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

Not Restricted

S ECI 2020 01590

BRETT STALLARD AS TRUSTEE FOR THE STALLARD SUPERANNUATION FUND — First Plaintiff

STEVEN NAPIER — Second Plaintiff

v

TREASURY WINE ESTATES LIMITED (ACN 004 373 862) — Defendant

JUDGE:	McDonald J
WHERE HELD:	Melbourne
DATE OF HEARING:	28 May 2025, with written submissions received on 2 June 2025 and 4 June 2025
DATE OF JUDGMENT:	24 June 2025
CASE MAY BE CITED AS:	Stallard v Treasury Wine Estates Limited
MEDIUM NEUTRAL CITATION:	[2025] VSC 368

PRACTICE AND PROCEDURE – Group proceeding – Application for approval of settlement of group proceeding – Whether terms of settlement fair and reasonable – Whether settlement distribution scheme fair and reasonable – Whether claim for legal fees and disbursements fair and reasonable – Settlement approved – *Supreme Court Act 1986* (Vic) Part 4A, ss 33V, 33ZF – *Legal Profession Uniform Law* s 182.

PRACTICE AND PROCEDURE – Application by eight unregistered group members for leave to participate in the settlement – Adequacy of reasons for failure to register claims by registration deadline – Two applications by unregistered group members granted.

APPEARANCES:	Counsel	Solicitors
For the Plaintiffs	Ms M Szydzik SC with Mr T Chalke and Mr T Rawlinson	Slater and Gordon Maurice Blackburn
For the Defendant	Mr D Batt KC with Ms J Elliott	Herbert Smith Freehills Kramer

HIS HONOUR:

Introduction

1 On 31 March 2020, Mr Brett Stallard (as trustee for the Stallard Superannuation Fund) commenced proceeding S ECI 2020 01590 ('**Stallard Proceeding**'). On 1 May 2020, Mr Steven Napier commenced proceeding S ECI 2020 01983 ('**Napier Proceeding**'). On 15 October 2020, Nichols J made orders consolidating the two proceedings and appointing Mr Stallard and Mr Napier as joint plaintiffs and their respective solicitors, Slater and Gordon and Maurice Blackburn, as jointly named solicitors on the record.[1]

2 On 14 October 2024, the day the trial was due to commence, the parties announced that an in-principle settlement had been reached. A settlement deed was executed by the parties on 21 February 2025 ('**Deed**'). The parties propose to settle the proceeding on terms that Treasury pay $65 million inclusive of costs and interest ('**Settlement Sum**') without admission of liability.

3 The parties have applied to the Court for approval of the proposed settlement under s 33V and s 33ZF of the *Supreme Court Act 1986* (Vic) ('**Act**'). For the reasons set out in this judgment:

(a) the proposed settlement will be approved;

(b) the proposed orders regarding the Settlement Distribution Scheme ('**SDS**') and the appointment of Slater and Gordon as administrator of the SDS will be approved; and

(c) the proposed deductions from the Settlement Sum will be approved.

Summary of the claims

4 The defendant ('**Treasury**') operates a global winemaking and distribution business. It is listed on the Australian Securities Exchange ('**ASX**').

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1 *Stallard v Treasury Wine Estates Ltd and Napier v Treasury Wine Estates Ltd* [2020] VSC 679.

5 The claims in this proceeding relate to a series of announcements Treasury made to the ASX regarding its earnings before interest, tax, SGARA[2] and material items ('**EBITS**'):

(a) on 31 January 2018, Treasury announced that changes in its Americas region would 'contribute to accelerated EBITS growth for Treasury through FY19,[3] FY20 and beyond';[4]

(b) on 14 February 2019, Treasury announced that it expected reported EBITS growth in FY20 in the range of approximately 15% to 20%;[5]

(c) on 15 August 2019, Treasury reaffirmed that it expected reported EBITS growth in FY20 in the range of approximately 15% to 20%;[6] and

(d) on 16 October 2019, Treasury reaffirmed that it expected reported EBITS growth in FY20 in the range of approximately 15% to 20%.[7]

(Collectively, I will refer to these announcements as the '**Representations**').

6 On 28 January 2020, Treasury released an announcement to the ASX which stated that, as a result of challenging conditions in the wine market in the United States, it now expected reported EBITS growth for FY20 of 5% to 10%. Following this announcement, the price of Treasury's shares declined from $16.68 per share at the close of trade on 28 January 2020 to $12.35 per share at the close of trade on 29 January 2020.

7 The plaintiffs claim that Treasury had no reasonable grounds for making and reaffirming the Representations, and in doing so engaged in misleading or deceptive conduct in contravention of s 1041H(1) of the *Corporations Act 2001* (Cth), s 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) and/or s 18 of the Australian Consumer Law. Further, the plaintiffs claim that Treasury breached its

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2 SGARA is an agricultural accounting standard: Amended Consolidated Statement of Claim dated 21 April 2023, [12(b)] ('ACSOC').
3 'FY' refers to a financial year ending on 30 June.
4 ACSOC, [34].
5 Ibid, [50].
6 Ibid, [69].
7 Ibid, [88].

obligation of continuous disclosure under s 674(2) of the *Corporations Act* by failing to disclose a likelihood or a material risk that Treasury would not achieve the EBITS growth conveyed by the Representations.

8 The plaintiffs contend that the alleged contraventions created a situation where Treasury's share price was 'inflated' during the period from 30 June 2018 to 28 January 2020 ('**Relevant Period'**). The plaintiffs claim that the acquisition of Treasury shares at an inflated price during this period caused the plaintiffs and group members to suffer loss.

Procedural history

9 Following the consolidation of the proceedings, on 12 March 2021 Nichols J made orders appointing Ms Catherine Dealehr as an independent costs consultant to conduct inquiries every six months into whether there was any duplicated work being performed by reason of there being two firms representing the plaintiffs rather than one.

10 On 26 October 2023 and 30 October 2023, Nichols J made orders approving an opt-out process. The opt-out deadline ordered by the Court was 4pm on 20 December 2023 ('**Opt-Out Deadline**'). Nichols J also made orders requiring any group member wishing to participate in any pre-trial settlement of the proceeding to register their claim by 4pm on 20 December 2023 ('**Registration Deadline**').

11 Opt-out and registration notices were distributed to approximately 23,363 potential group members by post and email, and the notices were also published on the websites of Slater and Gordon, Maurice Blackburn, and the Supreme Court of Victoria. By the Opt-Out Deadline, 423 group members had opted-out of the proceeding.[8] By the Registration Deadline, there were 1,891 registered group members.[9]

12 On 21 August 2024, Waller J made orders for three group members who had provided valid late opt-out requests to cease to be group members in the proceeding.

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8 Affidavit of Kirsten Marie Morrison dated 3 March 2025, [36] ('First Morrison Affidavit').
9 Ibid, [37].

13 On 14 October 2024, the parties announced an in-principle settlement of the proceeding had been reached. The Deed of Settlement was executed on 21 February 2025.

14 On 3 March 2025, the plaintiffs issued a summons seeking, among other things, orders approving a proposed notice of proposed settlement and for the distribution of same, for the appointment of a costs referee and for a costs report to be provided to the Court, and for confidentiality and other ancillary matters.

15 On 31 March 2025, I made orders, amongst other things:

(a) approving the notice of proposed settlement and for its distribution;

(b) providing that any group member who wishes to oppose the proposed settlement must send a completed notice of objection to the plaintiffs' solicitors by 4pm on 15 May 2025 ('**Objection Deadline**');

(c) providing that any unregistered group member ('**UGM**') who wishes to seek leave to participate in the proposed settlement must send an email to the plaintiffs' solicitors identifying the basis on which they think the Court should grant them permission to participate and attach evidence in support by 4pm on 15 May 2025 ('**UGM Registration Deadline**'); and

(d) appointing Ms Dealehr as a special referee for the purpose of conducting an inquiry and making a report to the Court as to the reasonableness of the plaintiffs' legal costs and disbursements incurred in relation to the proceeding and the reasonableness of the sum proposed for settlement administration costs.

16 The notice of proposed settlement was distributed to each registered group member by email and was published on the websites of Slater and Gordon, Maurice Blackburn, and the Supreme Court of Victoria. An abridged version of the notice was also published in the Australian Financial Review. I am satisfied that the requirement in

s 33X(4) of the Act has been met. The settlement approval hearing took place on 28 May 2025.

Proposed settlement

17 In summary, the proposed settlement is on the following terms:

(a) Treasury is to pay $65 million inclusive of all legal costs, expenses, disbursements and interest in full and final settlement of the plaintiffs' and group members' claims;

(b) the plaintiffs and group members will provide releases to Treasury;

(c) the Settlement Sum is to be distributed in accordance with the proposed SDS;

(d) Slater and Gordon is to be appointed as administrator of the SDS; and

(e) the following deductions are to be made from the Settlement Sum:

(i) a payment of $25,000 to each plaintiff as reimbursement for their time and involvement in the proceeding;

(ii) costs of the settlement administration; and

(iii) the plaintiffs' legal costs and disbursements.

Materials before the Court and confidentiality

18 The plaintiffs rely on the following material:

(a) an affidavit of Kirsten Morrison dated 3 March 2025 ('**First Morrison Affidavit**');

(b) an affidavit of Julian Schimmel dated 23 May 2025 ('**First Schimmel Affidavit**');

(c) an affidavit of Kirsten Morrison dated 23 May 2025 ('**Second Morrison Affidavit**');

(d) an affidavit of Kirsten Morrison dated 27 May 2025 ('**Third Morrison Affidavit**'); and

(e) the confidential opinion of counsel ('**Counsel's Opinion**') which was exhibited to the Second Morrison Affidavit as a confidential exhibit.

19 The plaintiffs also rely upon the costs report of costs referee Ms Catherine Dealehr dated 21 May 2025 ('**Costs Report**') in support of their claim for reasonable costs incurred in the litigation and administration of the settlement.

