

## NOTICE

### FEDERAL COURT OF AUSTRALIA - AIR CARGO CLASS ACTION

**This notice is an important document which may affect your legal rights. You should read it carefully and, if you do not understand any part of it, you may wish to seek legal advice in relation to its contents.** A class action in the Federal Court of Australia is being brought by De Brett Seafood Pty Limited and J Wisbey & Associates Pty Limited (**the Applicants**) against Qantas Airways Limited, Lufthansa Cargo Aktiengesellschaft, Singapore Airlines Ltd, Singapore Airlines Cargo Pte Ltd, Cathay Pacific Airways Limited, Air New Zealand Ltd, Air New Zealand (Australia) Pty Ltd and British Airways Plc (**the Respondents**). The action arises out of an alleged cartel to fix the price of international air freight services, and specifically the level of fuel and security surcharges imposed, between 1 January 2000 and 11 January 2007.

#### **1. Why is this Notice Important?**

The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the action.

This notice is part of a court-ordered process to assist the parties to attempt to resolve these proceedings by settlement. The Court has ordered a mediation of the proceeding to be conducted on 25 and 26 November 2013 for the purposes of the parties attempting to reach settlement. To facilitate the mediation, the Respondents want to know how many group members would participate in any settlement of the proceedings and the potential value of their claims.

**Group Members wishing to participate in any potential settlement must register their claims by 15 November 2013. If you do not register, you may lose any rights you have to compensation.**

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. What is a class action?**

A class action is an action brought by one person (the applicant) on his, her or its own behalf and on behalf of a group of people (group members) against another person (the respondent) where the applicant and the group members have similar claims against the respondent.

Group 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, unless the court otherwise orders as set out in paragraph 6 below.

Group 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:

- a) if the class action is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages; and
- b) if the class action is unsuccessful, group members will not receive any compensation.

Regardless of the outcome of the class action, group members will not be able to pursue any individual claim against the respondent in separate legal proceedings unless they have opted out.

Group members in a class action can cease to be group members by opting out of the class action. In this class action, the date fixed by the Court for group members to opt out has already passed.

### **3. What is this class action?**

The Air Cargo Class Action is brought by the Applicants on their own behalf and on behalf of all persons who are **group members** as defined in the proceeding (see paragraph 4 below).

The Applicants allege in the Eighth Amended Statement of Claim in Federal Court proceeding No. VID12 of 2007 that from 1 January 2000 to 11 January 2007 (**the Period**) the Respondents engaged in cartel conduct to fix the price of international air freight services, and specifically the level of fuel and security surcharges imposed, including international air freight services to and from Australia in contravention of the *Trade Practices Act 1974*.

The allegations are set out in detail in the Eighth Amended Statement of Claim which may be viewed on the websites of Maurice Blackburn and the Federal Court.

The proceeding claims that the cartel caused the prices of international airfreight services supplied by carriers including the Respondents to be higher than they would otherwise have been. The Applicants are claiming damages, declarations, injunctions and other orders on behalf of themselves and on behalf of the group members.

To date the Respondents have denied the allegations, and are defending the class action. Some Respondents have joined other airlines as Cross-Respondents, who are also expected to deny the allegations and defend the class action.

### **4. Are you a group member?**

Group members are all those persons resident in Australia as at 11 January 2007 who, during the period 1 January 2000 to 11 January 2007, paid identified amounts (i.e. amounts identified by way of invoices, or equivalent demands for payment, or terms of trade, which identified international airfreight as a separate item for which payment was due) totalling more than AUD\$20,000 over the period for the carriage of goods to or from Australia including in each instance a component by air and who are not related parties of the Respondents or any of them within the meaning of the *Corporations Act 2001*.

You are not a group member if you are a retailer who purchased goods from an importer or a customer who purchased goods from a retailer, AND you did not pay identified amounts for international airfreight on your goods.

You can claim damages only if you sustained any loss or damage by reason of the alleged conduct and have not released such a claim. Your claim for loss and damage may be reduced to the extent if any that you were able to and did pass on any loss or damage you suffered to your own customers.

If you are unsure whether or not you are a group member, you should contact Maurice Blackburn or seek your own legal advice without delay.

