

**FEDERAL COURT OF AUSTRALIA**  
**NOTICE TO GROUP MEMBERS**  
**Live Cattle Trade Ban Class Action**

Brett Cattle Company Pty Ltd v Minister for Agriculture & Anor

NSD 1102 of 2014

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

On 2 June 2020, the Federal Court of Australia found in favour of the Lead Applicant, **Brett Cattle** Company Pty Limited in representative proceedings (also known as a 'class action') before the Federal Court brought against the **former Minister** for Agriculture, Forestry and Fisheries Senator Joe Ludwig and the Commonwealth of Australia (the **Respondents**).

In the judgment, the Court found that Brett Cattle suffered loss due to the former Minister's invalid decision to temporarily suspend the trade of live cattle to the Republic of Indonesia on 7 June 2011 (the **live cattle trade ban**). In that judgment the Court also answered several questions which are likely to be common to all claims brought by members of the class who were affected adversely by the live cattle trade ban. The Court found that the former Minister committed the tort of misfeasance in public office. It also found that if the former Minister had acted as he should have, at least an additional 88,000 head of live cattle would have been exported to Indonesia in 2011. This notice explains which persons may be members of the class and the nature of the claims they might make.

The action was brought by Brett Cattle on its own behalf and on behalf of members of the class.

The Court has ordered this notice be published for the information of persons who might be members of the class and who may now be able to apply to receive compensation in this class 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.

**2. Class action judgment**

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 (**Group Members**) against

other persons (**the Respondents**) where the Applicant and the Group Members have similar claims against the Respondents.

The Applicant in a class action does not need to seek the consent of Group Members to commence a class action on their behalf or to identify a specific Group Member. Group Members are bound by the judgment of the class action unless they have opted out of the proceeding. The opt out period closed on 1 April 2016.

This means that Group Members who have not opted out of the proceedings may be eligible for a share of the Court-awarded damages which are yet to be determined. This Notice provides important information about what you need to do if you wish to participate in the class action and seek to have your claim for damages determined by the Court.

### 3. Are you a Group Member?

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

You are a Group Member if:

- (a) on or around 7 June 2011, you derived financial benefit from:
  - (i) producing cattle in Australia which were sold for live export to the Republic of Indonesia (**'Producers'**);
  - (ii) exporting cattle from Australia to the Republic of Indonesia (**'Exporters'**); or
  - (iii) providing transport services, mustering services, feed, agistment and/or other incidental services to Producers and/or Exporters (**'Service Providers'**);
- (b) 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*; and
- (c) you did not opt out of the proceedings.

If you are unsure whether or not you are a Group Member, you should contact Mr Andrew Gill on (02) 6225 3347 or email [livetradeaction@minterellison.com](mailto:livetradeaction@minterellison.com) and/or seek your own legal advice without delay.

#### **4. Funding arrangements**

Brett Cattle entered into an arrangement with the Australian Farmers' Fighting Fund (**AFFF**) for the AFFF to fund Brett Cattle's legal costs and disbursements in the proceedings. Pursuant to those arrangements, the AFFF has paid the Brett Cattle's legal costs and out of pocket expenses (disbursements) of the class action. Brett Cattle's lawyers were **MinterEllison**.

Some Group Members (**Funded Group Members**) have entered into litigation funding arrangements with the AFFF, to fund the costs of the claims brought on their behalf in the proceedings, in return for the payment of a commission of 10 per cent of whatever they ultimately recover through these proceedings either by way of settlement or judgment.

#### **5. Individual Claims for compensation**

In its judgment of 2 June 2020, the Court has answered several questions on issues that are likely to apply to all claims that Group Members may have. Individual Group Members can now elect to have their individual claims for damages determined. Individual damages claims may be 'settled' through negotiation and agreement with the Respondents or, if no settlement is reached, they may be the subject of determination by the Court.

If you are a Group Member and you wish to bring forward your individual claim for damages, you will need to supply to the Respondents evidence of your losses. There are two ways you can proceed.

##### **Option A**

You can retain MinterEllison to assist you with the preparation of your evidence and to advance your individual loss claims. If you elect to proceed to have your claims determined and retain MinterEllison to assist you with the preparation of your individual loss claims, the AFFF is prepared to pay the legal costs incurred on your behalf in presenting your individual claims provided you enter into a litigation funding agreement with the AFFF. Those arrangements will provide for the AFFF to pay MinterEllison's legal costs and disbursements incurred in preparing your evidence and acting as your lawyers. In return, you must agree to pay to the AFFF 10 per cent of any judgment or settlement of your claim and, if your claim for damages is successful, any legal costs that you might otherwise have to pay (as explained in Section 6 below). If your claim for damages is not successful you will not have to pay any legal costs.

Entry by Group Members into litigation funding arrangements with the AFFF would not be the subject of the Australian Financial Services Licence and managed investment scheme regulations that now apply to litigation funding schemes entered into on or after 22 August 2020 (pursuant to the *Corporations Amendment (Litigation Funding) Regulations 2020* (Cth)).

### **Option B**

Alternatively, you can prepare and advance your individual damages claim yourself, and may choose to retain a lawyer of your choice in order to assist and represent you in the preparation and advancement of that claim.

For those Group Members who chose Option B (as described further in Section 6 below), the AFFF intends to seek orders that those Group Members contribute from any recovery they obtain through settlement or a judgment:

- their proportionate share (on a pro rata basis) of the costs incurred by Brett Cattle in the proceedings so far, which have to date been paid by the AFFF; and
- 10 per cent of any recovery to which they become entitled.

## **6. Intention to seek a Cost Equalisation Order and Common Fund Order**

Regardless of whether you choose to retain MinterEllison in respect of your individual loss claims, or whether you choose to advance your individual loss claims yourself, Brett Cattle intends to seek a cost equalisation order from the Court. Such an order operates by calculating the dollar-value of the portion of the costs of the trial of the class action which the Respondents are not required to pay that the AFFF incurred and would have to come out of the damages payable to Group Members who have entered into funding arrangements with the AFFF. The calculation then pro rates that sum over the entire class of Group Members (including those who have not signed a funding agreement), so that the legal costs reasonably incurred up to (and including) the trial thus far would be shared equally among all Group Members who recover compensation from the class action.

The AFFF may also seek a 'common fund order' from the Court. A common fund order is one that requires all Group Members who have not signed a litigation funding agreement with the AFFF and who benefit from the outcome by advancing their individual loss claims, to pay to the AFFF an amount as a form of commission. That commission will be the amount that would have been payable to the AFFF by a Group Member if they had entered into a litigation funding agreement with the AFFF, or some lesser amount which the Court considers reasonable in the circumstances. You will be

given further notice and an opportunity to object, if and when the AFFF decides to bring an application in the Court for a common fund order.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Mr Andrew Gill on (02) 6225 3347 or email [livetradeclaimaction@minterellison.com](mailto:livetradeclaimaction@minterellison.com). Please contact Andrew Gill by **17 November 2020**. 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.