



FORM 46A

Rule 46.04(1)

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

Case: S ECI 2020 04230

Filed on: 18/05/2021 01:41 PM

**No. S ECI 2020 04230**

**B E T W E E N**

**JORDAN WILKINSON**

Plaintiff

-and-

**ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850)**

Defendant

**SUMMONS**

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Date of Document:	18 May 2021	Solicitors Code:	564
Filed on behalf of:	The Plaintiff	DX:	N/A
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To: the Defendant in this proceeding and the Plaintiff and Defendants in proceeding S ECI 2020 02853.

You are summoned to attend before the Court on the hearing of an application by the Plaintiff for the following orders.

**Consolidation**

1. Pursuant to Rule 9.12 of the *Supreme Court (General Civil Procedure) Rules 2015 (the Rules)* and section 33ZF of the *Supreme Court Act 1986 (Vic) (Act)*, this proceeding (S ECI 2020 04230) (**Wilkinson Proceeding**) be consolidated with the proceeding *Tracy-Ann Fuller v Allianz Australia Insurance Limited and another* (S ECI 2020 02853) (**Fuller Proceeding**) and the consolidated proceeding be known as *Tracy-Ann Fuller and Jordan Wilkinson v Allianz Australia Insurance Limited and another* to be identified as S ECI 2020 02853 (**Consolidated Proceeding**).
2. The plaintiff in the Fuller Proceeding (**Fuller Plaintiff**) and the plaintiff in the Wilkinson Proceeding (**Wilkinson Plaintiff**) are to be the joint representative plaintiffs in the Consolidated Proceeding (**Plaintiffs**).

3. Pursuant to section 33ZF of the Act, Maurice Blackburn Pty Ltd (**Maurice Blackburn**) and Johnson Winter & Slattery (together, the **Lawyers**) are granted leave to be jointly named as solicitors on the record for the Plaintiffs in the Consolidated Proceeding.
4. Order 3 is subject to the provision of:
  - (a) an undertaking in the terms of Annexure A to these orders by each of the Fuller Plaintiff and the Wilkinson Plaintiff; and
  - (b) an undertaking in the terms of Annexure B to these orders by each of Johnson Winter & Slattery and Maurice Blackburn.
5. Subject to further order, costs incurred in the Fuller Proceeding and the Wilkinson Proceeding will be costs in the Consolidated Proceeding.
6. The costs of any work performed in the Consolidated Proceeding on and after the date of these orders that is performed by reason of there being two firms jointly representing the Plaintiffs rather than one firm (**Duplicated Work**):
  - (a) not be recoverable against group members in the Consolidated Proceeding;
  - (b) not be recoverable against the Defendants in the Consolidated Proceeding.

#### **Consolidated pleading**

7. Pursuant to Rules 36.01 and 36.04 of the Rules, by no later than one week after the date that orders 1 to 6 above are made, the Plaintiffs are to file and serve a consolidated writ and consolidated statement of claim.
8. By no later than four weeks after service upon them of the consolidated statement of claim, the Defendants are to file and serve a defence to the consolidated statement of claim.
9. By no later than four weeks after service upon them of the defence, the Plaintiffs are to file and serve any reply to the Defendants' defence.

#### **Costs referee**

10. Pursuant to Rule 50.01 of the Rules and section 33ZF of the Act, Elizabeth Harris, is appointed as special referee (**costs referee**) for the purpose of:
  - (a) conducting inquiries every six months (commencing from the date of these orders) as to the question of whether there is unnecessary or excessive work (including any Duplicated Work) being performed by the Lawyers for the Consolidated Proceeding, such question to be considered in accordance with the Cooperative Litigation Protocol annexed as Annexure C; and
  - (b) providing confidential written reports (of no more than 10 pages) to the Court and the Lawyers every six months (commencing from after the date of these orders) stating that costs referee's opinion on the question in 10(a) above, including any recommendations for reducing duplication where identified or otherwise reducing costs.

