



## GROUP PROCEEDING SUMMARY STATEMENT

**KEVIN CARLING GREEN V GRAINCORP OILSEEDS PTY LTD (ACN 006 772 578)**

Case: S ECI 2021 04524

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### 1. What is a group proceeding (also known as a class action)?

Also known as a representative proceeding, a class action is a case that is brought by a lead plaintiff on their own behalf and on behalf of others where seven or more people have claims against the defendant(s) that arise out of similar circumstances.

### 2. Who is the defendant in this class action, and what is the claim about?

The claim is against Graincorp Oilseeds Pty Ltd (**Defendant**) in relation to odour and/or noise **emissions** discharged from its Numurkah factory situated at 46-50 McDonald Street (**Graincorp Factory**). The Graincorp class action alleges that the lead plaintiff and group members experience a range of **amenity loss and damage** including diminution in property value, sleep disturbance, distress, inconvenience, annoyance and upset caused by the emissions from the Graincorp Factory which they receive at their properties. The Graincorp class action alleges that the emissions are unlawful constituting a common law **nuisance**. The Graincorp class action also alleges that the Defendant owes a General Environmental Duty (**GED**) to the lead plaintiff and group members to minimise the risk of harm to their health or the environment from pollution, which it has breached. The lead plaintiff and group members seek an injunction to restrain the Defendant from continuing the nuisance as well as damages for loss of amenity and diminution in the value of their land attributable to the nuisance for breaching the GED.

As at the date of this group proceeding summary statement, no other group proceedings have been, or are expected to be, filed in relation to the same subject matter or claims alleged in the GrainCorp class action.

### 3. Who is a group member in the Graincorp class action?

You are a group member in the Graincorp class action if you:

- a) have owned or occupied land in Numurkah, Victoria, within one kilometre of the Graincorp Factory any time after 1 January 2017; and
- b) have suffered loss or damage as a consequence of offensive odours and/or noise emitted by the Defendant from the Graincorp Factory; and
- c) the loss or damage as a consequence of offensive odours and/or noise was 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**). Amenity loss and/or damage does not include a personal injury or property damage.

#### **4. Who is the lead plaintiff and what is their role and responsibility?**

The lead plaintiff in the Graincorp class action is Kevin Carling Green. It is the lead plaintiff’s role to represent group members and provide instructions to DST Legal regarding the conduct of the case. The lead plaintiff may also give evidence during the proceeding, and in hearing the lead plaintiff’s case, the Court will consider questions of fact and/or law that are common to all group members.

#### **5. Who is the law firm acting for the lead plaintiff?**

The lead plaintiff has retained DST Legal as his legal representative. DST Legal is the solicitor on the record and she has briefed Dr Michelle Sharpe of the Victorian Bar as lead counsel.

#### **6. How is the Graincorp class action funded? What costs are involved?**

The case is being run by DST Legal and Dr Michelle Sharpe on a ‘No-Win, No-Fee basis’. The case is not being funded by a litigation funder, and is not subject to any funding arrangement. The legal costs of DST Legal are calculated using a time-based billing. This means time is calculated on a per unit basis where each unit equals 6 minutes or part thereof. For example, 33 minutes equals 6 units. Dr Sharpe’s fees and other disbursements, including expert fees, are charged at cost. However, those disbursement costs are ‘conditional’, meaning they will only be recovered in the event of a successful outcome such as a Court judgment or settlement. If the case is successful, then any costs payable to DST Legal, Dr Sharpe and other disbursements will be deducted from, and will not exceed, any compensation that group members are entitled to receive. Any deduction of costs will not be more than the compensation group members may receive. This means that group members participating in the Graincorp class action will not be out of pocket for legal costs incurred in the conduct of the case. If the class action is not successful, the Court may make a costs order against the lead plaintiff but group members will not be required to pay any costs.

#### **7. Contact Us**

If you would like to find out more about the Graincorp class action, or if you are a group member, please register your interest by submitting an enquiry on this webpage. Alternatively, contact Dominica Tannock by email at [dtannock@dstlegal.com.au](mailto:dtannock@dstlegal.com.au) or by telephone on 0437 989 751. You will not be charged for making an enquiry about the Graincorp class action.