20 The following submissions were provided:

(a) the plaintiffs' submissions dated 23 May 2025 in support of the application for settlement approval;

(b) the plaintiffs' submissions dated 2 June 2025 addressing the question of whether a court has considered the issue of the reasonableness of a solicitor's costs in circumstances where two solicitors are acting concurrently for the same party in the same class action and one set of solicitors has a higher charge-out rate than the other; and

(c) Maurice Blackburn's submissions 4 June 2025 as to the reasonableness of their costs. These submissions were accompanied by a second affidavit of Julian Schimmel dated 4 June 2025 (**'Second Schimmel Affidavit'**) and an expert report prepared by Mr Ian Ramsey-Stewart dated 4 June 2025.

21 The plaintiffs initially sought confidentiality orders in respect of the Costs Report, Counsel's Opinion and particular passages in the affidavits they have filed. At the hearing, the plaintiffs did not press their application for confidentiality orders in respect of the Costs Report.[10]

[10] Transcript of settlement approval hearing dated 28 May 2025 ('T') 2 line ('L') 8–11.

22 In *Andrianakis v Uber Technologies Inc and Others (Settlement Approval)* (‘***Uber***’)[11] Matthews J outlined the principles relating to confidentiality applications in the context of group proceedings:

> Confidentiality orders are not granted as of right. They will not be made automatically or by default. Open justice is an important principle and it is to be given effect to, unless it is necessary for the administration of justice for certain restrictions to be imposed.
>
> In instances such as this, where the Court’s approval is being sought and where the Court relies on the frank and comprehensive disclosure of all relevant information, including material which is confidential and/or protected by legal professional privilege, the interests of justice are served by the Court making confidentiality orders. Enabling the Court to fulfil its task is the only purpose for which the information is being provided to the Court. If the risk of disclosure of such information served to discourage the information being provided to the Court, then that is clearly contrary to the administration of justice. This is an important context for the consideration of confidentiality orders.[12]

23 The content of the documents which the plaintiffs seek to keep confidential is appropriately confined. The time periods during which the documents are to be kept confidential is also appropriately confined, depending on the category of document either to end of the period in which orders in this proceeding can be appealed or until further order of the Court. The documents which fall within the former category include information as to the formula by which loss was assessed and parts of affidavits that refer to the Deed of Settlement. The documents within the latter category include documents which canvass the strengths and weaknesses of the plaintiffs’ case, the reasons and reasonableness of the settlement, personal addresses of the plaintiffs, opinions of the plaintiffs’ lawyers and other information as to the merits of the proceeding and information which attracts legal professional privilege. This material has been provided to assist the Court in its assessment of the appropriateness of the settlement. In making this assessment, I have had regard to the Second Morrison Affidavit[13] and I accept Ms Morrison’s evidence on this point.[14]

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11 [2024] VSC 733 (‘*Uber*’).
12 Ibid, [42]-[43].
13 Affidavit of Kirsten Marie Morrison dated 23 May 2025, [9]-[17] (‘Second Morrison Affidavit’).
14 Except as it relates to the Costs Report.

24 Without the 'frank and comprehensive'[15] disclosure of such material, the task before the Court is made difficult and time consuming. If the Court declines to keep such material confidential it may have an adverse impact upon future proceedings which require such frank and comprehensive disclosure. Accordingly, save for the Costs Report, I will make the confidentiality orders sought. I am satisfied that the documents and parts of documents that the plaintiffs seek to keep confidential reveal commercially sensitive information and/or are legally privileged.

Settlement Approval

25 Section 33V of the Act provides:

> **Settlement and discontinuance**
>
> (1) A group proceeding may not be settled or discontinued without the approval of the Court.
>
> (2) If the Court gives such approval, it may make such orders as it thinks fit with respect to the distribution of any money, including interest, paid under a settlement or paid into court.

26 Section 33V confers two distinct, but related, powers. Section 33V(1) gives the Court power to approve the settlement and s 33V(2) empowers the Court approve the distribution of payments under it. The Court of Appeal has said that '[i]t is important not to elide these two powers'.[16]

27 The Court's primary concern when determining an application under s 33V is to protect the interests of the group members.[17] The Court assumes a 'protective' role 'akin to that of a guardian'.[18]

28 The Court's task is to assess whether the settlement is:

(a) in the interests of group members as a whole; and

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15 *Uber*, [43].

16 *Botsman v Bolitho* (2018) 57 VR 68, 111 [200] ('*Botsman*').

17 *Fuller & Anor v Allianz Australia Insurance Ltd & Anor (Settlement Approval)* [2025] VSC 160, [65] ('*Fuller*').

18 *Australian Securities and Investments Commission v Richards* [2013] FCAFC 89, [8] per Jacobson, Middleton and Gordon JJ. This has been applied in the Victorian context in *Lynden Iddles & Anor v Fonterra Aust Pty Ltd & Ors* [2023] VSC 566, [23] per Delany J ('*Iddles*').

(b) fair and reasonable, having regard to the claims made on behalf of the class members who will be bound by the settlement.[19]

29 The Court does not ask itself whether the settlement is the only fair and reasonable outcome but whether the settlement falls within the range of fair and reasonable outcomes taking everything into account.[20] The principles that guide the Court in this assessment are well-established.[21] In *Botsman v Bolitho*[22] the Court of Appeal stated:

> The organising principle which underpins s 33V is whether the proposed settlement is fair and reasonable and in the interests of the group members bound by the settlement. Consideration of that question is informed by a number of matters.
>
> It is an essential starting point to identify the settlement and its terms. It is commonplace that a deed of settlement may address more than the settlement of the claims against the defendant and will also deal with the distribution of settlement money, including to a litigation funder. The structure of subs 33V(1) and (2) suggests that such payments may be distributions of money that has been paid under a settlement to which the Court has given approval under s 33V(1). Those distributions are the subject of separate Court approval under s 33V(2).
>
> The question of fairness interposes itself at various levels. Most obviously, there will need to be consideration of the fairness of a proposed settlement sum.
>
> The Court is being asked to approve a compromise of litigation. Inevitably, that will require an assessment of whether the plaintiff is likely to succeed in the action, the measure of damages that a successful judgment would yield, the prospects of recovery, and the expenditure in costs, time and effort that would be required to bring the proceedings to a conclusion.
>
> That assessment does not involve a simple calculus but calls for matters of judgment based on imperfect knowledge and is influenced by the appetite for risk. It will be informed by the complexity and duration of the litigation and the stage at which the settlement occurs. It is important to acknowledge that it is the state of imperfect knowledge and the existence of risks that will have likely induced the settlement. It follows that those matters should be accorded

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19 *Iddles*, [24].

20 *Darwalla Mining Co Ltd Ptd v F Hoffman-La Roche Ltd (No 2)* (2006) 236 ALR 322, 339 [50]; [2006] FCA 1388, [50].

21 *Botsman*, [201] citing *Williams v FAI Home Security Pty Ltd [No 4]* (2000) 180 ALR 459, 465–6 [19]; *Darwalla Milling Co Pty Ltd v F Hoffman-La Roche Ltd [No 2]* (2007) 236 ALR 322, 332–6 [30]–[40]; *Blairgowrie Trading Ltd v Allco Finance Group Ltd (rec and mgr apptd) (in liq) [No 3]* (2017) 343 ALR 476, 499–500 [81]–[85]. The approach of the Supreme Court of Victoria largely mirrors the approach taken by the Federal Court of Australia in respect of representative proceedings brought under Part IVA of the *Federal Court of Australia Act 1976* (Cth).

22 (2018) 57 VR 68.

> a degree of prominence in any assessment of the reasonableness of the settlement.
>
> Those considerations mean that there will rarely, or ever, be a single correct settlement. Strategic decisions must be factored into account but it is not the role of the Court to second guess those decisions.
>
> The question of fairness will also be relevant to the distribution of the settlement sum, particularly where, as is usually the case, the group members will receive less than their claimed losses and the costs of bringing the proceeding (both in terms of legal costs and funding costs) will need to be accounted for. It follows that there will often be questions of fairness as between group members, particularly where some, but not all, of the group members have funded the litigation or where it may be necessary to apportion the settlement sum between group members based on differences in their respective claims.
>
> An important issue of principle also arises as to the extent to which a settlement may make provision for, or seek to control (including by way of condition precedent), the distribution of money paid under the settlement. That matter requires consideration of the nature of the power exercised by the court and the particular terms of a settlement which is sought to be approved. The issue will arise in respect of payments made to a funder, payments made in respect of legal costs and disbursements, and payments made to particular group members, most commonly the lead plaintiff, on account of his or her particular effort in the conduct of the litigation.[23]

30 The factors relevant to the Court's assessment include:

(a) the complexity and likely duration of the litigation;

(b) the reaction of the group to the settlement;

(c) the stage of the proceeding;

(d) the likelihood of establishing liability;

(e) the likelihood of establishing loss or damage;

(f) the risks of maintaining a group proceeding;

(g) the ability of the defendant to withstand a greater judgment;

(h) the range of reasonableness of the settlement in light of the best recovery;

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[23] Ibid, 111-112 [202]-[209].

(i) the range of reasonableness of the settlement in light of all the attendant risks of litigation; and

(j) the terms of any advice received from counsel and/or from any independent expert in relation to the issues which arise in the proceeding.[24]

31 These factors are not mandatory considerations or an exhaustive list.[25] The principles outlined in various judgments are a useful guide.[26] The question of whether a settlement is reasonable *per se* cannot be separated from ancillary questions regarding the approval of funding and legal costs.[27] When making its assessment about whether the settlement is fair and reasonable, the Court must have 'reference to what all group members obtain in their hands following the resolution of their individual claims in the event that the settlement is approved'.[28]

32 Matthews J described the task before the Court as:

> The consideration for the Court is thus typically framed as being whether the proposed settlement is fair and reasonable:
>
> (a) as between the parties, often referred to as *inter partes* fairness; and
>
> (b) as between group members, often referred to as *inter se* fairness.[29]

33 In relation to the second limb above, for a SDS to be fair and reasonable the deductions to be taken from the settlement sum must be reasonable so that class members receive a fair share, the settlement administration must not consume the settlement or unreasonably delay its distribution and the SDS must achieve a fair division of the proceeds of the settlement as between group members.[30]

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24 Supreme Court of Victoria, Practice Note SC Gen 10, Conduct of Group Proceedings (Class Actions). This reflects the factors noted by Goldberg J in *Williams v FAI Home Security Pty Ltd (No 4)* (2000) 180 ALR 459, 465 [19]; [2000] FCA 1925, [19].