11. The Lawyers must provide such information, access to personnel and access to documents as the costs referee may require.
12. Without affecting the powers of the Court as to costs, the reasonable fees of the costs referee shall be borne equally by the Plaintiffs in the Consolidated Proceeding and shall not be recoverable against the Defendants in the Consolidated Proceeding.
13. The Plaintiffs may apply to the Court for review of the costs referee's opinion about whether work performed is Duplicated Work. The Court may on application of either Plaintiff decline to adopt the opinion of the costs referee in whole or in part, and make such order as it thinks fit.

**Other**

14. Costs against any party that opposes these orders.

The application will be heard by the Judge by way of virtual hearing or as otherwise advised on Friday, 16 July 2021 at 10:30am or so soon afterwards as the business of the Court allows.

FILED 18 May 2021

This summons was filed by Andrew Watson of Maurice Blackburn, solicitor for the Plaintiff.

**ANNEXURE A – FORM OF UNDERTAKING**

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

S ECI 2020 04230

BETWEEN:

**JORDAN WILKINSON**

Plaintiff

- and -

**ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850)**

Defendant

**UNDERTAKING**

Jordan Wilkinson undertakes to the Court to enter into the Cooperative Litigation Protocol annexed to the orders of the Court dated [insert] at Annexure C, and undertakes to instruct his solicitors Maurice Blackburn Pty Ltd to comply with the Cooperative Litigation Protocol in conducting the Consolidated Proceeding.

Signature: \_\_\_\_\_

Jordan Wilkinson

Date of signature:

**ANNEXURE B – FORM OF UNDERTAKING**

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

S ECI 2020 04230

BETWEEN:

**JORDAN WILKINSON**

Plaintiff

- and -

**ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850)**

Defendant

**UNDERTAKING**

Maurice Blackburn Pty Ltd undertakes to the Court to conduct the Consolidated Proceeding in accordance with the Cooperative Litigation Protocol annexed to the orders of the Court dated [insert] at Annexure C.

Signature: \_\_\_\_\_

On behalf of: Maurice Blackburn Pty Ltd

Signatory:

Capacity:

Date of signature:

## **ANNEXURE C – COOPERATIVE LITIGATION PROTOCOL**

# **Allianz Add-On Insurance Class Action**

## **Cooperative Litigation Protocol**

**Tracy-Ann Fuller, plaintiff in S ECI 2020 02853**

**Jordan Wilkinson, plaintiff in S ECI 2020 04230**

Dated: \_\_\_\_\_ 2021

**Allianz Add-On Insurance Class Action**  
**Cooperative Litigation Protocol**  
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## PARTIES

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- 1 **Tracy-Ann Fuller**, c/o Johnson Winter & Slattery of Level 34, 55 Collins Street, Melbourne VIC 3000
- 2 **Jordan Wilkinson**, c/o Maurice Blackburn Pty Ltd of Level 21, 380 La Trobe Street, Melbourne VIC 3000
- (collectively, the '**Plaintiffs**').

## RECITALS

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- A On 7 July 2020, Tracy-Ann Fuller (**Fuller Plaintiff**) commenced proceeding S ECI 2020 02853 (**Fuller Proceeding**) in the Supreme Court of Victoria (**Court**) against Allianz Australia Insurance Limited and Allianz Australia Life Insurance Limited pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) (**Supreme Court Act**).
- B Johnson Winter & Slattery (**JWS**) are solicitors for the Fuller Plaintiff.
- C On 11 November 2020, Jordan Wilkinson (**Wilkinson Plaintiff**) commenced proceeding S ECI 2020 04230 against Allianz Australia Insurance Limited in the Court (**Wilkinson Proceeding**) pursuant to Part 4A of the Supreme Court Act. Maurice Blackburn Pty Ltd (**Maurice Blackburn**) are solicitors for the Wilkinson Plaintiff.
- D On 19 November 2020 and 30 November 2020, the Honourable Justice Nichols made orders that the Fuller Plaintiff and Wilkinson Plaintiff and their legal representatives confer in an attempt to resolve any Multiplicity Dispute.
- E On 4 February 2021, 2 March 2021 and 31 March 2021, the Honourable Justice Nichols extended the period of conferral.
- F On 23 April 2021, the Honourable Justice Nichols made orders that the Fuller Plaintiff and Wilkinson Plaintiff file an application with evidence and submissions to resolve any Multiplicity Dispute.
- G On [date], her Honour made orders consolidating the Fuller Proceeding and the Wilkinson Proceeding (**Consolidated Proceeding**) and granting leave to JWS and Maurice Blackburn to be jointly named as solicitors on the record for the Plaintiffs in the Consolidated Proceeding, on the provision of:
- (a) Undertakings by each of the Fuller Plaintiff and the Wilkinson Plaintiff that they would enter into this Cooperative Litigation Protocol (**Protocol**) and that they would instruct their respective solicitors JWS and Maurice Blackburn to comply with this Protocol in conducting the Consolidated Proceeding;
  - (b) Undertakings by each of JWS and Maurice Blackburn that they would conduct the Consolidated Proceeding in accordance with this Protocol.

