

FEA Growers Group Communication
Update No 24, 9 September 2011

Dear Growers,

1999-2002 schemes: Growers meetings

The Growers meetings to consider the Black Tree proposal for the 1999-2002 schemes will now take place on Tuesday 4 October 2011 at the time and venue in the notice of meeting. A copy notice of meeting is already emailed.

The meetings on 4 October will consider an additional resolution, Resolution 6, to approve funding to protect Grower meetings and the convenors from continued threats of litigation and to facilitate legal action to protect growers. Details of the Resolution are set out in the notice of meeting with a detailed explanation in an accompanying information memorandum.

It is the FEAGG 's view that the convenors cannot be put in the intolerable situation of protecting the rights of Growers when faced with recurrent threats of legal action by the Receivers including threats of legal challenges to the validity of the meetings as well as procedural issues surrounding the meetings.

The FEAGG shares the frustration experienced by Growers as to the repeated meeting adjournments and has come to the view that the convenors must have appropriate legal protection and the meetings be protected against further attack.

2003-2008 schemes

Further notices of adjourned meeting have not been issued for 2003-2008 schemes. We would like to see these schemes involved in a one line asset sale seeking to provide revenue sharing between the banks and growers.

Federal Court decision: High Court appeal

Since the last update, the Administrators BRI Ferrier have filed an application in the High Court of Australia for leave to appeal against the decision of the full Federal Court made on 9 August 2011.

If the High Court provides leave for the appeal to be heard, the appeal will seek to reinstate the \$11 million rental set-off applying to the head leases from FEA to FEAP in the schemes from 2000 onwards.

Background to the case:

In the full Federal Court appeal, there were 2 opposing lines of cases on the set off issue:

The strict interpretation (favouring our case) was that a clause in a lease to pay rent “*without deduction or set off*” was not wide enough to exclude broader equitable rights by the tenant against the landlord

The broad interpretation (favouring the Receivers) was that “*without any deductions whatsoever*” should be given a common sense, business interpretation that FEAP had to pay the rent in full.

The Full Court adopted the second interpretation.

The court also held that there was insufficient connection between the offsetting claim under the funding commitment for April/May 2010 (in favour of FEAP) and FEAP’s obligation to pay rent to FEA in August 2010. A set off can only arise if there is a sufficient connection between the two claims.

The court found it unnecessary to make any ruling on growers’ rights to grow and harvest the timber.

Going forward, there is a 2 stage process:

1. Hearing of the special leave application: then
2. At a later date Hearing of the appeal on the merits.

Notices of default and notices of termination: other schemes

In the meantime the Receivers have issued notices of default under the head leases in the years 1995-2008, which gives rise to a right to terminate. In addition the Receivers have issued a notice of termination of the head leases in the scheme years 2001-2008.

The administrators BRI Ferrier intend to challenge the validity of these notices by legal action.

BRI are proposing to issue relief against forfeiture proceedings in the Tasmanian Supreme Court in the 1995-2002 schemes. This action is based on pre-paid rent and that other lease payments can continue to be met. It is intended to run test cases with the consent of the Receivers to avoid multiplication of actions by each grower.

BRI have also pointed to Forestry Rights deeds that can be used to defend grower’s rights of plantation and harvest in the face of an attempted one line sale by the Receivers. The Administrators may seek to introduce this defence in the Tasmanian Proceedings or Federal Court proceedings against the Receivers in FEAP’s rights to invoice growers and enforce Receivers approval of forest practices plans.

Regards,

FEA Growers Group

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