

## SUPREME COURT OF NEW SOUTH WALES

### DOYLE'S FARM PRODUCE PTY LTD (ACN 119 734 539) AS TRUSTEE FOR CLAREDALE FAMILY TRUST & ORS V MURRAY DARLING BASIN AUTHORITY & ANOR

PROCEEDINGS NO: 2019/150651

## IMPORTANT NOTICE ISSUED TO YOU BY THE SUPREME COURT OF NEW SOUTH WALES

### WHY IS THIS NOTICE IMPORTANT?

This is an important notice issued to you by the Supreme Court of New South Wales

It is sent to you because the Court considers that you are likely a group member.

As explained below, you may do one of two things in response to this notice:

1. **opt out** of the class action by 31 May 2024 and lose a right to get any money compensation out of the class action (but keep your right to try to get some money compensation in an action you start yourself); or
2. **do nothing**.

If you are unsure whether you are a group member, you should contact Banton Group by sending an email to [mdbaaction@bantongroup.com](mailto:mdbaaction@bantongroup.com), or seek your own legal advice without delay.

#### A. What is this notice about?

1. A class action has been commenced in the Supreme Court of New South Wales against the Murray Darling Basin Authority (**MDBA**) and the Commonwealth of Australia (together, **Defendants**) (**MDBA Class Action**).
2. The representative plaintiffs are Doyle's Farm Produce Pty Ltd, and others (**Plaintiffs**), and they bring the MDBA Class Action on behalf of all members of the group in respect of alleged losses suffered by NSW Murray Regulated River general security water entitlement holders who were allocated low water allocations in the water year 2017/2018 and no water allocation or low water allocations in 2018/2019 and Victorian Murray high reliability water share holders within the Murray declared water system who were allocated low water allocations in the 2019/20 water year due to the alleged mismanagement of the Defendants.

3. The representative plaintiffs' lawyers are Banton Group. A company called International Litigation Partners No. 8 Pte Ltd (**ILP**) is funding the case.
4. You have received this notice because you are potentially a group member in the class action.
5. The Supreme Court of New South Wales has approved and ordered the issue of this notice at the request of the Plaintiffs to:
  - (a) provide information to the group members about the MDBA Class Action;
  - (b) ensure that group members are aware of the principal issues in the MDBA Class Action and of the need to retain records which are relevant to the claims in the MDBA Class Action;
  - (c) correct misleading statements made by others which have been reported in the media about the MDBA Class Action and whether you need to sign up to be part of it; and
  - (d) provide group members with an opportunity to opt out of the MDBA Class Action if they do not want to be part of it.

**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.**

**B. What is a class action?**

6. A class action (representative proceeding) is an action where a number of people have claims against the same person arising out of the same, similar or related circumstances, and there is a substantial common question of law or fact arising from those claims.
7. The plaintiff in a class action does not need to seek the specific consent of group members to commence a class action on their behalf. However group members can cease to be group members by opting out of the class action.
8. Group members are bound by any judgment or settlement entered into in the representative proceeding unless they choose not to participate by "opting out" of the proceedings. This means that:
  - (a) if the representative action is successful or settles, group members may be eligible for a share of any settlement monies or Court-award damages;
  - (b) if the representative proceeding is unsuccessful, group members are bound by that result; and

- (c) regardless of the outcome of the representative proceeding, group members will not be able to pursue their claims against the Defendants in separate legal proceedings (or raise arguments that are inconsistent with factual or legal common questions decided in the class action) unless they have opted out. This is because in a *judgment*, the Court will decide those issues, and in a *settlement*, it is likely to extinguish the claims of group members in relation to the matters the subject of the class action.

**C. What is the MDBA Class Action about?**

9. In the MDBA Class Action, the Plaintiffs claim that the Defendants breached their alleged duty of care owed to the Plaintiffs (and group members). The Plaintiffs claim that MDBA and its delegates mismanaged the operation and maintenance of the Murray Darling Basin by causing or permitting “overbank transfers” through the Barmah-Millewa Forest in the periods between 3 October 2017 and 20 January 2018; and 31 August 2018 and 7 January 2019.
10. The Plaintiffs claim that the Defendants’ conduct resulted in NSW Murray Regulated River general security water entitlement holders, Victorian Murray high reliability water share holders within the Murray declared water system and related parties receiving less water than they would otherwise have received, and suffering damage, including a reduction in the market value of their water, increased costs of water on the temporary market and business losses.

