

# **Kilmore & Murrindindi Bushfire Class Action Settlement Administrations**

Expert Report by Catherine Mary Dealehr &  
Fiona Elizabeth Mullen  
7 September 2017

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# INSTRUCTIONS

1. We are instructed by Andrew Watson, who was appointed as the Scheme Administrator (SA) pursuant to the Settlement Distribution Scheme (SDS) in each of the Kilmore & Murrindindi Class Actions.
2. We have been retained to provide our expert opinions on the following:

*“What is the range of reasonable fees chargeable on a solicitor-client basis for an uncontested damages assessment in a Victorian common law claim. For the purposes of responding to this question, please assume that the work was undertaken in 2015 and 2016.”*

3. For the purposes of this report, the term “reasonable fees” referred to above, means “legal costs”, which comprises of lawyers’ professional fees and disbursements incurred by them.

## 1. BACKGROUND

4. The Kilmore Class Action involved a 16-month trial against SP AusNet and four other defendants. Settlement was reached in excess of \$494 million in July 2014. On 23 December 2014 Justice Osborn of the Supreme Court of Victoria (**Supreme Court**) approved the settlement of the class action and the proposed SDS.
5. The Murrindindi Bushfire Class Action was settled immediately prior to trial on 6 February 2015 for the sum of \$300 million. The proceeding had been brought against SP Ausnet and four other defendants. On 27 May 2015, Justice Emerton of the Supreme Court of Victoria approved the settlement of the class action and the proposed SDS.

## EXPERTISE

### 1. CATHERINE DEALEHR

6. I have been practising as a lawyer since 1984 and exclusively as a costs lawyer since 1988. In 2010, I was accredited by the Law Institute of Victoria (**LIV**) as a costs law specialist. I am the principal of the legal firm – ALCG (formerly known as Compucost – The Australian Legal Costing Group). I have been engaged as a costs expert on numerous occasions and I have appeared extensively in all Victorian (now Supreme Court Costs Court) and Federal jurisdictions. In relation to Supreme Court and the Victorian County Court (**County Court**) matters, I have prepared thousands of itemised bills of costs. I have worked for Plaintiff law firms in relation to personal injury matters since 1990, when I commenced ALCG (then known as Compucost), and have continued to provide advice and prepare bills of costs in this field.
7. I have reviewed numerous claims for costs on a solicitor-own client basis (including acting for personal injury lawyers whose legal costs have been disputed by their clients) and have acted for hundreds of clients who have disputed their former lawyers’ legal costs (including personal injury lawyers). I have provided advice to lawyers and/or clients in a wide range of matters including costs disputes, security of costs applications, costs agreements (including

preparing the costs agreements for a major personal injury law firm), gross sum costs applications, lawyers' billing and management software systems, costs recovery and on the law of costs generally. Furthermore, I have taxed numerous bills of costs that have been claimed on hourly rates pursuant to costs agreements. I have provided costing advice to the Senior Master's Office of the Supreme Court in 2014-2015 in relation to the Office's approval of Plaintiff lawyers' fees from Funds in Court in personal injury matters.

8. I have trained many lawyers in the field of costs law in my role as director and/or CEO of several costing companies since 1990. I have been a regular speaker on the law of costs to national conferences conducted by the LIV, and Victorian conferences for Leo Cussen Centre for Law, Legalwise Seminars, and other organisations over the last 13 years. I have tutored in the field of costs to Leo Cussen law trainees for 26 years. I was a member of the committee of the LIV Cost Lawyers Group until 2016. I have published five articles on costs in the LIV Journal in 1991, 2005, 2014, 2015 and 2017. In July 2014, I was elected the lawyer (non-advocate) member of the Victorian Legal Services Board. In January 2015, I became a graduate of the Australian Institute of Company Directors. In July 2015, I prepared the LIV precedent costs agreements and disclosure statements drawn pursuant to the *Legal Profession Uniform Law, 2014 (Vic) (Uniform Law)*<sup>1</sup> for dissemination to the Victorian legal profession. I have been a keynote speaker to lawyers across Australia on the issue of the Uniform Law on numerous occasions since 2015. I was the LIV's Pro-Bono Access to Justice award winner in 2014 and received a LIV Certificate of Service in 2016.
9. Since 2012, I have prepared independent expert costs reports for ten class actions issued in the Victorian and NSW Supreme Courts and the Federal Court of Australia (**Federal Court**) in relation to the Court approval of the settlement of the costs in class actions. These have included the Kilmore and Murrindindi bushfire class actions. I have also provided an expert report on the administration costs in a shareholder class action in the Federal Court.

