

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

Not Restricted

S ECI 2024 07057

BETWEEN:

JEREMY BERGMAN

Plaintiff

v

SPORTSBET PTY LTD (ACN 088 326 612)

Defendant

<u>JUDGE:</u>	Matthews J
<u>WHERE HELD:</u>	Melbourne
<u>DATE OF HEARING:</u>	13 August 2025
<u>DATE OF RULING:</u>	28 August 2025
<u>CASE MAY BE CITED AS:</u>	Bergman v Sportsbet Pty Ltd (GCO Ruling)
<u>MEDIUM NEUTRAL CITATION:</u>	[2025] VSC 521

GROUP PROCEEDINGS – Application for a Group Costs Order – Costs to be calculated as a percentage of the amount of any award or settlement recovered – Whether proposed percentage appropriate or necessary – *Supreme Court Act 1986* (Vic), s 33ZDA.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Plaintiff	Mr A Hochroth with Mr J Page	Maurice Blackburn
For the Defendant	No appearance for the defendant	Allens

HER HONOUR:

A Introduction

- 1 This is an application pursuant to s 33ZDA of the *Supreme Court Act 1986* (Vic) (**Act**) seeking a group costs order (**GCO**) for the group proceeding. The plaintiff seeks a GCO at a rate of 33% (inclusive of GST).
- 2 The group proceeding is brought by the plaintiff on behalf of group members seeking damages against Sportsbet for offering a betting service, known as 'Fast Code'. The Fast Code service is part of Sportsbet's in-play betting product offering. A code is shown to the customer when they make a bet selection on Sportsbet's app or website. Once a code is generated, the customer must telephone Sportsbet and relay the code to a Sportsbet representative to place their bet.¹
- 3 Under the *Interactive Gambling Act 2001* (Cth) (**IGA**), it is unlawful to place a bet on a sporting event after it has commenced. However, an exception exists if the bet is made wholly by telephone.² It is alleged that Sportsbet's Fast Code service contravenes the IGA because key information about the bet placed is not communicated by telephone but rather is done via the Sportsbet app and/or website. It is alleged that Sportsbet has engaged in misleading and deceptive conduct in representing that the Fast Code service was legal³ and/or breached the Fast Code service terms and conditions which relevantly provided that Sportsbet complies with the IGA in not accepting live betting over the internet but via the telephone.⁴ The loss and damage claimed by the plaintiff is his betting losses using the Fast Code service, that is, the net result of wins and losses over the course of his use of the Fast Code service. Claims for loss and damage on the same basis are made on behalf of group members. The defendant denies all of these allegations. There will be factual and legal issues in contest, as well as a contest over loss and damage.

¹ Summary Statement, [2].

² Ibid.

³ See Amended Statement of Claim, [22]-[26].

⁴ Ibid, [15]-[21].

4 For the reasons set out below, I have decided to grant the plaintiff's GCO at the rate
of 33% (inclusive of GST).

B Procedural history

5 This group proceeding was commenced by writ on 24 December 2024 and is still in its
early stages. On 24 February 2025, pursuant to r 36.04(1)(a) of the *Supreme Court*
(*General Civil Procedure*) *Rules 2015 (Rules)*, the plaintiff filed an amended statement
of claim. On 28 February 2025, Delany J made timetabling orders for the defendant
to file its defence, for the plaintiff to make its GCO application and to file its reply to
the defence. The defence was filed on 17 April 2025 and reply filed on 9 May 2025.
Pleadings have now closed but no discovery has yet been made and no evidence has
been filed.

6 Delany J extended the time for the plaintiff to make its GCO application twice,⁵ which
culminated in the GCO application being listed before me for hearing and
determination on 13 August 2025.

7 On 9 July 2025, the plaintiff filed its summons and supporting materials for the GCO
application. By email dated 4 August 2025, the plaintiff sought leave to file an
amended summons pursuant to r 36.01(1) of the Rules. I granted the plaintiff leave to
file its amended summons for the GCO application.