**D. Are you a group member in the MDBA Class Action?**

11. You are a group member in the MDBA Class Action if you are a person or entity who, for all or part of the period between 1 July 2017 and 30 June 2020:
- (a) held NSW Murray Regulated River general security water entitlements under the *Water Management Act 2000 (NSW)* or high reliability water shares issued under the *Water Act 1989 (Vic)* for the Murray declared water system; and/or
- (b) held water supply entitlements under contractual arrangement with the holder of a NSW Murray Regulated River general security bulk water access licence under the *Water Management Act 2000 (NSW)* or held water supply entitlements under contractual arrangement with Goulburn-Murray Water as the bulk entitlement holder of WSE000139;

(the persons or entities described in subparagraphs 11(a) and 11(b) are together described as **Water Entitlement Holders**);

or, not being Water Entitlement Holders,

- (c) conducted irrigated agriculture operations in the NSW Central Murray or the Goulburn-Murray irrigation region using water entitlements owned by Water Entitlement Holders ("**Related Parties**"); and
- (d) in the case of Water Entitlement Holders and Related Parties, or both, received and/or utilised an allocation of water in:
  - i. the 2017/2018 year;
  - ii. the 2018/2019 year; and/or
  - iii. the 2019/20 year

which was lower than the allocation which they would have received and/or utilised had the conduct the subject of complaint in the representative plaintiffs' claim not occurred; and

- (e) suffered loss or damage by reason of the conduct of the Defendants set out in the representative plaintiffs' claim.

- 12. You may be a group member in the MDBA Class Action even if you have not "signed up", and you will remain a group member unless you take Option 1 ("Opt Out") in response to this notice. You do not have to "sign up" to the MDBA Class Action to benefit from it, though you can if you want to.

**E. Are group members liable for legal or other costs?**

- 13. Group members in a representative proceeding are not individually responsible for the legal costs associated with bringing the representative proceedings or for the costs of the Defendants if the claim is unsuccessful. In a representative proceeding, it is the plaintiffs that are responsible for such costs.
- 14. The Plaintiffs in the MDBA Class Action are presently being funded by ILP. ILP pays the Plaintiffs costs of bringing and running the MDBA Class Action. If the MDBA Class Action is unsuccessful, ILP will pay any order made against the Plaintiffs to pay the Defendant's costs.

15. You will not become liable for any legal costs associated with the MDBA Class Action simply by remaining a group member during the determination of the common questions. However:

- (a) 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 can engage Banton Group or other solicitors to do that work for you. You may be liable for costs associated with determination of issues concerned only with your claim;
- (b) if any compensation becomes payable to the class members including you as a result of any order, judgment or settlement in the MDBA Class Action, the Court may make an order that some of that compensation be used to help pay a share of the legal costs and other costs which are incurred by the Plaintiffs in running the MDBA Class Action. The Plaintiffs propose to ask the Court to make such an order. Further, either the Plaintiffs or the funder (ILP) may ask the court for an order approving payment to ILP of an amount the Court considers reasonable for funding the MDBA Class Action. The Court will not make such an order without giving you notice and an opportunity to tell the Court if you agree or disagree with what is proposed. If the Court does not make such an order, it might be asked to make a different order requiring all group members to contribute to the litigation funding costs incurred by the Plaintiffs and those group members who have signed contracts with ILP;

The total of any amounts deducted will never exceed the amount a group member receives. That is, group members **will never be out of pocket by participating in the MDBA Class Action**;

- (c) representative proceedings are often settled out of Court. If this occurs in the MDBA Class Action, you may be able to claim from the settlement amount without retaining a lawyer.