H

This Protocol documents the manner in which the Plaintiffs, JWS and Maurice Blackburn are to conduct the Consolidated Proceeding.

**IT IS AGREED AND THE PLAINTIFFS INSTRUCT** as follows:

**1 Commencement Date**

- 1.1 The term of this Protocol shall begin from the date on which it is executed (**Commencement Date**).
- 1.2 The term of this Protocol shall continue until terminated pursuant to clause 13.

**2 Plaintiffs and Group Members**

- 2.1 The Wilkinson Plaintiff and the Fuller Plaintiff have each given their instructions to be joint representative plaintiffs in the Consolidated Proceeding.
- 2.2 Maurice Blackburn is and will be instructed by the Wilkinson Plaintiff.
- 2.3 JWS is and will be instructed by the Fuller Plaintiff.
- 2.4 In the event that either of the Fuller Plaintiff and/or the Wilkinson Plaintiff ceases to be a representative plaintiff in the Consolidated Proceeding (**Former Representative Plaintiff**), then:
  - a) the Former Representative Plaintiff will no longer be bound by the terms of this Protocol other than clause 10;
  - b) in the event that any other person who is a group member in the Consolidated Proceeding (**Group Member**) instructs the lawyers for the Former Representative Plaintiff that it will act as a representative plaintiff (**Replacement Representative Plaintiff**) and those instructions are accepted by the lawyers for the Former Representative Plaintiff, then:
    - i as soon as reasonably practicable, the Former Representative Plaintiff will enter into an accession deed poll with the Replacement Representative Plaintiff by which the Replacement Representative Plaintiff undertakes to step into the shoes of the Former Representative Plaintiff in respect of his or her rights, obligations and liabilities in respect of the Consolidated Proceeding, and to become bound by the terms of this Protocol, as if they were named as a representative plaintiff (in respect of the proceeding associated with the Former Representative Plaintiff) under the terms of this Protocol; and
    - ii JWS and Maurice Blackburn are instructed to jointly take all necessary steps to secure the appointment of the Replacement Representative

Plaintiff as a representative plaintiff in the Consolidated Proceeding.

2.5 JWS will not be required, and it is agreed that JWS is not intending, to enter into a retainer with any Maurice Blackburn client for the purpose of the Consolidated Proceeding.

2.6 Maurice Blackburn will not be required, and it is agreed that Maurice Blackburn is not intending, to enter into a retainer with any JWS client for the purpose of the Consolidated Proceeding.

### **3 Avoidance of Duplication of work and costs**

3.1 JWS and Maurice Blackburn will work together in seeking to avoid duplicated work in the Consolidated Proceeding.

3.2 The Wilkinson Plaintiff and the Fuller Plaintiff shall instruct Maurice Blackburn and JWS respectively, with a view to avoiding duplicated work.

3.3 For the purpose of this Protocol, **duplicated work** is the same work being performed by both JWS and MB that could reasonably have been performed by one firm only.

