



IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

S ECI 2021 04524

Case S ECI 2021 04524
Filed on: 08/08/2023 11:25 AM

BETWEEN

KEVIN CARLING GREEN

Plaintiff

and

GRAINCORP OILSEEDS PTY LTD (ACN 006 772 578)

Defendant

STATEMENT OF CLAIM
FILED PURSUANT TO ORDER OF THE HONOURABLE JUSTICE JOHN DIXON
MADE 13 JULY 2023

Date of Document:	8 August 2023
Filed on behalf of:	The Plaintiff
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THE PLAINTIFF AND THE GROUP MEMBERS

1. The Plaintiff brings a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) on his own behalf and on behalf of all persons (the **Group Members**) who have:
 - (a) owned or occupied land in Numurkah, Victoria, within one kilometre of the Graincorp Factory located at 46-50 McDonald Street, Numurkah in the State of Victoria (the **Graincorp Factory**) any time after 1 January 2017 (the **Affected Land**); and
 - (b) suffered loss or damage as a consequence of offensive odours and/or noise:
 - (i) emitted by the Defendant from the Graincorp Factory; and
 - (ii) caused by the Defendant's operations to manufacture oilseed at the Graincorp Factory

where “**loss or damage**” means a **capital loss** (diminution in the capital value of the Plaintiff’s and Group Members’ interest in their land) and/or a loss of acoustic and/or olfactory amenity value (including sleep disturbance, distress, inconvenience, annoyance and upset) (**amenity loss**).

2. There are seven or more persons who have claims against the Defendant in respect of the matters set out herein.
3. The Plaintiff is and was at all material times:
 - (a) a natural person;
 - (b) a joint registered proprietor of an estate in fee simple in certain land situated at 16 Railway Place, Numurkah, in the State of Victoria (the **16 Railway Place Property**)

Particulars

The 16 Railway Place Property is more particularly described in the Victorian Register of Land Volume 07421 Folio 064

- (c) in actual possession of the 16 Railway Place Property; and
 - (d) resident in a house on the 16 Railway Place Property.
4. The 16 Railway Place Property is situated:
 - (a) directly opposite to the Graincorp Factory;
 - (b) within about 100 meters of the Graincorp Factory; and
 - (c) within the Moira Shire in a residential zone.

THE DEFENDANT AND THE GRAINCORP FACTORY

5. The Defendant is and at all material times was:
 - (a) incorporated pursuant to Australian law;
 - (b) the registered proprietor of the Graincorp Factory;
 - (c) a wholly owned subsidiary of Graincorp Limited;
 - (d) in control of the Graincorp Factory;
 - (e) the holder of a Licence # 1116 (**Licence**) issued under s. 20 of the *Environment Protection Act 1970* (**EP Act**);

- (f) required to comply with the amended planning Permit 5/2015/122 issued by the Moira Shire in relation to the operation of the Graincorp Factory (**Permit**);
 - (g) engaged in the oilseed business; and
 - (h) manufacturing oilseed at the Graincorp Factory.
6. The Permit conditions stipulate *inter alia* that:
- (a) offensive odours must not be discharged beyond the boundary of the Graincorp Factory.
 - (b) noise emitted from the Graincorp Factory must not exceed the recommended levels as set out in the Noise from Industry in Regional Victoria (NIRV; EPA Publication 1411, 2011) (**EPA Publication 1411**) or as amended; and
 - (c) noise attenuation measures must be installed to ensure that sensitive receptors are not negatively impacted, where deemed necessary by the referral authority.

Particulars

Conditions 24, 25 and 27.

7. The Licence requires the Defendant to:
- (a) ensure that odours offensive to the senses of human beings are not discharged, emitted, or released beyond the Graincorp Factory; and
 - (b) there are no emissions of noise and/or vibrations from the Graincorp Factory which are detrimental to the wellbeing of persons and/or their property around the Graincorp Factory.