## 2. FIONA MULLEN

10. I have been practising as a lawyer since 1994, specialising in personal injury matters, and exclusively as a costs lawyer since 1999. I commenced work as a costs lawyer at the Australian branch of a United Kingdom costs law company, assessing and negotiating the legal costs of personal injury plaintiffs' law firms on behalf of panel firms for the Victorian WorkCover Authority.
11. From 2004, I was the in-house costs lawyer at a boutique plaintiff personal injury law firm. From 2014, I was in charge of the personal injury costing department of a major plaintiff personal injury law firm. My roles from 2004 involved providing advice and undertaking any work necessary to satisfy all the costing requirements for the personal injury solicitors. I assessed costs in thousands of personal injury matters including WorkCover, Transport Accident, Medical Negligence and Public Liability. I assessed both the solicitor own client and inter partes costs and disbursements in matters where my costing expertise was sought. In early 2015, I prepared precedent costs agreements and disclosure statements under the Uniform Law for various internal personal injury departments. I

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<sup>1</sup> Applies to all retainers entered into after to 1 July 2015

regularly provided in-house costing seminars for the lawyers and non-lawyers. I have provided advice in over 500 hundred matters that required Court approval in both the Supreme Court and County Court for common law WorkCover matters and matters involving Litigation Guardians.

12. Since January 2016, I have been a senior costs lawyer at ALCG, in charge of its personal injury costing department where I continue to provide expert costs advice to plaintiff personal injury law practices. In addition to my usual personal injury work, I recently provided advice regarding assessing inter partes costs in a large bushfire class action.<sup>2</sup>
13. I have been a member of the Executive Committee of the LIV Costs Law Section (previously the Costs Lawyers Group) since 2005. I have been a member on several sub-committees organising the annual national cost conference and contributed to submissions regarding amendments to the Legal Profession Uniform Law. I was awarded a Certificate of Service by the LIV in 2016.

### **3. OBLIGATIONS OF AN EXPERT WITNESS**

14. We confirm the SA has provided us both with a copy of the Expert Witness Code of Conduct and the Obligations of Expert Witnesses set out in the *Supreme Court (General Civil Procedure) Rules, 2015*.
15. We have each read and understood the Expert Witness Code of Conduct and each agree to be bound by it. We acknowledge our opinions are based wholly or substantially on the specialised knowledge we have developed collectively over 50 years practising as costs lawyers (as set out above). In preparing our joint report, we have conferred with each other. We have provided a declaration at the conclusion of our report that we have made all enquiries we believe to be reasonable and appropriate, and no matters of significance that we regard as relevant to our knowledge, have been withheld from the Court. We also note the requirement to identify any part of the report upon which we disagree and the reasons for not agreeing. Unless otherwise stated, this joint report reflects our agreed opinions.
16. We are also aware of the provisions of the *Civil Procedure Act, 2010* and the overarching obligations that this imposes on each of us as expert witnesses.

### **4. THE RELATIONSHIP BETWEEN SOLICITOR-CLIENT & INTER PARTE COSTS**

17. Solicitor-client costs are the total professional fees and disbursements that may be incurred in a matter and are payable by the client. The basis for charging and liability to pay solicitor-client costs is usually found in the costs agreement.

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<sup>2</sup> Thomas v Powercor Australia Limited (Horsham Bushfire class action)

18. Inter partes costs are those costs (i.e. professional fees and disbursements) that are payable by a party to the proceeding (e.g. the defendant) to another party (e.g. the plaintiff) pursuant to an order of the Court, an agreement between the parties or the application of Court Rules. As a general rule, the successful party in a proceeding is entitled to recover inter partes costs from the unsuccessful party pursuant to the relevant scale or, in some circumstances, fixed amounts set by statutory regimes, such as in WorkCover and TAC matters.
19. The shortfall between solicitor-client and inter partes costs is known as the “non-recoverable solicitor-client costs” and is payable by the client. This is often referred to by lawyers and explained by them to their clients as “the gap”. In our experience, this gap can vary greatly based upon factors including the basis for charging, which scales apply, uplift fees, GST, or the amount recovered under statutory schemes.