3.4 In this Protocol there are provisions and measures that are intended to avoid duplicated work and to identify and report on costs incurred as a result of duplicated work.

3.5 The Plaintiffs will seek orders to appoint a costs referee on the question of whether there is unnecessary or excessive work, including any unnecessary or excessive duplication of work, being performed by JWS and Maurice Blackburn in the Consolidated Proceeding and the costs referee will provide confidential written reports to the court, JWS and Maurice Blackburn every six months from the date consolidation is ordered by the court.

3.6 In the event that a costs referee is appointed by the Court, JWS and MB will assist the costs referee in undertaking their inquiries by cooperating and providing such information, access to personnel and access to documents as the costs referee may require.

### **4 Litigation Committee**

4.1 Maurice Blackburn and JWS are instructed to convene a Litigation Committee to conduct the Consolidated Proceeding and to be responsible for the matters referred to in clause 4.2 and for ensuring the work is done fairly and efficiently and without duplication in the best interests of the group members, initially comprising:

- a) Andrew Watson, Principal of Maurice Blackburn; and
- b) Paul Buitendag, Practice Group Head of JWS;

but may be amended at the discretion of the appointing firm.

- 4.2 The Litigation Committee shall be responsible for:
- a) the making of major decisions in accordance with clause 5;
  - b) management of the litigation;
  - c) determining the equal distribution and coordination of work between Maurice Blackburn and JWS in accordance with clause 4.8.
- 4.3 The Litigation Committee will communicate by whatever means and at whatever frequency is necessary for the efficient and effective conduct of the Consolidated Proceeding.
- 4.4 The Litigation Committee will provide written or verbal reports to the Plaintiffs on the progress of the litigation upon request or otherwise as reasonably required.
- 4.5 Subject to clause 4.6, the Litigation Committee will operate by unanimous agreement. Each member of the Litigation Committee will act on the basis of utmost good faith in accordance with their professional obligations and obligations to the Court.
- 4.6 Upon agreement by the Litigation Committee member from each of Maurice Blackburn and JWS, the Litigation Committee may delegate, to either Maurice Blackburn or JWS (and their legal personnel), sole carriage and responsibility for decision-making including sending correspondence without the approval of the other firm in relation to any aspect of the Consolidated Proceeding so as to promote efficiency and reduce duplication in the conduct of the Consolidated Proceeding.
- 4.7 If the Litigation Committee is not able to reach unanimous agreement on any decision relating to the Consolidated Proceeding, then the dispute resolution procedure set out at clause 11 will apply.
- 4.8 In respect of all matters except for matters individual to the Wilkinson Plaintiff or the Fuller Plaintiff, for the purposes of avoiding duplication of costs and effort, work is to be distributed between the personnel of Maurice Blackburn and JWS ultimately on a 50/50 basis in a manner which so far as possible ensures the number and seniority of legal personnel conducting a task will be no more than if there was only a single representative proceeding conducted by a single firm. The primary determinant of the allocation of work shall however be the interests of Group Members having regard to:
- i. the skills and experience of the Lawyers and their respective staff;
  - ii. the objective of ensuring that the total legal costs are reasonable and proportionate; and

iii. the objective of avoiding legal costs incurred through overlapping or duplicated work.

4.9 Maurice Blackburn and JWS shall periodically exchange, at least every three months, itemised lists or detailed invoices of time recorded on the matter in a given period.

## **5 Major Decisions**

5.1 Any major decision in the litigation will be:

- a) made in accordance with clauses 4.5, 4.6 and 4.7;
- b) subject to the operation of, and compliance with, retainers, legal costs agreements and any orders of the Court; and
- c) if applicable, made following and considering any advice from Joint Counsel (defined below).