25 *Fuller,* [68].

26 Ibid.

27 *Iddles,* [25] citing *Quick v Suncorp Portfolio Services Ltd (No 2)* [2022] NSWSC 1457.

28 Ibid, quoting *Liverpool City Council v McGraw-Hill Financial, Inc (now known as S&P Global Inc)* [2018] FCA 1289, [2] (Lee J).

29 *Fuller,* [71].

30 *Caason Investments Pty Ltd v Cao (No 2)* [2018] FCA 527, [91].

Costs

34 The Court has broad oversight over the professional fees charged as between solicitors and clients. In the context of group proceedings, judicial oversight is an important part of the Court's role in protecting class members' interests.[31]

35 The basis for the Court's oversight over costs between solicitor and client was explained by Tadgell J in *Redfern v Mineral Engineers Pty Ltd*[32]:

> The courts' surveillance over costs as between solicitor and client is assumed with a view to preventing any unfair advantage by solicitors in their charges to their clients. It stems, it seems, from the notion that ordinarily a solicitor is presumed to be in a position of dominance in relation to his client as a result of his presumed knowledge of the law and of what may and may not be properly charged by way of fees. Were a strict view not taken it might be open to a solicitor to overreach his client or otherwise act oppressively towards him on the matter of costs.[33]

36 In *Modtech Engineering Pty Ltd Limited v GPT Management Holdings Limited*[34] Gordon J discussed the unique elements of a costs order in the context of group proceedings:

> This is not a taxation. But it is unique. The solicitor is acting for *itself* – *it* seeks an order that *its* costs be approved by the Court and paid to *it.* There is no contradictor. The group members who are to share the liability for the fees and disbursements are unable to oppose the application… The inability of the group members to act as a contradictor provides a further example of the "position of dominance" referred to by Tadgell J.[35]

37 Usually parties will seek to support the reasonableness of their costs incurred by reference to a costs report made by an independent costs expert.[36] However, the Court's supervisory role is not supplanted by the independent costs expert. The Court retains the task of determining whether the fees and disbursements are reasonable and must have sufficient information to complete that determination.[37]

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31 *Petersen Superannuation Fund Pty Ltd v Bank of Queensland Limited (No 3)* [2018] FCA 1842, [87]; 132 ACSR 258 [87].

32 [1987] VR 518.

33 Ibid, 523. Cited with approval by Gordon J in *Modtech Engineering Pty Ltd Limited v GPT Management Holdings Limited* [2013] FCA 626, [26].

34 [2013] FCA 626 ('*Modtech*').

35 Ibid, [27] (emphasis in original).

36 *Botsman*, [224].

37 Ibid.

38 In *Lenehan v Powercor Australia Ltd*[38] Nichols J set out the principles governing the approval of costs in a representative proceeding. Her Honour said:

> The Court's function in scrutinising a claim for costs by the plaintiff and his solicitors is protective. Group members ordinarily benefit from the legal work undertaken by the plaintiff's solicitors in conducting and settling the proceeding and are typically required to pay a proportionate share of the plaintiff's costs. However, they have no control over the costs incurred during the conduct of proceeding and the information available to them about costs (including information that would allow them to effectively scrutinise a claim for costs) is generally limited. As Murphy J put it in *Petersen*, group members suffer a significant information asymmetry in this regard.
>
> The Court must be satisfied that the costs claimed are reasonable in all of the circumstances and proportionately incurred.
>
> The proportionality measure looks to the relationship between the costs incurred and the value and importance of the subject matter in issue. The requirement for proportionality as it concerns legal costs generally is expressed in s 172 of the *Legal Profession Uniform Law (Vic)* (the Uniform Law) and in s 24 of the *Civil Procedure Act 2010* (Vic). It is a forward looking assessment which compares the cost of the work with the benefit that could reasonably be expected from the work, at the time at which the work was performed.
>
> The Court may be satisfied as to the amount of costs that is reasonable and proportionate, in any one of a number of ways.
>
> …
>
> What is reasonable and proportionate will vary from case to case. Factors commonly considered in this assessment include:
>
> (a) the reasonableness of the terms of the fee agreements and whether the costs actually charged have been calculated in accordance with those agreements;
>
> (c) whether any significant portion of the fees charged have been inappropriately or unnecessarily incurred;
>
> (d) whether the work in a particular area or in relation to a particular issue was undertaken efficiently and appropriately;
>
> (e) whether the work was undertaken by a person of an appropriate level of seniority and whether the charge out rates were appropriate having regard to the seniority of the practitioners and the nature of the work undertaken;
>
> (g) whether the tasks and associated charges were appropriate having regard to the nature of the work and the time taken to complete the work.

[38] [2020] VSC 82.

> Considerations of this kind might be characterised as broadly reflecting the requirements of s 172 of the Uniform Law which applies to costs generally.
>
> Ordinarily, the plaintiff's costs of the proceeding will have been incurred and charged pursuant to an agreement between the plaintiff and his or her solicitors. Often, the plaintiff's solicitors will also have entered costs agreements with at least some group members. Accordingly, those agreements will inform the assessment to be made by the Court on an application for approval of the costs of a representative proceeding, on settlement. A logical starting point for assessing the reasonableness of the costs claimed is to establish what costs have actually been incurred and pursuant to what terms.
>
> However, costs agreements inform rather than determine the Court's assessment of the quantum and nature of costs to be approved. The Court may consider the reasonableness of the terms of the costs agreements. The considerations relevant to an exercise of the power to approve costs on a settlement of a representative proceeding are not limited to what is permitted by the costs agreement. The question remains whether in the Court's assessment the costs are reasonable and proportionate. The costs agreement may itself assist in evidencing reasonableness.
>
> Those observations are subject to the proviso that legal costs and costs agreements are regulated by Part 4.3 of the Uniform Law. Accordingly, aspects of that law may become relevant on an assessment of this kind.[39]

39 The *Legal Profession Uniform Law*[40] provides certain requirements where a firm seeks to charge uplift fees as is the case in this proceeding. Those requirements include that the firm must have a reasonable belief that a successful outcome is reasonably likely and that the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.[41]

Consideration

Objections

40 No notices of objection were received in relation to the proposed settlement by the Objection Deadline.[42]

Unregistered group members

41 Section 33ZF of the Act is in the following terms:

> In any proceeding (including an appeal) conducted under this Part the Court may, of its own motion or on application by a party, make any order the Court

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39 Ibid, [9]-[22] (citations omitted).
40 *Legal Profession Uniform Law Application Act 2014* (Vic), sch 1 ('*Legal Profession Uniform Law*').
41 *Legal Profession Uniform Law* ss 182(2)(a)-(b).
42 Second Morrison Affidavit, [162].

thinks appropriate or necessary to ensure that justice is done in this proceeding.

42 In *Bopping v Monash IVF Pty Ltd & Ors (No 2)*[43] Watson J endorsed the principles set out by Matthews J in *Uber* applicable where a court has set a deadline for registration for participation in a settlement, the matter settles and individuals who failed to register by the court imposed deadline apply after the matter has settled in-principle to be registered to participate in the settlement. In *Uber* Matthews J stated:

> The Class Closure Orders have effect unless the Court otherwise orders. I must determine whether I ought to permit a UGM to participate in the settlement pursuant to my discretion under s 33ZF of the Act. *In exercising that power, I have a protective role in respect of group members as a whole, and primary consideration must be given to group members*. Section 33ZF empowers the Court to make any order the Court thinks appropriate or necessary to ensure that justice is done in the proceeding. Accordingly, in making my decision, *I must be satisfied that it is appropriate or necessary to ensure that justice is done in the proceeding to permit the UGM to participate, or I will decline to order their participation*. In doing so, *I must be astute to protect the best interests of all group members*.
>
> It is self-evident that a group member will suffer prejudice if they are to be bound by the settlement but not able to partake because of the operation of the Class Closure Orders. However, *mere prejudice is not enough*. The potential for this prejudice was already considered by the Court in the making of the Class Closure Orders and balanced against the "desirable ends of settlement" to be facilitated by the greater certainty about the size of the class and quantum obtained as a result of those orders.
>
> In order to be permitted to participate in the proposed settlement, *the UGM must sufficiently demonstrate unfair prejudice to them in the operation of the Class Closure Orders*, so that I am satisfied that it would be unjust to exclude the UGM from participating in the settlement. This is a high threshold for the UGM to reach.[44]

43 Watson J identified further matters which were relevant to the disposition of the late applications before him:

(a) it may be unjust to exclude a group member from participating in the settlement in circumstances where they have provided persuasive evidence that they did not receive the opt-out and registration notice;

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43 [2025] VSC 8 ('*Bopping*').

44 *Uber*, [61]-[63] (citations omitted) (emphasis added).

(b) a relevant factor in the assessment of late registration applications is that the grant of leave for group members to participate in the settlement will dilute the settlement sum available to those persons who registered on time;

(c) in assessing the reasons and evidence provided by group members in support of their applications, regard should be had to the characteristics of the class and to the Court's protective jurisdiction;

(d) it may be appropriate to determine some late registration applications by category, whereas others may need to be reviewed individually; and

(e) where a late registration applicant has provided no reason in support of their application, this will be insufficient for leave to be granted. A bare statement of group membership is an insufficient basis for leave to be granted.[45]

44 In assessing whether a UGM ought be permitted to participate in the settlement, the Court has a protective role in respect of group members as a whole and primary consideration must be given to group members.[46] The Court must be satisfied that it is appropriate or necessary to ensure that justice is done in the proceeding to permit a UGM to participate.[47]

45 In the present case, applications from eight UGMs to participate in the proposed settlement were received by the UGM Registration Deadline, representing 16 shareholdings.[48] The plaintiffs took no position on the UGM applications.[49]

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45 *Bopping*, [12] (citations omitted).

