

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS1010/21

First Plaintiff: **TWEED BAIT PTY LTD ACN 010 917 674**

AND

Second Plaintiff: **TPF MANAGEMENT COMPANY PTY LTD ACN 065 200 268**

AND

Defendant: **COMMONWEALTH OF AUSTRALIA**

Amended Order

Before: Justice Brown

Date: 15 December 2023

Initiating document: Claim and Statement of Claim filed 18 October 2021

THE COURT ORDERS THAT:

Opt out date

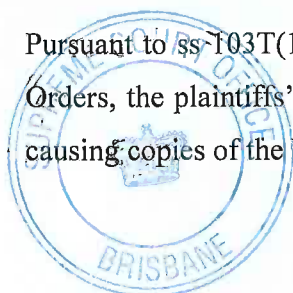
1. Pursuant to s 103G(1) of the *Civil Proceedings Act 2011 (Qld) (CPA)*, the time and date by which a group member may opt out of this proceeding is fixed at 4:00pm on 12 February 2024 (**Opt Out Date**).

Content of notice to group members

2. Pursuant to s 103U of the CPA, the content of the notice informing group members of the commencement of the proceeding, and of their right to opt out of the proceeding, as set out in Annexure A to these Orders (**Notice**) is approved.

Giving notice

3. Pursuant to ss 103T(1)(a) and 103U(2) of the CPA, within 14 days after the date of these Orders, the plaintiffs' solicitors (**Clyde & Co**) shall give the Notice to group members by causing copies of the Notice to be sent by Omni Bridgeway Limited:



- (a) where a Signatory Claimant or other Claimant provided an email address to Clyde & Co or Omni Bridgeway Limited for the purposes of this proceeding – by email to that address; and
- (b) where a Signatory Claimant or other Claimant did not provide an email address as described in (a), or an email transmission to that address prompts a notification that the email was not delivered – by pre-paid ordinary post to the last-known postal address of that Claimant;

and for the avoidance of doubt, notice as given pursuant to (a) and (b) shall constitute notice to all Claimants whether Signatory Claimants or other Claimants.

Reporting to the Court

- 4. Within 28 days after the date fixed in order 3 above, Clyde & Co shall file and serve an affidavit deposing to:
 - (a) the steps taken pursuant to Order 3;
 - (b) the rates of ‘returned’ email and mail;
 - (c) steps taken by Clyde & Co to address non-deliveries in (b); and
 - (d) the rates and nature of enquiries from group members in response to the Notice.

Corrections

- 5. In the event that Clyde & Co believe that a group member may have opted out inadvertently, Clyde & Co:
 - (a) shall forthwith seek confirmation from the group member as to the group member’s intent, and report the response to the solicitors for the defendant (**KWM**); and
 - (b) if the response indicates that the group member inadvertently opted out – as soon as practicable, deliver to the Associate to Justice Brown:
 - i) an affidavit explaining the steps taken pursuant to Order 5(a) above; and
 - ii) a draft order setting aside the opt out notice.
- 6. In the event that a group member sends a completed notice of opting out to Clyde & Co or Omni Bridgeway Limited instead of the Registry:

- (a) within 2 days of receiving the notice of opting out, Omni Bridgeway Limited shall provide the notice to the solicitors for the plaintiffs;
- (b) within 2 days of receiving a notice of opting out (whether directly or as a result of (a) hereof), Clyde & Co shall file the notice at the Registry; and
- (c) the notice shall be treated as filed in the Registry on the day it was received by Omni Bridgeway Limited or Clyde & Co as described in (a) or (b), whichever is earlier.

Costs

- 7. The costs of and incidental to the application for or implementation of these Orders shall be costs in the proceeding.

Other

- 8. On or after the Opt Out Date, the solicitors for the parties be granted leave to uplift and copy the Notices filed in this matter and the Plaintiffs be granted first access.

