

B E T W E E N :

CAROL ANN MATTHEWS Plaintiff

- and -

**AUSNET ELECTRICITY SERVICES PTY LTD (formerly SPI ELECTRICITY
PTY LTD) (ACN 064 651 118)** and others according to the Schedule Defendants

A N D B E T W E E N :

**AUSNET ELECTRICITY SERVICES PTY LTD (formerly SPI ELECTRICITY
PTY LTD) (ACN 064 651 118)** and others according to the Schedule Plaintiffs by
Counterclaim

- and -

ACN 060 674 580 PTY LTD and others according to the Schedule Defendants
by Counterclaim

A N D B E T W E E N :

ACN 060 674 580 PTY LTD and others according to the Schedule Plaintiff

- and -

**AUSNET ELECTRICITY SERVICES PTY LTD (formerly SPI ELECTRICITY
PTY LTD) (ACN 064 651 118)** and others according to the Schedule Defendants
by Counterclaim

**SPECIAL REFEREE'S FIFTH REPORT
JOHN DAVID WHITE
27 APRIL 2023**

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Filed : Pursuant to an appointment in Orders made 5 November 2015
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SPECIAL REFEREE'S FIFTH REPORT

PREVIOUS REPORTS

1. By Orders made 5 November 2015 (“the Orders”) His Honour Justice J Forrest appointed me as Special Referee pursuant to Rule 50.01 of the Supreme Court (General Civil Procedure) Rules 2005 in respect of the costs of administering the Settlement Distribution Scheme (“the Scheme”) in this matter.
2. Pursuant to that appointment I am required to review the costs incurred by the Scheme Administrator in administering the Scheme and prepare a written report which responds to the two questions set out in Appendix A to the Orders and which states the reasons for my opinion. The two questions set out in Appendix A to the Orders are :
 - (a) Are the costs sought in relation to the administration of the settlement distribution scheme reasonable ?
 - (b) If not, in what amount should the costs be disallowed ?
3. On 20 June 2016 I filed my first Special Referee’s Report (“my First Report”) which was in respect of the costs of administering the Scheme over the period 14 July 2014 to 30 April 2016. I concluded that the quantum of costs and disbursements incurred by the Scheme Administrator over that period was reasonable and no amount should therefore be disallowed.
4. On 21 November 2016 I filed my second Special Referee’s Report (“my Second Report”) which covered :
 - (a) the costs of administering the Scheme in respect of General administration, the personal injuries (“I-D”) claims and the economic loss and property damage (“ELPD”) claims over the period 1 May 2016 to 30 September 2016 – part **(A)**,
 - (b) the anticipated costs of administering the Scheme in respect of General administration and the I-D claims over the period 1 October 2016 to 31 October 2016,
 - (c) the anticipated costs of administering the Scheme in respect of the I-D claims over the period 1 November 2016 to 30 November 2016, and
 - (d) the anticipated costs of administering the Scheme in respect of the I-D claims over the period 1 January 2017 to 31 January 2017 – collectively part **(B)**.

I concluded that the quantum of costs and disbursements incurred by the Scheme Administrator in respect of General administration, the I-D claims and the ELPD claims over the period 1 May 2016 to 30 September 2016 was reasonable and should be allowed. I also

concluded that the anticipated costs of administering the Scheme in respect of General administration and the I-D claims over the period 1 October 2016 to 31 October 2016, the anticipated costs of administering the Scheme in respect of the I-D claims over the period 1 November 2016 to 30 November 2016, and the anticipated costs of administering the Scheme in respect of the I-D claims over the period 1 January 2017 to 31 January 2017 were reasonable and should be allowed.

5. On 1 March 2017 I filed my third Special Referee's Report ("my Third Report") which covered:
- (a) the costs of administering the Scheme in respect of General administration, the I-D claims and the ELPD claims over the period 1 October 2016 to 31 December 2016 – part **(A)**,
 - (b) the proposal to split General administration costs and disbursements incurred over the period 1 November 2016 to 31 December 2016 between the I-D administration and the ELPD administration – part **(B)**,
 - (c) the estimated costs of administering the Scheme in respect of General administration over the period 1 January 2017 to finalisation of the Settlement Administration, which was expected to be sometime after 1 July 2017,
 - (d) the estimated costs of administering the Scheme in respect of the ELPD claims over the period 1 January 2017 to 30 June 2017 – collectively part **(C)**, and
 - (e) other miscellaneous matters raised by the Scheme Administrator – part **(D)**.

I concluded that :

- (i) the quantum of costs and disbursements incurred by the Scheme Administrator in respect of General administration, the I-D claims and the ELPD claims over the period 1 October 2016 to 31 December 2016 was reasonable and should be allowed,
- (ii) the proposal to split General administration costs and disbursements incurred over the period 1 November 2016 to 31 December 2016 as to 3/8ths to the I-D administration and 5/8ths to the ELPD administration was reasonable,
- (iii) the estimate of the likely costs and disbursements of administering the Scheme in respect of General administration from 1 January 2017 to finalisation of the Settlement Administration, which was expected to be sometime after 1 July 2017, was reasonable,
- (iv) the estimate of the likely costs and disbursements of administering the Scheme in respect of ELPD administration from 1 January 2017 to 30 June 2017 was reasonable, and
- (v) it would have been premature for me to comment on the PricewaterhouseCoopers ("PwC") estimate of costs likely to be incurred in respect of the Taxation Controversy

(“Taxation Issue”), save to say that I had assumed PwC would have been circumspect in preparing that estimate.

6. On 2 March 2018 I filed my fourth Special Referee’s Report (“my Fourth Report”) which covered the costs of administering the Scheme in respect of General administration, the I-D claims and the ELPD claims over the period 1 January 2017 to 30 November 2017.

I concluded that the quantum of costs and disbursements incurred by the Scheme Administrator in respect of General administration, the I-D claims and the ELPD claims over the period 1 January 2017 to 30 November 2017 was reasonable and should be allowed.

FIFTH REPORT

7. Administration of the Scheme has continued since my Fourth Report. I note that following my Fourth Report His Honour Justice J Forrest made Orders on 20 March 2018 adopting my Fourth Report and approving payment of the sum of \$2,990,295.63¹ for settlement administration costs for the period 1 January 2017 to 30 November 2017. On the Court’s own motion on 20 March 2018 a transcription error in the “other matters” section of His Honour’s Order made that day was amended by His Honour Justice John Dixon.

FIFTH REPORT – FIRST DRAFT

8. My first draft of the Fifth Report (which was not filed with the Court for the reasons detailed in paragraphs 15 and 16 below) covered the costs of administering the Scheme in respect of General administration, the I-D claims and the ELPD claims over the period 1 December 2017 to 31 March 2019 (the **first relevant billing period**), with the primary outstanding issue at the time being the conduct of the taxation litigation against the Australian Taxation Office.
9. In early April of 2019 Mr Jonathan Peck and Ms Elizabeth Mukherji of the Scheme Distribution Team (the “SDS Team”) contacted me to discuss preparation of a Fifth Report in respect of the Scheme Administrator’s proposed further application to approve payment of settlement administration fees and disbursements. By e-mail letter of 11:06 am on 18 April 2019 Mr Peck forwarded to me further information and relevant documentation in respect of this proposed application. The attachments to Mr Peck’s e-mail indicated that the Scheme Administrator intended at that time to seek approval to be paid the sum of \$780,307.87 for settlement administration fees and disbursements for the first relevant billing period.

¹ All amounts referred to in this Fifth Report are inclusive of all applicable GST, unless otherwise stated.

10. In order to obtain further background to assist in the preparation of the proposed Fifth Report, following receipt of Mr Peck's e-mail letter of 18 April 2019 I downloaded and printed copies of all of the documents dated after 2 March 2018 (the date of my Fourth Report) posted at that time on the Supreme Court Kilmore East Kinglake Black Saturday bushfire class action website and I reviewed those documents in detail.

11. From that material and the further materials provided to me by the SDS Team as detailed below I note that :
 - (a) the vast majority of the work required to be undertaken by the Scheme had by that time been completed with the primary outstanding issue being the conduct of the Federal Court appeal against the decision of Middleton J in the taxation litigation issued by the Scheme Administrator against the Australian Taxation Office,

 - (b) in respect of the I-D settlement distribution a total of 1,905 I-D assessments had been undertaken which resulted in 1,482 I-D claimants being paid compensation. As at 18 April 2019 all of those I-D claimants had received their compensation and presented their cheques,

 - (c) in respect of the ELPD settlement distribution a total of 9,174 claims had been assessed which resulted in 3,092 claimants being entitled to compensation. As at 18 April 2019 some 3,089 of those claimants had received their compensation and presented their cheques. I note that in respect of the remaining three ELPD claimants whose claims had not been resolved the Scheme Administrator intended at the time to seek orders which would have the effect of cancelling the entitlement of those three outstanding claimants and absorbing the value of those claims back into the distribution fund,

 - (d) by his Affidavit dated 23 November 2018 the Scheme Administrator filed with the Court a document entitled "Kilmore-East Kinglake and Murrindindi-Marysville Black Saturday Class Action Settlement Administrations: Final Report (the "Final Report") which outlined the work undertaken by the Scheme and drew together the numerous documentary materials which described its processes and outcomes. The cost of preparing the Final Report, including the costs of the Deloitte Report and the ALCG Report, were borne entirely by Maurice Blackburn and have not been passed on to group members in the Kilmore-East/Kinglake bushfire class action,

 - (e) in respect of the taxation issues the Scheme Administrator and other members of the SDS Team had continued to work closely with the Scheme's taxation advisors PwC and

Counsel in respect of (i) the Federal Court appeal against the Australian Taxation Office's objection decision, test case funding issues and the subsequent Notice of Appeal against the decision of Justice Middleton handed down on 28 February 2019 on the one hand and (ii) obtaining the Advice of Senior Counsel in respect of the GST registration issue on the other.

12. Given that the primary focus of the Scheme Administrator over the first relevant billing period was the taxation litigation against the Australian Taxation Office, and having regard to the general nature of work done from 1 April 2019, all fees and disbursements incurred in respect of administering the Scheme have been recorded as General Costs – in other words from 1 April 2019 there are no separate claims for fees and disbursements in respect of injury or dependency claims (I-D Costs) or economic loss and property damage claim (ELPD Costs).
13. On 6 August 2019 I completed the first draft of my Fifth Report (the “first draft”). By e-mail letter to the SDS Team that evening I attached a copy of the first draft, made some comments in respect of the current structure of the first draft and sought detailed instructions in relation to a number of specific matters as well as provision of further documents so as to enable me to finalize the first draft.
14. On 16 August 2019 Ms Greaves of the SDS Team advised me by e-mail that as the Taxation dispute was listed for hearing before the Full Court of the Federal Court on 22 August 2019 the Scheme Administrator considered it was now preferable to leave seeking approval of Scheme Administration costs until the Full Court of the Federal Court had handed down its decision.
15. On 10 August 2020 Ms Greaves advised that the decision of the Full Court of the Federal Court had been handed down and the Scheme Administrator had subsequently instructed PwC to lodge an Application for Special Leave to Appeal with the High Court. Ms Greaves also advised that the Scheme Administrator proposed that my Fifth Report should now cover the period 1 December 2017 to 30 June 2020.
16. By e-mail letter of 25 November 2020 Ms Greaves advised that (a) the Scheme Administrator's Special Leave application to the High Court had been unsuccessful, (b) the SDS Team was now taking the necessary steps to conclude the Administration, including filing tax returns and the like and (c) in those circumstances it would be therefore appropriate to leave preparation of my Fifth Report until such time as to it could deal with all costs from 1 December 2017 through to conclusion of the Administration.

FIFTH REPORT – FINAL VERSION

17. By e-mail letter of 14 February 2022 Ms Sharni Robinson of the SDS Team advised me of the Scheme Administrator's request that I now continue with preparation of the final version of my Fifth Report. Ms Robinson attached to that e-mail a number of further documents relevant to my task as detailed in paragraph 37 below. The period covered by the Fifth Report was subsequently extended by e-mail letters from Ms Robinson on 2 September 2022 (see paragraph 44 below) and Ms Kim Adey the Manager of the Settlement Claims Team, on 6 March 2023 (see paragraph 66 below).
18. This final version of my Fifth Report covers the costs of administering the Scheme in respect of General administration, the I-D claims and the ELPD claims over the period 1 December 2017 to 28 February 2023 including claims for additional disbursements billed by PwC on 30 June 2022, 21 December 2022 and 27 March 2023. In addition to these three PwC disbursements, I am advised by the SDS Team that the Scheme Administrator did not incur any professional charges over the period from 1 March 2022 to 31 August 2022 and therefore does not intend to seek recovery of any amount for professional charges for that period, but he does seek to recover professional charges incurred from 1 September 2022 to 28 February 2023.
19. I do not propose in this Fifth Report to repeat the matters canvassed in paragraphs 3 to 9 ("My experience"), 10 to 18 ("Materials provided"), 19 to 23 ("Establishment of the settlement distribution scheme") and 27 to 37 ("The law relevant to my task and the methodology to be adopted") of my First Report. All of those matters are relevant to this Fifth report save that as a result of a medical condition diagnosed in mid-2017 and the subsequent medical treatments I have undergone since that diagnosis I have not been in a position to renew my accreditation as a Costs Law Specialist, although I remain a member of the Law Institute's Costs Law Section Executive.
20. In addition, I do not propose in this Fifth Report to repeat the matters canvassed in paragraphs 7 to 12 ("Further Materials provided") of my Second Report as those matters are relevant to this Fifth Report.
21. Further, I do not propose in this Fifth Report to repeat the matters canvassed in paragraphs 9 to 22 ("Further Materials provided") of my Third Report as, once again, those matters are relevant to this Fifth Report.

22. Finally, I do not propose in this Fifth Report to repeat the matters canvassed in paragraphs 12 to 19 (“Further Materials provided”) of my Fourth Report. Once again, those matters are relevant to this Fifth Report.

