

GRAINCORP CLASS ACTION

KEVIN CARLING GREEN v GRAINCORP OILSEEDS PTY LTD
(S ECI 2021 04524)

IMPORTANT NOTICE

THE DEADLINE IS: 4:00pm AEST on 16 May 2025

ANNEXURE A



SUMMARY:

On 1 December 2021, Mr Kevin Carling Green (**the Plaintiff**), together with his partner and daughter, commenced a proceeding in the Supreme Court of Victoria against GrainCorp Oilseeds Pty Ltd (**GrainCorp**). On 8 August 2023 the proceeding was converted into a class action (the **GrainCorp Class Action**).

In summary, the GrainCorp class action seeks compensation for alleged odour and/or noise emissions discharged from GrainCorp’s Numurkah factory situated at 46-50 McDonald Street (the **GrainCorp Factory**). The Plaintiff resides at a property about 100 meters away from the GrainCorp Factory. He alleges that he experiences amenity loss (in the form of sleep disturbance, distress, inconvenience, annoyance, and upset) and loss caused by a diminution in the value of his property caused by the emissions from the GrainCorp Factory since about 1 January 2017 which he alleges that he receives at his property.

WHAT IS THIS NOTICE?

- 1. The Supreme Court of Victoria has ordered that you receive this notice because you may be a group member in the **GrainCorp Class Action** (described further below).
- 2. The purpose of this notice is to inform you of the **GrainCorp Class Action** and to provide you with options regarding your participation in the class action.
- 3. **YOU SHOULD READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS.**
- 4. 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.

WHAT IS A CLASS ACTION?

- 5. A class action is a proceeding brought by a plaintiff on their own behalf and on behalf of group members against the defendant, where the plaintiff and the group members have similar claims against the defendant.
- 6. Group members are bound by any judgment or settlement entered into in the class action unless they choose not to participate by “opting out” of the proceeding. This means that:
 - (a) if the class action is successful, or settles, group members may be eligible for a share of any settlement monies of Court-awarded damages;

- (b) if the group proceeding is unsuccessful, group members are bound by the result; and
- (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against GrainCorp in separate legal proceedings unless they have opted out.

WHAT IS THE GRAINCORP CLASS ACTION?

- 7. This Plaintiff alleges that, since about January 2017, GrainCorp has emitted noise and odour from the GrainCorp Factory. The Plaintiff alleges that these emissions have caused, and continue to cause, substantial and unreasonable interference with his use and enjoyment of his property, and that they give rise to a risk of harm to human health or the environment. The Plaintiff alleges that these emissions constitute a nuisance and a breach by GrainCorp of an environmental duty owed under s 25 of the *Environment Protection Act 2017* (Vic).
- 8. The Plaintiff alleges that the emissions have caused loss and damage to he and group members, being a decline in the value of property affected by the emissions and a disturbance to the Plaintiff’s and group members’ sleep, comfort, health and wellbeing. The Plaintiff seeks an injunction to abate further nuisances, and also seeks damages, and aggravated and/or exemplary damages.
- 9. The claims made by the Plaintiff are set out in a “Statement of Claim” filed in the Court dated 8 August 2023, and amended on 13 March 2024, and further amended on 11 April 2025. A copy of the further amended statement of claim can be accessed at this link: <https://www.supremecourt.vic.gov.au/areas/group-proceedings/graincorp> . The Plaintiff is represented by DST Legal.
- 10. GrainCorp denies the claims made against it and is defending the class action. The basis of GrainCorp’s defence is set out in a “Defence” filed in the Court dated 7 September 2023. A copy of the defence can be accessed at this link: <https://www.supremecourt.vic.gov.au/areas/group-proceedings/graincorp> . GrainCorp is represented by Ashurst Australia.
- 11. The trial of the proceeding is set down to commence on 6 October 2025.

ARE YOU A GROUP MEMBER?

- 12. You are a **group member** if you:
 - (a) are the owner or occupier of land in Numurkah, Victoria, within one kilometre of the GrainCorp Factory any time after 1 January 2017; and
 - (b) consider that you have suffered loss or damage as a consequence of offensive odours and/or noise emitted by GrainCorp from the GrainCorp Factory and caused by GrainCorp’s operations to manufacture oilseed at the GrainCorp Factory; and/or
 - (c) consider that you have suffered loss or damage as a consequence of offensive odours and/or noise emitted by GrainCorp from the GrainCorp Factory and/or that your interests have been affected by a breach of the general environmental duty in section 25 of the *Environment Protection Act 2017* (Vic), making you an “eligible person” within the meaning of section 308 of that Act,

where “loss or damage” means a “capital loss” (being a diminution in the value of your interest in your land) or amenity loss (which is a loss of acoustic and/or olfactory amenity value, including sleep disturbance, distress, inconvenience, annoyance and upset).

- 13. If you do not fit parts (a) and (b) or (a) and (c) of this description, you may disregard this notice.

WHAT IS OPT OUT?

- 14. The plaintiff in a class action does not need to seek the consent of group members to commence a class action on their behalf.
- 15. If you are a group member, you have two options:
 - (a) **opt out** of the Graincorp Class Action;
 - (b) **do nothing** and therefore remain a group member in the Graincorp Class Action.
- 16. If you meet the description of a group member and do not want your legal rights to be determined by this class action, you must opt out by 4.00pm AEST on 16 May 2025.

17. If you choose to “opt out”:

- (a) you will cease to be a group member in the class action;
- (b) you will not be bound by the outcome of the class action and will not be entitled to share in the benefit of any order, judgment or settlement in favour of the Plaintiff and group members in the class action; and
- (c) you may be at liberty to bring your own claims against GrainCorp, provided that you file court proceedings within the time limit applicable to your claims.