8 By the amended summons, the plaintiff sought the following orders:

1. Pursuant to section 33ZDA(1) of the *Supreme Court Act 1986* (Vic):
 - (a) The legal costs payable to the solicitors for the plaintiffs and
group members, Maurice Blackburn, be calculated as a
percentage of the amount of any award or settlement that may
be recovered in the proceeding, and that percentage be 33%
(subject to further order); and
 - (b) Liability for payment of the legal costs pursuant to paragraph
1(a) be shared among the plaintiff and all group members.
2. Pursuant to section 33ZDA(2) of the *Supreme Court Act 1986* (Vic), upon
the making of orders pursuant to paragraph 1, the solicitors for the
plaintiff and group members, Maurice Blackburn:

⁵ See Order of Delany J made on 19 May 2025 and 20 June 2025.

- (a) Be liable to pay any costs payable to the defendant in the proceeding; and
 - (b) Be liable to give any security for the costs of the defendant in the proceeding that the Court may order be given by the plaintiff.
3. Pursuant to rule 28.05(4) *Supreme Court (General Civil Procedure) Rules 2015* (Vic) the highlighted material contained in the unredacted versions of the following documents:
- (a) Affidavit of Jeremy Bergman affirmed 9 July 2025;
 - (b) Affidavit of Lee Taylor affirmed 9 July 2025; and
 - (c) Affidavit of Rebecca Gilsenan affirmed 9 July 2025.

is confidential and is not to be published or disclosed without the prior leave of the Court to any person or entity other than the Plaintiff, the Plaintiff's legal advisers and the Court, and is to be sealed in an envelope marked "Confidential, not to be opened without leave of the Court or a judge", and held on the court file on that basis until further order of the Court.

...

5. The Plaintiff is to bear his own costs, of and incidental to, this application.

C Materials relied on by the plaintiff and confidentiality orders

9 In support of the GCO application, the plaintiff relies on the following materials:

- (a) affidavits of Ms Rebecca Gilsenan, Principal Lawyer and National Head of Class Actions at Maurice Blackburn, affirmed on 9 July 2025 (**First Gilsenan Affidavit**) and 12 August 2025 (**Second Gilsenan Affidavit**);
- (b) an affidavit of Mr Jeremy Bergman, affirmed on 9 July 2025 (**Bergman Affidavit**);
- (c) affidavits of Mr Lee Taylor, Principal Lawyer at Maurice Blackburn affirmed on 9 July 2025 (**First Taylor Affidavit**), 10 July 2025 (**Second Taylor Affidavit**) and 13 August 2025 (**Third Taylor Affidavit**); and
- (d) written submissions filed on 10 July 2025, updated on 12 August 2025.

10 By email on 4 August 2025, the plaintiff indicated to the Court that it had been advised by the defendant that it did not wish to be heard on the GCO application. This was

also confirmed by email from the defendant on 5 August 2025 who sought to be and was excused from appearing at the GCO application hearing.

- 11 Redacted versions of the above materials (except for the Second and Third Taylor Affidavits) were filed and served but the Court also received the unredacted versions of the same materials in order to properly determine the plaintiff's GCO application. The plaintiff seeks orders to preserve confidentiality over the materials said to be confidential upon which he relies in support of the GCO application.
- 12 In the Second Taylor Affidavit, Mr Taylor sets out the reasons for claiming confidentiality over the redacted portions of the First Gilsenan Affidavit, the First Taylor Affidavit, the Bergman Affidavit, and the written submissions. In the Third Taylor Affidavit, Mr Taylor sets out the reasons for claiming confidentiality over the redacted portions of the Second Gilsenan Affidavit. The three main grounds that Mr Taylor relies on for the confidentiality orders are that the materials:
- (a) would confer an unfair tactical advantage on the defendant in the proceeding;
 - (b) would disclose Maurice Blackburn's commercially sensitive information that would prejudice its commercial interests if disclosed to a competitor; or
 - (c) are confidential as between the plaintiff and his legal representatives and are subject to legal professional privilege.⁶
- 13 Mr Taylor annexes schedules to each of the Second and Third Taylor Affidavits which refer to each redacted section of the confidential materials and lists which of these three grounds apply to them. I found these schedules very helpful in considering the claims to confidentiality.
- 14 Having considered the Second and Third Taylor Affidavits and reviewed the contents of the unredacted versions of the materials, I am satisfied that confidentiality orders pursuant to r 28.05(4) of the Rules should be made with respect to the materials filed in support of the GCO application. It is important for the Court, when considering an application for a GCO, to have access to materials of this type. The consequence of