46 *Uber*, [61].

47 Ibid.

48 As per the table at [167] of the Second Morrison Affidavit. 10 purported UGM applications were received by the UGM Registration Deadline: Second Morrison Affidavit, [164]. However, Ms Morrison clarifies that one of the UGM applications was a trading data update and not an UGM application: Second Morrison Affidavit, [171]. Further, Ms Morrison clarifies that one of the holdings was registered prior to the Registration Deadline and is an update to trading data for an existing claim rather than an application for late registration: Third Morrison Affidavit, [10]. In respect of UGM application number 5, its two holdings have been treated as separate applications (number (7) and (8)): Second Morrison Affidavit, [168].

49 Plaintiffs' Submissions in Support of Application for Settlement Approval dated 23 May 2025, [109].

46 In respect of four of the UGM applications,[50] no evidence in the form of a statutory declaration or affidavit was provided in support of the application. Pursuant to orders made on 31 March 2025 any UGM who wished to seek leave to participate in the proposed settlement was required to send an email to the plaintiffs' solicitors identifying the basis on which the Court should grant them permission to participate. The UGM was required to attach evidence in support in the form of an affidavit or statutory declaration. In *Uber*, Matthews J said:

> The Contradictor submits that applications which are not supported by evidence may be dismissed without further consideration. This is said to be consistent with the principles arising from case law that applications for leave to participate in a settlement by UGMs should be supported by evidence in the form of a signed affidavit. Further, the Contradictor says that it would be unfair to UGMs who have provided evidence to waive this requirement for others. I agree with this submission.[51]

47 UGM applications number 1, 3, 6 and 8 (as set out in the table at [167] of the Second Morrison Affidavit) are not supported by any evidence. I am not satisfied that it is appropriate to permit these UGMs to participate in the settlement and will dismiss their applications.

48 In respect of the remaining four UGM applications,[52] those applications had supporting statutory declarations or affidavits. In respect of UGM applications number 2 and 5, the applicants made statutory declarations to the effect that they acquired Treasury shares during the Relevant Period. However, no explanation was provided for why they did not register by the Registration Deadline. In *Uber*, Matthews J observed:

> It was a further key requirement of UGM Applications that they identify the basis on which leave ought be granted. This entails more than a statement of group membership; the UGM must provide an explanation for why they did not register by the Class Closure Deadline. This is a critical part of the Court's consideration in deciding whether leave ought to be granted to a UGM to participate in a settlement where orders had been made in the proceedings limiting participating group members to those who took steps to register by the Class Closure Deadline.[53]

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50 UGM applications number 1, 3, 6 and 8, as set out in the table at [167] of the Second Morrison Affidavit.
51 *Uber*, [93].
52 UGM applications number 2, 4, 5 and 7, as set out in the table at [167] of the Second Morrison Affidavit.
53 *Uber*, [98].

49 UGM applications number 2 and 5 do not disclose any reason for the failure to register in time. The applications consist simply of a bare statement of group membership, which is an insufficient basis for leave to be granted to participate in the settlement.

50 UGM applications number 4 and 7, are supported by statutory declarations which disclose a reason for the failure to register in time. UGM application number 4 states that the registration notice sent to group members advising of the Registration Deadline was not received. UGM application number 7 states that the shareholder's portfolio was managed by a financial adviser, and had no knowledge of the proceeding until advised of it by her financial adviser in May 2025. I am satisfied that UGM applications number 4 and 7 should be permitted to participate in the settlement. They have complied with the requirements of the orders made on 31 March 2025 and have disclosed a sufficient reason for why they did not register in time.

Fairness and reasonableness of the proposed settlement

51 The proposed settlement of this proceeding for $65 million on terms found in the Deed of Settlement is fair, reasonable and in the interests of the group members bound by the settlement.

52 Mr Schimmel and counsel opined as to the recovery they expected that plaintiffs to receive if the matter proceeded to trial and the plaintiffs were successful.[54] I accept their opinions. The sum of $65 million is reasonable and fair in light of the best recovery that the plaintiffs could have achieved. The settlement sum comfortably falls within the range of settlements that could be considered appropriate having regard to the risks the plaintiffs faced in establishing their case.

53 I accept counsel's opinion as to the legal and evidentiary complexity of this proceeding. Although in many respects this was an orthodox securities class action,

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54 Affidavit of Julian Schimmel dated 23 May 2025, [49] ('First Schimmel Affidavit'); Confidential Opinion of Counsel dated 23 May 2025, [289] ('Counsel's Opinion').

certain legal and factual questions may have required substantial consideration. The litigation had been extensive and long-running. The trial was listed for nine weeks.

54 The proceeding settled the day the trial was to commence. Extensive negotiations had taken prior to the scheduled commencement of the trial.[55] Both parties were in a strong position to assess and evaluate the relative strength of their case. The settlement negotiations were informed by the advice of experienced practitioners.

55 The settlement of the proceeding avoids the prospect of delays arising from a lengthy trial and the finalisation of a judgment following the trial. One or both parties may have appealed the primary decision. Any appeal would have necessitated further delays before it was heard and determined. By settling, the parties have avoided significant additional legal costs. Treasury gains the benefit of knowing exactly the extent of its liability. As between the parties and as between the group members, the settlement provides certainty and clarity.

56 The confidential memorandum of Counsel for the plaintiffs provided a candid and comprehensive overview of the risks the plaintiffs faced in establishing liability, causation and loss. The Court is assisted by the thorough and detailed by the work undertaken by counsel. As I observed at the hearing on 28 May 2025 the memorandum was of high quality. As the memorandum is confidential I will not refer to its contents. It is sufficient to say that I accept Counsel's Opinion on the issues of liability, causation and loss.

57 No objections to the settlement were received. I infer from this that the reaction of the group to the proposed settlement was, at least, not negative. I also accept Mr Schimmel's evidence and counsel's opinion as to whether Treasury could have withstood a greater judgment.[56]

58 My opinion as to the fairness and reasonableness of the settlement is not altered by the releases contained in the Deed of Settlement. The first release binds the plaintiffs

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55 First Schimmel Affidavit, [16]-[30].
56 First Schimmel Affidavit, [46]; Counsel's Opinion, [286]-[287].

(and group members) and is given to Treasury (and its related parties).[57] The second release binds the solicitor for the plaintiffs and it is given to Treasury (and its related parties).[58] The third release binds Treasury and is given to the plaintiffs (and group members), their solicitors and others. The releases are limited to claims related to, arising from or made in this proceeding.[59]

The SDS

59 The proposed SDS is a 'standard settlement administration scheme' used by Slater and Gordon.[60] Similar schemes have been previously been approved by this Court.[61]

60 The settlement will be distributed in accordance with the following process:

(a) following the approval of the settlement, the settlement administrator will send an individualised letter to each registered group member. That letter will set out the trade data held by the administrator and provide the group member an opportunity to review that data and correct any errors;

(b) the deed administrator will then determine each group member's loss by use of a confidential formula. That formula aggregates the inflation paid by each group member determined by multiplying the number of shares purchased by that group member in the Relevant Period by the inflation per share. The inflation per share will be assessed having regard to the differing expert evidence in this proceeding as to the amount of inflation per share. Then the administrator will apply the 'last in first out'[62] methodology to account for any shares sold and discount a group member's loss by reference to the period in which the shares were acquired; and

(c) unless a group member amends the trade data that the settlement administrator holds, the group member is taken to have confirmed that the data

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57 CB 501, Deed of Settlement dated 21 February 2025.
58 Ibid.
59 Ibid.
60 Plaintiffs' Submissions in Support of Application for Settlement Approval dated 23 May 2025, [60].
61 *Allen & Anor v G8 Education Ltd (No 4)* [2024] VSC 487.
62 See Counsel's Opinion, [317.1].

is true and correct. Once this process has taken place, the group member will receive their distribution.

61 Any distribution that would be less than $20 will not be distributed. If any group member is a Prohibited Person (as defined in the SDS) they will not receive a distribution.

62 I consider that the proposed SDS is in the interests of group members and fair and reasonable.

63 The SDS provides for a scheme which should distribute funds to group members within a short period of time. The bulk of the settlement sum is expected to be distributed within 13 weeks. The SDS provides for a further period in which the administrators of the scheme can remedy any errors in the first distribution and make further distributions. Approximately 13 months after the settlement receives approval, the final distribution will be made. This is a reasonable timeline and almost certainly shorter than the timeline for group members to receive a distribution if the proceeding had continued to trial and judgment reserved.

64 I accept the plaintiffs' submission as to the procedural considerations underpinning the SDS.[63] The procedures for lodging and assessing claims are straightforward and partially complete as a result of the registration process. The loss assessment methodology is mathematical and mechanical and limits the need for checks and balances.

65 The exclusion of any distribution less than $20 is appropriate. The work and costs involved to facilitate such a distribution would be disproportionate to the amount distributed. The exclusion of Prohibited Persons is appropriate. A distribution to a Prohibited Person could result in the administrator breaching the law.

66 Under the SDS a group member's loss will be discounted by a percentage calculated by reference to the point in time during the Relevant Period the group member

63 Plaintiffs' Submissions in Support of Application for Settlement Approval dated 23 May 2025, [73]–[75].

purchased the shares. The extent of the discount is consistent with the risks identified in Counsels' Opinion.

67 The proposed discount is fair and reasonable. The discount reflects the relative strength and weakness of the claim at the point in time in which shares were purchased. The SDS discount formula avoids the need for overly complex and individualised assessments of each particular group member's claim. Such an approach would result in lengthy delays to the distribution of the settlement sum and increase the costs incurred in the administration of the scheme.

Appointment of settlement administrator

68 The plaintiffs propose that Slater and Gordon be appointed as the administrator of the SDS. The total costs estimated to be incurred by Slater and Gordon in administering the SDS are $291,991.50 inclusive of GST.[64]

69 I am satisfied that Slater and Gordon should be appointed as the administrator of the SDS. I accept the plaintiffs' submissions that:

(a) Slater and Gordon has experience in administering large and complex settlement distribution schemes in group proceedings; and

(b) it is unlikely a tender process would result in a more cost-effective settlement administration process, because Slater and Gordon has already received and processed group members' trading data through the registration process. The processes for identifying registered group members, obtaining payment data and determining their entitlements from the Settlement Sum are straightforward.[65]

70 The estimated costs of administering the SDS are reasonable and proportionate. In reaching this conclusion, I have been assisted by the Costs Report.[66] It outlines the work that will be undertaken for the proper administration of the settlement, as well

64 Costs Report, [312].
65 Plaintiffs' Submissions in Support of Application for Settlement Approval dated 23 May 2025, [73]–[75].
66 Costs Report, [312]–[317].

as the proposed allocation of resources. A 'significant' amount of the work in the settlement administration is to be undertaken by consultants and paralegals, with a lower utilisation of senior lawyers and principals. I agree with Ms Dealehr's conclusion that the estimated costs of the settlement administration are reasonable and proportionate.

Payments to the plaintiffs

71 It is proposed that $25,000 will be paid to each plaintiff to compensate them for their time, effort and expenses in acting as the representative plaintiffs in this proceeding since 2020. The figure of $25,000 reflects a 'global assessment made with regard to comparable actions' as opposed to an itemised accounting of the time spent by the plaintiffs in undertaking their role as representative plaintiffs.[67] I accept the plaintiffs' submission that there is 'no hard and fast rule' that a claim for compensation must be based on such an assessment.[68]

72 Over the course of the proceeding, the plaintiffs took steps including discovery, providing statements of evidence, participating in conferences with their solicitors, and participating in the mediation and settlement discussions.[69] A payment of $25,000 provides the plaintiffs with an appropriate level of compensation commensurate with their involvement in the proceeding. It is fair and reasonable and in the interests of group members as a whole for the amounts to be ordered.

Legal costs of the plaintiffs' solicitors

73 The plaintiffs seek approval for a deduction from the Settlement Sum for their legal costs and disbursements. Prior to the settlement approval hearing, the plaintiffs sought approval for a deduction in the amount of $27,620,419.33. This is the amount Ms Dealehr assessed as being the plaintiffs' reasonable legal costs.[70] Following the settlement approval hearing and receipt of further material, for the reasons explained below, this amount was reduced and the plaintiffs ultimately seek $27,083,230.80 be

67 Second Morrison Affidavit, [153].
68 Plaintiffs' Submissions in Support of Application for Settlement Approval dated 23 May 2025, [85].
69 Second Morrison Affidavit, [149].
70 Costs Report, [10].

deducted from the Settlement Sum for their legal costs ('**Costs Sum**').[71] This represents approximately 42% of the Settlement Sum.

74 On 31 March 2025 the Court made orders appointing Ms Dealehr as a special referee. Ms Dealehr was appointed to prepare a report on the reasonableness of the plaintiffs' legal costs and disbursements incurred in relation to the proceeding, up to and including the settlement approval hearing. Ms Dealehr provided the Costs Report on 21 May 2025.

75 Ms Dealehr used the gross sum costs method in calculating and assessing the reasonableness of legal fees charged by the plaintiffs' solicitors. She opined that this method was the most cost effective where the claims for legal costs are substantial.[72]

76 The method used by Ms Dealehr to assess the solicitors' professional fees up to and including 28 May 2025 involved six steps:

(a) verifying electronic time entries in the solicitors' time recording for accuracy;

(b) applying fair and reasonable hourly rates to work performed by various 'operators' (including Principals, Senior Associates and Associates);

(c) classifying time entries based on the phase in the proceeding in which they occurred, the task that was being performed, and the nature of the work done;

(d) removing amounts associated with non-claimable time for tasks such as preparing costs agreements;

(e) applying discounts for activities such as internal communications, single unit time recordings, and multiple solicitors attending Court to instruct; and

(f) applying the solicitors' uplift fee to the professional fees allowable.[73]

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71 Affidavit of Julian Klaus Schimmel dated 4 June 2025, [14] ('Second Schimmel Affidavit').
72 Costs Report, [33].
73 Ibid, [40]–[48].

77 Ms Dealehr also reviewed the claimed disbursements. She verified the accuracy of the fees claimed and assessed the reasonableness of the amounts for counsel, travel expenses, expert fees and other disbursements, relying on what might be recoverable on a solicitor own client taxation. In assessing counsel fees, she classified the time spent by each counsel in each phase and identified the nature of work done. She relied on her experience in determining any applicable reductions to the disbursements.[74]

Slater and Gordon

78 Slater and Gordon seek approval for their legal costs and disbursements up to and including 28 May 2025 in the amount of $12,708,364.59. This is the amount assessed by Ms Dealehr as being reasonable.[75] Neither party contended that this amount was not reasonable.

79 I have carefully considered the Costs Report. I am satisfied that in relation to Slater and Gordon's legal costs, Ms Dealehr conducted her inquiry and made her report in a proper manner. Ms Dealehr is an experienced costs specialist and I accept her findings that Slater and Gordon's legal costs, disbursements and uplift fee are reasonable.

80 I am satisfied that the amount proposed to be deducted from the Settlement Sum for Slater and Gordon's legal costs and disbursements is reasonable and proportionate.

Maurice Blackburn

81 Maurice Blackburn initially sought approval for their legal costs and disbursements up to and including 28 May 2025 in the amount of $14,912,054.74. This is the amount assessed by Ms Dealehr as being reasonable.[76]

82 During the course of the hearing, two adjustments were made to this figure. First, an error in the Costs Report was identified with respect to the calculation of Maurice Blackburn's total legal costs. In table 3 of the Costs Report, Ms Dealehr sets out in section '(C) ESTIMATED FROM 10 MAY 2025' Maurice Blackburn's estimated legal costs from 10 May 2025 up to and including 28 May 2025. The sub-total figure is stated

74 Ibid, [49].
75 Ibid, [10].
76 Ibid.

to be $116,571.54.[77] However, in table 65 of the Costs Report, the sub-total figure for Maurice Blackburn's estimated legal costs from 10 May 2025 up to and including 28 May 2025 is stated to be $233,221.54 (comprising of $116,571.54 in professional fees and $116,650 in disbursements).[78] It would appear that Ms Dealehr, in calculating the sub-total in section (C), mistakenly failed to add the $116,650 for disbursements. However, there is a discrepancy of $116,650 between the sub-total in section '(B) UP TO 9 MAY 2025' ($10,931,965.51) and the total of section (B) plus section (C) ($11,048,615.51) in table 3. In calculating the sub-total in section (C) for Maurice Blackburn's estimated legal costs from 10 May 2025 up to and including 28 May 2025, Ms Dealehr failed to add $116,571.54 for professional fees. The total in table 4, being Maurice Blackburn's total legal costs, of $14,912,054.74 is incorrect and is short $116,571.74. Counsel for the plaintiffs accepted this error.[79] The actual amount assessed by Ms Dealehr as being Maurice Blackburn's reasonable legal costs is $15,028,626.28.

83 The second adjustment arises from costs incurred in the satellite litigation in this proceeding. Treasury had alleged that when drafting the statement of claim in the Napier Proceeding, Mr Napier and Maurice Blackburn used information from publicly available pleadings in a previous class action conducted by Maurice Blackburn against Treasury in the Federal Court of Australia. Treasury alleged this was in breach of the *Harman* undertaking. On 22 June 2020, Mr Napier and Maurice Blackburn filed an interlocutory application in the Federal Court, seeking a declaration that they had not breached the implied undertaking. Maurice Blackburn acted for itself and for Mr Napier.

84 On 6 August 2020, Foster J ruled that the *Harman* undertaking did not apply to the publicly available pleadings from the previous Federal Court proceeding and that, if it did apply, Mr Napier and Maurice Blackburn should be released from the obligation and granted leave *nunc pro tunc* to use the documents for the purpose for which they

77 Ibid.
78 Ibid, [305].
79 T 19 L 19.

had used them.[80] Treasury appealed this decision, but the appeal was dismissed.[81] The Full Court ordered Treasury to pay Mr Napier and Maurice Blackburn's costs. The Full Court ordered that to the extent Treasury was required to pay Mr Napier and Maurice Blackburn's costs of the appeal, those costs were limited to the costs of Mr Napier and Maurice Blackburn's counsel.[82]

85 In a letter of instruction to Ms Dealehr dated 1 May 2025, Maurice Blackburn instructed her that Treasury had paid $182,500 to Mr Napier and Maurice Blackburn in compliance with the Full Court's costs decision as well as the costs of other interlocutory applications filed in the Federal Court. Maurice Blackburn expected Ms Dealehr to take the payment of $182,500 into account in assessing Maurice Blackburn's total legal costs. However, this had not been done and the $182,500 was erroneously included in the amount assessed by Ms Dealehr as Maurice Blackburn's reasonable legal costs.[83] During the hearing on 28 May 2025 counsel for the plaintiffs accepted that it was appropriate for $182,500 to be deducted from the amount for Maurice Blackburn's total legal costs.[84]

86 The net result of the adjustments referred to above is that the amount of Maurice Blackburn's legal costs and disbursements for which they seek approval for is $14,846,126.28.

