



Annexure A

FEDERAL COURT OF AUSTRALIA

NOTICE AS TO PROPOSED SETTLEMENT OF CLASS ACTION

KATHLEEN O'DONNELL v COMMONWEALTH OF AUSTRALIA (VID482/2020)

1. We have sent this notice to you because it appears that you are a retail bondholder who, during the period 7 July 2020 and 20 December 2022 (the **Class Period**) acquired, and continued to hold as at 20 December 2022, one or more units of Australian:
 - (a) exchange-traded Treasury Indexed Bonds (eTIB) maturing in 2050 with ASX code GSIC50; and
 - (b) exchange-traded Treasury Bonds (eTB) maturing in 2047 with ASX code GSBE47.
2. This means that you appear to be a "**group member**" in the *O'Donnell v Commonwealth of Australia* class action.
3. The purpose of this notice is to provide you with some information about a proposed settlement of the class action.

The class action

4. In the class action, Ms O'Donnell, on behalf of group members, seeks a declaration that the Commonwealth had misled or deceived investors for the duration of the Class Period by not disclosing climate change risks in bond issue documents and on the website of the Australian Office of Financial Management.

Proposed settlement of the class action

5. Ms O'Donnell and the Commonwealth have agreed to settle the class action.
6. The settlement is subject to approval by a judge of the Federal Court. The judge will hold a hearing to decide whether to approve the settlement on **11 October 2023 at 10:15 am AEDT**.
7. The terms of the settlement are set out in the **attached** Heads of Agreement. Under the proposed settlement:
 - (a) Equity Generation Lawyers (the solicitors for Ms O'Donnell) and the Department of Treasury (part of the Commonwealth) will each publish a public statement on their respective websites, the content of which has been agreed between the parties and is annexed to the attached Heads of Agreement;



- (b) Ms O'Donnell will apply to the Court to discontinue the proceeding, and the Commonwealth will support that application. We explain below what "discontinue" means;
 - (c) Neither Ms O'Donnell nor the Commonwealth will have to pay for each other's "costs" associated with the proceeding.
- 8. Senior and junior counsel acting for Ms O'Donnell have given advice to Ms O'Donnell about the proposed settlement. That advice is confidential, but it concludes that the terms of the settlement contained in the Heads of Agreement are fair and reasonable and in the interests of the Ms O'Donnell, the group members and as between them.

"Discontinuing" the class action

- 9. While this class action has been on foot, Ms O'Donnell has been conducting the litigation on behalf of all group members. The claims of all group members have been part of the proceeding whether or not an individual group member has registered their interest in the proceeding or made any step to contact Equity Generation Lawyers.
- 10. As part of the proposed settlement, Ms O'Donnell has now applied to the Court for permission to discontinue the class action.
- 11. If the Court permits Ms O'Donnell to discontinue the class action:
 - (a) The proceeding will cease;
 - (b) However, you will still be able to bring your own case to make the same claims, either just for yourself, or also on behalf of other group members, if you wish. If this is something you think you might want to do then you should get legal advice.

What options are available to you?

- 12. You have two options. The options are:
 - (a) Do nothing, in which case the Court will proceed to consider whether to approve the proposed settlement (including whether to give Ms O'Donnell permission to discontinue the class action). If you choose this option, you will still be able to bring your own case in relation to these issues, provided you meet any applicable deadline for bringing such a case; or
 - (b) Object to or oppose the proposed settlement of the class action.



13. If you wish to take option (b):
- (a) please inform Equity Generation Lawyers by email as soon as possible and ideally before **26 September 2023**. Any email you send may need to be shown to the Court and to the Commonwealth.
 - (b) You can also tell the Court your concerns at the settlement approval hearing on **11 October 2023 at 10:15 am AEDT**. If you wish to do this, please inform Equity Generation Lawyers by email and the Court will make arrangements to allow you to speak at the hearing.

Contacting Equity Generation Lawyers

14. You can contact Equity Generation Lawyers at:

- (a) info@equitygenerationlawyers.com
- (b) +61 03 9607 8300

How will you be informed of the outcome?

15. If the Court approves the proposed settlement (with the consequence that the class action is discontinued), group members will be notified by way of an update to the website of Equity Generation Lawyers, accessible at this address: <https://equitygenerationlawyers.com/cases/odonnell-v-commonwealth/>

Federal Court of Australia

District Registry: Victoria

Division: General

No. VID482/2020

KATHLEEN O'DONNELL

Applicant

THE COMMONWEALTH OF AUSTRALIA

Respondent

HEADS OF AGREEMENT

1. The parties have agreed that:
 - a. the content of the public statement annexed hereto is to be published on the websites of the Department of the Treasury and Equity Generation Lawyers at an agreed time within 7 days of the Court approving the settlement of this proceeding on the terms set out in these Heads of Agreement (**the Settlement Terms**);
 - b. the Applicant will discontinue this proceeding with no order as to costs within 7 days of the Court approving the Settlement Terms.
2. The Settlement Terms are subject to final approval being obtained by the Commonwealth to the form of the annexed public statement within 28 days.
3. Subject to the Commonwealth obtaining the approval described in paragraph 2:
 - a. the Applicant agrees to make an application to the Court for approval of the Settlement Terms and for the grant of leave to the Applicant to discontinue this proceeding; and
 - b. the Commonwealth agrees to support the application of the Applicant.