⁶ Second Taylor Affidavit, [8].

those confidentiality orders means that I am constrained by what I can set out in this ruling when giving my reasons for granting the plaintiff a GCO.

D Legal principles

- 15 Section 33ZDA(1) of the Act relevantly provides that if ‘satisfied that it is appropriate or necessary to ensure that justice is done in the proceeding’, the Court may make an order:

that the legal costs payable to the law practice representing the plaintiff and group members be calculated as a percentage of the amount of any award or settlement that may be recovered in the proceeding, being the percentage set out in the order.

- 16 The legal principles relevant to the determination of an application under s 33ZDA of the Act have been considered on a number of occasions by this Court.⁷ In *JB Hi-Fi*, Nichols J recently summarised how the Court should go about determining whether a GCO should be made and I gratefully adopt her Honour’s summary here. Her Honour said that:

- (a) Group Costs Orders are recognised to possess inherent substantive structural benefits. The plaintiff and group members will receive a fixed proportion of any award or settlement (subject to any variation by Court order), and the law firm must assume the burden of meeting any adverse costs award and any security for costs. This engenders certainty and transparency. By fixing costs as a percentage of the recovered sum it eradicates for the plaintiff and group members any risk that their compensation, if recovered, will be eroded by costs beyond the fixed percentage. Traditional costs calculation methods present that risk of erosion of recoveries. Those benefits are real rather than illusory when the GCO rate is set at a level that is reasonable and proportionate.
- (b) A corollary of the statutory model is that it permits the legal practice to benefit from the upside as the damages recovered increase proportionally to the costs incurred. Considerations of reasonableness and proportionality accordingly inform the setting of an appropriate GCO percentage. Determination of the reasonableness and proportionality of a proposed GCO rate may be evaluated against numerous measures, including whether it is proportional to the risk undertaken by the law firm in the proceedings, the likely amount to be recovered in the proceedings, and the legal costs and disbursements that are likely to be incurred in the proceedings (including the likely

⁷ See eg, *Fox v Westpac* [2021] VSC 573, [9]-[38]; *Bogan v Estate of Peter John Smedley (dec’d)* [2022] VSC 201, [6]-[14] (J Dixon J); *Gehrke v Noumi Ltd* [2022] VSC 672, [53] (Nichols J); *Mumford v EML Payments Ltd* [2022] VSC 750, [13]-[14] (Delany J); *Dawson & Anor v Insurance Australia Ltd & Anor* [2024] VSC 808, [18] (Watson J); *Clarke v JB Hi-Fi Group Pty Ltd* [2025] VSC 288, [6] (*JB Hi-Fi*) (Nichols J).

potential adverse costs). It is, however, also to be recognised that this evaluation occurs at an early state of proceedings where such assessments are likely fraught with uncertainty.

