
FEDERAL COURT OF AUSTRALIA - AIR CARGO CLASS ACTION

1. Why is this notice important?

A class action commenced in the Federal Court of Australia by Auskay International Manufacturing and Trade Pty Ltd is being continued by De Brett Seafood Pty Limited and J Wisbey & Associates Pty Limited (**‘the Applicants’**) against Qantas Airways Limited, Deutsche Lufthansa Aktiengesellschaft (the Applicants have foreshadowed applying to substitute Lufthansa Cargo Aktiengesellschaft as the appropriate ‘Lufthansa’ respondent), Singapore Airlines Ltd, Singapore Airlines Cargo Pte Ltd, Cathay Pacific Airways Limited, Air New Zealand Ltd, Air New Zealand (Australia) Pty Ltd, Japan Airlines International Co Limited and British Airways Plc (**‘the Respondents’**). The action arises out of an alleged cartel to fix the price of international air freight services.

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. **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 or her 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.

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;
- (b) if the class action is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against the respondent in separate legal proceedings unless they have opted out.

3. What is Opt Out?

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. However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found below in the section headed ‘How can you opt out of the proceeding’.

4. 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 5 below).

The Applicants allege in the Sixth 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

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 'Sixth 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.

The Respondents deny the allegations and are defending the class action.

5. 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 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.

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.

6. Will you be liable for legal costs?

You will **not become liable for any legal costs** simply by remaining as a group member for 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 Maurice Blackburn or other solicitors to do that work for you. A copy of the terms on which Maurice Blackburn are acting in the class action may be obtained by contacting them;
- (b) 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 the Applicants in running the class action but which are not able to be recovered from the respondents; and
- (c) 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.

7. What will happen if you choose to remain a group member?

Unless you opt out, you will be bound by the outcome of the class action. If the class action is successful then, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicants and group 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.

8. How can you remain a group member?

If you wish to remain a group member there is **nothing you need to do** at the present time. The Applicants 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 Applicants and the group members. However, you are invited to contact Maurice Blackburn to register as a group member so that future notices about the class action can be sent to your preferred address.

9. How can you opt out of the class action?

If you do not wish to remain a group member you must opt out of the 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 respondent/s, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the respondent/s, 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 group member' in the form shown below, 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 19 August 2011**, otherwise it will not be effective.

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

- (a) you qualify as a group member and you wish to opt out of the class action; or
- (b) you believe that you have been incorrectly identified as a group member, because you do not meet the criteria set out in the section headed 'Are you a group member' above.

Each group member 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).

10. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the Fourth Amended Application, the Sixth Amended Statement of Claim, the Defences, the Replies to Defences and any consents given pursuant to sections 5(3) and 5(4) of the *Trade Practices Act* may be obtained by:

- (a) downloading them from the Maurice Blackburn website www.mauriceblackburn.com.au;
- (b) inspecting them between 9am and 5pm at one of the offices of Maurice Blackburn. The address for these offices are available by contacting Maurice Blackburn;
- (c) inspecting them on the Federal Court website: www.fedcourt.gov.au/courtdocuments/classactions.html 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 or by calling the Victoria District Registry on (03) 8600 3333.

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.

MAURICE BLACKBURN CONTACT DETAILS:

Contact details for Maurice Blackburn regarding this matter are as follows:

Website: www.mauriceblackburn.com.au

Email: aircargoclassaction@mauriceblackburn.com.au

Telephone: (03) 9605 2892

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY**

No. VID12 of 2007

DE BRETT SEAFOOD PTY LIMITED & Anor
Applicants

-and-

QANTAS AIRWAYS LIMITED & Ors
Respondents

**NOTICE OF OPTING OUT BY GROUP MEMBER
(Order 73, rule 6)**

TO: The Registrar
Federal Court of Australia
Commonwealth Law Courts Building
305 William Street
Melbourne 3000

I, (PRINT NAME), a group member in the Air Cargo
Class Action, give notice under subsection 33J of the Federal Court of Australia Act 1976, that I
am opting out of the class action.

Date:

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Signature of group member or his or her solicitor

Address of group member:			
Address			
Phone number	(w)	(mob)	
Email address			