5.2 Subject to clause 5.3, 'major decisions' shall include the following in respect of the Consolidated Proceeding:

- a) any matters which are of significant importance to the conduct of the Consolidated Proceeding;
- b) a decision requiring the Plaintiffs to seek approval from the Court;
- c) the making of any interlocutory applications or the response to any interlocutory applications filed by another party;
- d) the claims made in, and parties to, the pleadings in the Consolidated Proceeding (**Consolidated Pleadings**);
- e) a decision to add, remove or substantially amend claims made;
- f) a decision to amend the relevant claim period;
- g) a decision to amend the definition of "group member";
- h) a decision to open or close the class;
- i) the making, acceptance or rejection of a settlement offer and any terms of settlement, provided that all precursor steps set out in any retainer have first been complied with;
- j) discovery to be sought from, provided to or negotiated with another party;
- k) a decision to accept or amend the loss methodology used to calculate the damages

- claimed by (or otherwise assessed on behalf of) the Plaintiffs and Group Members;
- l) a decision to issue any notices or respond to any notices under the Supreme Court Act (including any issued by the Court under its own motion);
  - m) a decision to appeal or not appeal any order, judgment or decision of the Court (including a decision to defend or not defend any appeal by another party);
  - n) a decision to retain or change counsel;
  - o) a decision to retain, brief or instruct an independent expert witness or consulting expert (together, **Experts or Consultants**);
  - p) a decision to terminate any retainers with Experts or Consultants;
  - q) the filing of any evidence from Experts or Consultants including responding to any responsive evidence filed by another party;
  - r) the filing of any lay evidence (other than evidence from the Wilkinson Plaintiff or the Fuller Plaintiff);
  - s) the approval of the fee structure of any contracts or fee agreements with Experts or Consultants;
  - t) a decision to undertake a piece of work likely to cost \$20,000 or more;
  - u) a decision to terminate this Protocol pursuant to clause 13;
  - v) a decision to discontinue the Consolidated Proceeding, provided that all precursor steps to discontinue set out in any retainer have first been complied with;
  - w) any security for costs to be provided by the Plaintiffs, with all matters in respect of security to remain at the sole discretion of each Plaintiff;
  - x) a decision as to how fees and disbursements are to be shared between the Plaintiffs;
  - y) allocation of work between JWS and Maurice Blackburn.

5.3 For the avoidance of doubt, the following matters do not comprise a 'major decision' and are excluded from this section:

- a) any other matters that the Litigation Committee has deemed not to comprise a 'major decision', or any matters falling within the delegation described at clause 4.6.

## **6 Counsel**

- 6.1 One set of counsel (**Joint Counsel**) will be briefed to represent the Plaintiffs and Group Members in the Consolidated Proceeding to be agreed by the Litigation Committee in accordance with clause 5.1 of this Protocol.
- 6.2 Wendy Harris QC, Lachlan Armstrong QC, Christopher Withers SC, Rachel Francois, Dion Fahey, Adam Hochroth, Anna Batrouney and Robert Pietriche are presently briefed by the Plaintiffs, and upon entry into this Protocol, the Litigation Committee will rationalise the composition of the Joint Counsel team for the purpose of the conduct of the Consolidated Proceeding and on an ongoing basis will make decisions as to the briefing of counsel as needed in order to prosecute the Consolidated Proceeding.
- 6.3 In circumstances where counsel is to be briefed with respect to any future contest or dispute between the Plaintiffs, each of the Plaintiffs must brief counsel other than Joint Counsel for the purposes of any interlocutory proceedings unless agreed otherwise by the Plaintiffs. For the avoidance of doubt, this clause shall not affect the appointment of any Joint Counsel for the purposes of clause 11.
- 6.4 Any or all of Joint Counsel may be replaced by alternative counsel to be chosen by the Litigation Committee in accordance with clause 5.1 of this Protocol.

## **7 Joint conduct of the consolidated proceeding**

- 7.1 The Plaintiffs will jointly:
- a) make any interlocutory applications that are necessary in the Consolidated Proceeding, save for any application in respect of non-common issues;
  - b) respond to any interlocutory applications filed by the Defendants in the Consolidated Proceeding;
  - c) retain, brief and instruct expert witnesses in the Consolidated Proceeding; and
  - d) conduct the discovery process as set out in clause 9.