- (c) The appropriate rate must be determined with regard to the facts of the particular case but it is nevertheless appropriate to compare what is sought with the rates that have been fixed in decided cases. It may also be instructive to have regard to the principles employed in other contexts to analyse returns on investment.
- (d) At the time an initial GCO order is made, the Court is necessarily engaged in a forward-looking exercise with limited information. For this reason, s 33ZDA(3) provides an important safeguard allowing the Court to revisit the GCO rate in light of known facts regarding the proceeding.⁸

E Current funding arrangement

- 17 The plaintiff entered into a retainer and costs agreement with Maurice Blackburn, where Maurice Blackburn has agreed to act for him on a conditional ‘no win, no fee’ basis in respect of both professional fees and disbursements, with the intention of applying for a GCO. As part of that costs agreement, Maurice Blackburn has also agreed to indemnify the plaintiff for any adverse costs and provide any security for costs until a reasonable time after the GCO application is determined.⁹
- 18 The contractual arrangement between the plaintiff and Maurice Blackburn is on the basis that if a GCO is not made, then Maurice Blackburn may, in its sole discretion, choose to either seek third party funding, continue to act on a ‘no win, no fee’ basis or cease to act for the plaintiff, which would likely result in the proceeding being discontinued.¹⁰

F The benefits of a Group Costs Order

- 19 The plaintiff submits that there are a number of benefits to a GCO being awarded:
 - (a) the GCO rate sought of 33% is proportionate and reasonable having regard to the burden undertaken and risks assumed by Maurice Blackburn;

⁸ *JB Hi-Fi*, [6] (citations omitted).

⁹ Costs agreement, [13.1], exhibited to Bergman Affidavit at page 16.

¹⁰ Costs agreement, [10], exhibited to Bergman Affidavit at page 16.

- (b) the GCO will ensure that justice is done by guaranteeing the plaintiff and group members receive a fixed proportion of any award or settlement;
- (c) the GCO will provide certainty and transparency to the plaintiff and group members on the legal costs;
- (d) the GCO will ensure that costs are shared equitably between the plaintiff and group members;
- (e) the plaintiff has expressed a preference that a GCO be awarded for the group proceeding; and
- (f) the return to Maurice Blackburn under the GCO is not disproportionate when regard is had to other returns on class actions conducted by it.

20 The plaintiff submits that a GCO will produce greater returns to group members than the usual 'costs-plus' third party funding and avoids the uncertainties associated with a common fund order as a single and certain proportionate return to group members is fixed early in the proceeding.¹¹

21 The plaintiff also submits that when a GCO is awarded, the legal costs are proportionate to any award or settlement. That is, if the award or settlement is low, then the legal costs are proportionate to that lower amount.¹² Further, a GCO will also alleviate concerns from group members that any award or settlement will be consumed by legal costs. The GCO will effectively cap any legal costs recoverable by Maurice Blackburn.¹³

22 Further, the First Gilsenan Affidavit sets out, in some detail and with reasons and explanation, what is likely to occur if the GCO is not made, either at all or in the percentage sought. Much of this is confidential, so I cannot say more about it here. However, I have read that material and I accept Ms Gilsenan's evidence and the foundation for it.

¹¹ First Taylor Affidavit, [73].

¹² First Taylor Affidavit, [74].

¹³ Ibid, [74].

23 I have set out certain aspects of the evidence relevant to my decision in a confidential schedule, which will not be published with these reasons. I do so, in case it may be of assistance to a future court in considering any application for payment of costs on the basis of the GCO in this case.¹⁴

G Proportionality and reasonableness of the Group Costs Order

24 The plaintiff submits that the GCO rate of 33% it seeks is proportionate and reasonable having regard to the previous GCOs that have been made by this Court.¹⁵

25 Since the enactment of s 33ZDA of the Act, as at the date of the hearing, the following GCOs had been made by this Court:

Case	GCO rate (%)
<i>Allen v G8 Education Limited</i> [2022] VSC 32	27.5
<i>Bogan v the Estate of Peter John Smedley (Deceased)</i> [2022] VSC 201	40.0
<i>Nelson v Beach Energy; Sanders v Beach Energy</i> [2022] VSC 424	24.5
<i>Gehrke v Noumi Ltd</i> [2022] VSC 672	22.0
<i>Mumford v EML Payments Ltd</i> [2022] VSC 750	24.5
<i>Fuller v Allianz Australia Insurance Ltd; Wilkinson v Allianz</i> ¹⁶	25.0
<i>Lieberman v Crown Resorts Ltd</i> [2022] VSC 787	16.5 – 27.5
<i>Fox v Westpac Banking Corporation (No 2)</i> [2023] VSC 95	24.5
<i>O'Brien v Australia and New Zealand Banking Group Ltd</i> ¹⁷	24.5
<i>Nathan v Macquarie Leasing Pty Ltd</i> ¹⁸	24.5
<i>Anderson-Vaughan v AAI Ltd</i> [2023] VSC 465	25.0
<i>DA Lynch v Star Entertainment Group</i> [2023] VSC 561	14.0
<i>Lidgett v Downer EDI Ltd</i> [2023] VSC 574	21.0
<i>5 Boroughs NY Pty Ltd v Victoria (No 5)</i> [2023] VSC 682	30.0
<i>McCoy v Hino Motors Ltd</i> [2023] VSC 757	17.5 – 25.0
<i>Thomas v The a2 Milk Company Ltd</i> [2023] VSC 768	24.0
<i>Kilah v Medibank Private Limited</i> [2024] VSC 152	27.5
<i>Norris v Insurance Australia Group Ltd</i> [2024] VSC 76	30.0
<i>Raeken Pty Ltd v James Hardie Industries plc</i> [2024] VSC 173	27.5
<i>Gawler v Fleet Partners Group Ltd</i> [2024] VSC 365	39.0

¹⁴ In this regard, I note that Nichols J adopted a similar course in *JB Hi-Fi*, [20].

¹⁵ *Ibid*, [21].

¹⁶ Supreme Court of Victoria, Nichols J, 13 December 2022, written reasons provided to the parties 1 November 2024, first revision dated 28 February 2025.

¹⁷ See *Fox v Westpac Banking Corporation (No 2)* [2023] VSC 95, [3]-[7].

¹⁸ *Ibid*.

Case	GCO rate (%)
<i>Warner v Ansell Ltd</i> [2024] VSC 491	25.0 – 40.0
<i>Dawson & Anor v Insurance Australia Limited & Anor</i> [2024] VSC 808	27.5
<i>Clarke v JB Hi-Fi Group Limited</i> [2025] VSC 288	30.0
<i>Edwards v Hyundai Motor Company Australia Pty Ltd; Sims v Kia Australia Pty Ltd (Ruling No 3)</i> [2025] VSC 429	15 – 24.75
<i>Laricchia v WiseTech Global Ltd</i> [2025] VSC 482	35.0

- 26 The plaintiff refers to the group proceedings in the table above and submits that Maurice Blackburn have been the solicitor on record for nine of those group proceedings and the GCO awarded ranged between 21% to 30%.¹⁹ The plaintiff submits that having regard to previous GCOs that have been awarded by this Court, the GCO it seeks is within that range. However, the plaintiff submits that a comparative analysis on raw figures alone is insufficient for the Court to determine whether its GCO is reasonable. The Court must also consider the facts and circumstances of the particular proceeding to determine the appropriateness of the proposed GCO rate having regard to proceedings which have come before it.
- 27 The plaintiff submits that Maurice Blackburn is assuming substantial legal and financial risks in taking on this group proceeding.
- 28 In the First Taylor Affidavit, Mr Taylor sets out the assessment that Maurice Blackburn has engaged in for this group proceeding, namely it has assessed the potential size of the group members, the estimated claim value, the estimated legal costs, the liability risks of the claims advanced in the group proceeding and the estimated settlement range. These matters are based on a number of assumptions and judgments made by Mr Taylor which he has drawn from publicly available information. Those assessments are naturally quite speculative at this stage of the litigation. Nonetheless, I am satisfied that Mr Taylor's assessment of the range of possible outcomes in this case is reasonable in light of the inherent difficulties and uncertainties at this point.

