



**FORM 46A**

Rule 46.04(1)

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

Case: S ECI 2021 04391  
Filed on: 17/05/2022 04:21 PM

**No. S ECI 2021 04391**

**B E T W E E N**

**DANIEL JOSEPH BATCHELOR**

Plaintiff

-and-

**NUIX LIMITED (ACN 117 140 235)**

First Defendant

**MACQUARIE CAPITAL (AUSTRALIA) LIMITED (ACN 123 199 548)**

Second Defendant

**MACQUARIE GROUP LIMITED (ACN 122 169 279)**

Third Defendant

**SUMMONS**

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|                     |                            |                  |                                      |
|---------------------|----------------------------|------------------|--------------------------------------|
| Date of Document:   | 17 May 2022                | Solicitors Code: | 110756                               |
| Filed on behalf of: | The Plaintiff              | DX:              | N/A                                  |
| Prepared by:        | Phi Finney McDonald        | Telephone:       | (03) 9134 7100                       |
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To: the defendants

and

To: the plaintiff in *William Lay v Nuix Ltd* S ECI 2021 04360

and

To: the plaintiff in *Stella Stefana Bahtiyar v Nuix Ltd & Ors* S ECI 2022 00735 S ECI 2021

You are summoned to attend before the Court on the hearing of an application by the plaintiff for orders:

**Carriage**

1. Pursuant to rule 9.12 of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic), section 47(1) of the *Civil Procedure Act 2010* (Vic), and/or section 33ZF of the *Supreme Court Act 1986* (Vic) and/or the inherent jurisdiction of the Court:

- a. this proceeding and proceeding S ECI 2021 04360 (Lay **Proceeding**) be consolidated (**Consolidated Proceeding**) and the Consolidated Proceeding be known as *Daniel Joseph Batchelor & William Lay v Nuix Limited & Ors* to be identified as S ECI 2021 04391; and
  - b. the plaintiff in this proceeding and the plaintiff in the Lay Proceeding are to be the joint lead plaintiffs in the Consolidated Proceeding (together, **Joint Plaintiffs**).
  - c. Shine Lawyers Pty Ltd and Phi Finney McDonald Pty Ltd (**Plaintiffs' Solicitors**) be granted leave to be jointly named as solicitors on the record for the plaintiffs in the Consolidated Proceeding.
2. Order 1 is subject to the provision of:
- a. an undertaking in the terms of Schedule A to these orders by each of the Joint Plaintiffs; and
  - b. an undertaking in the terms of Schedule B to these orders by each of the Plaintiffs' Solicitors,
- within 7 days of these orders being made.
3. The costs to date in this proceeding and the Lay Proceeding, be reserved costs in the Consolidated Proceeding.
4. Pursuant to s 30 and s 33ZF of the *Supreme Court Act 1986* (Vic) and the inherent power of the Court, the proceeding *Stella Stefana Bahtiyar v Nuix Limited & Ors* (S ECI 2022 00735) (**Bahtiyar Proceeding**) be permanently stayed.
5. The costs of the application be paid by the plaintiff in the Bahtiyar Proceeding.

### **Costs Monitor**

6. Pursuant to section 33ZF of the *Supreme Court Act 1986* (Vic), an independent costs monitor be appointed, with the Plaintiffs' Solicitors to identify a suitable candidate and notify the Court within 14 days in the event order 1 is granted (**Costs Monitor**).
7. The Costs Monitor shall in each 6-month period after the date of these orders:
- a. make such enquiries of the Plaintiffs' Solicitors as they may consider necessary or appropriate to make an informed assessment of:
    - i. what work done and costs incurred by each firm have been necessary or reasonable for the purposes of recovery of costs on a solicitor-own client taxation;
    - ii. whether in their opinion any and, if so what, work done and costs incurred by either firm have not been necessary or reasonable for the purposes of recovery of costs on a solicitor-own client taxation; and
    - iii. whether in their opinion there has been any and, if so what, duplicated work, being work that is performed by reason of there being two firms representing the Plaintiffs, rather than one firm being performed by the Lawyers in the Consolidated Proceeding; and

- b. provide to the Plaintiffs' Solicitors on a confidential basis a written report (**Costs Report**) as to each assessment in (a), in sufficient detail to enable quantification of the costs approved, and costs disapproved or queried, by the Costs Monitor.
8. Subject to any further order, the Costs Reports shall be provided by the Costs Monitor to:
  - a. the Chambers of the trial judge, at the time of any settlement approval; and
  - b. any mediator at the time of any mediation.
9. The Plaintiffs' Solicitors must provide such information, access to personnel and access to documents as the Costs Monitor requires.
10. The reasonable fees of the Costs Monitor shall be borne equally by the Joint Plaintiffs in the Consolidated Proceeding and shall not be recoverable against any defendant in the Consolidated Proceeding.