Signed: _____



ANNEXURE A – NOTICE

IMPORTANT NOTICE SENT BY ORDER OF THE SUPREME COURT OF QUEENSLAND

Tweed Bait Pty Ltd & another v Commonwealth of Australia

Supreme Court of Queensland Proceeding No 1010/21

“Prawn White Spot Class Action”

1 Why is this notice important?

- 1.1 A class action has been started in the Supreme Court of Queensland in relation to the outbreak of “Prawn White Spot Syndrome” in the Logan River and Moreton Bay areas in Queensland in late 2016. The class action is known as the “Prawn White Spot Class Action”.
- 1.2 The Supreme Court of Queensland has ordered that this notice should be published for the information of persons who might have suffered financial losses as a result of the outbreak. Those persons are called **group members**. If you think you suffered financial losses as a result of the outbreak, you should read this notice carefully. If you are unsure whether you qualify as a group member, this notice tells you how to get more information.
- 1.3 As explained in Section 8 below, you may do one of two things in response to this notice:
 - (a) **Opt out** of the class action by **no later than 4.00pm (AEST) on 12 February 2024**. If you Opt Out, you will cease to be a group member in the class action. This means that the case will no longer affect your legal rights; or
 - (b) **Do nothing** if you wish to remain a group member.

2 What is a class action?

- 2.1 A class action is a type of legal proceeding in which one or more persons (called the **plaintiffs**) run the case on their own behalf and on behalf of other persons (the **group members**). The rulings made by the Court will affect the legal rights of the plaintiffs, the group members and the person being sued (called the **defendant**).
- 2.2 The plaintiffs can start a class action without needing permission from the group members, but the group members do not have to stay as group members. A group member can remove themselves from the class action by “opting out”.
- 2.3 If a group member opts out, the class action will no longer affect them.
- 2.4 This notice explains what the Prawn White Spot Class Action is about, and how group members can opt out if they want to do that.

3 What is the Prawn White Spot Class Action about?

- 3.1 The plaintiffs in the class action are Tweed Bait Pty Ltd (**Tweed Bait**) and TPF Management Company Pty Ltd (**TPF**). Tweed Bait carried on the business of processing, storing and wholesaling prawns purchased from commercial fishermen operating in Moreton Bay, Queensland. TPF carried on the business of farming prawns in Alberton in Queensland.

- 3.2 The defendant in the class action is the Commonwealth of Australia (the **Commonwealth Government**).
- 3.3 In summary, the plaintiffs allege that the outbreak of Prawn White Spot Syndrome virus (**WSSV**) in the Logan River and nearby properties in late 2016 was caused by infected uncooked prawn meat being imported into Australia, not being properly inspected by the Commonwealth Government's quarantine inspectors, then being released from quarantine and eventually getting into the Logan River as waste or as fishing bait or berley.
- 3.4 The plaintiffs also allege that the Commonwealth Government:
- (a) when applying its quarantine procedures for imported prawn products, owed a duty of care to the various prawn farming, commercial fishing (including crabbing and bloodworming), and other businesses that were affected by "movement control orders" and other responses enforced by State and Federal Governments in the wake of the outbreak.
 - (b) breached that duty of care, and that the breaches led to the outbreak.
 - (c) by allowing infected prawn meat out of quarantine, interfered with the quality of the waters in the Logan River and Moreton Bay and the commercial fishing group members' public right to fish so to become "tortious nuisance".
- 3.5 The plaintiffs seek monetary compensation for themselves and for all the businesses that fit the definition of "group member" in the class action (the definition is set out below).
- 3.6 The Commonwealth Government denies that it is liable for the outbreak and has filed a Defence in response to the plaintiffs' allegations.
- 3.7 The full statement of the plaintiffs' claims (their '*Further Amended Statement of Claim*') and the details of the Commonwealth's defence (called the '*Further Amended Defence to the Further Amended Statement of Claim*') are available on the website of the plaintiffs' solicitors, **Clyde & Co at Prawn White Spot Class Action: Clyde & Co (clydeco.com)** or the website of the litigation funder, Omni Bridgeway at <https://portal.omnibridgeway.com/cases/register/pws-overview>.