87 The Second Schimmel Affidavit filed following the settlement approval hearing further revised this figure, and Maurice Blackburn ultimately seek approval of $14,374,866.21 in legal costs. This further reduction represents Maurice Blackburn's own professional fees associated with the satellite litigation in the Full Court of the Federal Court (including an uplift on those professional fees), which were not paid by Treasury. Mr Schimmel deposed that if the Court formed the view that those professional fees attributable to the satellite litigation ought not be paid from the

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80 *Jones v Treasury Wine Estates Limited; In the Matter of Treasury Wine Estates Limited (No 4)* [2020] FCA 1131.

81 *Treasury Wine Estates Limited v Maurice Blackburn Pty Ltd* [2020] FCAFC 226.

82 *Treasury Wine Estates Limited v Maurice Blackburn Pty Ltd (No 2)* [2021] FCAFC 38.

83 T 18 L 3–12.

84 T 18 L 14–27.

Settlement Sum, it would not seek to be heard in relation to the issue.[85] I have concluded that Maurice Blackburn's fees attributable to the satellite litigation should not be paid out of the Settlement Sum. Consequently, Maurice Blackburn seek approval for their legal costs in the sum of $14,374,866.21.

88 Ms Dealehr adopted exactly the same methodology in assessing the reasonableness of Maurice Blackburn's costs and disbursements as with her assessment of Slater and Gordon's costs and disbursements. Save for one qualification, Ms Dealehr's report provides a proper basis for concluding that Maurice Blackburn's costs and disbursements were reasonable and proportionate. The one qualification relates to the disparity between the charge-out rates for Maurice Blackburn compared to Slater and Gordon.

89 In the Costs Report, Ms Dealehr sets out Maurice Blackburn's charge-out rates:[86]

TABLE 36 -UPDATED RATES & CLASSIFICATION FOR MB'S LAWYERS & OTHER OPERATORS

OPERATOR DESCRIPTION	FROM >29/1/20	FROM >30/6/22	FROM >30/6/23	FROM >30/6/24
Principal/Special Counsel > 15 years' experience	$925.65	$971.94	$1,020.53	$1,061.35
Principal/Special Counsel < 15 years' experience	$869.55	$913.03	$958.68	$997.03
Senior Associate	$734.91	$771.66	$810.24	$842.64
Associate	$645.15	$677.41	$711.28	$739.73
Lawyer	$532.95	$559.60	$587.58	$611.08
Trainee Lawyer	$420.75	$441.79	$463.88	$482.44
Law Clerk	$387.09	$406.45	$426.77	$443.84
Litigation Technology Consultant / Data Analyst / Legal Engineer	$291.72	$306.75	$321.62	$334.49
Client Services Officer / Business Analyst				$228.23

90 In the Costs Report, Ms Dealehr set out the charge-out rates for Slater and Gordon before 19 July 2024:[87]

TABLE 7 - RATES & CLASSIFICATION FOR S+G'S LAWYERS & OTHER OPERATORS

OPERATOR DESCRIPTION	HOURLY RATE
Practice group leader, principal lawyer, consultant, investigative accountant	$740.00
Senior associate	$600.00
Associate	$535.00
Lawyer	$430.00
Graduate, law clerk, litigation technology consultant	$300.00
Legal assistant, paralegal	$220.00

85 Second Schimmel Affidavit, [11].
86 Costs Report, [176].
87 Ibid, [52].

And for the rates Slater and Gordon charged after 19 July 2024:[88]

TABLE 8 -UPDATED RATES & CLASSIFICATION FOR S+G'S LAWYERS & OTHER OPERATORS

OPERATOR DESCRIPTION	HOURLY RATE
Practice group leader, principal lawyer, consultant, investigative accountant	$777.00
Senior associate	$630.00
Associate	$561.75
Lawyer	$451.50
Graduate, law clerk, litigation technology consultant	$315.00
Legal assistant, paralegal	$231.00

91 Post 30 June 2024, a Principal at Maurice Blackburn with more than 15 years' experience was charging $1,061.35 per hour.[89] By comparison, a Principal at Slater and Gordon's hourly rate was $777.[90] The difference between the charge-out rates is 36.59%.

92 Post 30 June 2024 the hourly rate for Maurice Blackburn's Senior Associates was $842.64[91] and $630 for a Senior Associate at Slater and Gordon.[92] The difference between the two is 33.75%.

93 Post 30 June 2024 Associates at Maurice Blackburn were charged out at $739.73 per hour[93] whilst Associates at Slater and Gordon were charged out at $561.75 per hour.[94] The difference between the two is 31.68%.

94 Post 30 June 2024 Maurice Blackburn's lawyers with more than one year experience had an hourly rate of $611.08 by the time proceeding settled.[95] Lawyers at Slater and Gordon had an hourly rate of $451.50.[96] Maurice Blackburn charged 35.34% more than Slater and Gordon for lawyers.

88 Ibid, [54].
89 Ibid, [176].
90 Ibid, [54].
91 Ibid, [176].
92 Ibid, [54].
93 Ibid, [176].
94 Ibid, [54].
95 Ibid, [176].
96 Ibid, [54].

95 Post 30 June 2024 Trainee lawyers at Maurice Blackburn were charged out at $482.44.[97] Graduates at Slater and Gordon were charged out at $315.[98] Graduate lawyers at Slater and Gordon charged 53.16% less than those at Maurice Blackburn.

96 The rate at which Maurice Blackburn charged out their law clerks after 30 June 2024 was $443.84 per hour.[99] Slater and Gordon for their part charged $315 per hour at their highest.[100] That is a difference of 40.9%.

97 Post 30 June 2024, the difference between the rates at which the two firms charged out Litigation Technology Consultants was 6.19%. Maurice Blackburn charged $334.49 per hour.[101] Slater and Gordon charged $315 per hour at their highest.[102]

98 Slater and Gordon did not have an equivalent to Maurice Blackburn's Client Services Officer or Business Analyst.

99 Based on the percentages set out above, on average Maurice Blackburn's rates were 33.94% per hour more than Slater and Gordon.

100 Ms Dealehr stated the following in regard to Slater and Gordon's rates as set out in the costs agreement with Mr Stallard:

> In my opinion, the highest hourly rate claimed under the LCA of $740 for practice group leader, principal lawyer, consultant, investigative account was at the lower to middle end of the "market" range when compared to the rates charged in 2020 by large law firms comparable to S+G acting in complex class action litigation. I consider the hourly rates set out for senior associate, associate and lawyer to be reasonable and also at the middle end of the "market" range in 2020. In relation to the updated hourly rates effective from mid-2024, I consider the rates for all operators to be in the lower end of the "market" range.

101 Ms Dealehr made the following observations regarding Maurice Blackburn's rates as set out in the costs agreement with Mr Napier:

> The above rates are not uncommon in funded class action litigation when

97 Ibid, [176].
98 Ibid, [54].
99 Ibid, [176].
100 Ibid, [54].
101 Ibid, [176].
102 Ibid, [54].

> commercial funders agree to similar rates and to pay 70-75% of the professional fees with the lead plaintiff and group members paying the remaining 25-30% on a conditional basis including a 25% uplift fee. However, in my opinion, care has to be taken when considering the rates where the class action is unfunded and the lead plaintiff and group members are required to pay 100% of the professional fees plus 25% uplift fees on the professional fees. This is particularly where the legal rates are at the higher range of the fees claimed by law practices who conduct class actions.[103]
>
> …
>
> [T]he rates for principal and for special counsel are at the high end of the "market" rate when compared to the rates charged for such categories of operators in the period of 2020 – mid-2025 by comparable law firms acting in class actions. In my experience these hourly rates reflect more the rates found in large commercial law practices rather than class action law practices. In comparison, the top hourly rate for lawyer under the current 2025 Victorian Supreme Court scale of costs is up to $900 and $720 per hour under the current Federal Court scale of costs (which has not been updated since 2023).[104]
>
> …
>
> [T]he rates for senior associate and associate are at the high end of the "market" rate when compared to the rates charged for such categories of operators in the period of 2020–2024 by comparable law firms acting in class actions. In my experience these hourly rates reflect more the rates found in large commercial law practices rather than class action law practices. Comparison can also be made to the rates of other lawyers such as counsel engaged in this matter or counsel who may be generally available to take briefs in this matter.[105]

102 Notwithstanding Ms Dealehr's observation that Maurice Blackburn's charge-out rates are 'at the high end' and reflected the rates found in large commercial law practices rather than class action law practices, she concluded that '[o]n balance I do not consider these rates to be unfair or unreasonable'.[106] However, Ms Dealehr's report does not identify what, if any, matters she took into account in concluding that 'on balance' the rates were not unfair or unreasonable.

103 Ms Dealehr made no discount to the charge-out rates of a Principal/Special Counsel, Senior Associate or Associate. In contrast, Ms Dealehr considered that the rate of $532.95 in 2020 for a lawyer with less than one year post-admission experience was unreasonable and considered the rate of $400 for a first year lawyer to be reasonable.[107]

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103 Ibid, [177].
104 Ibid, [178(a)].
105 Ibid, [178(b)].
106 Ibid, [178(a)-(b)].
107 Ibid, [178(c)].

Ms Dealehr also considered that the rates for a trainee lawyer and law clerk exceeded the market rate and were comparable to the rates of junior counsel engaged in the matter. She considered the rate of $300 for a trainee lawyer and law clerk to be reasonable.[108]

Is the amount of costs to be deducted from the Settlement Sum unreasonable by reason of the disparity and the charge-out rates of Maurice Blackburn and Slater and Gordon?

104 In Mr Schimmel's second affidavit filed after the hearing on 28 May 2025, he deposes that had Slater and Gordon's hourly rates been applied to the work performed by Maurice Blackburn, this would have resulted in a total reduction in Maurice Blackburn's professional fees of $2,612,000.[109] If the Costs Sum is reduced by $2,612,000 and this amount is available to be distributed amongst the 1,891 group members, each group member would receive an additional $1,381.27 (assuming equal distribution of this sum amongst group members). The differential in the charge-out rates of Maurice Blackburn and Slater and Gordon has had a material adverse impact on the quantum of funds available for distribution to group members. However, this conclusion does not, of itself, mandate a finding that the fees charged by Maurice Blackburn are unreasonable.