**Pleadings**

11. The Joint Plaintiffs shall file and serve their consolidated statement of claim within 7 days in the event order 1 is granted.

**Other**

12. Such other orders as the Court considers appropriate.

The application will be heard before the Honourable Justice Nichols, Judge of the Supreme Court of Victoria, 210 William Street, Melbourne on 16 June 2022 at 10.00 a.m.

FILED:

This summons was filed by Diana Young of Phi Finney McDonald of Level 3, 325 Flinders Lane, Melbourne VIC 3000, solicitor for the plaintiff.

#### **SCHEDULE A – PLAINTIFFS’ UNDERTAKINGS**

[William Lay / David Joseph Batchelor] undertakes to the Court to enter into the Cooperative Litigation Protocol annexed to the orders of the Court dated [date], and undertakes to instruct his solicitors [Shine Lawyers Pty Ltd / Phi Finney McDonald Pty Ltd] to comply with the Cooperative Litigation Protocol being Schedule C to the Orders made [date] May 2022 in conducting the consolidated proceeding.

#### **SCHEDULE B – FIRMS’ UNDERTAKINGS**

[Shine Lawyers Pty Ltd / Phi Finney McDonald Pty Ltd] undertakes to the Court to conduct the consolidated proceeding in accordance with the Cooperative Litigation Protocol being Schedule C to the Orders made [date] May 2022.

## **SCHEDULE C**

**Nuix Class Action**

**Cooperative Litigation Protocol**

**William Lay**

**Shine Lawyers Pty Ltd**

**David Joseph Batchelor**

**Phi Finney McDonald Pty Ltd**

May 2022

## PARTIES

- 1 **William Lay**, c/o Shine Lawyers of Level 6, 299 Elizabeth St, Sydney NSW 2000
  - 2 Shine Lawyers Pty Ltd of Level 6, 299 Elizabeth St, Sydney NSW 2000 (**Shine**)
  - 3 **David Joseph Batchelor**, c/o Phi Finney McDonald of Level 3, 325 Flinders Lane, Melbourne VIC 300
  - 4 Phi Finney McDonald Pty Ltd of Level 3, 325 Flinders Lane, Melbourne VIC 300 (**PFM**)
- (collectively, the '**Parties**').

## RECITALS

- A On 19 November 2021, William Lay (**Mr Lay**) commenced proceeding S ECI 2021 04360 (**Lay Proceeding**) in the Supreme Court of Victoria (**Supreme Court**) against Nuix Limited (ACN 117 140 235) (**Nuix**) pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) (**Supreme Court Act**). The Lay Proceeding was issued by Shine, the solicitors for Mr Lay. Shine has previously engaged in discussions with LLS Australia Funding Pty Ltd (**LLS**) regarding a potential expense sharing arrangement in respect of the Lay Proceeding.
- B On 23 November 2021, David Joseph Batchelor (**Mr Batchelor**) commenced proceeding S ECI 2021 04391 (**Batchelor Proceeding**) against Nuix, Macquarie Capital (Australia) Limited (ACN 123 199 548) and Macquarie Group Limited (ACN 122 169 279) (together, the **Macquarie Entities**) in the Supreme Court pursuant to Part 4A of the Supreme Court Act. The Batchelor Proceeding was issued by PFM, the solicitors for Mr Batchelor with funding from Woodsford Group Limited and its subsidiaries (together, **Woodsford**).
- C On 25 March 2022, the Honourable Justice Nichols ordered that the plaintiffs and solicitors for the plaintiffs in the Lay Proceeding, Batchelor Proceeding and proceeding S ECI 2022 00735 (**Bahtiyar Proceeding**) confer and seek to reach agreement in respect of cooperation or consolidation and file any applications with respect to the resolution of the competing proceedings (**Carriage Motions**).
- D In the interests of facilitating the just, efficient, timely and cost-effective resolution of the Carriage Motions, and the respective claims the subject of the Lay Proceeding and the Batchelor Proceeding, the Parties have reached agreement as to the terms of consolidation of the Lay Proceeding and Batchelor Proceeding into a single proceeding (**Consolidated Proceeding**) with funding from Woodsford and LLS (together, **Funders**) on more favourable terms for Mr Lay, Mr Batchelor and group members of the Lay Proceeding and Batchelor Proceeding than initially proposed in the Batchelor Proceeding.
- E This Protocol documents the manner in which the Parties are to conduct the Consolidated Proceeding.
- F On [#date], Justice Nichols, by reference inter alia to the proposed agreement now reflected in the operative provisions of this agreement set out below, made orders consolidating the Lay Proceeding and the Batchelor 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 14.