FURTHER MATERIALS PROVIDED

23. Since my report of 2 March 2018 the Scheme Administrator as provided me with copies of further material relevant to my task.
24. On 18 April 2019 Mr Peck of the Scheme Administrator’s staff forwarded to me the following :
- (a) an electronic link to an EXCEL spreadsheet which provided full data extracts of the scheme administration for the months of December 2017 through to the end of March 2019 for General administration, the I-D claims and the ELPD claims. I have downloaded and reviewed the EXCEL spreadsheet in detail,
 - (b) a document entitled “Attachment A – Confidential and Privileged – Kilmore Bushfire Settlement Administration – Confidential Note to Special Referee on Costs for the Period 1 December 2017 to 30 March 2019” dated 18 April 2019 which provided details of the finalised professional fees and disbursements for General administration, the I-D claims and the ELPD claims incurred over the period 1 December 2017 to 31 March 2019. On reviewing this document I noted that it incorrectly stated in its heading and elsewhere in the body of the document that the end date of “*the relevant billing period*” for which costs were claimed was 30 March 2019, and
 - (c) a copy of a document entitled “Kilmore East – Kinglake & Murrindindi – Marysville Black Saturday Class Action Settlement Administrations: Final report 2018”. I have reviewed this Final report in detail.
25. On 26 April 2019 Mr Peck forwarded to me a document entitled “Attachment A – Confidential and Privileged – Kilmore Bushfire Settlement Administration – Confidential Note to Special Referee on Costs for the Period 1 December 2017 to 31 March 2019” also dated 18 April 2019 which corrected the document referred to in paragraph 24(b) above by amending the end date in the heading and elsewhere in the body of the document from “30 March 2019” to read “31 March 2019”. As mentioned in paragraph 24(b) above the amended document provided details of the finalised professional fees and disbursements for General administration, the I-D claims and the ELPD claims incurred over the period 1 December 2017 to 31 March 2019.

This document is noted as **Confidential Attachment A 18/4/2019** to this report and I have reviewed it in detail.

26. On 2 May 2019 Mr Peck forwarded to me, I assume on a confidential basis given the then ongoing Federal Court litigation, the following :
- (a) an electronic link to a zip folder containing eight invoices from PwC and Counsel in respect of the taxation litigation. I have downloaded and reviewed the folders of invoices from PwC and the feeslips and fee memoranda of Counsel in detail, and
 - (b) an electronic link to a zip folder containing a draft version of the Scheme Administrator's proposed "Confidential Note to the Court Regarding Taxation Issues". I have downloaded and reviewed in detail the folder containing the draft version of the Scheme Administrator's confidential note and the proposed annexures thereto, however I observe that this document was superseded by a later version forwarded to me on 24 November 2022.
27. On 7 June 2019 Ms Megan Greaves of the Scheme Administrator's staff forwarded to me an electronic link to a zip folder containing copies of the following itemised bills of costs/tax invoices ("itemised bills") :

<i>Matter – Date of Invoice – Category – Dates of work</i>	<i>Amount</i>
Kilmore Settlement Administration – 11 January 2018 General 1 December 2017 – 31 December 2017	45,326.07
Kilmore Settlement Administration – 6 March 2018 General 1 January 2018 – 31 January 2018	16,140.47
Kilmore Settlement Administration – 13 April 2018 General 1 February 2018 – 28 February 2018	54,647.81
Kilmore Settlement Administration – 2 May 2018 General 1 March 2018 – 31 March 2018	57,061.32
Kilmore Settlement Administration – 12 April 2018 General 1 April 2018 – 30 April 2018	78,823.00
Kilmore Settlement Administration – 28 June 2018 General 1 May 2018 – 31 May 2018	11,374.42
Kilmore Settlement Administration – 6 August 2018 General 1 June 2018 – 30 June 2018	62,333.45
Kilmore Settlement Administration – 16 August 2018 General 1 July 2018 – 31 July 2018	13,585.59
Kilmore Settlement Administration – 6 September 2018 General 1 August 2018 – 31 August 2018	76,333.91

Kilmore Settlement Administration – 5 October 2018 General 1 September 2018 – 30 September 2018	1,903.00
Kilmore Settlement Administration – 12 April 2019 General 1 October 2018 – 31 October 2018	73,784.15
Kilmore Settlement Administration – 21 December 2018 General 1 November 2018 – 30 November 2018	15,596.90
Kilmore Settlement Administration – 5 February 2019 General 1 December 2018 – 31 December 2018	7,285.21
Kilmore Settlement Administration – 20 February 2019 General 1 January 2019 – 31 January 2019	8,321.50
Kilmore Settlement Administration – 5 April 2019 General 1 February 2019 – 28 February 2019	182,533.15
Kilmore Settlement Administration – 5 April 2019 General 1 March 2019 – 31 March 2019	11,689.70
	\$716,739.65

<i>Matter – Date of Invoice – Category – Dates of work</i>	<i>Amount</i>
Kilmore Settlement Administration – 26 April 2018 I-D 1 December 2017 – 31 December 2017	960.20
Kilmore Settlement Administration – 16 May 2019 I-D 1 January 2018 – 31 March 2019	7,881.50
	\$8,841.70

<i>Matter – Date of Invoice – Category – Dates of work</i>	<i>Amount</i>
Kilmore Settlement Administration – 11 January 2018 ELPD 1 December 2017 – 31 December 2017	5,980.69
Kilmore Settlement Administration – 27 February 2018 ELPD 1 January 2018 – 31 January 2018	6,494.40
Kilmore Settlement Administration – 7 March 2018 ELPD 1 February 2018 – 28 February 2018	17,938.46
Kilmore Settlement Administration – 2 May 2018 ELPD 1 March 2018 – 31 March 2018	6,859.60
Kilmore Settlement Administration – 4 June 2018 ELPD 1 April 2018 – 30 April 2018	5,927.57
Kilmore Settlement Administration – 28 June 2018 ELPD 1 May 2018 – 31 May 2018	4,648.60
Kilmore Settlement Administration – 6 August 2018 ELPD 1 June 2018 – 30 June 2018	3,335.20
Kilmore Settlement Administration – 15 August 2018 ELPD 1 July 2018 – 31 July 2018	831.60
Kilmore Settlement Administration – 6 September 2018 ELPD 1 August 2018 – 31 August 2018	1,843.60

Kilmore Settlement Administration – 24 October 2018 ELPD September 2018 – 30 September 2018	145.20
Kilmore Settlement Administration – 30 November 2018 ELPD 1 October 2018 – 31 October 2018	321.20
Kilmore Settlement Administration – 21 December 2018 ELPD 1 November 2018 – 30 November 2018	1,126.40
Kilmore Settlement Administration – 5 February 2019 ELPD 1 December 2018 – 31 December 2018	1,645.60
Kilmore Settlement Administration – 20 February 2019 ELPD 1 January 2019 – 31 January 2019	5,035.80
Kilmore Settlement Administration – 16 May 2019 ELPD 1 March 2019 – 31 March 2019	474.10
	\$62,608.02

28. Following receipt of these itemised bills I downloaded, printed and reviewed them. Arising from my review of these documents I note that :

- (a) the Scheme Administrator has not raised, and I was advised did not intend to raise, an itemised bill for the period 1 February 2019 to 28 February 2019 in the ELPD Administration, and
- (b) in **Confidential Attachment A 18/4/2019** to this report the Scheme Administrator advised he did not seek reimbursement of the amount of \$7,881.50 for professional costs incurred in the I-D administration over the period 1 January 2018 to 31 March 2019.

29. The zip folder to which I was given access on 7 June 2019 also included copies of the following itemised bills :

<i>Matter – Date of Invoice – Category – Dates of work</i>	<i>Amount</i>
Kilmore Settlement Administration – 16 May 2019 General 1 April 2019 – 30 April 2019	14,861.33
Kilmore Settlement Administration – 16 May 2019 ELPD 1 April 2019 – 30 April 2019	580.80
	\$15,442.13

I am uncertain as to why copies of the itemised bills for costs of the General administration and the ELPD administration incurred over the period 1 April 2019 to 30 April 2019 were included in the zip folder given that my instructions at the time were to prepare a Fifth Report on the costs of administering the Scheme in respect of General administration, the I-D claims and the ELPD claims over the period 1 December 2017 to 31 March 2019.

30. However, at paragraph 7 of the document entitled “Attachment B – Confidential and Privileged – Kilmore Bushfire Settlement Administration – Confidential Note to Special Referee on Costs for the Period 1 April 2019 to 31 January 2022” dated 14 February 2022 (see paragraph 37(2) below) the Scheme Administrator advised it was subsequently determined that the fees and disbursements incurred since 1 April 2019 were of a general nature, rather than specific to injury or dependency claims or economic loss and property damage claims, and that accordingly from 1 April 2019 all fees incurred in respect of administering the Scheme were to be recorded as General Costs.
31. It therefore follows that the April 2019 itemised bills in respect of costs of administering the general settlement (**General** Costs) and the economic loss and property damage claims (**ELPD** Costs) were withdrawn and a fresh itemised bill was raised in respect of General administration for the period 1 April 2019 to 30 April 2019. This fresh itemised bill is dated 14 August 2019 and claims the total sum of \$15,442.13 which is in fact the total of the two withdrawn April 2019 itemised bills.
32. On 12 July 2019 Ms Greaves forwarded to me, at my request, an electronic copy of the Affidavit of Andrew John Watson sworn 9 March 2018 filed in this proceeding and the exhibit to that Affidavit. I have reviewed this short Affidavit however I only very briefly examined the exhibits to this Affidavit to satisfy myself that they are in fact redacted copies of material I had previously sighted. On 12 July 2019 Ms Greaves also forwarded to me an electronic copy of a draft of the Affidavit of Andrew John Watson proposed to be filed in respect of the then upcoming Case Management Conference together with copies of the exhibit notes to the draft Affidavit. I have reviewed this draft Affidavit in detail.
33. By e-mail dated 20 June 2019 I had requested that the Scheme Administrator’s staff provide to me, on a confidential basis, a copy of the time ledger/time records that support the professional charges claimed in the PwC bills of costs/tax invoices numbered 37106275, 38001717, 38012670, 38026810, 38031594, 38069688, 38087929 and 38117263 (the “PwC invoices”) which are claimed as disbursements in the itemised bills detailed in paragraph 27 above. On 23 July 2019 Ms Greaves forwarded to me, on a confidential basis, an electronic copy of the PwC detailed worksheet which details all of the time that has been incurred by PwC in respect of, inter alia, the PwC invoices, together with a copy of a “Private & Confidential” explanatory letter dated 19 July 2019 from PwC. I have reviewed the “Private & Confidential” letter, the detailed worksheet and the PwC invoices in detail.
34. By e-mail dated 29 July 2019 I requested that the Scheme Administrator’s staff provide me, inter alia, with copies of (i) KPMG Invoice No 821100189 which was billed in the Kilmore ELPD

Administration bill of costs for the period 1 March 2018 to 31 March 2018, (ii) the PwC Engagement letter dated 17 February 2017, (iii) the PwC updated rates e-mail dated 7 August 2017 and (iv) an EXCEL version of the PwC WIP breakdown if there was one. On 30 July 2019 Ms Greaves forwarded to me, I assume on a confidential basis, copies of all those documents save for the EXCEL version of the PwC WIP breakdown which had not at the time been provided to Ms Greaves, together with copies of (a) the KPMG Engagement Letter of 12 April 2017 and (b) the KPMG updated engagement letter of 28 February 2019. On 1 August 2019 Ms Greaves provided me with an EXCEL version of the PwC WIP breakdown. I have downloaded and reviewed all of these documents in detail.

35. As noted in paragraph 15 above, Ms Greaves advised by e-mail letter of 10 August 2020 that the Scheme Administrator now proposed that my Fifth Report should now cover the period 1 December 2017 to 30 June 2020.
36. As also noted in paragraph 16 above, Ms Greaves advised by e-mail letter of 25 November 2020 that given the special leave application to the High Court had been unsuccessful, the Scheme Administrator considered it would be appropriate to leave preparation of my Fifth Report until such time as to it could deal with all costs from 1 December 2017 through to conclusion of the Administration.
37. On 14 February 2022 Ms Robinson of the Scheme Administrator's staff forwarded to me the following :
 - (a) a document entitled "Attachment B – Confidential and Privileged – Kilmore Bushfire Settlement Administration – Confidential Note to Special Referee on Costs for the Period 1 April 2019 to 31 January 2022" dated 14 February 2022 which provided details of the finalised professional fees and disbursements for General administration incurred over the period 1 April 2019 to 31 January 2022. This document was however itself later superseded (see paragraph 46 (i) below) and accordingly I have not attached a copy of Confidential Attachment B 14/2/2022 as a formal annexure to this report. I have nevertheless printed Confidential Attachment B 14/2/2022 and reviewed it in detail,
 - (b) an EXCEL spreadsheet which provided full data extracts of the Kilmore scheme administration for the period 1 April 2019 to 31 January 2022 for General administration. I have downloaded and reviewed the EXCEL spreadsheet in detail, and
 - (c) a further copy of the document entitled "Attachment A – Confidential and Privileged – Kilmore Bushfire Settlement Administration – Confidential Note to Special Referee on

Costs for the Period 1 December 2017 to 30 March 2019” dated 18 April 2019. I have once again reviewed this document in detail.

38. By e-mail letter of 4 March 2022 Ms Robinson advised that (a) the estimate in paragraph 29(c) of the document referred to as Confidential Attachment B 14/2/2022 in this report was currently undergoing a more detailed review and further information in this respect would be provided once that review was concluded, and (b) PwC had latterly provided their estimate of the likely costs of preparation of the FY 21 and FY 22 income tax returns.
39. Following my discussion with Ms Kimi Nishimura of the SDS Team, on 18 July 2022 I was provided with a link to a folder containing :
- (i) further copies of the draft itemised bills for the Kilmore **General** Settlement Administration for the period 1 December 2017 to 31 March 2019 as detailed in the first table in paragraph 27 above (but not further copies of the Kilmore I-D and ELPD Settlement Administrations for the same period), and
 - (ii) copies of the following additional draft itemised bills for the Kilmore **General** Settlement Administration for the period 1 April 2019 to 28 February 2022 – as noted in paragraph 28(a) above, from 1 April 2019 the Scheme Administrator determined not to raise separate draft itemised bills in respect of the Kilmore I-D and ELPD Settlement Administrations :

<i>Matter – Date of Invoice – Category – Dates of work</i>	<i>Amount</i>
Kilmore Settlement Administration – 14 August 2019 General 1 April 2019 – 30 April 2019	15,442.13
Kilmore Settlement Administration – 14 August 2019 General 1 May 2019 – 31 May 2019	7,284.20
Kilmore Settlement Administration – 28 October 2019 General 1 June 2019 – 30 June 2019	75,706.50
Kilmore Settlement Administration – 18 September 2019 General 1 July 2019 – 31 July 2019	5,024.80
Kilmore Settlement Administration – 18 September 2019 General 1 August 2019 – 31 August 2019	19,499.48
Kilmore Settlement Administration – 18 November 2019 General 1 September 2019 – 30 September 2019	213,744.95
Kilmore Settlement Administration – 3 December 2019 General 1 October 2019 – 31 October 2019	2,896.30
Kilmore Settlement Administration – 12 December 2019 General 1 November 2019 – 30 November 2019	1,227.60