## 5. **What do Group Members need to do?**

If you are a group member you now have the following options:

**Participate:** If you wish to participate in any future settlement of the Air Cargo Class Action and make a claim for losses you allegedly suffered as a result of the allegations made in the Eighth Amended Statement of Claim, pursuant to orders made by the court on 27 September 2013, you must complete the **Group Member Registration Form** below and send it to:  
Attention: Tahli Preston-Dixon  
**Maurice Blackburn Lawyers**  
PO Box 523J  
Melbourne 3001

Or email it to:

[aircargoclassaction@mauriceblackburn.com.au](mailto:aircargoclassaction@mauriceblackburn.com.au)

### **by 4:00pm on 15 November 2013 (the Deadline).**

By registering, you will be entitled to participate in the distribution of amounts as part of any settlement of these proceedings, subject to an assessment that you have a valid claim.

Information included in the Group Member Registration Form will be provided to the lawyers for the Respondents and Cross-Respondents on a confidential basis for the purpose of mediation only; and may be provided to the Respondents and Cross-Respondents upon their signing an undertaking to the Court.

**The Court orders made on 27 September 2013 provide for a group member to effectively challenge the requiring of registration and the providing of information.**

If you want to challenge the orders made on 27 September 2013 requiring the registration of claims for compensation, you must send your written reasons for the challenge to Maurice Blackburn by the Deadline.

**Take no action:** **If you do nothing**, or if your registration form is not received by Maurice Blackburn by the Deadline, **you will not be entitled to participate in the distribution of any amount to be paid in settlement of the proceedings.** You will however continue to be a group member for all purposes other than receiving compensation resulting from settlement.

You will continue to be bound by any judgments in the proceedings and will have no right to sue on claims arising from the same facts in other proceedings. In effect, this means that you may lose any rights you have to compensation for loss resulting from the contraventions alleged in these proceedings. You will be bound by any orders or judgment in the proceedings (including those made as part of a settlement approved by the Court).

## **6. Legal Costs & Litigation Funding**

**You will incur no liability for legal costs simply by returning the Registration Form.**

If the class action is unsuccessful, group members will have no liability for legal costs in this class action.

You will not become liable for any legal costs simply by becoming a Registered Group Member. However, if the class action results in a negotiated settlement or a judgment in favour of the Applicants, then:

- (a) the finalisation of your personal claim may require work to be done in processing your claim. If such work is required you may need the assistance of solicitors. You may enter into a retainer agreement with Maurice Blackburn or other solicitors of your choice to do that work if it becomes necessary, and you will be liable for the costs associated with the determination of the individual issues for your claim; and
- (b) if any compensation becomes payable to you, the Applicants may ask the Court to make an order that some of that compensation be used to pay a portion of the legal costs incurred by them in running the class action. If the Court makes such an order, the amount of costs which you have to pay will be deducted from your compensation.

Information about the retainer offered by Maurice Blackburn and the litigation funding arrangement offered by IMF (Australia) Limited is available from Maurice Blackburn.

## **7. If you have any questions**

If you have any questions regarding the Air Cargo Class Action, you should contact the Applicants' solicitors (Maurice Blackburn). Contact details for Maurice Blackburn regarding this matter are as follows:

Contact: Tahli Preston-Dixon  
Website: [www.mauriceblackburn.com.au](http://www.mauriceblackburn.com.au)  
Email: [aircargoclassaction@mauriceblackburn.com.au](mailto:aircargoclassaction@mauriceblackburn.com.au)  
Telephone: (03) 9605 2892

Copies of the Sixth Amended Application and Eighth Amended Statement of Claim which set out the claims made in the Air Cargo Class Action can also be viewed on the Maurice Blackburn website.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Maurice Blackburn or seek your own legal advice. You should not delay in making your decision. Please take careful note of the Deadline above for that decision.

**GROUP MEMBER REGISTRATION FORM**

**De Brett Seafood Pty Ltd & Another v Qantas Airways & Others  
No. VID 12 of 2013**

TO : Tahli Preston-Dixon  
MAURICE BLACKBURN  
PO Box 523J  
Melbourne VIC 3000

The person identified as a group member below **REGISTERS their claim for compensation.**

Name of person (**Group Member**) that purchased international airfreight services (**IAFS**) to or from Australia during the period 1 January 2000 to 11 January 2007 (the **Period**):

.....

ACN/ABN (if a company): .....

The amount spent on IAFS to or from Australia during the Period (please attach a separate page if more rows required; if you purchased freight in respect of many different locations, you may provide a total figure for all locations):

Origin	Destination	Value of expenditure on IAFS during Period AUD
Total		

Please tick as applicable:

- I have agreed with one or more persons to release some or all claims for loss or damage I might have by reason of the alleged cartel

Capacity in which purchased IAFS:

- I am a freight forwarder
- I am a shipper of goods to or from Australia by air
- Other

Signed: .....

Name of person signing: .....

Date: ..... / ..... / 2013

Telephone: .....

Email: .....

Postal address: .....