



## BACKGROUND

Great Southern Limited (Administrators appointed) (Receivers and Managers appointed) (**GSL**) is the parent company of the Great Southern Group of companies (**Great Southern Group**) dedicated to investment in agriculture, horticulture, viticulture and cattle through the operation of various managed investment schemes (**Schemes**). Great Southern Managers Australia Limited (Administrators appointed) (Receivers and Managers appointed) (**GSMAL**) is the wholly owned subsidiary of GSL which is the responsible entity of all of the Great Southern Group registered Schemes.

The Great Southern Schemes are operated on numerous plots of land located right across Australia and the Tiwi Islands. In total, there are 23 forestry schemes, 6 vineyard schemes, 5 Olive schemes and 2 Almond schemes.

On 18 February 2009 a strategic financial review of the Great South Group was undertaken by McGrathNicol Advisory. Further to this review, on 16 May 2009 the directors of the GSMAL and GSL appointed Ferrier Hodgson (**Administrators**) as joint and several administrators of the 36 companies within the Great Southern Group.

On 8 May 2009, the banking syndicate of secured creditors (**Club Banks**) appointed officers of McGrathNicol as receivers and managers (**Receivers**) of companies within the Great Southern Group on 8 May 2009, including GSMAL and GSL.

## APPLICATION BY THE RECEIVERS

The Receivers commenced legal proceedings in the Supreme Court of Victoria in order to implement their proposal to protect and preserve scheme property by paying rent and water payments and emergency maintenance costs. They proposed to fund these expenses by borrowing money from the Club Banks.

The Receivers applied for directions from the Court in relation to:

- (a) an indemnity for these expenses out of the Scheme assets, by way of an “equitable lien” or “equitable charge”;
- (b) an extension of time to fulfil formal reporting obligations; and
- (c) an exemption in relation to certain AFS licence compliance obligations, including complaints handling and significant event disclosure.



The Receivers approached Rob Burns, Chairman of the Save My Trees Committee, to appear on behalf of the growers. Clarendon Lawyers, the firm acting for the Timbercorp Grower Group, were engaged as were the same counsel to appear in the proceedings.

Mr Burns largely supported the orders sought by the Receiver in the interest of preserving the value of growers' assets, but sought some additional safeguards to ensure:

- no cross-subsidisation between schemes;
- only reasonable expenses actually incurred; and
- accountability to the Consultative Committee of which Mr Burns is a member.

## **COURT ORDERS**

On Wednesday 19 August 2009, Justice Rob Robson handed down a summary of reasons for judgment in relation to the indemnity and extensions of time but reserved his judgement on the compliance requirements.

He gave orders that the Receivers are justified in incurring reasonable expenditure and remuneration in the care, preservation, protection and, where necessary realise scheme property and will be entitled to indemnify themselves out of scheme property. He also ordered that the Receivers consult the Consultative Committee before making any sale of scheme assets outside the ordinary course of business.

Mr Burns said "His Honour's finding enables the Receivers to fund the protection of grower's assets but also includes important safeguards to ensure that expenditure is reasonable, there is no cross-subsidisation and to give the Consultative Committee a role in reviewing any proposed sale of essential scheme assets."

Justice Robson stated that a lien arises as a matter of law in respect of expenditure the Receivers reasonably incur in preserving and protecting the scheme assets. This means that the Receivers can only recover expenses that are actually incurred and that are reasonably incurred for preserving and protecting property but does not include expenditure seeking to enhance the value of property.

His honour clarified that the Club Banks do not have a charge over scheme assets.

His honour also stated that it is the Receiver's duty to act in a responsible way in the administration of the schemes. He also noted that as officers of a responsible entity, the Receivers must act in the best interests of members, and give priority to members' interests over the interests of GSMAL.



#### **OTHER INFORMATION**

“The Consultative Committee has not been convened since its recent formation. We are pleased that the court has given the Consultative Committee a formal role in protecting scheme assets for growers.”

Save My Trees will continue to negotiate / liaise with the Receivers and interested commercial parties.