Kilmore Settlement Administration – 23 January 2020 General 1 December 2019 – 31 December 2019	4,517.70
Kilmore Settlement Administration – 17 June 2020 General 1 January 2020 – 31 January 2020	33,602.47
Kilmore Settlement Administration – 15 April 2020 General 1 February 2020 – 29 February 2020	854.70
Kilmore Settlement Administration – 21 April 2020 General 1 March 2020 – 31 March 2020	4,627.70
Kilmore Settlement Administration – 29 June 2020 General 1 April 2020 – 30 April 2020	4,482.50
Kilmore Settlement Administration – 17 June 2020 General 1 May 2020 – 31 May 2020	10,417.00
Kilmore Settlement Administration – 21 July 2020 General 1 June 2020 – 30 June 2020	6,925.60
Kilmore Settlement Administration – 19 August 2020 General 1 July 2020 – 31 July 2020	100,709.65
Kilmore Settlement Administration – 8 September 2020 General 1 August 2020 – 31 August 2020	4,152.50
Kilmore Settlement Administration – 13 October 2020 General 1 September 2020 – 30 September 2020	3,844.28
Kilmore Settlement Administration – 12 November 2020 General 1 October 2020 – 31 October 2020	4,177.80
Kilmore Settlement Administration – 10 December 2020 General 1 November 2020 – 30 November 2020	10,022.79
Kilmore Settlement Administration – 8 January 2021 General 1 December 2020 – 31 December 2020	253.00
Kilmore Settlement Administration – 23 February 2021 General 1 January 2021 – 31 January 2021	134.20
Kilmore Settlement Administration – 12 May 2021 General 1 February 2021 – 28 February 2021	1,383.80
Kilmore Settlement Administration – 12 May 2021 General 1 March 2021 – 31 March 2021	2,201.10
Kilmore Settlement Administration – 3 May 2021 General 1 April 2021 – 30 April 2021	1,260.60
Kilmore Settlement Administration – 12 July 2022 General 1 May 2021 – 31 May 2021	9,174.79
Kilmore Settlement Administration – 12 July 2022 General 1 June 2021 – 30 June 2021	1,171.50
Kilmore Settlement Administration – 12 July 2022 General 1 July 2021 – 31 July 2021	617.10
Kilmore Settlement Administration – 12 July 2022 General 1 August 2021 – 31 August 2021	720.50
Kilmore Settlement Administration – 12 July 2022 General 1 September 2021 – 30 September 2021	316.80

Kilmore Settlement Administration – 12 July 2022 General 1 October 2021 – 31 October 2021	554.40
Kilmore Settlement Administration – 12 July 2022 General 1 November 2021 – 30 November 2021	24,908.40
Kilmore Settlement Administration – 12 July 2022 General 1 December 2021 – 31 December 2021	2,583.90
Kilmore Settlement Administration – 12 July 2022 General 1 January 2022 – 31 January 2022	1,500.40
Kilmore Settlement Administration – 12 July 2022 General 1 February 2022 – 28 February 2022	6,969.60
	\$582,910.74

40. I have downloaded, printed and reviewed these itemised bills in detail. Arising from my review of these documents I noted that there was a small (\$79.20) discrepancy between :
- (i) the amount of \$617.10 claimed in the Kilmore Settlement Administration General draft itemised bill for July 2021 as provided to me on the one hand, and
 - (ii) the amount of \$696.30 noted by the Scheme Administrator as the quantum of Kilmore Settlement Administration General itemised bill for July 2021 referred to in paragraph 15 of Confidential Attachment B 14/2/2022 on the other hand.
41. As the Supreme Court Group Proceedings (Class Actions) webpages no longer carry full information in respect of documents filed and Orders made in the Kilmore East Kinglake Group Proceeding, I requested that the Scheme Administrator provide me with PDF copies of all documents filed with the Court in this matter from 1 April 2018 to 31 January 2022, together with PDF copies of all Orders made in this matter from 1 April 2018 to 31 January 2022. By e-mail letter of 31 August 2022 Ms Robinson provided me with a link through which I could access those documents. Ms Robinson also advised that all Court documents and related documents dated after April 2018 in each of the Kilmore and Murrindindi Group Proceedings related solely to the taxation litigation. For completeness I have accessed and reviewed those documents.
42. On 1 September 2022 I e-mailed Ms Robinson with a request that she provide me with (i) copies of the additional PwC invoices claimed as disbursements in the specified Kilmore Settlement Administration itemised bills and (ii) copies of all Counsels' feeslips and miscellaneous disbursement accounts referred to in the PwC invoices. On 2 September 2022, Ms Robinson forwarded to me PDF copies of the following :

(a)	PwC invoice No 39058395 inclusive of GST which is claimed as a disbursement as to half in the Kilmore Settlement Administration itemised bill for the period 1 June 2019 to 30 June 2019
(b)	PwC invoice No 39089870 inclusive of GST which is claimed as a disbursement as to half in the Kilmore Settlement Administration itemised bill for the period 1 September 2019 to 30 September 2019
(c)	PwC invoice No 40005457 inclusive of GST which is claimed as a disbursement as to half in the Kilmore Settlement Administration itemised bill for the period 1 January 2020 to 31 January 2020
(d)	PwC invoice No 40066633 inclusive of GST which is claimed as a disbursement as to half in the Kilmore Settlement Administration itemised bill for the period 1 July 2020 to 31 July 2020
(e)	PwC invoice No 40076131 inclusive of GST which is also claimed as a disbursement as to half in the Kilmore Settlement Administration itemised bill for the period 1 July 2020 to 31 July 2020
(f)	PwC invoice No 40109570 inclusive of GST which is claimed as a disbursement as to half in the Kilmore Settlement Administration itemised bill for the period 1 November 2020 to 30 November 2020
(g)	PwC invoice No 41025550 inclusive of GST which is claimed as a disbursement as to half in the Kilmore Settlement Administration itemised bill for the period 1 May 2021 to 31 May 2021
(h)	PwC invoice No 41107995 inclusive of GST which is claimed as a disbursement as to half in the Kilmore Settlement Administration itemised bill for the period 1 November 2021 to 30 November 2021

43. Attached to some of the PwC invoices were copies of Counsels' feeslips and other miscellaneous disbursement accounts referred to in those PwC invoices. I have printed and reviewed the PwC invoices and attached disbursement accounts in detail.
44. On 2 September 2022 Ms Robinson provided me with a copy of the following further PwC invoice :

PwC invoice No 42053887 dated 30 June 2022 in the sum of \$34,452.00 inclusive of GST which is claimed as a disbursement as to half in the Kilmore Settlement Administration itemised bill for the period 1 August 2022 to 31 August 2022

together with a copy of the following additional draft itemised bill for the Kilmore **General** Settlement Administration for the period 1 August 2022 to 31 August 2022 which claims half of that PwC invoice (i.e. \$17,226.00 inclusive of GST) as a disbursement :

Kilmore Settlement Administration – 2 September 2022 General 1 August 2022 – 31 August 2022	17,226.00
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I have printed and reviewed both of these documents in detail. I note however that this draft itemised bill, which made no claim for professional charges and only claimed PwC invoice No 42053887 as a disbursement, was subsequently withdrawn and replaced by a further draft itemised bill (see paragraph 68(i) below).

45. As a result of the discrepancy detailed in paragraph 40 above and having regard to the further PwC invoice and the additional draft itemised bill for the Kilmore General Settlement Administration for the period 1 August 2022 to 31 August 2022 provided to me at that time, by e-mail on 26 September 2022 I advised Ms Robinson of the discrepancies and indicated certain amendments that would need to be made to Confidential Attachment B 14/2/2022. I also enquired as to whether the review of the estimate in paragraph 29(c) of Confidential Attachment B 14/2/2022 (see paragraph 38 above) had been completed and if so, whether a copy of the more detailed costings could be provided to me.
46. By e-mail letter of 4 October 2022 Ms Robinson responded to my e-mail of 26 September 2022 and provided copies of the following documents :
 - (i) an updated version of Confidential Attachment B 14/2/2022 which amended the discrepancy referred to in paragraph 40 above and which for the purposes of this exercise I shall refer to as Confidential Attachment B 4/10/2022. As Confidential Attachment B 4/10/2022 superseded Confidential Attachment B 14/2/2022 and was itself later superseded (see paragraph 48(ii) below) I have not attached a copy of Confidential Attachment B 14/2/2022 as a formal annexure to this report.
 - (ii) a document entitled “Kilmore and Murrindindi Bushfire Settlement Administrations – Confidential Note to Special Referee on Estimated Costs of Completing a Further Distribution to Group Members” which includes detailed updated calculations of the estimated costs to complete the further distributions in the Kilmore General Settlement Administration. Updated versions of this document were provided to me on 11 November 2022 and 12 April 2023.

I have printed and reviewed these documents in detail.

47. On 7 October 2022 I requested by e-mail that Ms Robinson provide me with copies of (i) Counsel’s feeslips that make up the claim for \$41,896.80 in PwC invoice 39058395, and (ii) the account claiming \$2,152.58 inclusive of GST for “Document copying and delivery (August 2019)” in PwC invoice 40005457, neither of which had been attached to the copy invoices forwarded to me on 1 September 2022.

48. On 12 October 2022 Ms Adey forwarded to me :
- (i) an electronic copy of a draft of the proposed Affidavit of Andrew John Watson in support of the approval application together with copies of the exhibit notes to that Affidavit, all of which I have reviewed. This draft Affidavit claimed adjusted amounts for future costs which included GST in order to reflect the full amount that would be deducted from the settlement sum.
 - (ii) an updated version of Confidential Attachment B 4/10/2022 which had been amended to reflect the updated GST inclusive future costs and to correct the discrepancy referred to in paragraph 40 above. This document, which I refer to in this report as Confidential Attachment B 12/10/2022, superseded both Confidential Attachment B 14/2/2022 and Confidential Attachment B 4/10/2022 but was itself subsequently superseded (see paragraph 58 below).
49. In her e-mail of 12 October 2022 Ms Adey also advised that the Settlement Claims Assessment Team was still awaiting responses from PwC in respect of my request of 1 September 2022 for copies of the PwC time records/time ledgers which support the claims for professional charges in the PwC invoices and in respect of my request of 7 October 2022 for copies of specified disbursements accounts claimed in two of the PwC invoices.
50. On 14 October 2022 Ms Adey forwarded to me copies of the feeslips of Counsel requested by me in the letter referred to in paragraph 47 above. I have printed and reviewed these feeslips in detail.
51. By e-mail sent 24 October 2022 Ms Adey forwarded to me copies of the following material :
- (i) a private and confidential letter from PwC dated 21 October 2022 in respect of the PwC invoices referred to in paragraph 42 above. This letter provided (a) a detailed overview of the services rendered by PwC to the Scheme Administrator, together with (b) an explanation of the time incurred by PwC in rendering those services. Attached to this letter was a spreadsheet prepared by PwC which appears to be a full data extract of the PwC WIP breakdown for all PwC service providers for the period 15 October 2018 to 28 October 2021, including non-billable time.
 - (ii) five Law In Order invoices totalling \$2,152.57 inclusive of GST addressed to PwC for printing and preparing folders – the total sum of \$2,152.57 is claimed as a disbursement in PwC invoice 40005457.

52. By e-mail dated 26 October 2022 I sought responses to three specific queries in respect of the PwC invoices 41107995 and 42053887 and also enquired of Ms Adey whether she would, on a confidential basis, be able to provide me with :
- (i) an EXCEL version of the “detailed worksheet” attached to the PwC letter of 21 October 2022, and
 - (ii) copies of the time records/time ledgers, preferably in EXCEL format, which support the claims for professional charges incurred after 28 October 2021 in PwC invoice 41107995 and PwC invoice 42053887.
53. By e-mail dated 2 November 2022 I enquired of Ms Adey whether she would be able to provide me with full copies of proposed annexures “Exhibit AJW-1” and “Confidential Exhibit AJW-2” to the Affidavit of Andrew John Watson proposed to be filed in respect of the approval application.
54. In response to the request in my letter of 2 November 2022, on 10 November 2022 Ms Adey forwarded to me a full copy of the proposed annexure “Exhibit AJW-1” to the Affidavit of Andrew John Watson proposed to be filed in respect of the approval application. I have examined the documents proposed to be annexed as “Exhibit AJW-1” to Mr Watson’s Affidavit.
55. In respect of the matters raised in my e-mail letter of 26 October 2022, by e-mail letter of 6:06 pm on 11 November 2022 Ms Adey provided responses to the queries raised in respect of the two PwC invoices and attached an EXCEL version of the “detailed worksheet” which had been attached to the PwC letter of 21 October 2022. I have reviewed the e-mail letter of 11 November 2022 and the attachment to it in detail.
56. In addition, by e-mail letter of 6:23 pm on 11 November 2022 Ms Adey also provided me with copies of :
- (a) an updated version of the “Kilmore and Murrindindi Bushfire Settlement Administrations – Confidential Note to Special Referee on Estimated Costs of Completing a Further Distribution to Group Members”, which I have printed and reviewed in detail, and
 - (b) an updated version of the draft Affidavit of Andrew John Watson proposed to be filed in respect of the approval application.

I have printed and reviewed in detail the above documents.

57. In response to the matters raised in my e-mail letter of 2 November 2022, by e-mail letter of 3:29 pm on 24 November 2022 Ms Adey provided me with a copy of a 12-page document entitled “Confidential Note of Scheme Administrator Regarding Taxation Issues” and a zip file of the annexures to that document. This document was however itself later superseded (see paragraph 68(vi) below) and accordingly I have not attached a copy of it as a formal annexure to this report. I have nevertheless printed out the “Confidential Note of Scheme Administrator Regarding Taxation Issues” received 24 November 2022 and have reviewed that document and examined its annexures.
58. On 5 December 2022 Ms Kim Adey emailed to me a further updated version of Confidential Attachment B 12/10/2022, which included one minor amendment. This document was however itself later superseded (see paragraph 68(v) below) and accordingly I have not attached a copy of Confidential Attachment B 5/12/2022 as a formal annexure to this report. I have nevertheless printed Confidential Attachment B 5/2/2022 and reviewed the minor amendment in it.
59. By e-mail letter of 4:40 pm on 14 December 2022 I requested that Ms Adey provide me with copies of the “scope notes” referred to in four specified PwC invoices together with a stack graph for work done on the General settlement administration aspect only for the period 1 April 2019 to 28 February 2022. Copies of the “scope notes” were provided to me by e-mail of 9:48 am on 15 December 2022 and a copy of the stack graph for the period 1 April 2019 to 28 February 2022 was provided to me by e-mail of 3:36 pm on 15 December 2022. I have reviewed all of these documents.
60. By e-mail letter of 6:35 pm on 15 December 2022 I sought from Ms Adey a copy of the feeslips claimed in PwC invoice number 39058395, which I could not locate amongst the materials previously provided to me. Copies of these feeslips were provided to me under cover of Ms Adey’s e-mail of 9:59 am on 16 December 2022 and I have reviewed these documents in detail.
61. By e-mail letter of 3 January 2023 I sought from Ms Adey (a) copies of the feeslips which supported the global claims for Counsels’ fees referred to in PwC invoices numbered 37108275, 38001717, 28012670, 38026810, 38031594, 39069688 and 38087929 and (b) advice as to the likelihood of any further amendment to the updated version of the draft Affidavit of Andrew John Watson proposed to be filed in respect of the approval application. I have reviewed these documents in detail.