Particulars

Amenity Conditions, being causes LI_A1 and causes LI_A2 of the Licence.

8. The Graincorp Factory:
- (a) operates 24 hours a day / 7 days a week;
 - (b) uses mechanical, thermal and chemical processes to crush, refine, bleach and deodorise oilseed onsite; and

- (c) has significantly increased oilseed crush and processing volumes since 1 July 2016.

Particulars

In FY17, the Graincorp Factory crushed 246,000 tonnes of oilseed.
In FY21, the Graincorp Factory crushed 397,000 tonnes of oilseed;
In FY22, the Graincorp Factory crushed record volumes of oilseed.

NUISANCE

Noise

9. Since about January 2017 the Defendant has continuously emitted from its operations at the Graincorp Factory excessively loud noise over the 16 Railway Place Property and the Affected Land (the **Graincorp Factory Noise**).

Particulars

- A. The Graincorp Factory Noise is constant;
 - B. The Graincorp Factory Noise is a combination of machinery noise (which is perceived as a low deep rumble at night-time), auger noise, steam hissing noise, emergency sirens and announcements, reverse beepers, noise from trucks entering and exiting the Graincorp Factory, and, since about 2023, a motor noise;
 - C. The Graincorp Factory Noise is intrusive into the homes located at the 16 Railway Place Property and the Affected Land, and is especially noticeable during early-mornings, evenings and nights;
 - D. The Graincorp Factory Noise exceeds permitted levels at night-time;
 - E. Further particulars may be provided prior to trial and after completion of all interlocutory steps.
10. The Graincorp Factory Noise has caused a substantial interference to the use and enjoyment of:
- (a) 16 Railway Place Property by the Plaintiff; and
 - (b) the Affected Land by the Group Members.

Particulars

- A. The Graincorp Factory Noise prevents the Plaintiff and Group Members from falling asleep;
- B. The Graincorp Factory Noise disrupts the Plaintiff's and Group Members' sleep, and once awoken, they have difficulty getting back to sleep;

- C. The sleep disruption causes the Plaintiff and Group Members to feel exhausted, anxious, distressed and/or annoyed;
 - D. The sleep disruption has hindered the Plaintiff's and Group Members' ability to work, and/or their comfort, and/or their day-to-day activities.
11. By reason of the matters in paragraphs 5-10 above, the Plaintiff and the Group Members do not carry the legal burden of establishing that Graincorp Factory Noise is unreasonable.
12. Alternatively, the Graincorp Factory Noise is unreasonable.

Particulars

The Plaintiff and Group Members rely on the particulars to paragraphs 9 and 10 above.

13. In the premises, since about January 2017, the Defendant has caused a nuisance to:
- (a) the Plaintiff; and
 - (b) each of the Group Members.
14. This nuisance has caused loss and damage to:
- (a) the Plaintiff; and
 - (b) each of the Group Members.

Particulars

- A. The presence of the Graincorp Factory Noise over the 16 Railway Place Property and the Affected Land has caused the land to decline in value; and/or
- B. The Graincorp Factory Noise disturbs the Plaintiff's and Group Members' sleep, comfort, health, and well-being.

Odour

15. Since about January 2017, the Defendant has continuously emitted from its operations of the Graincorp Factory offensive odour over the 16 Railway Place Property and the Affected Land (the **Graincorp Factory Odour**).

Particulars

- A. The Graincorp Factory Odour is constant, but is particularly pungent during warm weather;
 - B. The Graincorp Factory Odour varies in character and intensity depending on the wind speed and direction;
 - C. The Graincorp Factory Odour is perceived by the Plaintiff and Group Members as having a grainy smell with a strong chemical undertone, on occasion putrid like sewage, and/or like mould, and/or like wet wood, and/or like cooking yeast, and/or nutty;
 - D. The Graincorp Factory Odour wafts over the boundary of the Graincorp Factory and is intrusive into the homes located at the 16 Railway Place Property and the Affected Land.
 - E. Further particulars may be provided prior to trial and after completion of all interlocutory steps.
16. The Graincorp Factory Odour has caused a substantial interference to the use and enjoyment of:
- (a) 16 Railway Place Property by the Plaintiff; and
 - (b) the Affected Land by the Group Members.