- 18. If you wish to bring your own claims against GrainCorp, or are unsure how opting out will affect your legal rights, you should seek your own independent legal advice about your claims and any time limits prior to opting out.

WHAT ARE YOUR OPTIONS?

- 19. If you fit the definition of “group member”, you have following options.

Option 1: Opt-out

- 20. **If you do not wish to be a group member** you should opt out of the proceeding by completing and submitting an Online Opt Out via the Supreme Court of Victoria website at <https://www.supremecourt.vic.gov.au/areas/group-proceedings/graincorp/opting-out> or by completing the “Opt Out Notice” found at Schedule A of this Notice in accordance with the instructions below.

Option 2: Do nothing

- 21. **If you do nothing**, the Plaintiff will continue to bring the proceeding on your behalf up to the point when the Court determines the questions that are common to the claims of the Plaintiff and the group members. Further:
 - (a) You will remain a group member of the GrainCorp Class Action.
 - (b) You will be bound by any settlement or determination of the common claims in the GrainCorp Class Action.

(c) If a settlement of the proceeding is reached, this will include releasing any common claims that are **or could have been made** in the GrainCorp Class Action. If the class action does not result in a settlement before trial, you will be bound by any final judgment determined at trial in respect of the common claims.

HOW CAN YOU OPT OUT?

22. If you do not wish to remain a group member in the GrainCorp Class Action, you must opt out by no later than **4:00pm AEST on 16 May 2025** by :

- (a) completing and submitting an Online Opt Out at: <https://www.supremecourt.vic.gov.au/areas/group-proceedings/graincorp/ opting-out> or;
- (b) completing and submitting an “Opt Out Notice” found at Schedule A at the end of this of this Notice and return a copy of the notice to the Principal Registry of the Supreme Court of Victoria by post or email to the addresses on the notice.

23. If more than one person in your household is a group member, each person must complete and return a **separate opt out notice** if they wish to opt out of the GrainCorp Class Action. This includes any minors who are group members, who may opt out through their parent or guardian.

24. Each group member seeking to opt out should complete a separate opt out notice.

25. The opt out notice **must** reach the Supreme Court of Victoria by no later than **4:00pm AEST on 16 May 2025**, or it will not be effective.

WILL YOU BE LIABLE FOR LEGAL COSTS?

26. The GrainCorp Class Action is being run by DST Legal on a “no win-no fee” basis.

27. What this means is that:

- (a) Group members are not, and will not be, liable for any legal professional fees out of their own pocket by remaining in the GrainCorp Class Action. The Plaintiff is responsible for certain disbursement costs associated with expert evidence. Group members are liable to pay for expert evidence if they claim loss caused by a diminution in the value of their property caused by the emissions from the GrainCorp Factory.
- (b) If the GrainCorp Class Action is unsuccessful, group members will not be liable to pay any costs.

(c) If the GrainCorp Class Action is successful (that is, if any monetary amount is recovered from GrainCorp by settlement or judgment), any legal costs that are payable to the lawyers for the Plaintiff will be calculated and deducted from the monetary amount recovered for the Plaintiff and group members at the end of the GrainCorp Class Action.

(d) No amounts will be paid from any settlement or judgment to DST Legal for the work they have done unless the Court approves those amounts.

WHERE CAN YOU OBTAIN FURTHER INFORMATION?

28. Copies of relevant documents, including this notice and the pleadings, may be obtained by:

- (a) visiting the **DST Legal** website at: <https://dstlegal.com.au>
- (b) visiting the **Supreme Court of Victoria** website at: <https://www.supremecourt.vic.gov.au/areas/group-proceedings/graincorp>.

29. Please consider the above matters carefully. If there is anything you are unsure about, you can:

- (a) contact **DST Legal**:
Telephone: 0437 989 751
Email: dtannock@dstlegal.com.au
- (b) seek independent legal advice.

30. This notice was approved by the Court and distributed and published pursuant to orders made on 11 April 2025.

31. You should not delay in making any decision to opt out or seek further advice.

32. The Supreme Court of Victoria **should not** be contacted for legal advice.

SCHEDULE A

GREEN v GRAINCORP OILSEEDS PTY LTD S ECI 2021 04524

NOTICE OF OPTING OUT BY GROUP MEMBER

DO NOT COMPLETE AND RETURN THIS FORM UNLESS YOU WISH TO **OPT OUT** OF THE GRAINCORP CLASS ACTION.

IF YOU OPT OUT, YOU WILL **NO LONGER** BE A GROUP MEMBER

To: Principal Registry
Supreme Court of Victoria
210 William Street
Melbourne VIC 3000
graincorpclassaction@supcourt.vic.gov.au

I, *[print name]*....., am
(select **one** option only)

- ☐ a group member;
- ☐ a director of *[company]*.....which is a group member;
- ☐ an Executor for the Estate of *[print name]*.....who is a group member;
- ☐ a power of attorney for *[print name]*.....who is a group member; or
- ☐ a solicitor acting for *[print name]*.....who is a group member.

in the above group proceeding, and give notice under section 33J(2) of the *Supreme Court Act 1986* (Vic) that I am **opting out** of this proceeding (if a group member) or on behalf of the group member whom I represent (if I am a representative of that group member).

Date:	
Signature of group member, director of group member, Executor, power of attorney or solicitor for group member:	
Email address of group member:	
Address of group member:	

If you would like to **opt out** of the GrainCorp Class Action, please complete this form online via the **Supreme Court of Victoria website** **OR** return this completed form to the Supreme Court of Victoria by email or by post, at the addresses on this form, by **4:00pm AEST on 16 May 2025**.