62. By e-mail letter of 9 January 2023 Ms Adey provided me with, inter alia, copies of all feeslips rendered by Ms Cameron to PwC over the period 4 May 2017 to 13 November 2018 and a “Statement of Selected Accounts” printout for Mr McInerney KC of all feeslips rendered by him to PwC for work done over the period December 2016 to 20 July 2020. I have reviewed those documents in detail. In her e-mail letter Ms Adey also provided advice as to the position in respect of the draft Affidavit of Andrew John Watson to be filed in respect of the approval application.
63. By e-mail letter of 10 January 2023 I requested that Ms Adey obtain from PwC details of the feeslips rendered by Senior Counsel and both Junior Counsel which form part of the global claims for Counsels’ fees in each of the PwC invoices numbered (i) to (vii) referred to in my e-mail of 3 January 2023, together with copies of all feeslips rendered by Mr D Bloom KC for work done by him prior to 10 October 2018.
64. By e-mail letters of 13 February 2023, 15 February 2023, 23 February 2023 and 24 February 2023 Ms Adey provided me with copies of :
- (a) all feeslips rendered to PwC by Mr D Bloom KC for work done by him prior to 10 October 2018 together with a document entitled “Summary of Counsel Invoices” which detailed the feeslips of Senior and Junior Counsel that formed part of the global claims for Counsels’ fees in each of PwC invoices numbered 37108275 dated 8 December 2017, 38001717 dated 9 February 2018, 38012670 dated 8 March 2018, 38026810 dated 28 April 2018, 38031594 dated 7 June 2018, 38069688 dated 31 July 2018 and 38087929 dated 30 August 2018. I have reviewed in detail the feeslips of Mr D Bloom KC and the document entitled “Summary of Counsel Invoices”.
 - (b) all feeslips rendered to PwC by Mr D McInerney of Counsel (as he then was) .for work done by him prior to 10 October 2018. I have reviewed in detail the feeslips of Mr D McInerney of Counsel.
65. By e-mail letter of 27 February 2023 I forwarded to Ms Adey a PDF copy my draft Fifth Report dated 28 February 2023 for comment. In that e-mail I detailed further brief instructions I required in order to finalise the draft. On 3 March 2023 I e-mailed to Ms Adey, in four tranches, PDF copies of the Attachments to my draft Fifth Report dated 28 February 2023.
66. By e-mail letters of 6 March 2023 and 8 March 2023 Ms Adey indicated that after taking into account the very late stage of the Administration, the Scheme Administrator considered it would be most efficient for my Fifth report to be extended to be extended by six months to

include Administration costs incurred up to 28 February 2023, together with an amount for future Administration costs to the conclusion of the Administration. To that end Ms Adey further advised the Scheme Administrator's estimate of likely costs from 1 March 2023 to conclusion of the Administration and provided further instructions as to the nature of work likely to be done in order to complete both the Kilmore East/Kinglake Settlement Administration and the Murrindindi Settlement Administration on the assumption that these matters would be resolved by the Court "on the papers", rather than requiring extensive appearances. Ms Adey also attached to her e-mail letter of 8 March 2023 a draft of the itemised bill for the Kilmore **General** Settlement Administration for the period 1 September 2022 to 28 February 2023.

67. After reviewing the instructions and materials provided by Ms Adey in her e-mails of 6 March 2023 and 8 March 2023, I forwarded to Ms Adey two e-mails on 16 March 2023 in which (i) I detailed the nature of likely additional work required to extend the ambit of my Fifth Report, (ii) outlined consequential amendments which I considered would now be required to certain documents previously provided to me and (iii) requested provision on a confidential basis of certain PwC "background" documents in respect of the tax invoices rendered to the Scheme Administrator.
68. Under cover of e-mail letters dated 27 March 2023 and 31 March 2023 Ms Adey provided me with copies of the following documents :
- (i) an amended draft itemised bill for the Kilmore **General** Settlement Administration for the period 1 September 2022 to 28 February 2023 :

<i>Matter – Date of Invoice – Category – Dates of work</i>	<i>Amount</i>
Kilmore Settlement Administration – 8 March 2023 General 1 September 2022 – 28 February 2023	43,142.00

I have printed and reviewed this document in detail. I note however that this amended draft itemised bill, which was received under cover of the e-mail of 27 March 2023 and which now claimed for professional charges incurred over the period 1 September 2022 to 28 February 2023 and also for a half share of PwC invoices numbered 42053887 and 42112395 as disbursements, was itself subsequently withdrawn and replaced by a final version of the itemised bill (see paragraph 69 below).

- (ii) a PwC invoice for the period 1 September 2022 to 28 February 2023 which I have reviewed :

PwC invoice No 43026304 dated 27 March 2023 in the sum of \$4,400.00 inclusive of GST which is claimed as a disbursement as to half in the Kilmore General Settlement Administration itemised bill for the period 1 September 2022 to 28 February 2023

- (iii) a document entitled “document for costs assessor” which is in effect a time ledger of the work done by PwC file operators claimed in PwC invoices numbers 43026304 and 42112395 (which I had not sighted at that time). I have reviewed the “document for costs assessor” in detail.
- (iv) a further updated version of the draft Affidavit of Andrew John Watson proposed to be filed in support of the approval application, which I have reviewed in detail.
- (v) a further updated version of Confidential Attachment B 5/12/2022, which included a number of further minor amendments. This document was however itself later superseded (see paragraph 70(iii) below) and accordingly I have not attached a copy of Confidential Attachment B 27/3/2023 as a formal annexure to this report. I have nevertheless printed Confidential Attachment B 27/3/2023 and reviewed the minor amendments in it, and
- (vi) an 11-page further draft of a document entitled “Confidential Note of Scheme Administrator Regarding Taxation Dispute” which I have reviewed in detail. I have not examined the annexures to the “Confidential Note of Scheme Administrator Regarding Taxation Dispute” as they remain unchanged to those I had previously reviewed when I initially received zipped copies of them from Ms Adey on 2 November 2022.
69. Under cover of e-mail letter dated 6 April 2023 (which responded to a number of queries raised by me in my e-mail letter of 3 April 2023 in respect of PwC invoice 42112395) Ms Adey provided me with copies of the following PwC invoice :

PwC invoice No 42112395 dated 21 December 2022 in the sum of \$12,540.00 inclusive of GST which is claimed as a disbursement as to half in the Kilmore General Settlement Administration itemised bill for the period 1 September 2022 to 28 February 2023

and a final updated itemised bill for the Kilmore **General** Settlement Administration for the period 1 September 2022 to 28 February 2023 :

<i>Matter – Date of Invoice – Category – Dates of work</i>	<i>Amount</i>
Kilmore Settlement Administration – 5 April 2023 General 1 September 2022 – 28 February 2023	45,342.00

I have reviewed both of these documents in detail.

70. Under cover of two e-mail letters dated 12 April 2023 (which responded to a number of queries raised by me in my e-mail letters of 10 April 2023 and 11 April 2023) Ms Adey provided me with copies of the following documents :
- (i) a re-formatted version of the Confidential Note to Special Referee On Estimated Costs of Completing a Further Distribution to Group Members. This document, which is noted as **Confidential Attachment C** to this report, confirms that the total estimated cost of completing a further distribution to group members in the Kilmore Settlement Administration, including disbursements, is in the sum of \$205,729.80 inclusive of GST. I understand that this document will be Exhibit "AJW-4" to the Affidavit of Andrew John Watson proposed to be filed in support of the approval application,
 - (ii) a further copy of the 11-page draft of the document entitled "Confidential Note of Scheme Administrator Regarding Taxation Dispute". This document, which included a number of relatively minor amendments, is noted as **Confidential Attachment D** to this report and I have reviewed it in detail. Once again, I have not examined the annexures to the "Confidential Note of Scheme Administrator Regarding Taxation Dispute" for the reason detailed in paragraph 68(vi) above. I understand that this document will be Exhibit "AJW-2" to the Affidavit of Andrew John Watson proposed to be filed in support of the approval application,
 - (iii) a further updated version of Confidential Attachment B 27/3/2023, which included a few very minor amendments. This document was however itself later superseded (see paragraph 71(a) below) and accordingly I have not attached a copy of Confidential Attachment B 12/4/2023 as a formal annexure to this report. I have nevertheless printed Confidential Attachment B 12/4/2023 and reviewed the minor amendments in it,
 - (iv) an EXCEL spreadsheet which provided full data extracts of the Kilmore Scheme General Administration for the period 1 September 2022 to 28 February 2023. I have downloaded and reviewed the EXCEL spreadsheet in detail.
71. On 16 April 2023 I e-mailed Ms Adey seeking clarification of the manner in which the Scheme Administrator intended to claim the three most recent tax invoices rendered by PwC (see paragraphs 44, 68(ii) and 69 above) in terms of the Kilmore Settlement Administration Scheme. On 17 April 2023 Ms Mukherji provided the clarification sought and also provided me with :

- (a) an updated version of the “Kilmore Bushfire Settlement Administration – Confidential Note to Special Referee on Costs for the Period 1 April 2019 to 28 February”. This document is noted as **Confidential Attachment B 17/4/2023** to this report and I have reviewed it in detail. I also understand that this document will be Exhibit “AJW-3” to the Affidavit of Andrew John Watson proposed to be filed in support of the approval application, and
- (b) an updated version of the draft Affidavit of Andrew John Watson proposed to be filed in respect of the approval application, which I have also printed and reviewed in detailed .

72. I observe that the matters canvassed at paragraphs 12 and 16 of my First Report dated 20 June 2016 are also relevant to this Fifth Report.
73. For the purposes of preparing my Fourth Report, in early February of 2018 I sought full access to the Maurice Blackburn “FileSite” and “Matter Centre” databases which I had previously accessed through “Citrix”. In respect of the “Collaborate” electronic database Ms Greaves had advised in her letter of 8 February 2018 that the “Collaborate” electronic database was where all the data was stored for the assessors to complete the assessments, but that database had not been utilised for a long period of time and accordingly it would probably not be necessary for me to access it having regard to the stage the settlement administration had then reached. I therefore considered it unnecessary for me to access the “Collaborate” electronic database in preparing my Fourth Report and I have not sought access to the “Collaborate” electronic database in preparing this Fifth Report. In respect of the “FileSite” and “Matter Centre” databases Ms Greaves had advised in her letter of 12 July 2019 that those platforms are updated and utilized but largely to a lesser extent than previously required. During 2019 I briefly examined the “FileSite” and “Matter Centre” databases however in light of the other material provided to me I consider it unnecessary in preparing my Fifth Report to further review those databases.
74. In addition, I have from time to time requested that Maurice Blackburn provide me with additional materials or further information and each of those requests has been promptly and comprehensively complied with. The Scheme Administrator’s staff have once again also provided me from time to time with additional material they consider may be relevant to my task.
75. I have conducted a detailed examination of all of the further materials provided to me by the Scheme Administrator and his staff and have again reviewed much of the material provided to me by both the Court and Scheme Administrator at the time of preparation of each of my First, Second, Third and Fourth Reports.

SCHEME ADMINISTRATION COSTS 1 DECEMBER 2017 – 28 FEBRUARY 2023

76. In preparing this Fifth Report insofar as it relates to work done from 1 December 2017 to 28 February 2023 I have again adopted the methodology referred to in paragraph 37 of my First Report, that is :
- (a) step 1 – identify the scope of work done;
 - (b) step 2 – identify the nature of the costs incurred over particular periods of time;
 - (c) step 3 – examine the copy itemised bills and calculate the time spent on the proceeding by each of the lawyers and non-lawyers;
 - (d) step 4 – examine the copy itemised bills and take and examine :
 - (i) samples of charges claimed for work done by reference to selected operators and selected dates, and
 - (ii) samples of disbursements claimed by reference to selected service providers and selected dates;
 - (e) step 5 – apply the hourly rates to be allowed to the Scheme Administrator and administrator staff as approved by the Court and detailed in Schedule B to the Scheme;
 - (f) step 6 – identify the number of hours relating to non-recoverable work by reason of that work not being reasonably incurred or reasonable in amount and, if any, excise that work; and
 - (g) step 7 – identify and, if any, reduce or deduct disbursements which appear unreasonably incurred or unreasonable in amount.

STEP 1 – THE SCOPE OF WORK DONE

77. The first step in determining whether the costs claimed are reasonable is to identify the nature and scope of work done. As noted at paragraph 38 of my First Report this is to some extent evident from the copy itemised bills provided to me however the logistics of implementing the Scheme and the nature of work done is best explained in the Affidavit material filed in this proceeding. That Affidavit material comprehensively details the scope of work done in particular categories over particular periods of time during the course of the administration of the Scheme to 28 February 2023. It is therefore appropriate in the context of this report to briefly summarize those parts of the relevant Affidavit material which detail the scope of work done.
78. The Affidavit of Andrew John Watson proposed to be filed in support of the approval application (which I understand is to be sworn later this month) updates his Affidavits sworn 13 April 2015, 9 October 2015, 18 March 2016, 16 June 2016, 17 June 2016, 7 September 2016, 31 October 2016, 29 November 2016, 28 February 2017, 28 March 2017, 25 May 2017, 1 September 2017

and 1 March 2018 and the Affidavit of Brooke Wendy Dellavedova sworn 23 January 2017 and provides an overview of the current status of the I-D claims assessment process, the ELPD claims assessment process and the Scheme Administrator's litigation against the Australian Taxation Office.

79. Mr Watson's Affidavit proposed to be filed in support of the approval application at paragraph 6 deposes that all I-D claimants have received their compensation and presented their cheques.
80. Mr Watson's Affidavit proposed to be filed in support of the approval application at paragraphs 7 to 14 also provides a summary of the assessment process and administration generally in respect of the ELPD claims to date and deposes as to the Scheme Administrator's intention to seek directions from the Court regarding unclaimed monies. The summary of the assessment process and administration generally in respect of these claims is mentioned at paragraph 11(c) above however it is worth reiterating that as at the date of Mr Watson will swear his proposed to be filed in support of the approval application :
- (a) in respect of the ELPD settlement distribution some 3,092 above-insurance claimants were entitled to receive compensation and of those all but three had been resolved. The three outstanding claims comprise :
- (i) two claimants who share a loss address have not returned statutory declarations confirming their instructions as to the allocation split of the assessed losses, despite multiple follow up attempts, and
- (ii) one claimant that is the deceased estate of an individual who died intestate, where reasonable efforts have been made to locate and deal with potential beneficiaries, but no resolution has been able to be reached as to the distribution of compensation.

In respect of each of these three claims the claimants (which in the case of the deceased estate was one of the beneficiaries) were warned that their failure to take steps to deal with the SDS Team might result in their losing their entitlement.