Particulars

- A. The Graincorp Factory Odour makes the Plaintiff and Group Members experience a range of ill-effects including nausea, headaches, burning eyes, skin rashes, bloating;
 - B. The Graincorp Factory Odour disrupts the Plaintiff's and Group Members' sleep, and once awoken, they have difficulty getting back to sleep;
 - C. The sleep disruption causes the Plaintiff and Group Members to feel exhausted, anxious, distressed, depressed, inconvenienced and/or annoyed;
 - D. The sleep disruption has hindered the Plaintiff's and Group Members' ability to work, and/or their comfort, and/or their day-to-day activities;
 - E. The Plaintiff and Group Members have, on occasion, had to leave their homes to seek respite from the Graincorp Odour;
 - F. The Graincorp Factory Odour forces the Plaintiff and Group Members to shut the windows of their houses in summer, preventing ventilation and relief from natural, cool breezes;
 - G. The Graincorp Factory Odour forces the Plaintiff and Group Members to stay indoors.
17. By reason of the matters in paragraphs 5-8, 15-16, the Plaintiff and the Group Members do not carry the legal burden of establishing that Graincorp Factory Odour is unreasonable.

18. Alternatively, the Graincorp Factory Odour is unreasonable.

Particulars

The Plaintiff and Group Members rely on the particulars to paragraphs 15 and 16 above.

19. In the premises, since about January 2017, the Defendant has caused a nuisance to:
- (a) the Plaintiff; and
 - (b) each of the Group Members.
20. This nuisance has caused loss and damage to:
- (a) the Plaintiff; and
 - (b) each of the Group Members.

Particulars

- A. The presence of the Graincorp Factory Odour over the 16 Railway Place Property and the Affected Land has caused the land to decline in value; and/or
- B. The Graincorp Factory Odour disturbs the Plaintiff's and Group Members' sleep, comfort, health and well-being.

BREACH OF ENVIRONMENTAL DUTY

21. The Plaintiff and Group Members are eligible persons within the meaning of s.308 of the EP Act.
22. At all material times, the Defendant's operations to manufacture oilseed at the Graincorp Factory has given rise to risks of harm to human health or the environment from pollution within the meaning of the EP Act.
23. By reason of the matters pleaded in the two preceding paragraphs, the Defendant owes a duty under s.25 of the EP Act to minimise the risks of harm to human health or the environment from pollution so far as is reasonably practicable (**General Environment Duty**).

24. The Defendant has, in its operations to manufacture oilseed at the Graincorp Factory, failed to minimise the risks of harm to human health or the environment from pollution so far as is reasonably practicable.

Particulars

- A. The Defendant has failed to comply with the conditions of the Permit having allowed noise to be emitted from the Graincorp Factory that exceeds the recommended levels set out in EPA Publication 1411 and failed to install noise attenuation measures to ensure that sensitive receptors are not negatively impacted. The Plaintiff refers to and repeats paragraphs 9 and 10 above and the particulars subjoined thereto;
 - B. The Defendant has failed to comply with the conditions of the Licence and allowed noise to be emitted from the Graincorp Factory that is detrimental to the wellbeing of persons and/or their property around the Graincorp Factory. The Plaintiff refers to and repeats paragraphs 9 and 10 above and the particulars subjoined thereto;
 - C. The Defendant has failed to comply with the conditions of the Licence and Permit and allowed offensive odours to be emitted beyond the boundaries of the Graincorp Factory. The Plaintiff refers to and repeats paragraphs 15 and 16 above and the particulars subjoined thereto;
 - D. Further particulars will be provided before trial on the receipt of an expert report.
25. By reason of the matters pleaded above, in the preceding paragraph, the Defendant has breached its General Environment Duty.
26. The Defendant's breach of its General Environment Duty has caused loss and damage to:
- (a) the Plaintiff; and
 - (b) each of the Group Members.