Pre-consolidation costs

105 The number of hours of work performed by Maurice Blackburn pre-consolidation is set out in table 40 of the Costs Report.

TABLE 40 – BREAKDOWN OF AMOUNT & TIME SPENT BY OPERATORS

OPERATOR TYPE	HOURS	%	AMOUNT	%
Principal/Special Counsel > 15 years' experience	1176.6	33.4%	$1,089,119.79	43.35%
Principal/Special Counsel < 15 years' experience	0.3	0.0%	$260.87	0.01%
Senior Associate	526.1	14.9%	$386,636.15	15.39%
Associate	981.7	27.9%	$633,343.76	25.21%
Lawyer	651.4	18.5%	$347,163.63	13.82%
Law Clerk	123.7	3.5%	$37,110.37	1.48%
Litigation Technology Consultant / Data Analyst / Legal Engineer	63.6	1.8%	$18,553.39	0.74%
TOTAL	**3523.4**	**100.0%**	**$2,512,187.95**	**100.00%**

108 Ibid, [178(d)].

109 Second Schimmel Affidavit, [48].

106 The hourly rate of Slater and Gordon (prior to it increasing its rates in July 2024) is set out in table 7 of the Costs Report.

TABLE 7 - RATES & CLASSIFICATION FOR S+G'S LAWYERS & OTHER OPERATORS

OPERATOR DESCRIPTION	HOURLY RATE
Practice group leader, principal lawyer, consultant, investigative accountant	$740.00
Senior associate	$600.00
Associate	$535.00
Lawyer	$430.00
Graduate, law clerk, litigation technology consultant	$300.00
Legal assistant, paralegal	$220.00

107 In his second affidavit, Mr Schimmel multiplied the number of hours performed by different operators in table 40 by the hourly rates of equivalent operators of Slater and Gordon in table 7. It should be noted that there are seven Maurice Blackburn operators who performed work and six Slater and Gordon operator rates. Mr Schimmel does not explain which rates were applied to which operators. The following table sets out the resulting amounts when such multiplication is performed.

Operator Type	Hours	Rate	Amount
Principal/Special Counsel > 15 years' experience	1176.6	$740.00	$ 870,684.00
Principal/Special Counsel < 15 years' experience	0.3	$740.00	$ 222.00
Senior Associate	526.1	$600.00	$ 315,660.00
Associate	981.7	$535.00	$ 525,209.50
Lawyer	651.4	$430.00	$ 280,102.00
Law Clerk	123.7	$300.00	$ 37,110.00
Litigation Technology Consultant / Data Analyst / Legal Engineer	63.6	$300.00	$ 19,080.00
TOTAL	3523.4		$ 2,048,067.50

108 Mr Schimmel then appears to have subtracted from the total in table 40 ($2,512,187.95) the total calculated in the table above ($2,048,067.50), to yield a reduction in base professional fees of $464,120.45.[110] Mr Schimmel then multiplied the amount of

110 Mr Schimmel only explains that he calculated the estimated reductions 'by multiplying the numbers of hours done by different categories of operators … by the hourly rates for Slater & Gordon': Second Schimmel Affidavit, [46], [48]. I note there is a roughly $444 discrepancy between this figure and the figure stated in the Second Schimmel Affidavit, [48] ($464,564), which is presumably due to a difference in selection of rates for specific operators and/or rounding error.

reduction in base professional fees by the uplift percentage of 25% to calculate the reduction in uplift. This results in an uplift reduction of $116,030.11 ($464,120.45 multiplied by 25%).[111] The net result is that the total reduction of Maurice Blackburn's pre-consolidation costs is $580,150.56 ($464,120.45 plus $116,030.11).[112]

Post-consolidation costs

109 In respect of post-consolidation costs, the number of hours of work performed by Maurice Blackburn post-consolidation is set out in table 48 of the Costs Report.

TABLE 48 – BREAKDOWN OF AMOUNT & TIME SPENT BY OPERATORS

OPERATOR DESCRIPTION	HOURS	%	AMOUNT	%
Principal/Special Counsel > 15 years' experience	2164.5	23.3%	$2,103,524.26	31.4%
Principal/Special Counsel < 15 years' experience	108.7	1.2%	$94,520.09	1.4%
Senior Associate	1910.3	20.5%	$1,557,935.47	23.2%
Associate	1516.5	16.3%	$1,004,608.54	15.0%
Lawyer	2740.5	29.4%	$1,616,302.47	24.1%
Trainee Lawyer	286.6	3.1%	$139,029.66	2.1%
Law Clerk	396	4.3%	$129,273.14	1.9%
Litigation Technology Consultant / Data Analyst / Legal Engineer	181.9	2.0%	$57,817.20	0.9%
Client Services Officer / Business Analyst	1.2	0.0%	$263.34	0.0%
	9306.2	100.0%	**$6,703,274.15**	100.0%

110 Mr Schimmel multiplied the number of hours performed by different operators in table 48 by the hourly rates of Slater and Gordon of equivalent operators in table 7 (as set out at paragraph 107 above). There are nine Maurice Blackburn operators who performed work and six Slater and Gordon operator rates, therefore there is not a complete equivalence. Mr Schimmel does not explain which rates were applied to which operators. The following table sets out the resulting amounts when such multiplication is performed.

111 I note there is a roughly $111 discrepancy between this figure and the figure stated in the Second Schimmel Affidavit, [48] ($116,141), which is the consequence of the discrepancy described in the preceding footnote.

112 I note there is a roughly $555 discrepancy between this total and the total stated in the Second Schimmel Affidavit, [48] ($580,706), which is the consequence of the discrepancies described in the preceding two footnotes.

Operator Type	Hours	Rate	Amount
Principal/Special Counsel > 15 years' experience	2164.5	$740.00	$1,601,730.00
Principal/Special Counsel < 15 years' experience	108.7	$740.00	$80,438.00
Senior Associate	1910.3	$600.00	$1,146,180.00
Associate	1516.5	$535.00	$811,327.50
Lawyer	2740.5	$430.00	$1,178,415.00
Trainee Lawyer	286.6	$300.00	$85,980.00
Law Clerk	396	$300.00	$118,800.00
Litigation Technology Consultant / Data Analyst / Legal Engineer	181.9	$300.00	$54,570.00
Client Services Officer / Business Analyst	1.2	$220.00	$264.00
TOTAL	9306.2		$5,077,704.50

111 Mr Schimmel then appears to have subtracted from the total in table 48 ($6,703,274.15) the total calculated in the table above ($5,077,704.50), to yield a reduction in base professional fees of $1,625,569.65. Mr Schimmel then multiplied the amount of reduction in base professional fees by the uplift percentage of 25% to calculate the reduction in uplift. This results in an uplift reduction of $406,392.41 ($1,625,569.25 multiplied by 25%). The net result is that the total reduction of Maurice Blackburn's post-consolidation costs is $2,031,962.06 ($1,625,569.65 plus $406,392.41).

Total reduction

112 The result of the above calculations is that the total reduction in Maurice Blackburn's professional fees pre- and post-consolidation is $2,612,112.62 ($580,150.56 plus $2,031,962.06).[113] Mr Schimmel then made allowance for the reduction of Maurice Blackburn's professional fees associated with the satellite litigation in the Full Court of the Federal Court (including the 25% uplift on those fees, totalling $500,481.14),[114] with the end result being that the total overall reduction in Maurice Blackburn's costs is $3,112,593.76.

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113 I note there is a roughly $555 discrepancy between this figure and the figure stated in the Second Schimmel Affidavit, [48] ($2,612,668), which is due to the discrepancy in the total pre-consolidation costs calculation noted at footnote 110.

114 Second Schimmel Affidavit, [11], [48].

Associates and above charge-out rates

113 The difference in hourly rates charged by Maurice Blackburn and Slater and Gordon for Associates and Partners/Principals is significant. Focusing only on those practitioners who are at the level of Associate or above for Maurice Blackburn, the difference between the amount Slater and Gordon would have charged for the work Maurice Blackburn completed ($5,435,115.17) and the amount Maurice Blackburn charged ($6,869,948.93) is approximately $1.43 million.

114 In total, the Principal[115] class operator at Maurice Blackburn completed 3,450.1[116] hours of work in this proceeding. Senior Associates and Associates at Maurice Blackburn completed 2,436.4[117] hours of work and 2,498.2[118] hours of work respectively. Maurice Blackburn charged the following for this work completed:

(a) pre-consolidation Maurice Blackburn charged:

(i) $1,089,380.66 for 1176.9 hours worked by Principals;

(ii) $386,636.15 for 526.1 hours of worked by Senior Associates; and

(iii) $633,343,76 for 981.7 hours of worked by Associates;

for a total of $2,109,360.57.[119]

(b) post-consolidation Maurice Blackburn charged:

(i) $2,198,044.35 for 2,273.2 hours of worked Principals;

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115 This also includes the work completed by special counsel. I will use 'Principal' as a short hand to refer to this category. Maurice Blackburn divides their Principals in to two categories, those with more than 15 years' experience and those with less. Slater and Gordon does not distinguish between their Principal class operators on this basis.

116 Costs Report, [225], [252]: Pre-consolidation this category of operator completed 1176.9 hours of work. Post-consolidation this category of operator completed 2,273.2 hours of work.

117 Costs Report, [225], [252]: Senior Associates completed 526.1 hours of work pre-consolidation and 1910.3 hours post-consolidation.

118 Costs Report, [225], [252]: Associates completed 981.7 hours of work pre-consolidation and 1516.5 hours post-consolidation.

