Name of Group Member:	
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If nominating a contact person who is not the named Group Member, please state the contact's name and relationship to the group member:	
Telephone number:	
Postal address:	
Email address:	

B. Ground(s) of Objection

The ground(s) for my objection to the Proposed Settlement are as follows (set out in the space below any submissions you wish to make – you may attach additional pages if necessary):

C. Evidence or submissions (please tick the below options that apply to you)

- I attach evidence (by way of affidavit) in support of my objection.
- I attach submissions in support of my objection (limited to 2 pages).
- I do not attach any evidence or submissions in support of my objection but wish for my objection to be considered based on my submission set out above.

D. Attendance at hearing at 10:30am AEDT on 12 December 2024 (please tick one of the below three options)

- I intend to appear at the settlement approval hearing, and I will appear on my own behalf.
- I intend to appear at the settlement approval hearing, and I will be represented by a lawyer.
- I do not intend to appear at the settlement approval hearing but wish for my submission to be considered in my absence.



Signed:

Date:

