



**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
COMMERCIAL LIST**

No. S ECI 2019 02919

Case: S ECI 2019 02919

Filed on: 06/12/2019 04:32 PM

B E T W E E N

MOIRA SHIRE COUNCIL & ANOR
ACCORDING TO SCHEDULE 1

Plaintiffs

-and-

JARDINE LLOYD THOMPSON PTY LTD
ABN 69 009 098 864

Defendant

DEFENCE

Date of document: 6 December 2019

Filed on behalf of: Defendant

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Unless the context requires otherwise, the Defendant (**JLT**) adopts the defined terms used in the Amended Statement of Claim filed on 22 November 2019 (**Claim**), but does not admit any factual allegations contained in, or in any way implied by, any defined term used in the Claim and repeated in this Defence.

As to the allegations in the Claim, JLT says as follows:

1. JLT admits the allegations in paragraph 1 of the Claim.
2. In answer to the allegations in paragraph 2 of the Claim, JLT:
 - (a) admits that the Plaintiffs have purported to commence this proceeding pursuant to sections 33C and 33D of the *Supreme Court Act 1986* (Vic);
 - (b) says that group members in this proceeding are limited to those persons who had provided their consent to becoming a group member as at 28 June 2019 (being the date

on which this proceeding was commenced by writ), or alternatively 22 November 2019 (being the date of the Claim) (Group Member);

(c) says that from time to time during the Relevant Period, some councils constituted in accordance with the Local Government Act 1989 (Vic) received property risk cover through the Jardine (Municipal Asset Protection Plan) Mutual Discretionary Fund (**JMAPP**);

(d) otherwise does not admit to the allegations in paragraph 2 of the Claim.

3. JLT denies each and every allegation in paragraph 3 of the Claim.

4. JLT admits each and every allegation in paragraph 4 of the Claim.

5. In answer to each and every allegation in paragraph 5 of the Claim, JLT:

(a) admits that it and JGS are or were related bodies corporate within the meaning of s 50 of the Corporations Act;

(b) says that it was formerly known as “Jardine Australia Insurance Brokers Pty Ltd”; and

(c) otherwise denies each and every allegation in paragraph 5.

6. In answer to the allegations in paragraph 6 of the Claim, JLT:

(a) admits, subject to production at trial and reference to the full terms and effect of the 1998 Establishment Deed, that the 1998 Establishment Deed was entered into on or around 4 September 1998 between “Jardine Group Services, a division of Jardine Australian Insurance Brokers Pty Ltd” (**Jardine Group Services, a division of JLT**) and the Municipal Asset Protection Plan Advisory Committee (**Promoter**) (comprising representatives of Jardine Group Services, a division of JLT and municipal councils);

(b) admits that JMAPP was established under the 1998 Establishment Deed (clause 5.1) (herein referred to as the **JMAPP Trust Deed** as varied from time to time, unless otherwise stated);

(c) says that JMAPP was a trust arrangement which arose by reason of the fact that the Promoter resolved to establish a trust to provide a pooled fund and a scheme to manage the property and financial risks of Members associated with the Promoter that

may arise in connection with the conduct by those bodies of their activities (Recital A);

- (d) says that Jardine Group Services, a division of JLT, agreed to act as trustee of JMAPP under the 1998 Establishment Deed (clause 4); and
- (e) says that the objects and purposes of the 1998 Establishment Deed are set out in clause 5 thereof and it will rely on the full terms and effect of the 1998 Establishment Deed (including clause 5 thereof) at trial; and
- (f) otherwise denies each and every allegation in paragraph 6 of the Claim.

6A. In answer to the allegations in paragraph 6A of the Claim, JLT:

- (a) refers to and repeats sub-paragraphs 6(a) to 6(e) above; and
- (b) otherwise denies each and every allegation in paragraph 6A of the Claim.

6B. In answer to the allegations in paragraph 6B of the Claim, JLT:

- (a) admits that pursuant to the 1998 Establishment Deed, Jardine Group Services, a division of JLT, agreed to act as trustee of JMAPP (clause 4);
- (b) admits that pursuant to the 1998 Establishment Deed, Jardine Group Services, a division of JLT, and the Promoter were required, in each Fund year, to solicit and encourage Members (as that term is defined in clause 3 of the 1998 Establishment Deed) to become and remain members of JMAPP (clause 9);
- (c) admits that pursuant to the 1998 Establishment Deed, Jardine Group Services, a division of JLT's management duties included to:
 - (i) in consultation with the Promoter, determine the amount of contributions (in conjunction with actuarial advice) (clause 12.1.2);
 - (ii) in consultation with the Promoter, determine the level of Scheme cover to be provided in any Fund year (clause 12.1.3);
 - (iii) negotiate for insurance cover on the best terms and at the lowest cost available having regard to those terms (clause 12.2);
- (d) will rely on the full terms and effect of the 1998 Establishment Deed at trial; and

(e) otherwise denies each and every allegation in paragraph 6B of the Claim.

7. JLT admits the allegation in paragraph 7 of the Claim.

7A. In answer to the allegations in paragraph 7A of the Claim, JLT:

(a) says that by the February 1999 Deed, JGS replaced Jardine Group Services, a division of JLT as trustee of JMAPP;

(b) says that the February 1999 Deed recorded that JGS was to provide Insurance Broking, Claims Management and Risk Management services to JMAPP (Recital D); and

(c) otherwise denies each and every allegation in paragraph 7A.

8. JLT admits the allegations in paragraph 8 of the Claim.

9. JLT admits the allegations in paragraph 9 of the Claim.

9A. In answer to the allegations in 9A of the Claim, JLT:

(a) will refer to the full terms and effect of the April 2003 Deed at trial;

(b) says that by the April 2003 Deed, the obligation of JGS as the trustee under clause 9 of the 1998 Establishment Deed was removed and replaced by the following obligations:

(i) “[t]he Promoter shall refer all Affiliates enquiries pertaining to their becoming and remain members of the Scheme to [JLT] the appointed insurance broker”; and

(ii) “[JGS] and the appointed insurance broker [JLT] must in each Fund year solicit and encourage Affiliates to become and remain members of the Scheme”;

(c) says that by the July 2003 Deed, the full terms and effect of which it will refer at trial, the 1998 Establishment Deed was varied so as to define “Affiliates” as “*an incorporated body, allied association, other body, and/or person affiliated with the Promoter, pursuant to its constitution, rules and standing orders admitted to the Scheme from time to time pursuant to clause 25 of the 1998 Establishment Deed and shall include the Promoter*”;

- (d) says that the term “Affiliates” as used in the April 2003 Deed and for the purposes of clause 9 of the 1998 Establishment Deed, prior to the June 2014 Deed did not include potential members of JMAPP; and
- (e) otherwise denies each and every allegation in paragraph 9A of the Claim.

9B. In answer to the allegation in paragraph 9B of the Claim, JLT:

- (a) repeats paragraph 9A(c) above; and
- (b) otherwise denies each and every allegation in paragraph 9B of the Claim.

9C. In answer to the allegation in paragraph 9C of the Claim, JLT:

- (a) says that by the June 2006 Deed:
 - (i) the definition of “Affiliate” was replaced by the definitions of “Member” and “Potential Member” (clause 4(a));
 - (ii) where the word “Affiliate” appeared in the 1998 Establishment Deed, it was replaced by the word “Member” (clause 4(b));
- (b) admits the allegation in subparagraph 9C(b) of the Claim;
- (c) admits the allegation in subparagraph 9C(c) of the Claim; and
- (d) otherwise denies each and every allegation in paragraph 9C of the Claim.

9D. JLT admits the allegations in paragraph 9D of the Claim.

9E. In answer to the allegations in paragraph 9E of the Claim, JLT:

- (a) says that it will rely on the full terms and effect of the schedule to the June 2014 Deed;
- (b) says that paragraph 9E of the Claim does not plead fully or accurately the relevant terms of the June 2014 Deed; and
- (c) otherwise denies each and every allegation in paragraph 9E of the Claim.

10. In answer to the allegations in paragraph 10 of the Claim, JLT:
- (a) admits that at all material times during the Relevant Period:
 - (i) JLT was appointed by JGS as Insurance Broker for JMAPP; and

Particulars

Letter of Appointment dated 27 November 2000 regarding appointment as insurance broker.

- (ii) in that capacity as Insurance Broker for JMAPP, JLT arranged insurance cover for JMAPP; and
 - (b) otherwise denies each and every allegation in paragraph 10 of the Claim.
11. In answer to the allegations in paragraph 11 of the Claim, JLT:
- (a) says that from time to time during the Relevant Period it received fees and commissions in consideration for performing its obligations as Insurance Broker and Claims Manager for JMAPP; and
 - (b) otherwise denies each and every allegation in paragraph 11 of the Claim.
12. In answer to the allegations in paragraph 12 of the Claim, JLT:
- (a) says that from time to time during the Relevant Period it provided insurance broking services to some clients; and
 - (b) otherwise does not admit the allegations in paragraph 12 of the Claim.
13. In answer to the allegations in paragraph 13 of the Claim, JLT:
- (a) admits that, from time to time in the Relevant Period, it described itself as “*one of the world’s largest providers of insurance and employee benefits related advice, brokerage and associated services*”; and
 - (b) otherwise denies the allegations in paragraph 13.
14. In answer to the allegations in paragraph 14 of the Claim, JLT:
- (a) admits that during the Relevant Period it subscribed to the NIBA Code;

- (b) admits that during the Relevant Period it held itself out to Moira as a subscriber to the NIBA Code;
 - (c) admits that for such part of the Relevant Period in which Hobsons Bay was a member of JMAPP, it held itself out to Hobsons Bay as a subscriber to the NIBA Code; and
 - (d) otherwise denies each and every allegation in paragraph 14 of the Claim.
15. In answer to the allegations in paragraph 15 of the Claim, JLT:
- (a) refers to and repeats paragraphs 6 and 10(a)(i) above;
 - (b) says that the Plaintiffs instructed JLT to provide insurance broking services in respect of the insurance of certain risks, other than risks capable of being covered by JMAPP for:
 - (i) Moira in respect of the years ending 30 June 2013 to 30 June 2020; and
 - (ii) Hobsons Bay in respect of the years ending 30 June 2013 to 30 June 2019; and
 - (c) otherwise denies each and every allegation in paragraph 15 of the Claim.
16. In answer to the allegations in paragraph 16 of the Claim, JLT:
- (a) refers to and repeats paragraph 6 above;
 - (b) says that the Plaintiffs and each Group Member were Members under the JMAPP Trust Deed at certain times during the Relevant Period;
 - (c) says that the Plaintiffs and each Group Member were Members under the JMAPP Trust Deed until such time as they elected to retire from JMAPP and gave notice in accordance with clause 24.1 of the JMAPP Trust Deed;
 - (d) says that the JMAPP Trust Deed recorded, and it was the fact that, JMAPP was established to provide a pooled fund and a scheme to manage the property and financial risks of Members associated with the Promoter that may arise in connection with the conduct by those bodies of their activities;
 - (e) refers to and repeats paragraph 15(b) above; and
 - (f) otherwise denies each and every allegation in paragraph 16 of the Claim.

17. In answer to the allegations in paragraph 17 of the Claim, JLT:
- (a) refers to and repeats paragraph 6 above;
 - (b) admits that Moira appointed JLT as its agent for the purposes of carrying out a public tender of its Property/Industrial Special Risks cover in respect of the years ending 30 June 2011, 30 June 2012, 30 June 2013, 30 June 2014, 30 June 2015, 30 June 2016, 30 June 2018 and 30 June 2019;
 - (c) says that from time to time during the Relevant Period, Moira also appointed JLT as its agent for the purposes of carrying out a public tender in respect of lines of insurance other than Property/Industrial Special Risks cover, which are not the subject of any claimed loss in this proceeding;
 - (d) denies that Moira appointed JLT as its agent for the purposes of carrying out a public tender in respect of Moira's insurances for coverage in respect of the year ending 30 June 2017;
 - (e) admits that Hobsons Bay appointed JLT as its agent for the purposes of carrying out a public tender of its Property/Industrial Special Risks cover for coverage in respect of the years ending 30 June 2011, 30 June 2012, 30 June 2013, 30 June 2014, 30 June 2015, 30 June 2016 and 30 June 2017 and 30 June 2019;
 - (f) says that from time to time during the Relevant Period, Hobsons Bay also appointed JLT as its agent for the purposes of carrying out a public tender in respect of lines of insurance other than Property/Industrial Special Risks cover, which are not the subject of any claimed loss in this proceeding;
 - (g) denies that Hobsons Bay appointed JLT as its agent for the purposes of carrying out a public tender in respect of Hobsons Bay's insurances for coverage in respect of the year ending 30 June 2018; and
 - (h) otherwise denies each and every allegation in paragraph 17 of the Claim.
18. In answer to the allegations in paragraph 18 of the Claim, JLT:
- (a) refers to and repeats paragraph 17 above; and
 - (b) otherwise denies each and every allegation in paragraph 18 of the Claim.

19. In answer to the allegations in paragraph 19 of the Claim, JLT:

- (a) refers to and repeats paragraph 6 above;
- (b) says that in relation to coverage in respect of the years ending 30 June 2011, 30 June 2012, 30 June 2013, 30 June 2014, 30 June 2015, 30 June 2016 and 30 June 2018, the only tender proposal received by it as agent for Moira, for the purposes of carrying out a public tender of its Property/Industrial Special Risks cover, was from JMAPP;
- (c) says that the Tender Panel in respect of each tender recommended to Moira that it accept the tender submitted by JMAPP for the provision of Property/Industrial Special Risks cover in respect of the years ending 30 June 2011, 30 June 2012, 30 June 2013, 30 June 2014, 30 June 2015, 30 June 2016 and 30 June 2018;

Particulars

Tender Evaluation Report for the Provision of Insurances for Moira Shire Council dated 8 June 2010, 6 June 2011, 5 June 2012, 6 June 2013, 6 June 2014, 4 June 2015 and 21 June 2017.

- (d) further to sub-paragraph (c) above, it says further that in relation to coverage in respect of the year ending 30 June 2019, no tenders were received by it as agent for Moira, for the purposes of carrying out a public tender of its Property/Industrial Special Risks cover;

Particulars

Tender Evaluation Report for the Provision of Insurances for Moira Shire Council dated 15 June 2018.

- (e) says that in relation to coverage in respect of the years ending 30 June 2011, 30 June 2012, 30 June 2013, 30 June 2014, 30 June 2015, 30 June 2016 and 30 June 2017, the only tender proposal received by it as agent for Hobsons Bay, for the purposes of carrying out a public tender of its Property/Industrial Special Risks cover was from JMAPP;
- (f) says that the Tender Panel in respect of each tender recommended to Hobsons Bay that it accept the tender submitted by JMAPP for the provision of Property/Industrial

Special Risks cover in respect of the years ending 30 June 2011, 30 June 2012, 30 June 2013, 30 June 2014, 30 June 2015, 30 June 2016 and 30 June 2017;

Particulars

Tender Evaluation Report for the Provision of Insurances for Hobsons Bay Council dated 8 June 2010, 6 June 2011, 5 June 2012, 6 June 2013, 6 June 2014, 4 June 2015 and 14 June 2016.

- (g) further to sub-paragraph (f) above, it says further that in relation to coverage in respect of the year ending 30 June 2019, no tenders were received by JLT as agent for Hobsons Bay, for the purposes of carrying out a public tender of its Property/Industrial Special Risks cover; and

Particulars

Tender Evaluation Report for the Provision of Insurances for Hobsons Bay Council dated 15 June 2018.

- (h) otherwise denies each and every allegation in paragraph 19 of the Claim.

20. In answer to the allegations in paragraph 20 of the Claim, JLT:

- (a) refers to and repeats paragraphs 16(b) to (d) above;
- (b) refers to and repeats paragraph 19 above;
- (c) says that Moira provided to JLT signed instructions for JLT to renew its Property/Industrial Special Risks cover with JMAPP in respect of the coverage for the years ending 30 June 2013, 30 June 2014, 30 June 2015, 30 June 2016, 30 June 2017, 30 June 2018 and 30 June 2019;
- (d) says that Hobsons Bay provided to JLT signed instructions for JLT to place its Property/Industrial Special Risks cover with JMAPP in respect of coverage for the years ending 30 June 2013, 30 June 2014, 30 June 2015, 30 June 2016, 30 June 2017, 30 June 2018 and 30 June 2019; and
- (e) otherwise denies each and every allegation in paragraph 20 of the Claim.

21. In answer to the allegations in paragraph 21 of the Claim, JLT:
- (a) refers to and repeats paragraphs 16 to 20 above;
 - (b) admits that it had knowledge of the market for Property insurance for local government councils;
 - (c) does not admit that the Plaintiffs or Group Members lacked knowledge of the market for Property insurance; and
 - (d) otherwise denies each and every allegation in paragraph 21 of the Claim.
22. In answer to the allegations in paragraph 22 of the Claim, JLT:
- (a) refers to and repeats paragraph 6 above;
 - (b) says that the existence and/or nature of any obligation allegedly owed by JLT was limited by:
 - (i) the terms of the JMAPP Trust Deed and JLT's role in respect of JMAPP; and
 - (ii) the terms and scope of any instructions, appointment or contract between the relevant Plaintiffs or Group Member and JLT;
 - (c) refers to and repeats paragraphs 16 to 20 above; and
 - (d) otherwise denies each and every allegation in paragraph 22 of the Claim.
23. In answer to the allegations in paragraph 23 of the Claim, JLT:
- (a) refers to and repeats paragraphs 15(b) above in relation to the Broking Services;
 - (b) refers to and repeats paragraphs 17 and 18 above in relation to the Tender Services;
 - (c) refers to and repeats paragraph 19 above in relation to the Recommendations; and
 - (d) otherwise denies each and every allegation in paragraph 23 of the Claim.
24. In answer to the allegations in paragraph 24 of the Claim, JLT:
- (a) refers to and repeats paragraph 6 above;

- (b) says that the existence and/or nature of any obligation allegedly owed by JLT was limited by:
 - (i) the terms of the JMAPP Trust Deed and JLT's role in respect of JMAPP; and
 - (ii) the terms and scope of any instructions, appointment or contract between the relevant Plaintiffs or Group Member and JLT; and
- (c) otherwise denies each and every allegation in paragraph 24 of the Claim.

25. In answer to the allegations in paragraph 25 of the Claim, JLT:

- (a) refers to and repeats paragraph 6 above;
- (b) says that the existence and/or nature of any obligation allegedly owed by JLT was limited by:
 - (i) the terms of the JMAPP Trust Deed and JLT's role in respect of JMAPP; and
 - (ii) the terms and scope of any instructions, appointment or contract between the relevant Plaintiffs or Group Member and JLT; and
- (c) otherwise denies each and every allegation in paragraph 25 of the Claim

26. JLT denies the allegations in paragraph 26 of the Claim.

27. In answer to the allegations in paragraph 27 of the Claim, JLT:

- (a) refers to and repeats paragraphs 17 and 19 above;
- (b) denies each and every allegation in paragraph 27 of the Claim; and
- (c) says further that the amount of contributions was determined by JGS in consultation with the Promoter (in conjunction with actuarial advice).

Particulars

1998 Establishment Deed, clause 12.1.2; June 2014 Deed, clause 12.1.2

28. JLT denies each and every allegation in paragraph 28 of the Claim.

29. In answer to the allegations in paragraph 29 of the Claim, JLT:

- (a) refers to and repeats paragraph 28 above;
- (b) denies each and every allegation in paragraph 29 of the Claim; and
- (c) says further that:
 - (i) if JLT breached any duties as alleged (which is denied) and the Plaintiffs or Group Members suffered any loss or damage (which is denied), any cause of action arose no later than the point in time at which the relevant breach occurred, or alternatively, the point in time at which the Plaintiffs or a Group Member became liable to pay contributions in respect of property risk cover;
 - (ii) any claims by the Plaintiffs or Group Members relating to causes of action arising prior to 28 June 2013 are statute barred by operation of s. 5(1)(a) of the *Limitations of Actions Act 1958* (Vic); and
- (a) says further that to the extent that the Plaintiffs and Group Members remained members of JMAPP after becoming aware of the matters alleged in paragraphs 27 and 28 of the Claim (if, which is denied, the matters alleged in those paragraphs were the case), and if the Plaintiff or Group Members suffered any loss or damage (which is denied), such loss and damage was caused by their own conduct, or further and alternatively they failed to mitigate any such loss.

30. In answer to the allegations in paragraph 30 of the Claim, JLT:

- (a) refers to and repeats paragraphs 15 to 19 above;
- (b) says that the existence and/or nature of any duty allegedly owed by JLT was limited by:
 - (i) the terms of the JMAPP Trust Deed and JLT's role in respect JMAPP; and
 - (ii) the terms and scope of any instructions, appointment or contract between the relevant Plaintiffs or Group Member and JLT;
- (c) says that at all times during the Relevant Period, the Plaintiffs and Group Members were aware that it was a related entity of JGS; and

Particulars

Financial Services Guide for JLT Discretionary Trust (JDT) Arrangement

Further particulars will be provided prior to trial.

(d) otherwise denies each and every allegation in paragraph 30 of the Claim.

31. In answer to the allegations in paragraph 31 of the Claim, JLT:

(a) refers to and repeats paragraph 10(a) above;

(b) says that JLT disclosed to the Plaintiffs its role in respect of JMAPP;

Particulars

Tender Evaluation Reports provided to Moira dated 8 June 2010, 6 June 2011, 5 June 2012, 6 June 2013, 6 June 2014, 4 June 2015, 21 June 2017 and 15 June 2018.

Tender Evaluation Report provided to Hobsons Bay dated 8 June 2010, 6 June 2011, 5 June 2012, 6 June 2013, 6 June 2014, 4 June 2015.

Further particulars may be provided prior to trial.

(c) says further that it was appointed by JGS to act as insurance broker and claims manager agent for JMAPP; and

Particulars

Letter of Appointment dated 27 November 2000 regarding appointment as claims manager.

Letter of Appointment dated 27 November 2000 regarding appointment as insurance broker.

(d) otherwise denies each and every allegation in paragraph 31 of the Claim.

32. In answer to the allegations in paragraph 32 of the Claim, JLT:

(a) refers to and repeats paragraph 10(a) and 31(b) above;

- (b) says that from time to time during the Relevant Period it received fees and commissions in consideration for performing its obligations as Insurance Broker and Claims Manager for JMAPP;
- (c) says that at all times during the Relevant Period, it disclosed to the Plaintiffs and Group Members (insofar as they were members of JMAPP during the Relevant Period) the fact that it was entitled to receive fees and commissions and/or the fact or quantum of those fees and commissions; and

Particulars

- (1) Renewal Reports
- (2) Financial Services Guides
- (3) Insurance declarations
- (4) Insurance Invoices
- (5) JMAPP Trust Deed clause 16
- (6) JMAPP Annual Reports published during the Relevant Period
- (7) Acceptance Forms
- (8) JMAPP Product Disclosure Statements

(d) otherwise denies each and every allegation in paragraph 32 of the Claim.

33. In answer to the allegations in paragraph 33 of the Claim, JLT:

- (a) refers to and repeats paragraphs 31 and 32 above; and
- (b) otherwise denies each and every allegation in paragraph 33 of the Claim.

34. JLT denies each and every allegation in paragraph 34 of the Claim.

35. In answer to the allegations in paragraph 35 of the Claim, JLT:

- (a) repeats paragraph 32 above; and
- (b) otherwise denies each and every allegation in paragraph 35 of the Claim.

36. In answer to the allegations in paragraph 36 of the Claim, JLT:
- (a) refers to and repeats paragraph 32 above; and
 - (b) otherwise denies each and every allegation in paragraph 36 of the Claim.
37. JLT denies each and every allegation in paragraph 37 of the Claim and says further that:
- (a) if it breached any duties as alleged (which is denied) and the Plaintiffs or Group Members suffered any loss or damage (which is denied), any cause of action arose no later than the point in time at which the relevant breach occurred, or alternatively, the point in time at which a Plaintiff or a Group Member became liable to pay contributions in respect of property risk cover;
 - (b) any claims by the Plaintiffs or Group Members relating to causes of action arising prior to 28 June 2013 are statute barred by operation of s. 21(2) of the *Limitations of Actions Act 1958* (Vic), s 5(1) of that Act applied by analogy, or are barred by reason of the doctrine of laches; and
 - (c) to the extent that the Plaintiffs and Group Members remained members of JMAPP after becoming aware of the matters alleged in paragraphs 34 and 36 of the Claim (if, which is denied, the matters alleged in those paragraphs were the case), and if the Plaintiff or Group Members suffered any loss or damage (which is denied), such loss and damage was caused by their own conduct, or further and alternatively they failed to mitigate any such loss.
38. It denies each and every allegation in paragraph 38 of the Claim and says further that:
- (a) if it breached any duty as alleged (which is denied) and the Plaintiff or Group Members suffered any loss or damage (which is denied), any cause of action arose no later than the point in time at which the relevant breach occurred or, alternatively, the point in time at which a Plaintiff or a Group Member became liable to pay premiums in respect of Property risk cover;
 - (b) any claims by the Plaintiffs or Group Members relating to causes of action arising prior to 28 June 2013 are statute barred by operation of s. 21(2) of the *Limitations of Actions Act 1958* (Vic) , s 5(1) or (2) of that Act applied by analogy, or are barred by reason of the doctrine of laches; and

(c) says further that to the extent that the Plaintiffs and Group Members remained members of JMAPP after becoming aware of the matters alleged in paragraphs 34 and 36 of the Claim (if, which is denied, the matters alleged in those paragraphs were the case), and if the Plaintiff or Group Members suffered any loss or damage (which is denied), such loss and damage was caused by their own conduct, or further and alternatively they failed to mitigate any such loss.

39. JLT denies that the common questions set out in the Claim are in fact common questions.

Date: 6 December 2019

M DARKE

I AHMED

J A FINDLAY

Herbert Smith Freehills
Solicitors for the Defendant

SCHEDULE 1

SCHEDULE OF PARTIES

MOIRA SHIRE COUNCIL

First Plaintiff

HOBSONS BAY CITY COUNCIL

Second Plaintiff