

SCHEDULE A

OPT OUT NOTICE FEDERAL COURT OF AUSTRALIA

HENDRA VACCINE CLASS ACTION NSD406 of 2018

1. Why is this notice important?

A class action has been commenced in the Federal Court of Australia by Rachael Abbott (Applicant) against Zoetis Australia Pty Ltd (Zoetis). The action arises out of alleged injury to horses caused by reactions to a vaccine against the Hendra virus supplied by Zoetis (HeV Vaccine). The Applicant represents class members who are the owners of horses who have suffered a loss or damage as a result of what is alleged to be misleading or deceptive conduct in relation to the information provided relating to the HeV Vaccine.

Zoetis denies any wrongdoing or liability.

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 have been identified as a potential class member. **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 that is brought by one person on their own behalf and on behalf of a class of people (**class members**) against another person where the Applicant and the class members have similar claims against that person.

Class 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.

Class members are "bound" by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways being either a *judgment* following a trial, or a *settlement* at any time. If there is a judgment or a settlement of a class action, class members *will not* be able pursue the same claims and *may not* be able to pursue similar or related claims in other legal proceedings. Class members should note that:

- (a) in a *judgment* following trial, the Court will decide various factual and legal issues which are common to the claims made by the Applicant and class

members. Unless the decisions on those common questions are successfully appealed they will be binding. Importantly, if there are other proceedings between a class member and the person from whom they are seeking damages, it is likely that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action. After any initial trial of the class action in which common questions are determined, group members may still need to prove their individual loss and damage in order to receive compensation;

- (b) in a *settlement* of a class action, where the settlement provides for compensation to class members it is likely to extinguish *all* rights to compensation which a class member might have which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against Zoetis which are based in your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

3. What is this class action?

This class action, the Hendra Vaccine Class Action, is brought by the Applicant, Rachael Abbott on her own behalf and on behalf of all persons who are "class members" as defined in the proceeding.

The Applicant alleges that from 10 August 2012 to 20 March 2018 class members' horses suffered side effects from the HeV Vaccine and thereby suffered loss or damage. The Applicant alleges Zoetis engaged in conduct that was misleading and deceptive within the meaning of section 18 of the *Australian Consumer Law*. The Applicant alleges that through various publications, Zoetis represented that:

- (a) there was a serious risk of horses contracting Hendra virus in all areas of Australia in which flying foxes were present;
- (b) the vaccine had no serious side effects; and
- (c) all horses in Australia should be treated with the HeV Vaccine when it is said by the Applicant that those matters were not the case.

A sample class member, Kelly Hinton, has also been identified in relation to a claim that the HeV Vaccine was not of an "acceptable quality" within the meaning of section 54(2) of the *Australian Consumer Law*. This claim is brought by Ms Hinton on her behalf and on behalf of class members.

4. What is 'Opt Out'?

The Applicant in a class action does not need to seek the consent of class members to commence a class action on their behalf or to identify a specific class member. However, class members can cease to be class members by opting out of the class action. Unless a class member opts out, it will be bound by the outcome of the class action. An explanation of how class members are able to opt out is found below in the section headed "How you can opt out of the class action?".

5. Are you a class member?

You are a class member if, in the period of 10 August 2012 to 20 March 2018, you are a person or an entity who suffered loss or damage as a result of Zoetis's alleged conduct.

If you are unsure whether or not you are a class member, you should contact LHD Lawyers on (02) 9264 6644 or email mhgroup@lhd.com.au or seek your own legal advice without delay.

6. Will you be liable for legal costs if you remain a class member?

You will **not become liable for any legal costs** simply by remaining as a class 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 LHD Lawyers or other lawyers to do that work for you. A copy of the terms on which LHD Lawyers are acting in the class action may be obtained from them on the via the contact information provided above;
- (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 incurred by the Applicant in running the class action but which are not able to be recovered from Zoetis; 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 class member?

Unless you opt out, you will be bound by any settlement or judgment of the class action. If the class action is successful you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and class members, although 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 pursue the same claims and may not be able to pursue related claims against Zoetis in other legal proceedings.

8. What class members need to do

(a) How you can remain a class member?

If you wish to remain a class member there is **nothing you need to do** at the present time. The Applicant 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 Applicant and the class members. However, you are invited to contact the Applicant's lawyers, LHD Lawyers, via the contact information provided above on the number below and register as a class member so that future notices about the class action can be sent to your preferred address.

(b) **How you can opt out of the class action?**

If you do not wish to remain a class 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 Zoetis, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against Zoetis, 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 class member**” in the form shown below (Form 21 of the Court’s approved forms), 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 31 January 2020**, otherwise it will not be effective.

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

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

Each class member seeking to opt out 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).

9. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the application, the statement of claim, and the defence, may be obtained by:

- (a) downloading them from <https://www.lhd.com.au/media/blog/hendra-virus-class-action>;
- (b) inspecting them between 9am and 5pm at one of the offices of LHD Lawyers, contact details for which are available from <https://www.lhd.com.au/contact-us> or by calling (02) 9264 6644; or
- (c) by contacting a District Registry of the Federal Court (contact details are available www.fedcourt.gov.au) and paying the appropriate inspection fee.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact LHD Lawyers on (02) 9264 6644 or email mhgroup@lhd.com.au or seek your own legal advice. You should not delay in making your decision.

Form 21
Rule 9.34

OPT OUT NOTICE

No. 406 of 2018

Federal Court of Australia
District Registry: New South Wales
Division: General Division

RACHAEL ABBOTT

Applicant

ZOETIS AUSTRALIA PTY LTD ACN 156 476 425

Respondent

To: The Registrar
Federal Court of Australia
NSW District Registry
Federal Court of Australia, 184 Phillip St, Sydney NSW 2000

[Name of class member], a class member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [Name of class member] is opting out of the class action.

Date: [eg 19 June 20..]

Signed by [Name]

[Insert capacity eg class member / Lawyer for the class member]

Filed on behalf of Rachael Abbott, Lead Applicant
Prepared by (name of person/lawyer) _____
Law firm (if applicable) LHD Lawyers _____
Tel 02 9264 6644 Fax 02 9246 6622
Email MHGroup@lhd.com.au
Address for service Level 8, 151 Castlereagh Street, Sydney NSW 2000
(include state and postcode)

[Version 2 form approved 9/10/13]