4. These heads of agreement will remain confidential until the applicant makes an application pursuant to paragraph 3 to the Court for approval of the Settlement Terms and for the grant of leave to discontinue this proceeding.



Anthony Seebach

First Assistant Secretary and Chief
Counsel, Law Division within the
Department of the Treasury on behalf
of the Commonwealth of Australia



David Hertzberg

Equity Generation Lawyers on behalf of
the applicant

WITHOUT PREJUDICE AND FOR THE PURPOSES OF MEDIATION ONLY, SUBJECT TO INSTRUCTIONS

Federal Court of Australia

District Registry: Victoria

Division: General

No. VID482/2020

KATHLEEN O'DONNELL

Applicant

THE COMMONWEALTH OF AUSTRALIA

Respondent

AGREED PUBLIC STATEMENT

1. This statement is made by the Commonwealth of Australia in settlement of the proceeding commenced in the Federal Court of Australia by Kathleen O'Donnell against the Commonwealth (Proceeding No VID482/2020). This statement is published on the websites of the Department of Treasury and Ms O'Donnell's solicitors (Equity Generation Lawyers).
2. In the proceeding in the Federal Court, Ms O'Donnell claimed that the Commonwealth failed to disclose information relating to climate change in connection with the issue of Exchange-traded Australian Government Bonds (**eAGBs**).
3. The parties have agreed that Ms O'Donnell will discontinue the proceeding with no order as to costs when the Court has approved this settlement.
4. Climate change is a systemic risk that presents significant risks and opportunities for Australia's economy, regions, industries, and communities. Achieving Australia's emissions reduction commitments and realising the opportunities that accompany the transition will require significant investment by governments and the private sector. Uncertainty around the magnitude and timing of the physical impacts of climate change and the global transition to net zero emissions translates to uncertainty about the fiscal impacts of climate change. And, as a consequence, there is uncertainty about whether the fiscal impacts of climate change may affect (if at all) the value of Commonwealth Government Securities (also known as Australian Government Bonds or **AGBs**) and, in turn, eAGBs.
5. The economic and climatic changes brought about by climate change will have fiscal impacts. For example, the new industries and jobs emerging from the net zero transformation will impact the structure of the economy and, in turn, the tax base. Extreme weather events are also expected to occur with increased severity and frequency, which will increase demand for disaster relief payments and infrastructure repairs. Statement 3 of the 2022-23 October Budget outlined the drivers and nature of these fiscal impacts in detail, as well as the climate-related spending being undertaken by the Australian Government to respond to climate change.
6. The 2023-24 Budget continues this practice by transparently reporting \$4.6 billion in new climate-related expenditure. This is further to the historic \$24.9 billion in new climate-related spending announced in the October 2022-23 Budget and is additional to ongoing climate-

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related expenditure initiated prior to these budgets. The Government's approach to reporting climate-related spending is informed by the climate-reporting practices of international peers and is presented within the context of international best practice, as well as contributing to work underway to strengthen transparency in future budgets.

7. The Government is developing a package of sustainable finance reforms, including the establishment of a sovereign green bonds program and regulatory reforms, to increase the transparency and credibility of Australia's growing sustainable finance market. The Government's intention is that these reforms will assist investors to align their investment decisions with net zero emissions targets and increase the flow of capital toward new opportunities that support Australia's net zero pathway.
8. In accordance with the requirements of the *Climate Change Act 2022* (Cth), the Commonwealth will continue to publish an Annual Climate Change Statement. Among other things, the Annual Climate Change Statement addresses the risks to Australia from climate change impacts, such as those relating to Australia's economy. The first Annual Climate Change Statement was tabled in Parliament on 1 December 2022 and may be found at <https://www.dcceew.gov.au/climate-change/strategies/annual-climate-change-statement>.
9. The Commonwealth acknowledges that:
 - a. As part of investors' strategic responses to the risks and opportunities presented by climate change, investors are making commitments to reduce emissions associated with their investment portfolios.
 - b. Credit rating agencies and other stakeholders are increasingly examining the relationship between climate change and sovereign bonds.
 - c. There is currently no internationally agreed framework for assessing any climate-related risks and opportunities associated with sovereign debt instruments.
 - d. The Commonwealth will continue to engage with asset owners and relevant stakeholders to ensure that investors are informed as to the Commonwealth's policy settings and actions in relation to the risks and opportunities posed by climate change.

Date: [insert]