The combined value of these three claims is \$2,795.23 and the Scheme Administrator now seeks Orders to treat that amount as residual funds to be absorbed back into the settlement distribution fund.

(b) there are five compensation cheques that have remained unrepresented for more than 12 months. The SDS Team has previously warned these respective claimants that the cheques would be cancelled if they remained unrepresented. The unrepresented cheques have a combined value of \$501.09 and the Scheme Administrator now seeks Orders to treat that amount as residual funds to be absorbed back into the settlement distribution fund.

81. Finally, paragraphs 35 to 41 of Mr Watson's Affidavit proposed to be filed in support of the approval application and "Confidential Exhibit AJW-2" to that Affidavit broadly detail the history of the Scheme Administrator's litigation against the Australian Taxation Office through the Federal Court, the Full Federal Court and the Application to the High Court for special leave to appeal. Having regard to the two questions set out in Appendix A to the Orders made 5 November 2015 by His Honour Justice J Forrest, any comment by me on the taxation litigation should be restricted solely to matters of the professional fees and disbursements arising out of that litigation incurred by the Scheme Administrator.
82. As can be seen from the above, the scope of work over the period 1 April 2019 to 28 February 2023 has again changed with (a) the completion of the I-D administration, (b) the completion for all practical purposes of the ELPD administration and (c) in respect of the General administration the increase in work reasonably done given the taxation litigation conducted on behalf of the Scheme Administrator through the Federal Court, the Full Federal Court and the High Court. As before, one aspect has quite evidently remained constant which is that the much-reduced SDS Team has continued working to ensure that any outstanding issues and all issues currently being worked on are dealt with as expeditiously as possible.
83. I have no reason to consider that the descriptions of the scope of work done over particular periods of time as broadly deposed to in Mr Watson's Affidavit proposed to be filed in support of the approval application are anything other than accurate and in fact my view in this respect has been confirmed as a result of having undertaken the sampling process referred to as step 4(i) in paragraph 76 above and having regard to my examination of the other relevant hard copy and electronic material available to me.

STEP 2 – THE NATURE OF COSTS INCURRED OVER PARTICULAR PERIODS OF TIME

84. The second step in determining whether the costs claimed are reasonable is to identify the nature of the costs incurred over particular periods of time.

The categories of bills of costs/tax invoices

85. In respect of the categories of costs and disbursements incurred by the Scheme Administrator in the course of the settlement administration I repeat the matters referred to in paragraphs 53 to 55 of my First Report. As noted at paragraph 29 of my Fourth Report I observe that professional fees and disbursements incurred in respect of the taxation litigation and the GST Issue are claimed under the category broadly referred to as the “General settlement administration”. Given the completion of the I-D settlement administration and the near completion of the ELPD administration the Scheme Administrator made the quite reasonable decision that from 1 April 2019 all work in respect of the Settlement Administration Scheme would be billed to the General settlement administration.

The bills of costs/tax invoices

86. I again observe that the identification of the nature of the costs incurred over particular periods of time is to a very large extent evident from a close examination of the copy itemised bills and copy disbursement accounts provided to me. The itemised bills prepared by the Scheme Administrator, copies of which (a) are exhibited to Mr Watson’s Affidavit proposed to be filed in support of the approval application and (b) have been provided to me by Ms Greaves and subsequently Ms Robinson, are very comprehensive and by far the greater number of the entries contain a detailed narrative of the work done. In addition, the copy disbursement accounts which have been provided to me by Mr Peck, Ms Robinson and Ms Adey and the supporting material in respect of the disbursement accounts provided to me by Ms Greaves, Ms Robinson and Ms Adey are also very comprehensive.

87. Save for the missing element of the statutory requirements for an itemized bill under Order 63.42(2)(a) of the Supreme Court (General Civil Procedure) Rules 2015 that the items be individually numbered, the Scheme Administrator’s bills of costs/tax invoices are largely in itemized form and therefore reflect the actual work done.

The Affidavit material

88. The nature of costs incurred for work done over the period 1 December 2017 to 28 February 2023 is also explained at paragraph 47 of Mr Watson’s Affidavit proposed to be filed in respect of the approval application. Having regard to the matters canvassed in paragraphs 79 to 81 above I do not consider it necessary for me to once again summarize in this report those parts of the Affidavit material which detail both the scope and the nature of costs incurred over the relevant period.

STEP 2 – 1 DECEMBER 2017 to 31 MARCH 2019***Confidential Attachment A 18/4/2019***

89. The nature of costs incurred for work done over the period 1 December 2017 to 31 March 2019 for General administration, the I-D claims and the ELPD claims is also explained in **Confidential Attachment A 18/4/2019**. As mentioned above this document details, inter alia, the costs and disbursements incurred by the Scheme Administrator over the period 1 December 2017 to 31 March 2019 in respect of General administration, the I-D claims and the ELPD claims.
90. The document noted as **Confidential Attachment A 18/4/2019** to this report provides the following broad summary of the tasks carried out by lawyers overseeing the General settlement administration and the ELPD settlement administration processes over the period 1 December 2017 to 31 March 2019 :
- (i) General settlement administration**
- (a) liaising with and instructing PwC on the conduct and progress of the taxation litigation, including substantive work to assist PwC and reviewing PwC's billing of the matter;
 - (b) drafting affidavit material to update the Supreme Court of Victoria on progress of the Settlement Administration and the taxation dispute;
 - (c) preparation for the Case Management Conference on 20 March 2018;
 - (d) preparing bulk correspondence to group members regarding the ongoing taxation dispute and updating Maurice Blackburn website to reflect progress;
 - (e) responding to specific group member enquiries regarding the ongoing taxation dispute and other non-claim-specific matters, including once those enquiries have been raised by non-lawyers;
 - (f) ongoing liaison with KPMG regarding the auditing requirements of the Scheme;
 - (g) ongoing liaison with John White, Special Referee for Costs, regarding the preparation of costs reports;
 - (h) managing the investment of the distribution funds in term deposits, as required under the terms of the Scheme;
 - (i) reconciling accounts, including the preparation and review of summaries of unrepresented cheques and outstanding distributions;
 - (j) reviewing and managing the costs and billing of the Scheme including preparing material to update the Scheme Administrator about progress versus budgets;

- (k) taking preparatory steps to ensure that the Scheme could effect a potential second distribution in the event that we succeeded in the taxation dispute litigation at first instance; and
- (l) correspondence with the Supreme Court of Victoria regarding publication of material on the Supreme Court of Victoria website, communication with group members, case management hearings and the filing of materials.

(ii) *ELPD settlement administration*

- (a) attending to outstanding payments where probate issues or allocation disputes prevented distribution, including the drafting of documents to facilitate distribution agreements;
- (b) reviewing information on claimants who had failed to present their cheques in a timely manner and directing communications to those claimants;
- (c) effecting payments of compensation where it had previously been withheld and subsequently became payable, including the necessary trust accounting;
- (d) communications with claimants and their solicitors regarding their entitlement to compensation and the terms of distribution;
- (e) responding to various group member enquiries, including:
 - (i) claimants seeking various documents either at first instance or as replacements for material previously provided;
 - (ii) claimants seeking further information about the assessment process or seeking a review of their assessment; and
 - (iii) a claim from a group member alleging that a barrister that they had appointed to act for them had absconded overseas with their compensation, including an unfounded allegation of misfeasance against the SDS Team.

At paragraph 57 of **Confidential Attachment A 18/4/2019** to this report the Scheme Administrator noted that although the vast bulk of ELPD claims had resolved and been paid out prior to the first relevant billing period, a number of difficult circumstances prevented finalisation of the claims which remained withheld during the first relevant billing period including :

- (a) complicated probate or estate issues which prevented distribution to Estate claimants and other claimants who shared a loss address with those Estate claimants;
- (b) Family law matters which required consent to resolve but where the parties were in dispute about respective ownership or the application of Family Law Agreements or Court Orders;

- (c) other allocation disputes where the parties had been in disagreement as to the appropriate allocation of damages for in excess of 12 months; and
- (d) permutations of estate or allocation issues where one of the parties had commenced legal proceedings in respect of the compensation, or where the compensation was a feature of legal proceedings which had otherwise been commenced.

At paragraph 58 of **Confidential Attachment A 18/4/2019** to this report the Scheme Administrator provided three examples which detailed the chronology of certain ELPD disputes and the nature of work required to be undertaken to facilitate resolution and distribution of the claims. It is not necessary for me to repeat these examples in the body of this Fifth Report.

91. The document noted as **Confidential Attachment A 18/4/2019** to this report provides the following broad summary of the tasks carried out by non-lawyers undertaking paralegal and administration tasks in the settlement administration process over the period 1 December 2017 to 31 March 2019 :

(i) General settlement administration

- (a) responding to specific group member enquiries regarding the ongoing taxation dispute and other non-claim-specific matters, including maintaining accuracy of the database by taking instructions on updated contact details;
- (b) assisting with the conduct of the tax litigation;
- (c) assisting with preparation for the Case Management Conference on 20 March 2018;
- (d) assisting with preparing bulk correspondence to group members regarding the ongoing taxation dispute;
- (e) reviewing information and preparing material on various topics to assist lawyers including information regarding the reconciliation of accounts; and
- (f) assisting with preparatory steps undertaken to ensure that the Scheme could effect a potential second distribution in the event of success in the taxation dispute litigation at first instance.

(ii) ELPD settlement administration

- (a) assisting with the finalisation of assessments which were withheld but had been resolved;
- (b) responding to group member enquiries at first instance including drafting reply correspondence;

- (c) preparing material to facilitate distribution of compensation, including trust accounting documents to be settled;
- (d) monitoring unpresented cheques and outstanding distributions and preparing material for review regarding reconciliation of same;
- (e) updating database to reflect various progress on payments and resolution of issues which required funds to be withheld; and
- (f) raising requests for the cancellation and/or re-issue of cheques as required.

92. The document noted as **Confidential Attachment A 18/4/2019** to this report also provides a broad summary of the tasks carried out by lawyers overseeing the settlement administration process with the assistance of one non-lawyer undertaking paralegal and administration tasks in the I-D settlement administration process over the period 1 December 2017 to 31 March 2019 following up with the SDS Team on various matters including :

(iii) The I-D settlement administration

- (a) the interplay between I-D compensation and Centrelink and/or NDIS payments;
- (b) potential late registration for I-D claims;
- (c) the release of medical and claim information held by the Scheme; and
- (d) general enquiries about I-D assessments and compensation amounts.

93. It is clear from an examination of (a) the itemised bills, (b) those parts of the Affidavit material which detail the scope and nature of costs incurred over the relevant periods and (c) **Confidential Attachment A 18/4/2019** to this report that the settlement distribution process had by then progressed through its various phases, during the course of which as claims had been progressively dealt with administrative and/or logistic issues had arisen or otherwise become evident and these had likewise been progressively dealt with. Save for resolution of the taxation issues and any sequelae arising therefrom, the settlement distribution process at that time was all but complete.

STEP 2 – 1 APRIL 2019 to 28 FEBRUARY 2023

Confidential Attachment B 17/4/2023

94. The nature of costs incurred for work done over the period 1 April 2019 to 28 February 2023 for General administration is also explained in **Confidential Attachment B 17/4/2023** which details, inter alia, the costs and disbursements incurred by the Scheme Administrator over the period 1 April 2019 to 28 February 2023 in respect of General administration.

95. Paragraph 17 of **Confidential Attachment B 17/4/2023** to this report provides the following broad summary of the tasks carried out by lawyers overseeing the General settlement administration over the period 1 April 2019 to 28 February 2023 :

- (a) Liaising with and instructing PwC on the conduct and progress of the taxation litigation, including substantive work to assist PwC in preparation for the appeal;
- (b) Preparation for and attendance at the Federal Court for the Full Court appeal of the taxation dispute;
- (c) Drafting affidavit material to update the Supreme Court of Victoria on progress of the Settlement Administration and the taxation dispute;
- (d) Preparing various bulk correspondences to group members regarding the ongoing taxation dispute and preparatory steps for potential second distribution and updating Maurice Blackburn website to reflect progress;
- (e) Responding to specific group member enquiries regarding the ongoing taxation dispute and other non-claim-specific matters, including once those enquiries have been raised by non-lawyers;
- (f) Ongoing liaison with John White, Special Referee for Costs, regarding the preparation of costs reports;
- (g) Taking preparatory steps to ensure that the Scheme could effect a potential second distribution in the event that we succeeded in the taxation dispute litigation at first instance;
- (h) Managing the investment of the distribution funds in term deposits, as required under the terms of the Scheme;
- (i) Reconciling accounts, including the preparation and review of summaries of un-presented cheques and outstanding distributions;
- (j) Reviewing and managing the costs and billing of the Scheme including preparing material to update the Scheme Administrator about progress versus budgets;
- (k) Liaising with, and drafting correspondence to third parties, including Centrelink regarding group member repayment enquiry; and
- (l) Correspondence with the Supreme Court of Victoria regarding publication of material on the Supreme Court of Victoria website, communication with group members, case management hearings and the filing of materials.

and indicates that the professional fees for General Costs incurred by lawyers overseeing the settlement administration process over the period 1 April 2019 to 28 February 2023 amounted to \$140,492.00, with a total of 237.4 hours spent on the above and similar tasks.

96. Paragraph 18 of **Confidential Attachment B 17/4/2023** to this report indicates that the professional fees incurred by non-lawyers undertaking paralegal and administration tasks over the period 1 April 2019 to 28 February 2023 amounted to \$4,637.60, with a total of 14.6 hours spent on tasks involving assistance with, liaising with, and drafting correspondence to third parties, including Centrelink regarding group member repayment enquiry.
97. Accordingly, I have no reason to consider that the descriptions of the nature of the costs incurred over the particular periods of time as broadly deposed to in Mr Watson's Affidavit proposed to be filed in respect of the approval application referred to above and referred to in **Confidential Attachment A 18/4/2019** and **Confidential Attachment B 17/4/2023** to this report are anything other than accurate and once again my view in this respect has been confirmed as a result of having undertaken the sampling process referred to as step 4(i) in paragraph 76 above and having regard to my examination of the other relevant hard copy and electronic material available to me.

Confidential Attachment C

98. As mentioned at paragraph 56(a) above the Scheme Administrator has provided me with a document entitled "Kilmore and Murrindindi Bushfire Settlement Administrations – Confidential Note to Special Referee on Estimated Costs of Completing a Further Distribution to Group Members" (**Estimated Further Distribution Costs document**) which includes, inter alia, detailed calculations of the estimated costs required to complete a further distribution in both the Kilmore and Murrindindi Settlement Administrations.
99. In respect of both the Kilmore General Settlement Administration and the Murrindindi General Settlement Administration, **Confidential Attachment C** broadly details the steps likely to be taken in (a) calculating the further distribution amount on the basis that all group members will receive an equal amount of the residual settlement amount rather than on a pro-rata loss basis, (b) collecting Group member Bank details and the follow-up processes necessarily associated with that task, (c) processing the payments including reviewing and auditing bank details and creating payment schedules and (d) following up bounced or failed payments.
100. It is evident from the "Process Overview" paragraphs of the Estimated Further Distribution Costs document that in preparing **Confidential Attachment C** the Scheme Administrator and the SDS Team drew on their considerable experience gained in conducting both the Kilmore and the Murrindindi Bushfire Settlement Administrations over the past eight years or so.