## **8 Correspondence**

- 8.1 All correspondence to the Defendant(s) or to the Court shall be jointly sent on behalf of the Plaintiffs and, subject to clause 4.6, will be approved by at least one Litigation Committee member from each of Maurice Blackburn and JWS.
- 8.2 Correspondence to Group Members will be jointly sent in accordance with, and relying on



the procedure identified in, clause 8.1.

8.3 Notwithstanding clause 8.2, Maurice Blackburn and JWS may send correspondence to their respective clients at their own discretion.

8.4 The Plaintiffs will nominate one email address for service on the Plaintiffs, and to this end Maurice Blackburn or JWS will create and host an email account in order to allow correspondence to be received from the Court and the Defendant(s) (**Joint Service E-mail Address**). The Joint Service E-mail Address will be configured so that any e-mail sent to it is immediately forwarded to each member of the Litigation Committee and any other employees of Maurice Blackburn and JWS as requested. Further common email addresses may be established as necessary and configured as agreed by the Litigation Committee.

8.5 The Plaintiffs will nominate one physical address for service of the Plaintiffs for the purpose of the Consolidated Proceeding.

## **9 Discovery**

9.1 The Plaintiffs will seek orders to the effect that the Defendant(s) need only produce one set of discovered documents in the Consolidated Proceeding.

9.2 The Plaintiffs will jointly conduct the discovery process in the Consolidated Proceeding.

9.3 Maurice Blackburn and JWS agree to use the Relativity electronic discovery software to be managed by Maurice Blackburn with SKY Discovery to host documentary evidence in the proceeding unless otherwise agreed by the Plaintiffs.

9.4 A Relativity usage protocol will be developed (and shall be updated from time-to-time if necessary) and approved by the Litigation Committee to ensure a consistent approach is adopted in respect of the management and usage of the document database and approach to discovery review.

9.5 If SKY Discovery becomes unsuitable for hosting the document database, the Litigation Committee may decide to migrate the document database to another external provider.

9.6 Maurice Blackburn will seek payment of professional fees incurred in the administration of the Relativity discovery database in accordance with any arrangement made pursuant to clause 5.2(x).

## **10 Privilege & Confidentiality**

10.1 The Plaintiffs acknowledge that all information passed between parties to this Protocol is strictly confidential and subject to legal professional and common interest privilege (as is

relevant), unless otherwise agreed by the Litigation Committee.

10.2 Such information will only be used for the purposes of the Consolidated Proceeding, the Fuller Proceeding and/or the Wilkinson Proceeding.

- a) To the extent that such information is passed to any third parties then it will be subject to a confidentiality agreement unless required by law, by a Court or by a regulatory authority of competent jurisdiction (in which case if only one party is subject to that requirement, notice of the disclosure will be provided where lawful to the other party as soon as reasonably practicable after the first party becomes aware of the requirement including providing that notice before the disclosure if that is possible and lawful);
- b) the third party is subject to a professional obligation of confidence to the disclosing party; or
- c) otherwise agreed by the Litigation Committee.

10.3 This clause 10 survives any termination of this Protocol.

## **11 Dispute Resolution**

### Litigation Committee

11.1 Subject to clause 11.2, any dispute arising within the Litigation Committee that cannot be resolved by the Litigation Committee will be referred to the most senior member of counsel referred to in clause 6.1 for a final decision, which the parties agree will bind them.

11.2 If a dispute arises which would be referred to the most senior member of counsel pursuant to clause 11.1 and any member of the Litigation Committee or counsel considers that it is not appropriate for such counsel to determine the dispute, the Litigation Committee shall refer the dispute to an independent adjudicator appointed by the Litigation Committee, save that, failing agreement within 14 days by the Litigation Committee as to such independent adjudicator, the Litigation Committee must refer the dispute to an independent adjudicator to be appointed by the President of the Law Institute of Victoria for a final decision, whereby the independent adjudicator can seek to determine the dispute as he or she determines fit, in respect of which decision the parties agree to be bound. The parties must reasonably cooperate with requests made by the adjudicator to enable the adjudicator to determine the dispute.