## **ASSUMPTIONS**

### **1. ASSUMPTIONS AS TO CONDUCT OF MATTER**

20. We have made the following assumptions as to the conduct of a matter in providing our opinion on the range of reasonable legal costs (i.e. professional fees and disbursements) on a solicitor-client basis, of an uncontested damages assessment in a Victorian common law matter:
  - (a) Settlement occurs at the initial case conference
  - (b) Both heads of damages (i.e. pain & suffering and economic loss) may be claimed
  - (c) Liability has been admitted and is not in issue
  - (d) Injuries incurred include a psychological injury and therefore the matter may be complicated by requiring disentanglement from any pre-existing injury or other factors
  - (e) An interpreter was not required
  - (f) Only junior counsel was engaged (we note however that in matters where both heads of damages are claimed, it is usual for both senior and junior counsel to be retained)

### **2. NATURE OF RETAINER IN A PERSONAL INJURY MATTER**

21. In our experience, law firms specialising in personal injury matters are typically retained on a conditional basis, which is provided for under the *Legal Profession Act, 2004 (LPA)*<sup>3</sup> and the Uniform Law<sup>4</sup>. The SA was appointed prior to 1 July 2015<sup>5</sup>. Given our report is for use in the SDS we consider the relevant legislation is the LPA.
22. The most common form of conditional costs agreement, in our experience, stipulates that the client is only liable for professional fees where a successful outcome is achieved. Upon success, the law practice is then entitled to

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<sup>3</sup> Applies to all retainers entered into prior to 1 July 2015

<sup>4</sup> Applies to all retainers entered into after to 1 July 2015

<sup>5</sup> See paragraph 4 & 5 of this report

charge an uplift fee of up to 25% of professional fees charged. In our experience, personal injury law firms usually charge the maximum allowable uplift fee of 25%.<sup>6</sup>

23. Under the *Professional Conduct and Practice Rules 2005 (Vic)* (**Conduct Rules**), success is defined as, “when the client will receive an amount of money after the payment of all liabilities (including tax) the client incurs in a matter to the practitioner and to any other party, including any opposing party”<sup>7</sup>. It is common for law firms to describe what defines success in a conditional cost agreement in a multitude of ways and not necessarily to use the words found in the Conduct Rules. In our experience, the simplest, and most common form of words used is “the receipt of a settlement amount, which is recommended by the law firm.”
24. In our experience, it is common in personal injury matters for counsel to also accept briefs on a conditional basis, whereby counsel would not charge any fees unless success was achieved. Although counsel may charge an uplift fee of up to 25% upon achieving success, it is not common for a barrister to charge such a fee in personal injury matters.

### **3. ASSUMPTION AS TO UPLIFT FEE**

25. Although it is common for an uplift fee of 25% on professional fees to be charged in a personal injury matter in Victoria, we have assumed that no uplift fee would be applicable (including an uplift fee for counsel). We have done so on the basis that the SA was not appointed under the SDS pursuant to a conditional costs agreement (nor was counsel) and therefore no success fee would be applicable for either.

### **4. ASSUMPTION AS TO COMPLEXITY**

26. In calculating the reasonable legal costs chargeable on a solicitor-client basis for an uncontested damages assessment, we have assumed that the types of matters could range from a simple claim to a claim involving medium complexity. We have excluded the more complex matters, in which it would be unlikely that settlement would occur at the first case conference. Such matters include those in which substantial damages are recovered (in excess of \$350,000) and where we anticipate substantial additional legal costs (including senior counsel and further expert evidence) would be incurred.

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<sup>6</sup> Provided for under both the LPA and the Uniform Law

<sup>7</sup> Definition of success found in Rule 2A.1 of the *Professional Conduct and Practice Rules 2005 (Vic)* which applied to retainers entered into prior to 1 July 2015