Particulars

The Plaintiff and each of the Group Members refer to and repeat the particulars to paragraphs 14 and 20.

COMMON ISSUES OF FACT OR LAW

27. The questions of law or fact common to the claims of the Plaintiff and the Group members are:

- (a) Do the Defendant's operations at the Graincorp Factory emit excessive noise and/or offensive odours?
- (b) Is the Graincorp Factory Noise and the Graincorp Factory Odour the cause of the interference with the Plaintiff's and Group Members' use and enjoyment of their land?
- (c) Is there a risk of harm to the Plaintiff and Group Members from the Defendant's operations to manufacture oilseed at the Graincorp Factory?
- (d) What precautions have been taken by the Defendant to minimise the risk of harm to the Plaintiff and Group Members from its operations to manufacture oilseed at the Graincorp Factory?
- (e) Are the Defendant's precautions reasonable?
- (f) Are the Plaintiff and Group Members 'eligible persons' within the meaning of s. 308 of the EP Act?

GROUND FOR AN INJUNCTION

28. Unless abated by the Court, the Defendant is likely to continue causing a nuisance over the 16 Railway Place Property and the Affected Land by continuing its operations to manufacture oilseed at the Graincorp Factory in such a way that emits the:

- (a) Graincorp Factory Noise; and/or
- (b) Graincorp Factory Odour.

29. Damages are not an adequate or appropriate remedy for future nuisance.

GROUND FOR AGGRAVATED AND EXEMPLARY DAMAGES

30. At all times since about 2015, the Defendant knew, or ought to have reasonably known, that its operations to manufacture oilseed at the Graincorp Factory may

give rise to risks of harm to human health or the environment from pollution within the meaning of the EP Act because those risks were referred to in:

- (a) Moira Planning Scheme; and

Particulars

Moira Planning Scheme, clause 53.10

- (b) EPA Publication 1411.

Particulars

EPA Publication 1411, pages 1 and 4.

- 31. The Defendant has actually known since about May 2015 that the 16 Railway Place Property and at least some properties defined as the Affected Land are noise sensitive receivers in the area of the GrainCorp Factory.
- 32. Despite receiving EPA issued Pollution Abatement Notices, the Defendant has not taken adequate or effective measures to ensure that:
 - (a) there are no detrimental emissions of the GrainCorp Factory Noise from the GrainCorp Factory; and
 - (b) the GrainCorp Factory Odour is not discharged, emitted, or released beyond the GrainCorp Factory.
- 33. Despite receiving persistent complaints from the Plaintiff since January 2017 and complaints from other Group Members, the Defendant has not taken adequate or effective measures to investigate, eliminate or reduce the emissions of the GrainCorp Factory Noise and/or the GrainCorp Factory Odour with respect to the 16 Railway Place Property and the Affected Land.
- 34. The Defendant has been high-handed, and acted in contumelious disregard of the Plaintiff's and Group Members' rights to live peacefully in their homes.
- 35. The Defendant must be punished for this conduct to deter repetition by it, and to stand as a warning to other noise- and odour-producing businesses.

AND THE PLAINTIFF CLAIMS ON HIS OWN BEHALF AND ON BEHALF OF THE GROUP MEMBERS:

- A. Damages.
- B. Damages pursuant to s. 313 of the *Environment Protection Act 2017* (Vic).
- C. Aggravated damages.
- D. Exemplary damages.
- E. An injunction to abate further nuisances, alternatively or in addition, damages under s 38 of the *Supreme Court Act 1986* (Vic).
- F. Interest.
- G. Costs.
- H. Such further or other order as the Court deems appropriate.

8 August 2023

M. SHARPE



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DST Legal
Solicitor for the Plaintiff and Group Members