

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 27/04/2017 5:35:11 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application - Form 15 - Rule 8.01(1)
File Number:	VID430/2017
File Title:	AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v MURRAY GOULBURN CO-OPERATIVE LIMITED & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	First Case Management Hearing
Time and date for hearing:	02/06/2017, 10:15 AM
Place:	Please check Daily Court List for details



Dated: 28/04/2017 10:03:08 AM AEST

A handwritten signature in blue ink, appearing to read 'Warwick Soden'.

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 15  
Rules 8.01(1), 8.04(1)

**ORIGINATING APPLICATION**

**FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: VICTORIA  
DIVISION: GENERAL  
NPA: COMMERCIAL AND CORPORATIONS,  
REGULATOR AND CONSUMER PROTECTION**

**NO VID OF 2017**

**AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION**

Applicant

**MURRAY GOULBURN CO-OPERATIVE CO LIMITED**

**ABN 23 004 277 089**

and others named in the Schedule  
Respondents

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**TIME AND DATE FOR HEARING:**

**PLACE:**

Owen Dixon Commonwealth Law Courts Building  
305 William Street  
Melbourne VIC 3000

Date:

.....  
Signed by an officer acting with  
the authority of the District Registrar

Filed on behalf of the Applicant, ACCC  
Prepared by: Katrina Close  
AGS lawyer within the meaning of s 551 of the *Judiciary Act*  
1903

Address for Service:  
The Australian Government Solicitor,  
Level 34, 600 Bourke St, Melbourne, VIC 3000  
Katrina.Close@ags.gov.au

File ref: 16006417

Telephone: 03 9242 1230  
Lawyer's Email: Katrina.Close@ags.gov.au

DX 50 Melbourne



## DETAILS OF CLAIM

On the grounds stated in the accompanying concise statement the Applicant claims:

### *Murray Goulburn*

1. A declaration that the first respondent, Murray Goulburn (**MG**), has engaged in unconscionable conduct in breach of s21 of the Australian Consumer Law (**ACL**), by providing false and misleading information to dairy farmers in its Southern Milk region (**Farmers**) on numerous occasions between June 2015 and 27 April 2016 concerning the price it would pay them for milk for the 2015/2016 financial year (**FY16**), and failing to correct that information, in circumstances where:
  - 1.1. MG knew that Farmers relied on information it provided in making their significant business decisions throughout the year;
  - 1.2. there was an imbalance of information between MG and the Farmers;
  - 1.3. MG knowingly provided and maintained overstated forecasts which were repeating and continuing in FY16 until 27 April 2016;
  - 1.4. MG knew that Farmers expected and relied on accurate disclosure of milk pricing information as their primary source of income;
  - 1.5. Farmers lacked practical alternatives to supplying MG; and
  - 1.6. Farmers suffered detriment as a result of MG withholding accurate financial information until near the very end of FY16 when it was too late for Farmers to practically readjust significant business decisions, and where Farmers ultimately incurred debts to MG as a result of its conduct.
2. A declaration that MG, by:
  - 2.1. representing to Farmers on and from 24 June 2015 that:
    - 2.1.1. MG had fixed the Opening Price for FY16 at a level that minimised the risk of the final farmgate milk price (**Final FMP**) for FY16 falling below the Opening Price and facilitated step-ups from the Opening Price;
    - 2.1.2. MG forecast the Final FMP for FY16 to be \$6.05 kg/ms;
    - 2.1.3. the forecast Final FMP of \$6.05 kg/ms was subject to changes in external factors such as global dairy commodity prices which reflected MG's up to date opinion about those matters;
    - 2.1.4. MG considered the forecast final FMP of \$6.05 kg/ms to be the most likely outcome for FY16;
    - 2.1.5. there were no material risk factors to achieving a Final FMP of \$6.05 kg/ms known to MG other than the disclosed risk factors; and