# **BASIS OF CHARGING**

## **1. SUPREME COURT SCALE**

27. It is our experience that Victorian personal injury law practices predominantly issue common law proceedings in the Supreme Court of Victoria. Although it is open to Defendant law practices to refer matters back to the County Court on the basis that the Supreme Court is not the most appropriate jurisdiction, it is our experience that this rarely occurs where a matter is issued in the Supreme Court.
28. In our experience, legal practices who conduct common law proceedings usually charge pursuant to the Supreme Court scale of costs and not pursuant to any other basis, such as hourly rates or fixed fees. In our opinion, charging pursuant to the Supreme Court scale of costs for a common law matter issued in the Supreme Court is fair and reasonable.
29. The Supreme Court scale does not include GST<sup>8</sup> and we have found law practices, when calculating their fees pursuant to the Supreme Court scale usually add GST to the fees claimed. This is normally provided for in the costs agreement on the basis that providing legal services is a taxable supply. In our opinion, it is fair and reasonable to add GST to the Supreme Court scale.
30. Law practices may also issue common law proceedings in the County Court and charge pursuant to the Supreme Court scale of costs and not the County Court scale of costs, hourly rates or fixed fees. Provided the costs agreement is compliant with the disclosure requirements found in the provisions governing costs agreements (i.e. LPA and Uniform Law) such a basis for charge would, in our opinion, be fair and reasonable. However, in our experience charging on the Supreme Court scale for a County Court common law proceeding is not very common.

## **2. COUNTY COURT SCALE**

31. Common law proceedings can be issued in the County Court, which has unlimited jurisdiction. In our experience, legal practices usually issue in the County Court in less complex common law matters, such as where only one head of damages is claimed, and in such circumstances, usually agree to charge pursuant to the County Court scale of costs and not pursuant to any other basis, such as hourly rates or fixed fees. In our opinion, charging pursuant to the County Court scale of costs for a common law proceeding issued in the County Court for less complex common law matters is fair and reasonable. Since 6 October 2014, the County Court scale has been calculated at 80% of the Supreme Court scale<sup>9</sup>. As the Supreme Court scale is GST exclusive, GST would usually be added by legal practices to the scale when calculating their fees.

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<sup>8</sup> Preface to Appendix A – Supreme Court Scale of Costs to Supreme Court (General Civil Procedure) Rules 2015

<sup>9</sup> County Court (Chapter 1 Costs Amendment) Rules 2014

### **3. SUPREME & COUNTY COURT SCALES PLUS GST AS BASIS FOR CHARGING**

32. We have determined that the range for reasonable fees on a solicitor-client basis ought to be calculated using the Supreme Court and County Court scales plus GST. This is because of the likelihood of uncontested damages assessments in a Victorian common law claim being issued in either the Supreme Court or County Court, and that law practices usually charge the applicable scale plus GST.

## **INTER PARTE COSTS**

### **4. INTER PARTE RECOVERY IN A PERSONAL INJURY CLAIM**

33. In our experience, inter parte costs are usually recovered by a successful party from an unsuccessful party in an uncontested damages assessment in a Victorian common law claim. There are factors that mitigate against this, such as the need to satisfy statutory hurdles, as found in the Workcover legislation, or a successful party failing to exceed an offer made by the unsuccessful party. Inter parte costs are only a part payment and are a contribution towards solicitor-client costs and are usually recovered pursuant to scale or a fixed costs regime. In preparing our report, we have turned our mind to the inter parte costs that may be recovered by a successful Plaintiff in an uncontested damages assessment in a Victorian common law claim, in particular to the fixed costs found in the Workcover and TAC regimes.

#### **A. WORKCOVER FIXED INTER PARTE COSTS**

34. Personal injury workcover common law matters are governed by the Workcover (Pre-Litigated Claims) Legal Costs Order 2016 (PL LCO). Applications for common law damages which rely upon the relevant legislation<sup>10</sup> are governed by the PL LCO, even after proceedings are issued. In a Workcover common law matter, all work completed prior to the issue of the Writ (excluding work done in relation to an Originating Motion) is covered by the PL LCO. In a Workcover common law uncontested damages proceeding issued in either the Supreme Court or County Court, the PL LCO would apply. The PL LCO costs range from \$8,034 to \$13,500 and are inclusive of counsels' fees and exclusive of other disbursements. Other reasonable disbursements may be claimed, however, only one medico-legal report per speciality relevant to the injury or injuries will be allowed under the PL LCO.<sup>11</sup>
35. To trigger an entitlement for costs pursuant to the PL LCO a worker must firstly obtain damages and secondly, the amount of damages must beat the statutory hurdles that are imposed on the parties in this type of proceeding.<sup>12</sup>

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<sup>10</sup> Accident Compensation Act 1985 and the Workplace Injury Rehabilitation and Compensation Act 2013

<sup>11</sup> The VWA has the discretion to allow more than one report - Workcover (Pre-Litigated Claims) Legal Costs Order 2016

<sup>12</sup> S. 134AB(28) of the Accident Compensation Act 1985 and S.344 of the Workplace Injury, Rehabilitation & Compensation Act 2013.