4 Are you a group member?

- 4.1 The group members in the class action are all those persons who as at 21 November 2022:
- (a) were members of or had applied for membership of The Prawn White Spot Litigation Funding Scheme (**Scheme**) (**Signatory Claimant**); **OR**
 - (b) are:
 - (i) in relation to a Signatory Claimant who is an individual:
 - (1) a partner or former partner of a partnership in which the individual is or was a partner;
 - (2) a corporation of which the individual is or was a related entity or associate within the meaning of the *Corporations Act 2001* (Cth);
 - (ii) in relation to a Signatory Claimant who is a corporation – an entity that is or was a related entity or associate of that corporation within the meaning of the *Corporations Act 2001* (Cth);
 - (iii) in relation to a Signatory Claimant who is a trustee of a trust – any beneficiary or object of a power of appointment of that trust; and

- (iv) in relation to a Signatory Claimant who is the beneficiary or object of a power of appointment of a trust – any trustee of that trust.

4.2 If you received this notice by post or email from Clyde & Co, that means you are a group member.

4.3 If you are not sure whether you are a group member, you can contact Clyde & Co at the email or phone number provided at Section 10 of this notice, or seek your own legal advice. DO NOT contact the Supreme Court, as the Court's staff are not permitted to advise you about such matters.

5 What does it mean to be a group member?

5.1 A class action will usually affect the legal rights of group members in relation to the claims that are covered by the action.

5.2 In particular, if the class action results in a settlement or judgment in favour of the plaintiffs and group members, the group members are likely to be able to share in any money compensation that becomes payable. The payments they receive will resolve the group members' own claims against the defendant.

5.3 On the other hand, if the class action is unsuccessful, the group members will also be treated as if they had started their own court cases for the claims covered by the class action, and been unsuccessful in those claims. That would mean that group members would not be able to make the same claims in any other legal proceedings.

6 Do group members have to pay legal costs?

6.1 Group members do not have to pay legal costs in order to be covered by the class action, but if compensation is recovered at the end then *some* of the compensation will be deducted as explained in Section 7 below.

7 How is the class action being paid for?

7.1 The plaintiffs and Signatory Claimants have all entered into an arrangement with a litigation funder, Omni Bridgeway (Fund 5) Australian Inv. Pty Ltd (**Omni Bridgeway**), by joining a litigation funding scheme operated by Omni Bridgeway Investment Management Limited, regarding the legal costs of the class action.

7.2 Under the funding arrangement, Omni Bridgeway is paying part of the lawyers' fees and out-of-pocket expenses (**disbursements**) being incurred by Clyde & Co in preparing the case. Omni Bridgeway will also pay any legal costs that the Court might order be paid to the defendant (the Commonwealth Government), either during the litigation or at the end.

7.3 In return for taking all that financial risk, the funding arrangement provides that Omni Bridgeway will get a *percentage* of any compensation that might become payable to the plaintiffs or group members as a result of making the claims covered by the class action.

7.4 The Court also has power to make an order that group members pay part of any compensation to Omni Bridgeway in return for it having funded the case, even if an individual group member has not actually applied to become (or become) a funded member of the Scheme established by Omni Bridgeway. The Court can make that order if it thinks it is fair and reasonable that all the persons who benefit from the class action should share in the costs of winning that benefit. The plaintiffs, the Signatory Claimants and Omni Bridgeway intend to ask the Court to make that kind of order at the end of the class action if the litigation results in compensation becoming payable.