101. In my view, the estimate of disbursements at paragraph 6 and the calculations and estimates of professional fees at paragraph 7 of the Estimated Further Distribution Costs document appear reasonable, based as they are on the previous experience of the Scheme Administrator and the SDS Team in administering the scheme in the Kilmore matter. It is further my view that the estimated total of \$205,729.80 inclusive of GST for professional fees and disbursements to be incurred in completing the further distribution to Group members in the Kilmore matter noted at paragraph 8 is also a reasonable estimate.

Future Settlement Administration Costs to completion

102. As noted in paragraphs 50 and 51 of the Affidavit of Andrew John Watson proposed to be filed in respect of the approval application, the Settlement Administration Scheme will continue to incur liabilities until it is finalised. These future costs are estimated at the sum of \$31,050.00 inclusive of GST comprised as follows :

- (a) \$6,050.00 in fees from PwC for preparation and lodgement of outstanding tax returns as per paragraph 41 of the Affidavit; and
- (b) \$25,000.00 for General Costs incurred by lawyers overseeing the remaining settlement administration processes until finalisation of the Scheme by June 2023, which is estimated on the basis that a second distribution to Group Members will not be required.

103. I repeat the observations made in my earlier Reports that the SDS Team members are the ones most qualified to give such estimates having regard to their undoubted knowledge and experience of the manner in which administration of the Scheme has unfolded and their understanding of the additional work required to bring the Settlement Administration Scheme to a conclusion. Accordingly I have no reason to dispute the above estimates.

STEP 3 – CALCULATE THE TIME SPENT BY LAWYERS AND NON-LAWYERS

104. When preparing my earlier reports the Scheme Administrator's staff, from time to time and at my request, provided me with copies of updated staff lists which detailed (i) the name of the file operator, (ii) the file operator's billing code, (iii) the position held by the file operator, (iv) whether the file operator does work in respect of the I-D settlement administration and/or the ELPD settlement administration, (v) the period of time worked by the file operator and (v) the nature of work carried out by the file operator.

105. Having regard to the facts that (a) my Fourth Report had been prepared around 60 months ago, (b) by 31 March 2019 the settlement distribution process had been completed and there

had been a consequent reduction in the number of SDS Team members working on each of the settlement administrations following payment of compensation to I-D and ELPD claimants, (c) the itemised bills for the period 1 December 2017 to 28 February 2022 and 1 September 2022 to 28 February 2023 already contained quite detailed information, and (d) the itemised bill for the period 1 August 2022 to 31 August 2022 was for a PwC disbursement only and made no claim for professional charges, I did not consider it necessary for me to have copies of updated staff lists in order to prepare this Fifth Report.

106. However, in order to calculate the time spent by lawyers and non-lawyers on the work claimed in the itemised bills for the period 1 December 2017 to 28 February 2023 for which the Scheme Administrator seeks payment I have reviewed all the relevant itemised bills and prepared three separate tables for the period from 1 December 2017 to 28 February 2023 in respect of each of (a) the General settlement administration, (b) the I-D settlement administration and (c) the ELPD settlement administration which detail (i) the name of each of the file operators, (ii) the hourly rate of each of the file operators, (iii) the number of 6 minute units of time worked by each file operator over each bill period in respect of the itemised bills detailed in paragraphs 27, 39(ii) and 69 above, (iv) the total amount incurred by each file operator over each bill period and (v) the total amount incurred by each file operator. These tables are noted, respectively, as **Attachment E**, **Attachment F** and **Attachment G** to this report.
107. I have reviewed each of **Attachments E, F and G** in light of the staff list which is Attachment 1 to my First Report and the details of staff changes (i) deposed to in the subsequent Affidavits of Mr Watson sworn 12 September 2016 and 31 October 2016 and Ms Dellavedova's Affidavit sworn 24 January 2017 and (ii) referred to in paragraphs 17 to 21 of **Confidential Attachment A 18/4/2019** and paragraphs 11 to 15 of **Confidential Attachment B 17/4/2023**. I am satisfied that the charges claimed in the itemised bills prepared for the period 1 December 2017 to 28 February 2023 have been calculated by applying the appropriate Court approved hourly rates under the Scheme to the items of work done by the respective file operators.

STEP 4 – SAMPLE THE ITEMISED BILLS

Professional fees

108. The itemised bills prepared for the periods 1 December 2017 to 28 February 2022 and 1 September 2022 to 28 February 2023 in respect of (i) the General settlement administration, (ii) the I-D settlement administration and (iii) the ELPD settlement administration total 52 in number and comprise 407 pages including formal parts and pages detailing summaries, disbursement accounts and the like.

109. Of those itemised bills :

- (a) 16 comprise 6 pages in total including formal parts and pages detailing summaries, disbursement accounts and the like, although only 1 page of each contains a detailed summary of the work done;
- (b) 15 comprise 7 pages in total including formal parts and pages detailing summaries, disbursement accounts and the like, although of those 15 itemised bills 7 contain only 1 page of detailed summaries of the work done and 8 contain 2 pages of detailed summaries of the work done;
- (c) 4 comprise 8 pages in total including formal parts and pages detailing summaries, disbursement accounts and the like, although of those 4 itemised bills 1 contains 2 pages of detailed summaries of the work done and 3 each contain 3 pages of detailed summaries of the work done;
- (d) 7 comprise 9 pages in total including formal parts and pages detailing summaries, disbursement accounts and the like, although of those 7 itemised bills 6 contain 3 pages of detailed summaries of the work done and 1 contains 4 pages of detailed summaries of the work done;
- (e) 3 comprise 10 pages in total including formal parts and pages detailing summaries, disbursement accounts and the like, although of those 3 itemised bills 2 contain 4 pages of detailed summaries of the work done and 1 contains 5 pages of detailed summaries of the work done;
- (f) 5 comprise 11 pages in total including formal parts and pages detailing summaries, disbursement accounts and the like, although only 5 pages of each contain detailed summaries of the work done;
- (g) 1 comprises 12 pages in total including formal parts and pages detailing summaries, disbursement accounts and the like, although only 6 pages contain detailed summaries of the work done,
- (h) 1 comprises 14 pages in total including formal parts and pages detailing summaries, disbursement accounts and the like, although only 8 pages contain detailed summaries of the work done;

110. Accordingly, in order to conduct the sampling process referred to as step 4(i) in paragraph 76 above, I therefore determined this time that :

- (a) in respect of itemized bills comprising 1 to 3 pages of detailed summaries of the work done I would examine in detail all work done by all file operators recorded on that page or in those pages; and

- (b) in respect of itemized bills comprising 4 or more pages of detailed summaries of the work done I would examine in detail work done by all file operators on a particular date on every 2nd page of those itemized bills.
111. Where the work done on a particular date extended beyond the randomly selected page, I also examined in detail all other work done on that date as detailed in the pages following. Likewise, if the work done by a particular file operator on a particular date extended beyond the randomly selected page, I also examined in detail all other work done by that particular file operator on that particular date as noted in the following pages.
112. My detailed examination of the randomly selected claims involved considering (a) the nature of work done, (b) whether the work was reasonably done at the time, (c) whether the work was done by the appropriate level of file operator given the nature of the task, (d) whether the time claimed for the work was reasonable and (e) whether the correct hourly rate had been applied given the level of file operator doing the work. Where a claim referred to an attendance (such as a delegation and/or reporting conference) on another file operator in addition to considering (a) to (e) above I cross-referenced the claims of both file operators to confirm that the time claimed was accurate and reasonable.
113. As part of my detailed examination of the randomly selected work I also compared the work noted in the itemised bills with other relevant material provided to me. As mentioned above I have been given access to the "FileSite" and "Matter Centre" databases, however following my brief examination of those databases and in light of the other material provided to me (including the EXCEL spreadsheets referred to in paragraphs 24(a), 37(b) and 70(iv) above from which the itemised bills themselves were distilled) I considered it unnecessary in preparing my Fifth Report to conduct a further detailed review of those databases. The electronic files themselves nevertheless do remain solid evidence of the work actually done by the respective file operators in relation to particular claims.
114. My detailed examination revealed that some of the work was in respect of tasks which would normally not be separately allowed on a taxation of costs as between solicitor and own client but it has been my view those claims should be allowed in the context of the Scheme since the work was done either as a result of particular requirements under the Scheme or, most often, to ensure the integrity and efficiency of the settlement distribution process, particularly having regard to the number of claims to be dealt with. It should also be recalled that the nature of the Scheme means that by far the greater bulk of work done is almost entirely in respect of an administrative process rather than a legal process.

115. I am therefore satisfied that the randomly sampled work I examined was in all instances reasonably done at the time by the appropriate level of file operator, that the time claimed for the randomly sampled work was reasonable and that the correct hourly rate had been applied given the level of file operator doing the work.
116. This task was again time-consuming however I am satisfied that the cross-referenced sample was sufficiently large and provided a sufficiently accurate series of “snapshots” of the work done for me to extrapolate the results across the total of the charges claimed by file operators in all of the itemised bills covering the period 1 December 2017 to 28 February 2023 and to state that in my view the work claimed in those itemised bills was reasonably done at the time by the appropriate level of file operator, that the time claimed for the randomly sampled work was reasonable and that the correct hourly rate had been applied given the level of file operator doing the work.
117. In order to give a visual representation of the time spent by lawyers and non-lawyers in administering the SDS over the period 1 December 2017 to 28 February 2023 I requested that the Scheme Administrator provide me with “stack graphs” which break down the total time spent by each type of file operator for work done in respect of administration of (a) all aspects of the Scheme for the period 1 December 2017 to 31 March 2019 (“Kilmore Overview Stack Graph”), (b) the General settlement administration aspect only for the period 1 December 2017 to 31 March 2019 (“Kilmore General File 2017 to 2019 Stack Graph”), (c) the General settlement administration aspect only for the period 1 April 2019 to 28 February 2023 (“Kilmore General File 2019 to 2023 Stack Graph”)², (d) the I-D settlement administration aspect only for the period 1 December 2017 to 31 March 2019 when this aspect of the settlement administration effectively concluded (“Kilmore Personal Injury File Stack Graph”) and (e) the ELPD settlement administration aspect only for the period 1 December 2017 to 31 March 2019 when this aspect of the settlement administration was also effectively concluded on 31 March 2019 (“Kilmore Property File Stack Graph”). These stack graphs are noted, respectively, as **Attachment H**, **Attachment I**, **Attachment J**, **Attachment K** and **Attachment L** to this report.
118. An examination of the attached stack graphs for the period 1 December 2017 to 31 March 2019 reveals that (a) in respect of all aspects of the Scheme about 19.5% of the work had been done by paralegals and legal assistants/litigation support staff, about 60% of the work had been done by trainee lawyers and lawyers, about 13.5% of the work had been done by associates and senior associates and about 7% of the work had been done by principals; (b) in respect of the General settlement administration about 13.5% of the work had been done by

² This Stack Graph (Attachment J) also serves as an Overview of all aspects of the Scheme for the period 1 April 2019 to 28 February 2023.

paralegals and legal assistants/litigation support staff, about 61% of the work had been done by trainee lawyers and lawyers, about 16.5% of the work had been done by associates and senior associates and about 9% of the work had been done by principals; (c) in respect of the I-D settlement administration about 7% of the work had been done by paralegals, about 63.5% of the work had been done by lawyers, about 10.5% of the work had been done by associates and about 19% of the work had been done by senior associates; and (d) in respect of the ELPD settlement administration about 37% of the work had been done by paralegals, about 59% of the work had been done by lawyers, about 3% of the work had been done by associates and about 1% of the work had been done by principals.

119. Having regard to the scope of work done from 1 December 2017 to 31 March 2019 and given (i) the stage generally, and each aspect separately, at which the administration of the Scheme has reached and (ii) the nature of costs incurred in respect of each particular aspect of the Scheme over the above period of time I make the following observations :
- (a) it is appropriate that in respect of all aspects of the Scheme (i) a significant proportion (19.5%) of time was spent on the work by paralegals, (ii) by far the greatest amount of the work (60%) was done by trainee lawyers and lawyers, (iii) a much smaller amount of the work (13.5%) was done by associates and senior associates, and (iv) a very small amount of the work (7%) was done by principals. In this connection it should be noted that in respect of the I-D settlement administration there was no involvement by principals and in respect of the ELPD settlement administration the involvement of principals was kept to a bare minimum;
 - (b) having regard to the ongoing dispute at that time between the Scheme Administrator and the ATO in relation to taxation payable on the interest earned on the distribution sum by the Scheme over the course of its operation, it is not surprising in respect of the General settlement administration that (i) a relatively small amount of the work (13.5%) was done by paralegals, (ii) by far the greatest amount of the work (61%) was done by trainee lawyers and lawyers, (iii) a relatively small amount of the work (16.5%) was done by associates and senior associates, which (iv) was all subject at appropriate times to supervision of the work (9%) by principals;
 - (c) given the I-D settlement administration was largely completed by 1 December 2017 and having regard to the nature of work done since then over the period 1 December 2017 to 31 March 2019 it would appear to be appropriate that (i) a relatively small amount of the work was done by paralegals (7%), (ii) by far the greatest amount of the work (63.5%) was done by lawyers, (iii) somewhat less of the work (29.5%) was done by associates and senior associates; and (iv) no time was spent on the I-D administration by principals;
 - (d) given the stage reached in the ELPD settlement administration by 1 December 2017 and the nature of work done over the period 1 December 2017 to 31 March 2019 it is

appropriate that (i) by far the greatest amount of time (at 37% and 59% respectively) was spent on work done on one hand by paralegals and on the other hand by lawyers, with (ii) a minor amount of time (3%) being spent on the work by associates and (iii) a negligible amount of time (1%) being spent on the work by principals.

In light of the above I am of the view that the above observations in respect of **Attachment H, Attachment I, Attachment K and Attachment L** confirm the matters referred to in paragraphs 21, 29 and 30 of **Confidential Attachment A 18/4/2019**.

