**FEDERAL COURT OF AUSTRALIA**

**NOTICE TO GROUP MEMBERS**

**Live Cattle Trade Ban Class Action**

Brett Cattle Company Pty Ltd v The Commonwealth of Australia & Anor

NSD 1102 of 2014

* + - 1. **Why is this notice important?**

A class action (also known as a “group proceeding”) has been commenced in the Federal Court of Australia by the Brett Cattle Company Pty Limited (**Brett Cattle Company**) against Senator the Honourable Joseph Ludwig in his capacity as the former Minister for Agriculture, Fisheries & Forestry and the Commonwealth of Australia (the **Respondents**). The action is brought by Brett Cattle Company on its own behalf and on behalf of members of the class. The action arises out of alleged loss and harm suffered by the former Minister’s allegedly invalid decision to temporarily suspend the trade of live cattle to the Republic of Indonesia in June 2011.

The Federal Court of Australia has ordered this notice be published for the information of persons who might be members of the class on whose behalf the class action is brought and may be affected by the action. **You should read this notice carefully.** **Any questions you have concerning the matters contained in this notice should not** **be directed to the court**.If there is anything in it that you do not understand, you should seek legal advice.

* + - 1. **What is a class action?**

A class action is a Court proceeding that is brought by one person (**the Applicant**) on his or her or its own behalf and on behalf of a group of people (**class members**) against other persons (**the Respondents**) where the Applicant and the class members have similar claims against the Respondents.

Class members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant is responsible for the costs.

Class members are bound by any judgment or settlement entered into in the class action unless they have opted out of the proceeding. This means that:

1. if the class action is successful, class members may be eligible for a share of any settlement monies or Court-awarded damages;
2. if the class action is unsuccessful, class members are bound by that result; and
3. regardless of the outcome of the class action, class members will not be able to pursue their claims against the Respondents in separate legal proceedings unless they have opted out.
   * + 1. **What is Opt Out?**

The Applicant in a class action does not need to seek the consent of class members to commence a class action on their behalf or to identify a specific class member. However, class members can cease to be class members by opting out of the class action. An explanation of how class members are able to opt out is found below in the section headed “How can you opt out of the proceeding”.

* + - 1. **What is this class action that has been brought by the Brett Cattle Company?**

This class action, the “**Live Cattle Trade Ban class action”** is brought by Brett Cattle Company on its own behalf and on behalf of all persons who are group members as defined in the proceeding.

The Respondents to the class action are the Commonwealth of Australia and Senator the Honourable Joe Ludwig in his capacity as the former Minister for Agriculture, Fisheries and Forestry. The allegations in the Live Cattle Trade Ban class action relate to the decision by the then Minister, Senator the Honourable Joe Ludwig, to temporarily suspend the live cattle trade to Indonesia by making the *Export Control (Export of Live-stock to the Republic of Indonesia) Order 2011* (**the Decision**).

Brett Cattle Company claims that the Decision was invalid because the Minister did not have the power to make the Decision in the circumstances that had arisen and for the reasons that the Minister gave. Brett Cattle Company alleges that the Minister did not make the Decision consistently with the purposes of the relevant legislation because of any concerns relating to the maintenance of the export trade. It alleges that instead, the Minister acted beyond his legal powers in response to animal welfare concerns. It also alleges that the Decision was unreasonable and disproportionate in the circumstances which Brett Cattle Company alleges occurred.

Brett Cattle Company claims that the Minister did not care whether he had the power to make the Decision and that he recklessly failed to obtain proper legal advice about the validity of the Decision. It also claims that the Minister knew that the Decision would cause loss and or financial harm to producers, exporters and service providers (see description in section 5(a) below) but did not care about the loss and or financial harm that was likely to be caused.

The Respondents deny the allegations and are defending the class action. The Respondents maintain the Decision was validly made. The Respondents contend that the Decision was not inconsistent with the purposes of the relevant legislation which were not limited to maintenance of the export trade and they deny that the Decision was unreasonable or disproportionate. Further, the Respondents maintain that the Minister honestly believed on the basis of legal advice that the Decision was within power.

Brett Cattle Company claims that it suffered loss and or financial harm as a result of the Decision and is therefore entitled to damages. Brett Cattle Company also seeks a declaration from the Court that the Decision was invalid. Brett Cattle Company claims damages from the Minister and the Commonwealth (on the basis that the Commonwealth is legally responsible (vicariously liable) for the Minister’s actions). Brett Cattle Company alleges in its statement of claim that class members also suffered loss and or financial harm and are entitled to damages.

* + - 1. **Are you a class member?**

You have received this notice because you may be a class member in the Live Cattle Trade Ban class action against the Respondents.