## **B. TAC FIXED INTER PARTE COSTS**

36. The TAC common law protocols have been agreed between TAC, LIV and Australian Lawyers Alliance regarding common law entitlement assessments and provide procedures inter alia for inter parte costs. These protocol costs are set amounts that are determined by “events” such as whether the serious injury was deemed or granted, whether liability is in issue and whether economic loss is claimed. The common law protocol costs are only applicable where a matter resolves prior to issuing a Court proceeding and covers all work that may be completed prior to issuing. Once proceedings are issued, the TAC protocols no longer apply and inter parte costs would be recovered pursuant to the relevant scale.
37. The inter parte professional costs recoverable pursuant to the TAC common law protocols, in relation to an uncontested matter, range from \$10,440 to \$18,550.<sup>13</sup> These figures exclude any allowance for disbursements, which may be claimed separately. When claiming disbursements, counsels’ fees are recoverable using the applicable scale rates and all reports and documents served and relied upon can be claimed. TAC will reimburse all disbursements that have been reasonably incurred in relation to the matter.

## **UNCONTESTED DAMAGES ASSESSMENT SETTLED AT INITIAL CASE CONFERENCE**

### **1. STEPS IN AN UNCONTESTED DAMAGES ASSESSMENT**

38. In our experience, the following non-exhaustive list identifies work that is likely to be completed in a personal injury matter conducted in Victoria in 2015 – 2016 for an uncontested damages assessment which resolves at case conference for a settlement sum not more than \$350,000:
- (a) Initial instructions obtained
  - (b) Letter of advice forwarded shortly thereafter confirming instructions, advising as to possible claims, detailing timetable & enclosing authorities, Cost Agreement and Disclosure statement
  - (c) Investigation Stage:
    - i. Freedom of Information (FOI) requests made to the relevant statutory authorities for example, Victorian Workcover Authority, Transport Accident Commission, Victoria Police, Ambulance Victoria, Australian Taxation Office, Employer, Insurance Companies, admitting hospitals, medical practices
    - ii. Requesting treating doctors’ reports
    - iii. Requesting relevant medico legal reports
  - (d) Review documents, provide advice and obtain further and up to date instructions
  - (e) Draw necessary Affidavits
  - (f) Ensure applicable threshold to proceed with a common law claim is satisfied
  - (g) Serve documents on “other side” and explore settlement possibility
  - (h) Review other side’s response, confirm instructions
  - (i) Brief to counsel to advise and draw Statement of Claim
  - (j) Issue proceedings

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<sup>13</sup> This amount could be higher as additional fees can be triggered in certain matters – Common Law TAC Protocols

- (k) Interlocutory stage:
  - i. Limited discovery process
  - ii. Special Damages / Particulars of Loss
  - iii. Any updated medical information including clinical notes or expert reports
  - iv. Vocational Assessments
  - v. Financial report supporting economic loss claim

## **2. DISBURSEMENTS**

39. In our experience, the range and reasons for reasonable disbursements incurred in a common law proceeding for an uncontested damages assessment settled at the first case conference are as follows:

- (a) Court filing fees including an issuing fee and a setting down fee. (The amounts payable in the Supreme Court and County Court are not identical)
- (b) FOI fees for both the application and the copying of the documents produced. The lower calculation is based on three FOI applications and the higher on ten FOI applications
- (c) Treating doctor reports, including both “general practitioners” (“GP”) and expert treaters. The lower calculation is based on obtaining one treating GP and the higher on three GPs and three expert treaters
- (d) Medico-Legal expert reports. The lower calculation is based on obtaining two medico-legal experts and the higher on eight medico-legal experts
- (e) Vocational Assessment report and Economic Loss & Financial Assessment report. The lower calculation is based on no reports being obtained in these fields and the higher calculation is based on one such report in each field being obtained
- (f) Counsel’s fees in the Supreme Court calculations are based on the usual market rate of \$330 (including GST) per hour for a senior-junior barrister (This figure is less than the maximum amount allowed for junior counsel under the Supreme Court scale (excluding GST) being \$540 per hour). The lower calculation is based on allowing a total of 3 hours for preparing an advice prior to issuing, drawing the Statement of Claim and List of Special Damages/Particulars of Loss and \$1,200 for the case conference (half day). The higher calculation is based on allowing a total of 9 hours for preparing an advice prior to issuing, drawing the Statement of Claim and List of Special Damages/Particulars of Loss and \$3,300 for the case conference (full day). The County Court calculations are based on an allowance of 80% of the above Supreme Court allowances for counsel’s fees.