- 2.1.6. it had a genuine and reasonable basis for making the representations referred to in paragraphs 2.1.1 – 2.1.5;
- 2.2. further or alternatively, representing to Farmers on and from 31 August 2015 that:
  - 2.2.1. MG maintained a forecast Final FMP for FY16 of \$6.05 kg/ms;
  - 2.2.2. although that forecast was subject to certain assumptions including a material strengthening of commodity prices during the balance of FY16, MG expected dairy commodity prices to strengthen during the balance of FY16;
  - 2.2.3. MG considered the forecast final FMP of \$6.05 kg/ms to be the most likely outcome for FY16;
  - 2.2.4. if the assumptions underpinning the forecast Final FMP of \$6.05 kg/ms did not materialise, it expected a Final FMP in the range of \$5.60 to \$5.90 kg/ms;
  - 2.2.5. there were no material risk factors to achieving a Final FMP of \$6.05 kg/ms known to MG other than the disclosed risk factors; and
  - 2.2.6. MG had a genuine and reasonable basis for each of the representations referred to in paragraphs 2.2.1 – 2.2.5;
- 2.3. further or alternatively, representing to Farmers on and from 29 February 2016 that:
  - 2.3.1. the Final FMP would be \$5.60 kg/ms;
  - 2.3.2. although that forecast was subject to there being no further material deterioration in commodity prices or unfavourable changes to the current AUD:USD exchange rate, MG considered a final FMP of \$5.60 kg/ms to be the most likely outcome for FY16;
  - 2.3.3. there were no material risk factors to achieving a Final FMP of \$5.60 kg/ms known to MG other than the disclosed risk factors;
  - 2.3.4. the underperformance of the Ingredients and Nutritionals segment of its business derived from the weakness in commodity prices was expected to be partially offset by the expected strong performance of domestic and international dairy foods products sale; and
  - 2.3.5. it had a genuine and reasonable basis for making each of the representations in paragraphs 2.3.1 – 2.3.4,

has on each occasion throughout the period 24 June 2015 to 27 April 2016, in trade or commerce, in connection with the supply of milk by Farmers, made false or misleading representations with respect to the price of that milk in contravention of s29(1)(i) of the ACL.



3. A declaration that MG, by engaging in the conduct set out in paragraph 2 above, has on each occasion and throughout the period 24 June 2015 to 27 April 2016 engaged in misleading or deceptive conduct in contravention of s18 of the ACL.
4. An order pursuant to s247 of the ACL that MG cause to be sent to Farmers, and to be published, at its expense, a notice in terms and form to be agreed with the Applicant, setting out the substance of the Court's findings in relation to its conduct.
5. An order pursuant to s246(2) of the ACL that MG establish and maintain for a period of 3 years an education and training program for employees or other persons involved in MG's business, being a program designed to ensure their awareness of their responsibilities and obligations in relation particularly to Parts 2.1 and 2.2 of the ACL.

**Mr Helou**

6. A declaration that the second respondent, Mr Helou, was knowingly concerned in, party to, the contraventions by MG of the ACL referred to above, within the meaning of s224(1)(e) of the ACL.
7. An order pursuant to s248 of the ACL that Mr Helou be disqualified from managing corporations for a period of seven years from the date of the Court's order.
8. An order pursuant to s224 of the ACL that Mr Helou pay to the Commonwealth of Australia, in respect of his involvement in MG's contraventions of s21 and s29 of the ACL, pecuniary penalties in such amount as the Court considers appropriate.

**Mr Hingle**

9. A declaration that the third respondent, Mr Hingle, was knowingly concerned in, or party to, the contraventions by MG of the ACL referred to above, within the meaning of s224(1)(e) of the ACL.
10. An order pursuant to s248 of the ACL that Mr Hingle be disqualified from managing corporations for a period of seven years from the date of the Court's order.
11. An order pursuant to s224 of the ACL that Mr Hingle pay to the Commonwealth of Australia, in respect of his involvement in MG's contraventions of s21 and s29 of the ACL, pecuniary penalties in such amount as the Court considers appropriate.

**Other orders**

12. Costs.
13. Such further or other orders as the Court considers appropriate.



**APPLICANT'S ADDRESS**

The Applicant's address for service is:

Australian Government Solicitor,  
Level 34, 600 Bourke St, Melbourne, VIC 3000

Email: [Katrina.Close@ags.gov.au](mailto:Katrina.Close@ags.gov.au)

The Australian Government Solicitor's telephone and document exchange numbers are:

Tel: 03 9242 1230

DX 50 Melbourne

The Applicant's address is:

Level 35, The Tower  
360 Elizabeth Street  
Melbourne Central  
Melbourne Vic 3000

**SERVICE ON THE RESPONDENTS**

It is intended to serve this application on all Respondents.

Date: 27 April 2017

A handwritten signature in blue ink, appearing to read 'Katrina Close'.

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Katrina Close  
AGS lawyer  
for and on behalf of the Australian Government Solicitor  
Lawyer for the Applicant

Date: 27 April 2017



**Schedule**

**FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: VICTORIA  
DIVISION: GENERAL  
NPA: COMMERCIAL AND CORPORATIONS,  
REGULATOR AND CONSUMER PROTECTION**

**No VID of 2017**

**Respondents**

Second Respondent	Gary Helou
Third Respondent	Bradley Hingle

Date: 27 April 2017