You are a class member if:

* + 1. on or around 7 June 2011, you derived financial benefit from:
       1. producing cattle in Australia which were sold for live export to the Republic of Indonesia ("**Producers**");
       2. exporting cattle from Australia to the Republic of Indonesia ("**Exporters**"); or
       3. providing transport services, mustering services, feed, agistment and/or other incidental services to Producers and/or Exporters; and
    2. you suffered loss and or financial harm or damage as a result of the *Export Control (Export of Live-stock to the Republic of Indonesia) Order 2011*.

If you are unsure whether or not you are a class member, you should contact Mr Andrew Gill on (02) 6225 3260 or email [Andrew.gill@minterellison.com](mailto:Andrew.gill@minterellison.com) and/or seek your own legal advice without delay.

* + - 1. **Will you be liable for legal costs?**

You will **not become liable for any legal costs** simply by remaining as a class member for the determination of the common questions. The common questions are those questions that are common to the claims of Brett Cattle Company and the class members. In the present case the common questions are those concerning whether or not the Decision was invalid and whether or not the Minister acted recklessly because he did not care whether it was invalid and was likely to cause loss and or financial harm. However:

* 1. if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you may incur costs and become liable for costs. You can engage Minter Ellison or other lawyers to do that work for you. A copy of the terms on which Minter Ellison are acting in the class action may be obtained from them, at no cost to you, using the number shown below in paragraph 10;
  2. if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by Brett Cattle Company in running the class action but which are not able to be recovered from the Respondents; and
  3. class actions are often settled out of court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer.
     + 1. **What will happen if you choose to remain a class member?**

Unless you opt out, you will be bound by the outcome of the class action. If the class action is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Brett Cattle Company and class members. In some cases you may have to satisfy certain conditions before your entitlement arises. If the action is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceedings.

* + - 1. **How can you remain a class member?**

**If you wish to remain** a class member there is **nothing you need to do** at the present time. Brett Cattle Company will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Brett Cattle Company and the class members. However, you are invited to contact the Brett Cattle Company’s lawyers, Minter Ellison, on the number below at paragraph 10(b) and register so that future notices about the Brett Cattle Company class action can be sent to your preferred address.

* + - 1. **How can you opt out of the proceeding?**

**If you do not wish to remain** a class member you must opt out of the Brett Cattle Company class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against the Respondents, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the Respondents, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

**If you wish to opt out** of the class action you **must** do so by completing a “**Notice of opting out by class member**” in the form shown below (Form 21 of the Court’s approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form. **IMPORTANT: the Notice must reach the Registrar by no later than 4.00pm on 1 April 2016**, otherwise it will not be effective.

You should submit the Notice of opting out by class member if:

1. you qualify as a class member and you wish to opt out of the class action; or
2. you believe that you have been incorrectly identified as a class member, because you do not meet the criteria set out in section 5 headed “Are you a class member” above.

Each class member wishing to opt out should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

* + - 1. **Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the originating application starting the Brett Cattle Company class action in the court, the statement of claim, and the defence, may be obtained by:

1. inspecting them between 9am and 5pm at one of the offices of Minter Ellison , contact details for which are available from [www.minterellison.com](http://www.minterellison.com) or by calling (02) 6225 3260 ;
2. inspecting them on the Federal Court website: [www.fedcourt.gov.au](http://www.fedcourt.gov.au/) or by visiting a District Registry of the Federal Court in Sydney, Canberra, Melbourne, Brisbane, Adelaide, Perth, Hobart or Darwin: the addresses for these registries are available at [www.fedcourt.gov.au](http://www.fedcourt.gov.au/) or by calling the New South Wales District Registry on (02) 9230 8567.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Mr Andrew Gill on (02) 6225 3260 or email andrew.gill@minterellison.com. There will be no cost to you for contacting Mr Gill in order to make an initial inquiry of this kind. Alternatively you should seek your own legal advice. You should not delay in making your decision.

Form 21

Rule 9.34

Opt out notice

No. NSD1102 of 2014

Federal Court of Australia

District Registry: New South Wales

Division: General

**BRETT CATTLE COMPANY PTY LTD**

Applicant

**COMMONWEALTH OF AUSTRALIA** and another named in the schedule

Respondents

To: The Registrar

Federal Court of Australia

New South Wales District Registry

Locked Bag A6000

Sydney South NSW 1235

[Name of group member], a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [Name of group member] is opting out of the representative proceeding.

Date: [eg 19 June 20..]

|  |
| --- |
| Signed by [Name]  [Insert capacity eg group member / Lawyer for the group member] |

Schedule

No. NSD1102 of 2014

Federal Court of Australia

District Registry: New South Wales

Division: General

**SENATOR THE HONOURABLE JOE LUDWIG IN HIS CAPACITY AS THE FORMER MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES**

Second Respondent