## **3. RANGE OF REASONABLE SOLICITOR-CLIENT PROFESSIONAL FEES & DISBURSEMENTS – SUPREME COURT**

40. In our expert opinion, taking into account the steps set out in paragraph 38 above, the reasonable professional fees claimed on the Supreme Court scale and chargeable on a solicitor-client basis for an uncontested damages

assessment range from \$22,000 - \$33,000 (inclusive of GST). This fee does not include any uplift fee that might be claimable pursuant to a conditional costs agreement on the professional fees<sup>14</sup>.

41. In our expert opinion, taking into account the disbursements set out in paragraph 39 above, the reasonable disbursements claimed on the Supreme Court scale and chargeable on a solicitor-client basis for an uncontested damages assessment range from \$7,887.20 - \$40,447.20 (inclusive of GST). This includes Court filing fees of \$2,222.20 for issuing the Writ and setting down the matter for trial. This includes counsel’s fees of between \$2,190.00 - \$6,270.00 for preparing an advice prior to issuing, drawing the Statement of Claim and List of Special Damages/Particulars of Loss and appearing at the case conference at which the matter resolves. This includes medical and expert reports, which range widely from \$3,300.00 to \$30,700.00, depending on the number and nature of the experts. Finally, this includes miscellaneous fees associated with FOI requests and copying of FOI documents and other documents, such as medical records, which range from \$175.00 - \$1,255.00.
42. Accordingly, in our expert opinion, the reasonable professional fees and disbursements claimed on the Supreme Court scale and chargeable on a solicitor-client basis for an uncontested damages assessment settled at the first case conference range from **\$29,887.20 - \$73,447.20** (inclusive of GST) (see Table 1).

**TABLE 1**

Category	Description	Lower Range	Higher Range
<b>Professional fees</b>		\$22,000.00	\$33,000.00
<b>Disbursements</b>			
Court fees	Filing fee	\$1,018.60	\$1,018.60
	Setting down fee	\$1,203.60	\$1,203.60
		\$2,222.20	\$2,222.20
Counsels fees	Advice	\$330.00	\$990.00
	Drawing Statement of Claim	\$330.00	\$990.00
	Drawing Special Damages	\$330.00	\$990.00
	Case Conference	\$1,200.00	\$3,300.00
		\$2,190.00	\$6,270.00
Medical & Expert reports	Treating reports	\$300.00	\$5,700.00
	Medico-Legal reports	\$3,000.00	\$12,000.00
	Vocational Assessment Report	nil	\$8,000.00
	Economic Loss & Financial report	nil	\$5,000.00
		\$3,300.00	\$30,700.00
Miscellaneous	Freedom of Information requests	\$125.00	\$255.00
	Copying documents	\$50.00	\$1,000.00
		\$175.00	\$1,255.00
Sub-total Disbursements		\$7,887.20	\$40,447.20
<b>TOTAL</b>		<b>\$29,887.20</b>	<b>\$73,447.20</b>

#### **4. RANGE OF REASONABLE SOLICITOR-CLIENT PROESSIONAL FEES & DISBURSEMENTS – COUNTY COURT**

43. In our opinion, there may be cases where the proceeding is issued in the Count Court and the County Court scale applies. For example, where only one head of damages is sought and/or the case has a low level of complexity.