120. Having regard to the scope of work done generally from 1 April 2019 to 28 February 2023 and in particular given that from 1 April 2019 to 14 October 2020 the Scheme Administrator's primary focus was on providing appropriate instructions and assistance to PwC and Counsel instructed by PwC in respect of the Appeal to the Full Federal Court and the subsequent High Court Application for special leave to appeal, whilst generally maintaining the status quo of the Administration Scheme pending finalisation of those Court proceedings, I observe it is not surprising in respect of the General settlement administration that (i) an almost negligible amount of the work (0.5%) was done by litigation support staff (0.5%) and the data analyst (0.01%), (ii) a relatively small amount of the work was done by Special Counsel (7.1%) and paralegals (3.8%), (iii) around two thirds of the work was done by Lawyers (i.e. solicitors with up to 3 years post Admission experience – 36.25%) and Associates (i.e. solicitors with between 3 and 6 years post Admission experience – 26.25%), (iv) a moderate amount of the work was done by Senior Associates (i.e. solicitors with more than 6 years post Admission experience – 16.5%) and the Settlement Administration Team Leader (7.0%), and (v) a relatively small amount of the work (5.3%) was done by Principals.

In light of the above I am of the view that the above observations in respect of **Attachment J** confirm the matters referred to in paragraphs 15, 20 and 21 of **Confidential Attachment B 17/4/2023**.

121. In my opinion the division of time amongst file operators apparent from the attached stack graphs also reflects an appropriate and reasonable allocation of work across all file operators.

DISBURSEMENTS

122. Pursuant to clause A1.1(b)(iii) of the Scheme all reasonable disbursements are to be allowed.
123. According to the itemised bills for the period 1 December 2017 to 28 February 2023, the following tranches of disbursements (inclusive of GST where appropriate) have been incurred:

(i) General settlement administration :

Disbursements for work carried out or invoiced in relation to the general administration between 1 December 2017 to 28 February 2023 amount to \$996,059.19 and include payments of :

- a) \$944,441.51 to PricewaterhouseCoopers for legal work in relation to the Administration Scheme's taxation liability, including the Federal Court, Full Federal Court and High Court litigation against the ATO in respect of the income tax dispute and accounting advice in respect of the GST status of the Settlement Administration Scheme, preparation and lodging of income tax returns up to and including the 2020 financial year and advice in respect of the preparation and lodging of income tax returns for the 2021 and 2022 financial years;
- b) \$26,358.75 to the Special Referee for preparation of his Fourth Court Report;
- c) \$12,850.00 to Law in Order for document support services to 30 April 2019 including photocopying charges and mail-out of physical versions of various group member updates;
- d) \$11,386.98 to Law Image Service (MELB) Pty Ltd for document support services including photocopying charges and mail-outs from 1 April 2019 through to 30 November 2020;
- e) \$719.71 to Victorian Transcript Services to obtain transcripts of relevant Court proceedings;
- f) \$271.54 to Nexus Primary Healthcare in respect of two overlooked October 2015 invoices for medical services provided by Drs Fullerton and Scholes during the course of the Kilmore East/Kinglake Settlement Administration Scheme, and
- g) \$30.70 being a miscellaneous administrative disbursement paid to Cabcharge.

(ii) I-D settlement administration :

Only one disbursement is claimed in respect of the I-D administration over the period 1 December 2017 to 31 March 2019 and that was a Probate search fee in the sum of \$24.10 incurred on 23 August 2017 which had not been previously billed.

(iii) ELPD settlement administration :

Disbursements for work carried out or invoiced in relation to the ELPD administration between 1 December 2017 to 31 March 2019 amount to \$1,530.52 and include payments of :

- a) \$1,398.10 to KPMG in respect of auditing services performed for the Scheme; and
- b) \$132.42 to SAI Global for obtaining copies of property titles and company reports as required in order to establish facts relevant to claims.

124. As a result of both the nature of my practice and my earlier reports I am familiar with the accounts and charges of such service providers as Victorian Transcript Services, Law In Order, SAI Global and Law Image Service (MELB) Pty Ltd

125. I have generally reviewed the claims for disbursements as made out in each of the itemised bills for the period 1 December 2017 to 31 March 2019. I make the following observations :

PricewaterhouseCoopers

(i) *General observations*

126. At the outset I observe that the first of the nineteen PwC invoices includes work done prior to the 1 December 2017. However that first PwC account is a disbursement rendered to the Scheme Administrator over the relevant billing period and therefore forms part of the Scheme Administrator's claim for settlement administration fees and disbursements referred to in paragraph 8 above. Accordingly when reviewing the first of the PwC invoices I compared that account with the copy Kilmore East/Kinglake Scheme Administration itemised bills for the periods 1 February 2017 to 30 November 2017 which had previously been forwarded to me by the Scheme Administrator to assist with preparation of my Fourth Report.

127. Having regard to the two questions set out in Appendix A to the Orders made by His Honour Justice J Forrest on 5 November 2015 in which I was appointed as Special Referee pursuant to Rule 50.01 of the Supreme Court (General Civil Procedure) Rules 2015 in respect of the costs of administering the Scheme (see paragraph 1 above), I do not consider I am required to conduct an *ex parte* taxation of the professional charges and disbursements incurred by PwC in acting for the Scheme Administrator in his Federal Court proceeding, Full Federal Court Appeal proceeding and High Court Application for Special Leave proceeding against the Australian Taxation Office.

Rather, I am of the view that my task is to adopt a broad brush approach, having regard to the matters referred to in paragraphs 30 to 35 of my First Report, and to come to a conclusion in the context of the Administration Scheme as to whether the costs and disbursements incurred by PwC are reasonable, and if in my view they are not reasonable then to come to a conclusion as to what amounts should be allowed for PwC's professional charges and disbursements.

(ii) Materials Provided

128. In line with the methodology accepted by Osborn J at paragraph 381 of his Judgement delivered 23 December 2014 in *Matthews v Ausnet Electricity Services Pty Ltd & Ors* [2014] VSC 663, and in order to assist me with preparation of my Fifth Report, as noted at paragraphs 26(a), 42, 44, 68(ii) and 69 above the Scheme Administrator provided me with copies of the nineteen PwC invoices, including the feeslips and fee memoranda of Counsel instructed by PwC in the Federal Court, Full Federal Court and High Court litigation. Counsels' fees are claimed as disbursements in a number of the PwC invoices included in the Scheme Administrator's itemised bills detailed in paragraphs 27, 39(ii) and 69 above. Copies of the nineteen PwC invoices together with copies of the feeslips and fee memoranda of Counsel claimed as disbursements in the relevant PwC invoices are noted as **Confidential Attachment M** to this report.
129. I have prepared a Table of the nineteen PwC invoices separated into the following eleven categories :
- (i) the period covered by the Kilmore East/Kinglake Scheme Administration itemised bill in which the PwC invoice is claimed,
 - (ii) PwC invoice reference number,
 - (iii) total quantum of GST exclusive professional fees claimed in the PwC invoice,
 - (iv) total quantum of GST to be added to the quantum of professional fees claimed in the PwC invoice,
 - (v) total quantum of GST exclusive non-professional (i.e. accounting) fees claimed in the PwC invoice,
 - (vi) total quantum of GST to be added to the quantum of non-professional (i.e. accounting) fees claimed in the PwC invoice,
 - (vii) total quantum of GST exclusive Counsels' fees claimed as a disbursement in the PwC invoice,
 - (viii) total quantum of GST to be added to the quantum of Counsels' fees claimed as a disbursement in the PwC invoice,
 - (ix) total quantum of GST exclusive "other disbursements" claimed in the PwC invoice,
 - (x) total quantum of GST to be added to the quantum of "other disbursements" claimed in the PwC invoice,
 - (xi) final total of all fees, disbursements and GST claimed in the PwC invoice.

This table is noted as **Confidential Attachment N** to this report. The total amount of each of the PwC invoices detailed in **Confidential Attachment N** was split as to 50% between each

of the Kilmore East/Kinglake Settlement Administration Scheme on the one hand and the Murrindindi Settlement Administration Scheme on the other hand.

130. In addition, as noted in paragraph 61(a) of my Fourth Report, I have previously been provided with, inter alia, copies of the PwC Umbrella Engagement Agreement dated 23 May 2016, the further PwC Engagement Letter dated 17 February 2017 (which was agreed to by the Scheme Administrator on 7 March 2017) and the e-mail from PwC sent on 7 August 2017 which updated the billing rates referred to in the Engagement letter dated 17 February 2017. I note that for the purposes of reporting on the PwC disbursement accounts included in the itemised bills covering the period 1 December 2017 to 31 March 2019 the PwC Umbrella Engagement Agreement dated 23 May 2016 (which was signed by the Scheme Administrator on 25 May 2016) is otiose given that it only applies to non-legal work done prior to 17 February 2017. The other two documents however remain relevant in that together they constitute (i) PwC's compliance with the disclosure requirements of Sections 174(1)(a) and 174(1)(b) of Schedule 1 to the *Legal Profession Uniform Law Application Act* 2014 and (ii) the costs agreement entered into between PwC's legal arm and the Scheme Administrator. I have once again reviewed both of those two documents in detail. The PwC Engagement Letter dated 17 February 2017 and the PwC e-mail of 7 August 2017 are noted as **Confidential Attachment O** to this report.
131. As noted in paragraph 33 above, on 23 July 2019 Ms Greaves provided to me, on a confidential basis, an electronic copy of the PwC detailed worksheet which details all of the time that has been incurred by PwC in respect of the first eight PwC invoices. Subsequently, at my request, Ms Greaves forwarded to me a copy of the PwC detailed worksheet in EXCEL format. In addition, as noted in paragraphs 51(i), 55 and 68(iii) above, on 24 October 2022, 11 November 2022 and 27 March 2023 Ms Adey provided to me, on a confidential basis, copies of the PwC detailed worksheets which detail all of the time that has been incurred by PwC in respect of the remaining eleven PwC invoices.
132. On 23 July 2019 Ms Greaves also forwarded to me a copy of a "Private & Confidential" letter dated 19 July 2019 from PwC. The "Private & Confidential" letter from PwC is noted as **Confidential Attachment P** to this report.

(iii) Review of Materials Provided – the hourly rates charged by PwC

133. The Engagement letter dated 17 February 2017 details the scope of the legal work to be done, the terms of engagement of PwC's legal arm and also details the basis on which fees are to be charged and the hourly rates which are to be charged for work done by the various levels of file operator. In accordance with paragraph 3.6 of the document entitled "Terms of business"

attached to the Engagement letter dated 17 February 2017, the PwC e-mail sent on 7 August 2017 updated the hourly rates. In respect of these documents I observe that :

- (a) the terms detailed in the Engagement letter and the two attachments to it (which, inter alia, constitute PwC's disclosure to, and costs agreement with, the Scheme Administrator) are as to be expected and are therefore unremarkable,
- (b) by comparison, the GST exclusive hourly rates charged pursuant to the terms of the Engagement letter dated 17 February 2017 as updated by the PwC e-mail of 7 August 2017 for the various levels of file operator are commensurate with the hourly rates customarily charged by top-tier and mid-tier legal firms in Victoria, as well as by both Senior and Junior Counsel at the Victorian Bar, and
- (c) in any event, pursuant Section 172(4) of Schedule 1 to the *Legal Profession Uniform Law Application Act* 2014 a costs agreement is prima facie evidence that the legal costs disclosed in the agreement are fair and reasonable provided that (i) the provisions of Division 3 of Part 4.3 of Schedule 1 to the Act have been complied with (which is the case here) and (ii) the costs agreement does not contravene the provisions of Division 3 of Part 4.3 of Schedule 1 to the Act (which it does not).

134. Further, I am advised the Scheme Administrator is of the view that the rates offered by PwC are more favourable than ordinarily offered, in light of the circumstances of the engagement and the population of the eventual beneficiaries of the work.

135. Accordingly, it is my view that in all the circumstances of this matter the hourly rates charged by PwC in their accounts rendered to the Scheme Administrator over the period covered by this Fifth Report are reasonable.

(iv) Review of Materials Provided – the quantum of PwC's professional charges

136. In order to determine whether the quantum of PwC's professional charges is reasonable I have examined in detail (a) the nineteen invoices rendered by PwC to the Scheme Administrator over the relevant billing period, (b) the PwC detailed worksheets and (c) the "Private & Confidential" letter from PwC and have also (i) reviewed the time spent on the matter by each level of file operator, (ii) applied the hourly rates applicable to each level of file operator in accordance with the terms of the costs agreement between PwC and the Scheme Administrator, (iii) identified the number of hours relating to attendances which are not recoverable pursuant to the Law of Costs and (iv) considered any further discount allowed by PwC to the claims for professional charges.

137. During the course of that review I also had broad regard to the work done by Counsel including the documents perused and prepared by Counsel, the conferences/consultations held by PwC with Counsel, the conferences/consultations held between Counsel, the correspondence passing between Counsel themselves and the correspondence passing between Counsel and PwC.
138. In addition, I also conducted a general comparison of (i) the work noted as done in the itemised bills referred to in paragraphs 27, 39(ii) and 69 above and (ii) the documents included in Confidential Exhibit "AJW-1" to the Affidavit of Andrew John Watson Affidavit of Andrew John Watson proposed to be filed in support of the approval application as against (iii) the nineteen PwC accounts, (iv) the work noted as done in the PwC detailed worksheet and (v) the feeslips and fee memoranda of Counsel instructed by PwC in the Federal Court, Full Federal Court and High Court litigation. That comparison clearly indicates that the Scheme Administrator and the legally qualified members of the SDS Team have very closely monitored the work done by PwC and, consequently, the invoices rendered by PwC.
139. Having regard to the matters referred to in paragraphs 136 to 138 above I am of the view that the total quantum of professional charges claimed by PwC is reasonable.

(v) Review of Materials Provided – PwC's Disbursements – Counsels' fees

140. During the course of acting for the Scheme Administrator over the relevant billing period in respect of the Federal Court proceeding against the Australian Taxation Office, the subsequent Federal Court appeal and the High Court Application for special leave to appeal, PwC briefed Mr D H Bloom KC, Mr Daniel McInerney of Counsel (as he then was), Ms Fiona Cameron of Counsel and, when Ms Cameron became unavailable, Ms Claire Horan of Counsel. As noted earlier in this Report I have been provided with copies of the feeslips and fee memoranda rendered by Counsel in respect of the Federal Court proceeding, the appeal to the Full Court of the Federal Court and the subsequent special leave application to the High Court.
141. Mr David Bloom KC obtained his Bachelor of Laws with Honours in March of 1972, was admitted as a solicitor of the Supreme Court of New South Wales in 1972 and was called to the New South Wales Bar in 1975. Mr Bloom KC obtained his Master of Laws with Honours in June of 1978. In 1986 he was admitted to the New York Bar. Mr Bloom KC was appointed Silk in 1987 and in 2008 was admitted to the Bar of England & Wales. He practices predominantly in the area of revenue law in which he is considered one of the most pre-eminent jurists in Australia and the most senior and experienced advocate in his field. Mr Bloom KC marked fees totalling \$642,400.00 inclusive of GST in the Federal Court, Full Federal Court and High Court proceedings.