**2 Plaintiffs and Group Members**

- 2.1 Mr Lay and Mr Batchelor have each given their instructions to be joint lead plaintiffs in the Consolidated Proceeding (**Plaintiffs**).
- 2.2 Shine is and will be instructed by Mr Lay.
- 2.3 PFM is and will be instructed by Mr Batchelor.
- 2.4 Mr Lay and Mr Batchelor agree (and instruct Shine and PFM, respectively) to file and serve a Consolidated Statement of Claim
- 2.5 In the event that either of Mr Lay and/or Mr Batchelor does not become, or 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 11;
  - 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 the said person will act as a representative plaintiff (**Replacement Representative Plaintiff**) and those instructions are accepted by the said lawyers then:
    - i as soon as reasonably practicable, the said lawyers will require the Former Representative Plaintiff to 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 Shine and PFM shall take all necessary steps to secure the appointment of the Replacement Representative Plaintiff as a representative plaintiff in the Consolidated Proceeding;
  - c) in the event that there is no proposed Replacement Representative Plaintiff pursuant to clause 2.5.b), then the remaining plaintiff will use reasonable endeavours to enter into a Protocol replacing this Protocol to govern the further conduct of the Consolidated Proceeding as soon as is reasonably practicable.
- 2.6 Shine will not be required, and it is agreed that Shine is not intending, to enter into a retainer with any PFM client for the purpose of the Consolidated Proceeding.

2.7 PFM will not be required, and it is agreed that PFM is not intending, to enter into a retainer with any Shine client for the purpose of the Consolidated Proceeding.

### **3 Consolidation**

3.1 The Parties intend that Shine and PFM will each undertake work equivalent to, and incur, 50% of the professional fees in the Consolidated Proceeding.

3.2 The Parties agree that some or all claims against Macquarie Entities shall continue as part of the Consolidated Proceeding, and so far as reasonably practicable the legal work undertaken by Shine and PFM will be delineated between defendants in the Consolidated Proceeding.

3.3 Costs incurred by the Solicitors (as applicable) associated with communications with the Funders, including with respect to the operation of the Woodsford - Nuix - Litigation Funding Scheme (ARSN 655 927 521) (and any scheme subsequently registered to reflect the terms upon which the Consolidated Proceeding is being funded) are not to be treated as legal work for the purposes of clause 3.1.

### **4 Avoidance of duplication of work and costs**

4.1 The Parties agree and instruct that Shine and PFM will take all reasonable steps to avoid duplicated work.

4.2 For the purpose of this Protocol, **duplicated work** is work that is performed by reason of there being two firms representing the Plaintiffs, rather than one firm.

### **5 Litigation Committee**

5.1 Shine and PFM are instructed to convene a Litigation Committee comprising one lawyer appointed by Shine and one lawyer appointed by PFM. The identity of the lawyers so appointed will be, initially:

- a) Craig Allsopp, Practice Leader of Shine, and if Craig Allsopp is unavailable, Jonathan Wertheim, Senior Associate of Shine; and
- b) Tim Finney, Director of PFM, and if Tim Finney is unavailable, Diana Young, Principal Lawyer of PFM;

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

5.2 The Litigation Committee shall be responsible for:

- a) making major decisions, in accordance with clause 6;
- b) management of the litigation;
- c) delegation of carriage and decision-making responsibility in relation to any issue in the Consolidated Proceeding; and
- d) determining the distribution and coordination of work between Shine and PFM in accordance with clause 5.7.

5.3 The Litigation Committee will:



- a) communicate by whatever means and at whatever frequency is necessary for the efficient and effective conduct of the Consolidated Proceeding;
- b) provide written or verbal reports to the Plaintiffs on the progress of the litigation upon request or otherwise as reasonably required; and
- c) subject to clause 5.5, operate by unanimous agreement.

5.4 Each member of the Litigation Committee will act on the basis of utmost good faith in accordance with their obligations to the Court and such further or other obligations as arise under this Protocol.

5.5 Upon agreement by the Litigation Committee member from each of Shine and PFM, the Litigation Committee may delegate, to either Shine or PFM (and their legal staff) 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.

5.6 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 12 will apply.

5.7 For the purposes of reducing duplication of costs and effort, work in respect of all matters (except for matters individual to Mr Lay or Mr Batchelor) is to be distributed between the personnel of Shine and PFM 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:

- a) the skills and experience of the Lawyers and their respective staff;
- b) the objective of ensuring that the total legal costs are reasonable and proportionate;
- c) the objective of minimising, to the greatest extent possible, the legal costs incurred through overlapping or duplicated work; and
- d) adherence to the division of legal work in accordance with clauses 3.1 and 3.2.