### Implementation of the Protocol or other dispute

11.3 In the event that either the Fuller Plaintiff or the Wilkinson Plaintiff or Maurice Blackburn or

JWS consider that co-operation between the Plaintiffs or between Maurice Blackburn and JWS in the conduct of the Consolidated Proceeding is not functioning in accordance with this Protocol, or if any other dispute arises in relation to this Protocol:

- a) the concerned party, or any party in dispute with another party (**complainee**), shall communicate his, her or its concerns to the other party or parties in writing;
- b) the relevant parties shall confer within 7 days of receipt of such notice, with a view to resolving the concern or the dispute (**conferral**);
- c) in the event that the concern or the dispute is not resolved to the satisfaction of all or both parties, the Litigation Committee must, within 14 days of the conferral, refer the concern or dispute to an independent adjudicator appointed by the Litigation Committee, save that, failing agreement within a reasonable time by the Litigation Committee as to such independent adjudicator, the Litigation Committee must refer the dispute to an independent adjudicator to be appointed by the President of the Law Institute of Victoria for a final decision whereby the independent adjudicator can seek to determine the dispute as he or she determines fit, in respect of which decision the parties agree to be bound. The parties must reasonably cooperate with requests made by the adjudicator to enable the adjudicator to determine the dispute.

11.4 The Plaintiffs will use their utmost good faith to attempt to resolve any dispute and in giving effect to the outcome of any dispute resolution process conducted in accordance with clause 11.

11.5 The Plaintiffs will not seek to recover from the Defendant(s) the costs of any referral pursuant to this clause 11.

## **12 Best Interests of Group Members**

12.1 The Plaintiffs consider that this Protocol serves to benefit Group Members.

12.2 The Plaintiffs shall instruct Maurice Blackburn and JWS to interpret and give effect to this Protocol in a manner whereby the primary consideration shall be the interests of Group Members.

## **13 Termination**

13.1 Subject to this clause 13 , this Protocol may only be terminated by an order of the Court.

13.2 If there is a purported or attempted termination of this Protocol which is not provided for in

this clause 13, the Plaintiffs and Maurice Blackburn and JWS will attempt to agree on the appropriate course, and if they cannot agree, the dispute will be resolved in accordance with the dispute resolution provisions in clause 11.

13.3 This Protocol (except those clauses which are expressly stated to survive termination) will terminate when the Court delivers a final judgment and any appeal period expires or any appeal is determined, or in the event of a settlement following settlement approval and dismissal of the proceeding, at which time the protocol may be extended by agreement to allow for the distribution of proceeds to Group Members, if a further extension of the protocol is so approved by the Court.

#### **14 General**

14.1 The Plaintiffs each agree to take all steps necessary to achieve the objectives and purposes of this Protocol, including (subject to clause 14.2), the entry into any further agreement necessary to implement this Protocol.

14.2 This Protocol may only be amended in any material respect by order of the Court.

14.3 Any non-material amendments may be made by a document duly executed by each of the Plaintiffs and such amended Protocol is to be filed with the Court within 2 business days of execution by both Plaintiffs.

14.4 Any principal lawyer of Maurice Blackburn or principal lawyer of JWS (or their equivalent) may, subject to consent from the other, issue a press release or media statement or respond to a journalist's request for comment relating to the Consolidated Proceeding provided that such communication is consistent with any decision made, or otherwise does not pre-empt any decision to be made, by the Litigation Committee.

14.5 This Protocol is governed by the law applicable in Victoria and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the Courts of Victoria.

14.6 If a provision in this Protocol is held to be invalid, illegal or unenforceable, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or other provisions.

14.7 This Protocol may be executed in counterparts.

Signed: \_\_\_\_\_

**By Johnson Winter & Slattery for and on behalf of Tracy-Ann Fuller**

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

**By Maurice Blackburn for and on behalf of Jordan Wilkinson**

Date: \_\_\_\_\_