**F. Your Options**

|   |  |
|---|--|
| <p><i>OPTION 1 - OPT OUT AND CEASE TO BE A GROUP MEMBER</i></p> | <p>Group members who opt out will not be bound by the outcome of the MDBA Class Action and will not receive any money from the MDBA Class Action if it wins or settles.</p> <p>To opt out of this class action you will need to complete the below “Opt Out Notice” contained at Schedule A, and then return it to the Registrar of the Supreme Court of New South Wales at the address on the form. The Notice must reach the Registrar by no later than 4.00pm (Sydney time) on 31 May 2024, otherwise it will not be effective.</p> <p>Group members should seek legal advice before opting out.</p>  |
| <p><i>OPTION 2 – DO NOTHING</i></p>                             | <p>Group members who do not opt out by 31 May 2024 will remain as group members and await the outcome of the MDBA Class Action.</p> <p>Group members will be sent further notices at various times in the proceeding, including if an in-principle settlement is reached.</p> <p>If you choose to do nothing and stay in the MDBA Class Action, you should retain your records concerning your water entitlements in the water years 2017/2018 to 2019/2020, and impacts you say you suffered. If you want more details about what records you should keep, please contact Banton Group (see below). You can also consider giving a copy of your records to Banton Group which may help the Plaintiffs negotiate a better settlement for group members because the more information they have about group members’ claims the better a position they will be in at any mediation of the MDBA Class Action.</p> |

**G. Where can you obtain copies of relevant documents?**

16. A copy of the Third Further Amended Statement of Claim filed by the Plaintiffs (and the Defence to the Third Further Amended Statement of Claim) may be obtained by:

- (a) contacting Banton Group (details below) and requesting a copy to be emailed or posted; or
  - (b) inspecting them by visiting the Registry of the Supreme Court in Sydney at Level 5, Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW or visiting the Supreme Court website:  
[https://www.supremecourt.justice.nsw.gov.au/Pages/sco2\\_classaction/Murray%20Darling%20Basin%20Authority%20Class%20Action.aspx](https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Murray%20Darling%20Basin%20Authority%20Class%20Action.aspx) .
17. If you have any issues in locating the Third Further Amended Statement of Claim and/or the Defence to the Third Further Amended Statement of Claim, or if you have any other query, please do not hesitate to contact Banton Group.
18. Please consider the above matters carefully. If there is anything of which you are unsure, you should not hesitate to contact Banton Group by email ([mdbaclassaction@bantongroup.com](mailto:mdbaclassaction@bantongroup.com)) who will answer questions about this notice. Alternatively, you can seek your own legal advice.

## SCHEDULE A

Form 115 (version 2)  
UCPR 58.2

### OPT OUT NOTICE

#### COURT DETAILS

|             |                                  |
|-------------|----------------------------------|
| Court       | Supreme Court of New South Wales |
| Division    | Common Law                       |
| Registry    | Sydney                           |
| Case number | 2019/00150651                    |

#### TITLE OF PROCEEDINGS

|   |   |
|---|---|
| First plaintiff                         | <b>Doyle's Farm Produce Pty Ltd (ACN 119 734 539) as trustee for Claredale Family Trust</b> |
| Second plaintiff                        | <b>John Gerard Doyle</b>  |
| Number of plaintiffs (if more than two) | <b>5</b>  |
| First defendant                         | <b>Murray Darling Basin Authority</b>   |
| Second defendant                        | <b>The Commonwealth of Australia</b>  |

#### FILING DETAILS

|                                 |   |
|---------------------------------|---|
| Filed for                       | <b>[name]</b> , person opting out of representative proceedings |
| #Legal representative           | [solicitor] [firm]  |
| #Legal representative reference | [reference number]  |
| Contact name and telephone      | [name] [telephone]  |
| Contact email                   | [email address]   |

#### OPT OUT NOTICE

Name of person opting out

Address of person opting out

I, a group member in these representative proceedings, opt out of the proceedings.

I understand that in opting out:

- 1 I forego the right to share in any relief obtained by the representative party in the representative proceedings;
- 2 I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and
- 3 To the extent that I have a claim against the defendant(s), any limitation period suspended by the commencement of the representative proceedings has recommenced to run.



## SIGNATURE

#Signature of legal representative

#Signature of or on behalf of  
person opting out if not legally  
represented

Capacity

[eg solicitor, authorised officer of person opting out, person  
opting out]

Date of signature

## NOTICE TO PERSON OPTING OUT

You must, within the time specified in the notice to group members:

- 1 file this form in the registry of the court at the address below, or in the manner provided in the notice to group members; and
- 2 serve a copy of this form on the representative party at the address, or in the manner provided, in the notice to group members.

## REGISTRY ADDRESS

|                |  |
|----------------|--|
| Street address | Supreme Court of NSW<br>Law Courts Building, Queen's Square<br>184 Phillip Street<br>Sydney NSW 2000 |
| Postal address | Supreme Court of NSW<br>GPO Box 3<br>Sydney NSW 2001   |
| Telephone      | 1300 679 272   |