5.8 To assist in monitoring the division of legal work, each month Shine and PFM shall exchange itemised lists or detailed invoices of time recorded on the matter in a given period.

5.9 The Parties agree the Funders have a standing right to be involved in any discussion or deliberation by the Litigation Committee in relation to any step in the Consolidated Proceeding. The Litigation Committee, however, has an overriding duty to the Plaintiffs and to act in accordance with their instructions.

## **6 Major Decisions**

6.1 Any major decision in the litigation will be:

- a) made in accordance with clauses 5.5, 5.6 and 5.7;
- 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 taking into account any advice from Joint Counsel.

6.2 Subject to clause 6.3, 'major decisions' shall include the following in respect of the Consolidated Proceeding:

- a) a decision which in its terms or its effect is inconsistent or interferes with the terms on which funding is provided by the Funders;
- b) any matters which are of significant importance to the conduct of the Consolidated Proceeding;
- c) a decision requiring the Plaintiffs to seek approval from the Supreme Court;
- d) the making of any interlocutory applications or the response to any interlocutory applications filed by another party;
- e) the claims made in, and parties to, the pleadings in the Consolidated Proceeding (**Consolidated Pleadings**);
- f) a decision to add, remove or substantially amend claims made;
- g) a decision to amend the relevant claim period;
- h) a decision to amend the definition of "group member";
- i) a decision to open or close the class;
- j) the making, acceptance or rejection of a settlement offer and any terms of settlement;
- k) discovery to be sought from, provided to or negotiated with another party;
- l) 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;
- m) 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);
- n) 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);
- o) a decision to retain, brief or change counsel;
- p) a decision to retain, brief or instruct an independent expert witness or consulting expert (together, **Experts or Consultants**);
- q) a decision to terminate any retainers with Experts or Consultants;
- r) the filing of any evidence from Experts or Consultants including responding to any responsive evidence filed by another party;
- s) the filing of any lay evidence;
- t) the approval of the fee structure of any contracts or fee agreements with Experts or Consultants;
- u) a decision to undertake a piece of work likely to cost \$20,000 or more;

- v) a decision to terminate this Protocol pursuant to clause 14; and
- w) a decision to discontinue the Consolidated Proceeding.

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

- a) any matters falling within the delegation described at clause 5.5; and
- b) any other matters that the Litigation Committee has agreed and deemed not to comprise a 'major decision'.

## **7 Counsel**

7.1 One set of counsel (**Joint Counsel**) will be briefed to represent the Plaintiffs and group members in the Consolidated Proceeding.

7.2 Lachlan Armstrong QC, David Sulan SC, Ryan May and Min Guo are presently briefed by the Plaintiffs, and upon consolidation the Litigation Committee:

- a) will rationalise the composition of the Joint Counsel team for the purpose of the conduct of the Consolidated Proceeding; and
- b) on an ongoing basis will make decisions as to the briefing of counsel as needed in order to prosecute the Consolidated Proceeding.

7.3 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 the said dispute 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 12.

7.4 Any or all of Joint Counsel may be replaced by alternative counsel to be chosen by the Litigation Committee in accordance with clause 6.1 of this Protocol.

## **8 Correspondence**

8.1 All correspondence to the defendants in the Consolidated Proceeding (**Defendants**) or to the Court shall be jointly sent on behalf of the Plaintiffs and, subject to clause 5.5, will be approved by the Litigation Committee.

8.2 Correspondence to:

- a) Group Members as a group will be jointly sent in accordance with, and relying on, the same procedure as identified in, clause 8.1.
- b) Group Members who are clients only of one firm may be sent by that firm, provided the content of that correspondence is settled by the Litigation Committee.

8.3 For the avoidance of doubt:

- a) Shine may send correspondence to Mr Lay at its discretion; and
- b) PFM may send correspondence to Mr Batchelor at its discretion.

- 8.4 The Plaintiffs will nominate one email address for service on the Plaintiffs, and to this end Shine will create and host an email account in order to allow correspondence to be sent to, or received from, the Court and the solicitors for other parties to the litigation (**Joint Service E-mail Address**). The Joint Service E-mail Address will be configured so that:
- a) emails can be prepared and sent by PFM as well as by Shine; and
  - b) any e-mail sent to it is immediately forwarded to each member of the Litigation Committee and any other employees of Shine and PFM as either firm may direct.
- 8.5 Further common email addresses may be established as necessary and configured as agreed by the Litigation Committee.
- 8.6 The Plaintiffs will nominate a physical address for service of the Plaintiffs for the purpose of the Consolidated Proceeding.