- 7.5 In making your decision whether to stay as a group member or opt out, you should assume that if the class action results in compensation becoming payable to the plaintiffs and any of the group members, the compensation will be paid:
- (a) **first** to reimburse Omni Bridgeway for the actual costs it has paid – the amount here will be determined by the Court, and will be limited to the legal costs that the Court considers are reasonable;
 - (b) **second** to remunerate Omni Bridgeway for having taken the financial risks of the class action – the funding arrangement provides for a remuneration payment of up to 35% of the resolution sum with an additional 5% added if there is an appeal. If the Court is asked to make an order for remuneration (rather than relying on the funding arrangement) then the percentage that is deducted will again be determined by the Court based on its assessment of what is reasonable in all the circumstances;
 - (c) **third** to pay the portion of Clyde & Co’s professional fees that were agreed only to become payable if the class action achieves a successful outcome, and to pay a success-based premium or ‘uplift’ of 25% on the firm’s reasonable fees to remunerate it for the risk it took in acting in the matter on that part-conditional basis; and
 - (d) **finally**, the remaining compensation will be shared among the plaintiffs and group members according to a distribution scheme that the Court will supervise.

8 Do you have to be a group member?

- 8.1 You do not need to remain a group member. This is so even if you applied to become a funded member of the Scheme at an earlier date and are therefore a Signatory Claimant. The Court rules for class actions require that you be given one opportunity to opt out and cease to be a group member.
- 8.2 If you opt out then you will cease to be a group member in the class action. The case will no longer affect your legal rights. This means that:
- (a) if it succeeds and wins compensation, you will not be entitled to any share of the compensation; but
 - (b) if it fails, you might still be able to bring your own proceeding against the Commonwealth Government.
- 8.3 **If you want to opt out** then you need to:
- (a) complete the “Opt Out Form” enclosed with this notice; and
 - (b) send it to the Court Registry at ~~the address shown on the form~~ “The Supreme Court of Queensland QEII Courts of Law Complex 415 George Street Brisbane QLD 4000”; and
 - (c) ensure the form will reach the Registry of the Supreme Court of Queensland in Brisbane by **no later than 4.00pm (AEST) on 12 February 2024**.
- 8.4 You should **ONLY** complete the Opt Out Form if you want to stop being a group member. If you want to *continue* to be a group member, do *not* complete the opt out form.
- 8.5 If you think you might want to opt out, you should get your own legal advice. You should do this as soon as possible, because of the “opt out” deadline above and because there are other time limits that might apply to any legal claims you might want to bring as a result of the WSSV outbreak.

8.6 If you are a Signatory Claimant and you want to opt out, it is *especially* important that you get independent legal advice since you might have continuing obligations under the Scheme agreement with Omni Bridgeway.

9 What do you need to do now?

9.1 If you want to continue as a group member, there is nothing you need to do.

9.2 If you are thinking about opting out, you need to follow the instructions in Section 8 above.

10 Do you need more information?

10.1 If you want more information about the Prawn White Spot Class Action, you may:

- (a) telephone Nicolas Doucas, Paul Hopwood or James Cooper at Clyde & Co on (03) 8600 7200,
- (b) send an email to clydecotweedbaitproceedings@clydeco.com or
- (c) get your own legal advice.

10.2 Again, do **not** ask the Supreme Court staff for legal advice. They are not permitted to give you advice about the matters covered by this notice.

ANNEXURE A

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 1010/21

First Plaintiff: **TWEED BAIT PTY LTD ACN 010 917 674**

AND

Second Plaintiff: **TPF MANAGEMENT COMPANY PTY LTD ACN 065 200 268**

AND

Defendant: **COMMONWEALTH OF AUSTRALIA**

NOTICE OF OPTING OUT BY GROUP MEMBER

The Group Member named below opts out of this representative proceeding under section 103G of the *Civil Proceedings Act 2011 (Qld)*.

Name of Group Member: _____

Address of Group Member: _____

Signed: _____

Title/position of person signing: _____

Email: _____

Telephone: _____

Dated: _____