142. Mr Daniel McInerney was admitted as a barrister and solicitor of the Supreme Court of Victoria in 1997 and gained extensive taxation experience in the public and private sectors. He signed the Bar Roll in 2007 and has a Masters of Taxation from the University of New South Wales, is a Senior Fellow at Melbourne Law School, a Fellow of the Tax Institute of Australia and a Chartered Tax Adviser. Mr McInerney was also named as one of Australia's leading Junior Counsel in Doyle's Guide Listing of leading tax barristers in 2015, 2016 and 2017 and as pre-eminent Junior Counsel in 2018. Mr McInerney also named as one of Australia's leading tax Juniors in Chambers and Partners Asia Pacific 2017, 2018 and 2019 guides. Mr McInerney marked fees totalling \$183,700.00 inclusive of GST in the Federal Court, Full Federal Court and High Court proceedings. Mr McInerney was appointed Silk on 1 October 2020, which post-dated his involvement in the Federal Court, Full Federal Court and High Court proceedings.
143. Ms Fiona Cameron obtained her Bachelor of Laws with Honours from the University of Adelaide in 2013 and was admitted as a barrister and solicitor of the Supreme Court of Victoria on 10 December 2013. From February 2013 to February 2014 Ms Cameron held positions as an Associate to Justice Davies, Justice Bongiorno and Justice Hargrave of the Supreme Court of Victoria and from February 2014 to February 2015 she was Associate to Justice Pagone of the Federal Court of Australia. Ms Cameron holds a Graduate Diploma of Legal Practice from the Australian National University and signed the Bar Roll on 30 April 2015. She practises primarily in commercial law with a particular focus on, inter alia, complex commercial and taxation matters. Ms Cameron's involvement as second Junior Counsel in the Scheme Administrator's litigation against the Australian Taxation Office concluded with her appearance before Middleton J on 13 November 2018 at the trial of the Federal Court proceeding. Ms Cameron marked fees totalling \$40,333.28 inclusive of GST in the Federal Court proceeding.
144. Ms Claire Horan obtained her Bachelor of Arts, Bachelor of Laws with First Class Honours and Master of Laws specialising in taxation law from the University of Melbourne and was admitted as a barrister and solicitor of the Supreme Court of Victoria in 2011. Prior to coming to the Bar Ms Horan was a Senior Associate in the King & Wood Mallesons Taxation Group with a specialist tax litigation practice. Ms Horan signed the Bar Roll in 2018 and specialises in taxation law in both Federal and State jurisdictions. She was recognised as a "Next Generation lawyer" for Taxation in The Legal 500 in 2017 and 2018. Ms Horan's involvement as second Junior Counsel in the Scheme Administrator's litigation against the Australian Taxation Office commenced on 1 March 2019 when she commenced assisting Senior and Junior Counsel with preparation of a draft opinion on the Judgment of Middleton J and a draft Notice of Appeal against the decision of Middleton J. Ms Horan marked fees totalling \$66,502.75 inclusive of GST in the Full Federal Court and High Court proceedings.

145. Under the relevant caselaw – see for example the decision of Fry J in *Kirkwood v Webster* (1878) 9 CD 239 and the decision of Griffiths CJ in *Kroehn v Kroehn* (1912) CLR 137) – the test to be applied in respect of the use of three Counsel is whether a prudent man, acting with ordinary prudence, would not have ventured into Court without three Counsel. It is my view that as between solicitor and own client the novel and complex legal and tax accounting issues involved in the Federal Court proceeding, the Full Federal Court proceeding and the High Court proceeding on the one hand, and the particular expertise and experience of Counsel briefed by PwC and the division of labour between them on the other, are such that the test is well satisfied in this matter and that the use of three Counsel in respect of the Federal Court proceeding, the Full Federal Court proceeding and the High Court proceeding as claimed in the PwC invoices rendered over the relevant billing period is reasonable.
146. I observe there can be no argument in these matters that the briefing of Senior Counsel was eminently reasonable. Further, I am advised that the rates marked by Mr Bloom KC (\$2,200.00 per hour inclusive of GST and \$17,600.00 per day inclusive of GST) are considerably less than his usual rates – see paragraph 37 of **Confidential Attachment A 18/4/2019** to this report – and are certainly well commensurate with his eminence in the field and are therefore reasonable in all the circumstances.
147. Having regard to the work done by Junior Counsel on behalf of the Scheme Administrator in the Federal Court proceeding, the subsequent appeal to the Full Federal Court and the High Court Application for special leave to appeal, the nature of their respective practices and the division of labour between them, the rates marked by Mr McInerney KC as Junior Counsel (\$550.00 per hour inclusive of GST to a maximum of \$4,400.00 per day inclusive of GST), the rates marked by, Ms Cameron (\$250.00 per hour inclusive of GST to a maximum of \$2,500.00 per day inclusive of GST for appearances) and the rates marked by Ms Horan (\$330.00 per hour inclusive of GST in 2019 increased to \$350.00 inclusive of GST in 2020 up to a maximum of \$3,300.00 per day inclusive of GST in 2019 increased to \$3,950.00 inclusive of GST in 2020) are all well within the hourly and daily rates one would expect for Junior Counsel of their expertise and experience and are therefore reasonable.
148. As noted in paragraphs 26(a), 42, 44, 50, 60, 62, 64(a) and 64(b) above I have reviewed the feeslips and fee memoranda rendered by Counsel in detail. In addition, I have reviewed the various claims made by Counsel for drafting, settling and reading documents as noted in Counsels' feeslips and fee memoranda in light of the time ledgers maintained by PwC and the documents filed in the Federal Court proceeding on behalf of the Scheme Administrator and the Australian Taxation Office which form part of **Confidential Exhibit "AJW-1"** to the Affidavit of Affidavit of Andrew John Watson proposed to be filed in support of the approval application.

149. As a result of that review and comparison I am of the view that the fees marked by Senior and Junior Counsel are reasonable in the circumstances of this matter.

(vi) Review of Materials Provided – “other disbursements” incurred by PwC

150. The “other disbursements” claimed in the nineteen PwC invoices comprise (i) miscellaneous disbursements totalling \$157.46; (ii) Law in Order copying charges and courier charges totalling \$1,622.06; (iii) document copying and postage (courier) expenses incurred in two tranches each of \$3,259.58 and \$5,899.01 for a total of \$9,158.59; (iv) printing charges of \$6,828.24, (v) document copying and delivery (transport) expenses totalling \$6,728.03 (vi) allowances for taxis and sustenance totalling \$269.37; (vii) transport expenses of \$139.03, (viii) miscellaneous additional copying expenses totalling \$29.26; (ix) oversize postage totalling \$8.36; (x) the Federal Court lodging fee of \$1,290.00 on the initial Notice of Appeal (xi) fees of \$4,675.00 on lodging the Notice of Appeal to the Full Federal Court and \$2,780.00 on setting that matter down; (xii) the High Court the fee of \$3,365.00 on lodging the Application for special leave; and (xiii) transport expenses totalling \$139.03. The total of the “other disbursements” claimed is \$37,189.43 and all of the amounts claimed for “other disbursements” are inclusive of GST, save for the Federal Court and High Court lodging and setting down fees which total \$12,110.00 and are not subject to GST.
151. Apart from Court fees, the major component of the total claimed for “other disbursements” is document copying and postage and/or delivery of those documents, most of which was incurred after 30 April 2018. In respect of these claims I have not sighted the service provider accounts however I have examined the narrative in the nineteen PwC bills and the PwC detailed worksheets. As a result of examining those documents I consider that these claims are most likely reasonable given, inter alia, that (i) separate briefs for each of the three proceedings were prepared for some or all of Mr D Bloom KC, Mr D McInerney of Counsel (as he then was), Ms F Cameron of Counsel and Ms C Horan of Counsel which included packages of copy materials that were updated as required, (ii) copies of various materials were prepared and provided to the solicitor for the Australian Taxation Office from time to time, (iii) master folders of relevant key documents were prepared for use at the various hearings and trials, (iv) copy Court Books, Books of authorities and Books of other relevant documents for use by the Federal Court, the Full Federal Court and the High Court were prepared, etc.
152. Although I have not sighted all of the service provider accounts for the remaining “other disbursements”, they are all relatively minor in amount and are within the range one would expect for matters such as these. Accordingly, on the face of it these claims would appear to be reasonable in all the circumstances.

(v) Review of Materials Provided – General observations

153. As noted in paragraph 65 of my Fourth Report it is clear that the Federal Court proceeding against the Australian Taxation Office which culminated in the Judgment of Justice Middleton handed down on 28 February 2019 and the subsequent Federal Court appeal lodged against that Judgment together with the eventual application to the High Court involved novel and complex legal and tax accounting issues and as a consequence these legal proceedings have been an expense which the Scheme Administrator was obliged to pursue through to finality.
154. Notwithstanding that I have come to the view that the PwC invoices are reasonable in all the circumstances, I observe that until at least 12 months after the date on which PwC rendered its final account the Scheme Administrator continues to have rights under Part 4.3 of Schedule 1 of the *Legal Profession Uniform Law Application Act 2014* in respect of the professional charges and disbursements claimed by PwC.

KPMG**(i) Materials Provided**

155. To assist me with preparation of my Fifth Report the Scheme Administrator provided to me a copy of a KPMG account claimed as a disbursement in one of the Scheme Administrator's itemised bills detailed in paragraphs 27, 39(ii) and 69 above. This account is dated 5 March 2018 and is in respect of the Kilmore East/Kinglake ELPD Administration (for \$1,398.10). I have examined this account in detail.
156. As noted in paragraph 60(a) of my Fourth Report, I had been provided with a copy of the Scheme Administrator's retainer letter to Mr Dougall of KPMG dated 11 April 2017, which was signed by Mr McDougall on 12 April 2017. The retainer letter of 11 April 2017 sets out in detail over 7 pages the terms of KPMG's engagement and the hourly rates which KPMG was to charge for work done pursuant to the retainer. On 11 April 2017 Mr McDougall was instructed to prepare a report as detailed in paragraphs 2.1 to 2.3 of the Scheme Administrator's retainer letter. Mr McDougall's report was dated 20 October 2018 and is exhibited to his Affidavit sworn that day which has been filed with the Court.

(ii) Review of Materials Provided

157. In late 2017 the Scheme Administrator instructed Mr McDougall to continue with an audit in relation to individual group members whose ELPD Administration matters had not previously been audited. Over the period 1 November 2017 to 28 February 2018 Mr McDougall and his

staff conducted this continuing audit and they were assisted in this task by the SDS Team who liaised with them over that period.

158. The work done over the period November 2017 to March 2018 was billed in accordance with the hourly rates detailed in the retainer letter dated 11 April 2017. I observe that the hourly rates referred to in that retainer letter are the same as those detailed in the Scheme Administrator's retainer letter to Mr Kompos of KPMG dated 12 October 2016. In respect of the terms of the retainer letter dated 11 April 2017 and the hourly rates referred to therein, I refer to and repeat the matters stated in paragraphs 61 and 62 of my Fourth Report.

159. Following my examination of (a) the itemised bills referred to in paragraphs 27, 39(ii) and 69 above, and (b) the KPMG disbursement account provided to me by the Scheme Administrator, it is my view that in all the circumstances of this matter the quantum of the fees charged by KPMG as claimed in the account referred to in paragraph 155 above is reasonable.

Transcript fees

160. In my view the fees for transcript have been reasonably incurred and are reasonable in amount.

Other service providers and miscellaneous disbursements

161. I have reviewed the itemised bills for the period 1 December 2017 to 28 February 2023 in respect of the accounts rendered by other service providers, such as Law In Order, Dynamic Direct and Law Image Service Pty Ltd and I am satisfied that all remaining disbursements have been reasonably incurred and are reasonable in amount.

162. Finally I refer to and repeat the matters canvassed in paragraph 105(b) of my First Report in respect of the Cabcharges claimed in the itemised bill for December 2017.

STEP 5 – APPLY THE HOURLY RATES APPROVED BY THE COURT

Administration Costs

163. In respect of the definition of "Administration Costs" and "Administrator staff" I repeat paragraphs 106 to 108 of my First Report.

164. In respect of the GST exclusive hourly rates to be allowed to the Scheme Administrator and Administrator staff I repeat paragraph 109 of my First Report.

Time recording

165. In respect of the time recording system utilized by the Scheme Administrator and the time recording protocols followed by fee earners at Maurice Blackburn I repeat paragraphs 110 and 111 of my First Report.
166. I also again note at this point that throughout the course of the Scheme administration certain other staff assisting with the matter including legal assistants and certain information technology staff did not record their time and the Scheme Administrator has not, and does not, seek reimbursement in respect of any work done by other staff assisting with the matter who have not recorded their time.
167. My examination of the itemised bills for the period 1 December 2017 to 28 February 2023, both in a broad sense as referred to in paragraphs 24 to 71 above and in a detailed sense as part of the sampling process referred to as step 4(i) in paragraph 76 above, suggests that these time recording protocols have been conscientiously followed and applied.

Application of the approved hourly rates to the recorded time

168. Utilising the tables in **Attachment E**, **Attachment F** and **Attachment G** to this report I have reviewed the hourly rates applied as detailed in all of the itemised bills covering the period 1 December 2017 to 28 February 2023 for the Scheme Administrator and for each member of his administration staff in light of the “qualification” of each file operator.
169. Having done that exercise and as a result of the sampling process referred to as step 4(i) in paragraph 76 above, I am satisfied that in all instances the appropriately qualified operator has done the work at the appropriate standard hourly rate approved by the Court.

STEP 6 – EXCISE WORK UNREASONABLY DONE or UNREASONABLE IN AMOUNT

170. In light of my review of the materials provided to me, having regard to the outcome of the sampling process referred to as step 4(i) in paragraph 76 above and reiterating the matters generally canvassed, I do not consider it could reasonably be said that any of the work claimed in the itemised bills was unreasonably done or is unreasonable in amount.

STEP 7 – DISBURSEMENTS UNREASONABLY INCURRED or UNREASONABLE IN AMOUNT

171. In light of my review of the materials provided to me and reiterating the matters generally canvassed above, I do not consider that the disbursements claimed in the itemised bills were unreasonably incurred or are unreasonable in amount.

CONCLUSIONS

172. Having regard to the matters canvassed in this report and the reasons expressed in paragraphs 77 to 121 and 163 to 170 above I am of the opinion that the quantum of the Scheme Administrator's costs claimed in the itemised bills covering the period 1 December 2017 to 28 February 2023 is reasonable.
173. Having regard to the matters canvassed in this report and the reasons expressed in paragraphs 122 to 162 and 171 above I am of the opinion that the quantum of disbursements claimed in the itemised bills covering the period 1 December 2017 to 28 February 2023 is reasonable.
174. Having regard to the matters canvassed in this report and in particular the matters referred to, and the reasons expressed, in paragraphs 89 to 103 above I am of the opinion that the quantum of proposed professional charges and disbursements in respect of finalization costs is reasonable.
175. Should however the Court require any further information or analysis I would of course be most pleased to oblige.

DATED : 27 April 2023



JOHN D WHITE