<sup>14</sup> See paragraph 25

44. In our expert opinion, taking into account the steps set out in paragraph 38 above, the reasonable professional fees claimed on the County Court scale and chargeable on a solicitor-client basis for an uncontested damages assessment range from \$17,600.00 - \$26,400.00 (inclusive of GST). The costs in the County Court have been calculated at 80% of the Supreme Court Scale<sup>15</sup>. This fee does not include any uplift fee that might be claimable pursuant to a conditional costs agreement on the professional fees<sup>16</sup>.
45. In our expert opinion, taking into account the disbursements set out in paragraph 39 above, the reasonable disbursements claimed on the County Court scale and chargeable on a solicitor-client basis for an uncontested damages assessment range from \$7,004.50 - \$32,398.50 (inclusive of GST). This includes Court filing fees of \$1,777.50 for issuing the Writ and setting down the matter for trial. This includes counsel's fees of between \$1,752.00 - \$5,016.00 for preparing an advice prior to issuing, drawing the Statement of Claim and List of Special Damages/Particulars of Loss and appearing at the case conference at which the matter resolves. This includes medical and expert reports which range widely from \$3,300.00 to \$24,350.00, depending on the number and nature of the experts. In our opinion, fees for a vocational assessment report and the economic loss & financial report would be less than in more complex matters issued in the Supreme Court. Finally, this includes miscellaneous fees associated with FOI requests and copying of FOI documents and other documents, such as medical records, which range from \$175.00 - \$1,255.00.
46. Accordingly, in our expert opinion, the reasonable professional fees and disbursements claimed on the County Court scale and chargeable on a solicitor-client basis for an uncontested damages assessment range from **\$24,604.50 - \$58,798.50** (inclusive of GST) (see Table 2).

**TABLE 2**

Category	Description	Lower Range		Higher Range	
<b>Professional fees</b>			\$17,600.00		\$26,400.00
<b>Disbursements</b>					
Court fees	Filing fee	\$814.60	\$1,777.50	\$814.60	\$1,777.50
	Setting down fee	\$962.90		\$962.90	
Counsels fees	Advice	\$264.00	\$1,752.00	\$792.00	\$5,016.00
	Drawing Statement of Claim	\$264.00		\$792.00	
	Drawing Special Damages	\$264.00		\$792.00	
	Case Conference	\$960.00		\$2,640.00	
Medical & Expert reports	Treating reports	\$300.00	\$3,300.00	\$5,700.00	\$24,350.00
	Medico-Legal reports	\$3,000.00		\$12,000.00	
	Vocational Assessment	nil		\$5,000.00	
	Economic Loss & Financial report	nil		\$1,650.00	
Miscellaneous	Freedom of Information	\$125.00	\$175.00	\$255.00	\$1,255.00
	Copying documents	\$50.00		\$1,000.00	
<b>Sub-total Disbursements</b>			<b>\$7,004.50</b>		<b>\$32,398.50</b>
<b>TOTAL</b>			<b>\$24,604.50</b>		<b>\$58,798.50</b>

<sup>15</sup> From 6 October 2014 pursuant to *County Court (Chapter 1 Costs Amendment) Rules, 2014*

<sup>16</sup> See paragraph 25

## SUMMARY

47. In our expert opinion, the total amount of reasonable legal costs and disbursements chargeable on a solicitor-client basis for an uncontested damages assessment in a Victorian common law claim issued in the Supreme Court range from \$29,887.20 to \$73,447.00<sup>17</sup>.
48. In our expert opinion, the total amount of reasonable legal costs and disbursements chargeable on a solicitor-client basis for an uncontested damages assessment in a Victorian common law claim issued in the County Court range from \$24,604.50 to \$58,798.50<sup>18</sup>.

**TABLE 3 - TOTAL AMOUNT OF REASONABLE SOLICITOR CLIENT PROFESSIONAL COSTS  
& DISBURSEMENTS IN A VICTORIAN COMMON LAW CLAIM**

JURISDICTION	REFERENCE	LOWER RANGE	HIGHER RANGE
Supreme Court	See Table 1	\$29,887.20	\$73,447.00
County Court	See Table 2	\$24,604.50	\$58,798.50

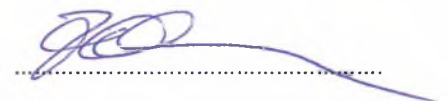
## DECLARATION BY EXPERTS:

We each declare that we have received from the SA and have read the Expert Evidence Code of Conduct from the *Supreme Court (General Civil Procedure) Rules 2015* and agree to be bound by it. We each confirm the following:

- (i) We have made all inquiries which we believe are desirable and appropriate, and that no matters of significance that we regard as relevant have, to our knowledge, been withheld from the Court.
- (ii) All conclusions and findings have been conducted by us.
- (iii) The opinions expressed by us are honestly and truly held by us.
- (iv) The opinions expressed by us are our agreed opinions, unless specifically identified to the contrary.



CATHERINE MARY DEALEHR



FIONA ELIZABETH MULLEN

<sup>17</sup> Inclusive of GST & exclusive of uplift fee

<sup>18</sup> Inclusive of GST & exclusive of uplift fee