## **9 Out of Pocket Expenses & Disbursements**

- 9.1 After the Commencement Date, Shine and PFM will, as far as practicable, each pay 50% (or such other portion as may be agreed by the Litigation Committee) of any disbursements and other third-party expenses incurred for the benefit of the Consolidated Proceeding, and will separately seek reimbursement from the Funders.
- 9.2 Unless agreed otherwise, where a disbursement (other than counsel's fees) is likely to exceed \$5,000 then the Litigation Committee must approve the expenditure before it is incurred.
- 9.3 Where possible and appropriate, Shine and PFM will seek to jointly engage third party providers and receive joint tax invoices payable in the proportions set out at clause 9.1.

## **10 Discovery**

- 10.1 The Parties agree, and will seek orders to the effect, that each of the Defendants need only produce one set of discovered documents to the Plaintiffs in the Consolidated Proceeding.
- 10.2 Unless agreed otherwise, Shine Lawyers and PFM will use common electronic discovery software to host documentary evidence in the Consolidated Proceeding.
- 10.3 A 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.

## **11 Privilege & Confidentiality**

- 11.1 The Plaintiffs acknowledge that all information passed or in future passing between the Parties:
- a) is strictly confidential and subject to legal professional and common interest privilege (as is relevant), unless otherwise agreed by the Litigation Committee; and
  - b) will only be used for the purposes of the Consolidated Proceeding, the Lay Proceeding and/or the Batchelor Proceeding.
- 11.2 To the extent that such information is passed to any third parties then it will be subject to a confidentiality agreement unless:

- a) 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.

11.3 Where information is passed to any Funders it will also be subject to common interest privilege.

11.4 This clause 11 survives any termination of this Protocol.

## 12 Dispute Resolution

### *Litigation Committee*

12.1 Subject to clause 12.2, any dispute arising within the Litigation Committee that cannot be resolved by the Litigation Committee will be referred to the most senior counsel referred to in clause 7.1 for decision, and:

- a) senior counsel shall be instructed that counsel is to determine the dispute by reference solely to the best interests of the Plaintiffs and group members considered as a whole and not by reference to the interests of any Party to this agreement; and
- b) senior counsel's decision on the dispute shall be binding on the Parties.

12.2 If a dispute arises which would be referred to the most senior counsel pursuant to clause 12.1, 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 may refer the dispute to an independent adjudicator appointed by the Litigation Committee, provided however that absent 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, and clause 12.1 shall apply mutatis mutandis in respect of any such appointment.

### *Implementation of the Protocol or other dispute*

12.3 In the event that any Party considers that co-operation between the Plaintiffs or between Shine and PFM 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 (**the complainant**), shall communicate its concerns to the other party or parties in writing (**recipients**);
- b) the complainant and recipients 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 as under clause 12.2 above.

12.4 The Parties 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 this clause 12.

12.5 The Plaintiffs will not seek to recover from the Defendants the costs of any referral(s) pursuant to this clause 12.

### **13 Best Interests of Group Members**

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

13.2 The Plaintiffs shall instruct Shine and PFM to interpret and give effect to this Protocol in a manner whereby the primary consideration shall be the interests of Group Members.

### **14 Termination**

14.1 Subject to this clause 14, the Protocol may only be terminated by an order of the Court, and the Parties agree that no application for such order will be made other than upon five (5) clear business days' notice to each other Party.

14.2 If there is a purported or attempted termination of this Protocol which is not provided for in this clause 14, the Parties will attempt to agree on the appropriate course, and if they cannot agree, the dispute will be resolved in accordance with the dispute resolution provision in clause 12.

14.3 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.

### **15 General**

15.1 The Parties each agree to take all steps necessary to achieve the objectives and purposes of this Protocol, including (subject to clause 15.2), the entry into any further agreement necessary to implement this Protocol.

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

15.3 Any non-material amendments may be made by a document duly executed by each of the Parties, and such amended Protocol is to be filed with the Court within 2 business days after execution by all Parties.

15.4 Any principal lawyer of Shine or principal lawyer of PFM (or their equivalent) may issue a press release or media statement or respond to a journalist's request for comment relating to the Consolidated Proceeding, but must take all reasonable care to ensure that such communication is consistent with any decision made, and does not pre-empt any decision yet to be made, by the Litigation Committee. The firm that makes the communication should inform the other firm of the communication before making it where possible, otherwise as soon as practicable after making the communication.

15.5 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.

- 15.6 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.
- 15.7 This Protocol may be executed in counterparts.