119 To reach this hourly rate I have divided the amount of hours accrued by each category of practitioner by the amount charged. For example, post-consolidation Senior Associates at Maurice Blackburn charged $1,557,935.47 and worked 1910.3 hours. Dividing the total charged by the hours worked, the rate of a senior associate at Maurice Blackburn post-consolidation is $815.54 per hour.

(ii) $1,557,935.47 for 1910.3 hours worked by Senior Associates; and

(iii) $1,004,608.54 for 1516.5 hours worked by Associates;

for a total of $4,760,588.36.

115 Applying the same rates[120] that Ms Dealehr applies in table 10 and 21 of her report, Slater and Gordon's rates per hour in this proceeding were:

(a) pre-consolidation:

(i) Principals at $739.67;

(ii) Senior Associates at $600; and

(iii) Associates at $535.

(b) post-consolidation:

(i) Principals at $751.51;

(ii) Senior Associates at $627.66; and

(iii) Associates at $538.33.

116 Multiplying the hours worked by Maurice Blackburn pre- and post-consolidation by the hourly rates Slater and Gordon charged results in the following:

(a) pre-consolidation Slater and Gordon would have charged:

(i) $870,518.70 for work completed by Principals;

(ii) $315,661.58 for work completed by Senior Associates; and

(iii) $525,205.60 for work completed by Associates;

120 Costs Report, [52], [54]. On 19 July 2024 Slater and Gordon increased its rates by 5%. To reach this hourly rate I have divided the amount of hours accrued by each category of practitioner by the amount charged. For example, post-consolidation Principal category operators at Slater and Gordon charged $1,229,395.33 and worked 1635.9 hours. Dividing the total charged by the hours worked, the rate of a Principal class operator at Slater and Gordon post-consolidation is $751.51 per hour.

for a total of $1,711,385.89.

(b) post-consolidation Slater and Gordon would have charged:

(i) $1,708,332.70 for work completed by Principals;

(ii) $1,199,013.07 for work completed by Senior Associates; and

(iii) $816,383.52 for work completed by Associates;

for a total of $3,723,729.28.

117 In short, for the same work, Slater and Gordon would have charged approximately $1,434,833.76 less than Maurice Blackburn.

118 During the hearing on 28 May 2025 I raised with the plaintiffs' counsel the question of whether, insofar as the Costs Sum reflects the higher rates charged by Maurice Blackburn, it was not reasonable. I directed the plaintiffs to file and serve a written submission identifying any authority which had considered the impact of a disparity in solicitor charge-out rates in the context of an application for approval of a settlement of a group proceeding with two firms of solicitors jointly representing group members. I also granted leave to Maurice Blackburn to file a written submission on its own behalf together with any affidavit in support, in respect of its claim for costs an disbursements.

119 On 2 June 2025, counsel for the plaintiffs filed submissions with the Court. They advised that they had not identified any case in which an Australian court has considered the different charge-out rates of solicitor firms jointly representing plaintiffs in the approval of a settlement of group proceedings.[121] I note that from my own research on this issue I also have not been able to identify any case on point. On 4 June 2025 Maurice Blackburn filed a written submission, together with an affidavit of Julian Schimmel. Maurice Blackburn also filed an expert report of a cost consultant,

121 Plaintiffs' Note Regarding Consolidation Settlement Decisions dated 2 June 2025.

Ian Ramsay-Stewart. I did not grant Maurice Blackburn leave to file a further expert report and I have had no regard to the contents of this report.

120 In its written submissions dated 4 June 2025, Maurice Blackburn contended that the fact two solicitor firms jointly representing plaintiffs in a group proceeding have different fee rates is not an appropriate basis for discounting the costs claim of the higher charging firm. Maurice Blackburn submitted that the proper questions are instead, whether the charge-out rates are individually reasonable on a stand-alone basis, and whether the resulting total is reasonable.

121 Maurice Blackburn acknowledged that the Court should only allow those costs which it accepts as reflecting the application of reasonable rates to work properly done.[122] It submitted that its charge-out rates are within the reasonable range, for reasons that:

(a) there is no distinction between a shareholder class action and 'commercial' litigation;

(b) both Ms Dealehr and Mr Ramsey-Stewart, experienced costs lawyers, opine that Maurice Blackburn's charge-out rates are within the market range; and

(c) although Maurice Blackburn's charge-out rates are higher than the base rates in the Court scale, they are not higher once loading for complex litigation is added.[123]

122 The primary question for the Court to consider is whether the Costs Sum is reasonable. If the component of the Costs Sum attributable to Maurice Blackburn's costs and disbursements is not reasonable, whether by reason of its higher charge-out rates or otherwise, the primary question should be answered in the negative.

123 On 15 October 2020 orders were made consolidating the Stallard and Napier Proceedings, appointing Mr Stallard and Mr Napier as joint plaintiffs and their respective solicitors as jointly named solicitors on the record.[124] More than 3.5 years

122 Submissions of Maurice Blackburn – Costs dated 4 June 2025, [15].
123 Ibid, [19]-[21].
124 *Stallard v Treasury Wine Estates Ltd and Napier v Treasury Wine Estates Ltd* [2020] VSC 679.

later, an application has been made which requires the Court to determine whether the settlement of the proceeding should be approved. The approval process requires consideration of the reasonableness of the legal costs incurred and sought to be recovered from the Settlement Sum.

124 Both Slater and Gordon and Maurice Blackburn are very experienced practitioners acting for plaintiffs in group proceedings. Unsurprisingly, there is no evidence before the Court which provides any basis for a finding that any differential in the charge-out rates between Slater and Gordon and Maurice Blackburn is attributable to differences in the skills and experience of the practitioners employed by the respective firms.

125 In *Dunsmuir v New Brunswick*[125] the Supreme Court of Canada observed that '[r]easonableness is one of the most widely used and yet most complex legal concepts'.[126] One might be forgiven for readily embracing a finding that in circumstances where two firms with commensurate experience and skills have been jointly appointed as solicitors on the record, their respective charge-out rates should also be commensurate. Whilst this conclusion is superficially attractive, it does not stand up to close scrutiny. Any difference in the respective charge-out rates of Maurice Blackburn and Slater and Gordon could be attributable to higher costs legitimately incurred by Maurice Blackburn. For example, Maurice Blackburn might have higher operating costs in terms of salaries which it pays to its staff and the operating costs of its business premises. There is simply no evidence before the Court which allows for an informed assessment of whether, by reason of its higher charge-out rates, the component of the Costs Sum referrable to Maurice Blackburn's costs, is unreasonable.

126 Further, there is a temporal consideration which bears on the assessment of the reasonableness or otherwise of the legal costs claimed by Maurice Blackburn. There is nothing to suggest that Maurice Blackburn have acted inconsistently with the terms of the costs agreement which it entered into with Mr Napier prior to the

125 [2008] SCC 9.
126 Ibid, [46].

commencement of the proceeding. Nor is there any evidence which suggests that Maurice Blackburn have acted inconsistently with the protocol which has governed the joint representation of group members by Maurice Blackburn and Slater and Gordon. It would be unfair to retrospectively deprive Maurice Blackburn of fees which it has generated acting in accordance with the terms of its retainer and the court ordered protocol.

127 Where there is an application to consolidate group proceedings and appoint two firms to jointly represent group members, a differential in the charge-out rates of the two firms of solicitors is one of the matters which might legitimately be taken into consideration by a court in determining whether the appointment of joint solicitors is in the interest of group members.

128 In *Southernwood v Brambles Ltd* (‘***Brambles***’)[127] Brambles Ltd was the respondent in two separate securities class action proceedings. Slater and Gordon acted in one proceeding, while Maurice Blackburn acted in the other proceeding. An application was brought to consolidate the proceedings. Murphy J ordered the two proceedings to be consolidated with Slater and Gordon and Maurice Blackburn jointly representing the applicants. His Honour made a common fund order. Clause 2.1 of the order provided as follows:

> Where there are any differences in comparable professional fee rates charged by Slater and Gordon and Maurice Blackburn in accordance with their respective Retainer Agreements, the lower applicable rate shall prevail such that the fee rates charged by both Slater and Gordon and Maurice Blackburn will be the same.

129 In his judgment, Murphy J stated:

> *Fifth*, the proposed common fund order has a number of provisions which operate to protect class member’s interests and which may be expected to operate to reduce overall costs to class members. The aspects of costs reduction include an equalisation of the professional rates charged by the solicitors, a prohibition on recovering “uplift” on any conditional fees and a prohibition on the funders seeking to recover costs incurred in the provision of security for costs.[128]

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127 [2019] FCA 1021; (2019) 137 ACSR 540.

128 Ibid, [76].

130 Where an application is made for consolidation of group proceedings and joint representation by two firms of solicitors, the outcome of the application will turn on the particular facts of the case, the evidence and submissions provided to the Court in support of the application. Subject to this important qualification, I consider the approach adopted by Murphy J in *Brambles* has much to commend it by protecting group members' interests by reducing overall costs.

131 The written submissions filed by Maurice Blackburn included an application for orders joining it as a party to the proceeding for the limited purpose of advancing submissions on the question of costs. I do not consider there to be any utility in granting this application as the orders I propose to make do not adversely affect the interests of Maurice Blackburn.

Conclusion

132 For the reasons set out above:

(a) I approve the proposed settlement;

(b) I approve the proposed SDS;

(c) I appoint Slater and Gordon as administrator of the SDS;

(d) I approve the following deductions from the Settlement Sum:

(i) payments to the plaintiffs in the amount of $50,000;

(ii) settlement administration costs in the amount of $291,991.50; and

(iii) the plaintiffs' legal costs and disbursements in the amount of $27,083,230.80; and

(e) I grant leave for UGM applications number 4 and 7 to participate in the settlement.

133 I will make the other ancillary orders sought by the parties contained in the minute of proposed orders dated 28 May 2025.

CERTIFICATE

I certify that this and the 42 preceding pages are a true copy of the reasons for judgment of McDonald J of the Supreme Court of Victoria delivered on 24 June 2025.

DATED this 24th day of June 2025.

.....
Associate