



**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: 26/05/2025 09:44 AM

BETWEEN

KEVIN CARLING GREEN

Plaintiff

and

GRAINCORP OILSEEDS PTY LTD (ACN 006 772 578)

Defendant

REPLY

Date of Document:	19 September 2023 <u>26 May 2025</u>
Filed on behalf of:	The Plaintiffs
Prepared by:	Solicitors code: 107956
DST Legal	
17/6 Balwyn Road,	Tel No: 0437 989 751
Canterbury	Ref: Dominica Tannock
VIC 3067	Email: dtannock@dstlegal.com.au

In reply to the defendant's defence dated ~~7 September 2023~~ 19 May 2025
(**Defence**), to the Further Amended Statement of Claim dated ~~8 August 2023~~ 11
April 2025 (**Claim**), the plaintiff says as follows (using terms in the same way as they
are defined in the Defence):

1. The plaintiff generally joins issue with the Defence, save for the defendant's admissions.
2. The plaintiff adopts the admissions (including deemed admissions) in the Defence.

THE PLAINTIFF AND THE GROUP MEMBERS

3A. As to paragraph 1(c) of the Defence, the plaintiff and Group Members are eligible persons within the meaning of s 308(1)(a) of the EP Act by reason of

the fact that they are persons whose interests are affected by the defendant's alleged contravention of s 25 of the EP Act:

- (a) the plaintiff and each Group Member own or occupy land in Numurkah, Victoria, within one kilometre of the Graincorp Factory; and
- (b) the plaintiff and each Group Member have an interest in the:
 - i. amenity of the land that they own or occupy; and
 - ii. (for the Plaintiff and those Group Members who own the land) the value of the land; and
- (c) the defendant's contravention of s 25 of the EP Act has had an adverse effect on:
 - i. the amenity of the land that they own or occupy that unreasonably interferes with or is likely to unreasonably interfere with their enjoyment of the land; and
 - ii. the value of the land.

- 3. As to paragraph 3 of the Defence, the plaintiff says that 'at all material times' means after 1 January 2017.
- 4. As to paragraph 3(c) of the Defence, the plaintiff says that the term 'actual possession' or 'possession' in respect of real property is a legal term and means the plaintiff is a freeholder of the land situated at 16 Railway Place Property.
- 5. As to paragraph 4(a) of the Defence, the plaintiff says that the words 'directly opposite' means 'across the road' in their common and ordinary sense and they are intended to be descriptive.

BREACH OF ENVIRONMENTAL DUTY

- 6. As to paragraph 21(a)(i) of the Defence, the plaintiff, refers to paragraph 3A above, and says that the plaintiff and the Group Members are all persons whose interests in land are affected by Graincorp's contravention of the 2017 EP Act by reason of:

- (a) in respect of the Group Members, their ownership or occupation and possession or de facto possession of the Affected Land pleaded in paragraphs 1(a) the Claim;
- (b) in respect of the plaintiff his ownership and possession and residency of a house at the 16 Railway Place Property as pleaded in paragraph 3 of the Claim; and
- (c) Graincorp's contravention of the EP Act affected the plaintiff and each Group Member's interest in:
 - i. the value of the 16 Railway Place Property and the Affected Land; and/or
 - ii. the use and enjoyment of the 16 Railway Place Property and the Affected Land.

7. As to paragraph 22(b) of the Defence, the plaintiff says:

- (a) the operations to manufacture oilseed at the GrainCorp Factory are described in paragraph 8(b) of the Claim as the mechanical, thermal and chemical processes to crush, refine, bleach, and deodorise oilseed onsite **(Graincorp's Operations)**;
- (b) GrainCorp's Operations give rise to the risk of:
 - i. an adverse effect on the amenity of the 16 Railway Place Property and the Affected Land that unreasonably interferes with, or is likely to unreasonably interfere with, the plaintiff and Group Members' enjoyment of the land by reason of the noise and/or odour emitted from the GrainCorp Factory; and/or
 - ii. a change to the condition of the environment so as to make it offensive to the sense of the plaintiff and Group Members, that change being the noise and/or odour emitted from the GrainCorp Factory; and
- (c) GrainCorp was aware that GrainCorp's Operations may give rise to risks of harm to human health or the environment from pollution, from the emission of noise and/or offensive odour, because those risks were ~~referred to~~ identified and/or reported in:
 - i. Moira Planning Scheme;
 - ii. EPA Publication 1411;

- iii. EPA Publication 1481;
- iv. EPA Publication 1695.1;
- v. EPA Publication 1822.1;
- vi. EPA Publication 1883; and
- vii. EPA Works Approval Assessment Report of the defendant's application to increase oil production;
- viii. EPA Licence conditions; and
- ix. Reports commissioned by the defendant from expert consultants including The Odour Unit and Acoustic Compliance.

8. As to paragraph 23 of the Defence, the plaintiff concedes that Graincorp owes a duty under section 25 of the 2017 EP Act from the day that the Act came into effect, being 1 July 2021.
9. As to paragraph 24(b)(ii) of the Defence, the plaintiff says that the matters listed in section 6(2) of the EP Act are explanatory only and not material to pleading a breach of section 25 of the 2017 EP Act.
10. As to paragraph 31 of the Defence, the plaintiff says that the basis of Graincorp's actual knowledge that the 16 Railway Place Property and at least some properties defined as Affected Land are noise sensitive receivers in the area of the GrainCorp Factory is to be inferred from a map (copy reproduced below) titled 'noise sensitive receptors' and 'Numurkah site development' prepared by SEMF Pty Ltd appearing at page 3 of the EPA's 'Works Approval Assessment Report' in respect of GrainCorp's application, numbered 1002011, to increase oil production.