¹⁹ *Fuller v Allianz Australia Insurance Ltd; Wilkinson v Allianz and Anderson-Vaughan v AAI Ltd* [2023] VSC 465; *Nathan v Macquarie Leasing Pty Ltd; Fox v Westpac Banking Corporation (No 2)* [2023] VSC 95; *O'Brien v Australia and New Zealand Banking Group Ltd; Clarke v JB Hi-Fi Group Limited* [2025] VSC 288; *Lieberman v Crown Resorts Ltd* [2022] VSC 787; *Lidgett v Downer EDI Ltd* [2023] VSC 574; *McCoy v Hino Motors Ltd* [2023] VSC 757.

- 29 In the First Gilsenan Affidavit, Ms Gilsenan sets out the financial risks Maurice Blackburn is taking on in this group proceeding. In particular, Ms Gilsenan sets out the costs to Maurice Blackburn in running the group proceeding²⁰ and the returns Maurice Blackburn expects if the group proceeding settles either before, during or after trial.²¹ An estimated return for Maurice Blackburn, including an investment analysis based on Maurice Blackburn's internal rate of return, is also provided. In the Second Gilsenan Affidavit, Ms Gilsenan updates some of the figures to take account of the differences between the assumptions regarding adverse costs risk and the cost of providing security for costs and events after the First Gilsenan Affidavit was prepared, given that security for costs was ordered in the meantime. In the First Gilsenan Affidavit, Ms Gilsenan also outlines the alternative forms of funding available for this group proceeding should a GCO not be awarded.²² The analysis here has been deliberately brief as the materials I have considered are confidential. However, having considered those materials, I am satisfied that Maurice Blackburn is assuming substantial legal and financial risks in running this group proceeding. I am also satisfied that the proposed GCO rate is proportionate and reasonable in light of those risks.
- 30 The plaintiff's evidence is that he supports Maurice Blackburn seeking a GCO. The plaintiff believes that a GCO is in his and the group members interests as the GCO provides a simple funding arrangement that is clear and understandable. The GCO guarantees that the plaintiff and group members receive a fixed percentage of any award or settlement.²³ In this case, at least 67% of any award or settlement will be shared among the group members. Further, the GCO provides cost protection for the plaintiff, which he considers an advantage.²⁴
- 31 While the rate of 33% is high when compared to most other group proceedings, as set out in the table above, I am satisfied that the evidence here justifies that rate. Apart from anything else, this is a relatively novel case, such that the litigation risk associated with it is higher than, say, a standard shareholders class action. As

²⁰ First Gilsenan Affidavit, [13]-[27].

²¹ Ibid, [28]-[34].

²² Ibid, [35]-[44].

²³ Bergman Affidavit, [11].

²⁴ Bergman Affidavit, [12].

indicated, the analysis supporting a rate of 33% is based on forward-looking assumptions which may or may not come to pass.

32 During the hearing, I raised with counsel for the plaintiff the approach taken by Garde J in *Warner v Ansell Ltd*, where his Honour made a GCO in the amount of 40% as sought by the plaintiff in that case, but decided to utilise a ratchet mechanism such that any amount achieved (by way of award or settlement) over \$50 million would result in a GCO of 25% for that portion of the award or settlement.²⁵ Given that the rate of 33% in this case is at the higher end, it seemed to me that this was one mechanism the Court could take to ensure that the GCO percentage was not unduly disproportionate, should the ultimate outcome be a high one.

33 In response, counsel for the plaintiff began by saying that, assuming for these purposes that the Court had the power to order a ratchet mechanism, it ought not be done in this case because of the great difficulty which would be experienced in trying to work out what the ratcheting point should be. Secondly, the more appropriate check on a potential windfall is the one specifically contemplated by the Act, which is the amendment power at the end. Thirdly, it is inherent in the nature of a GCO that the law firm may do well, or it may do badly. If the proceeding fails then the law firm gets nothing; if the outcome is a low one, then the law firm likely gets far less than its ordinary time costed charges. Fourthly, a law firm like Maurice Blackburn runs a portfolio of class action cases, and it expects that the outcomes of each will range from ones in which it does well and ones where it does not. Hence, the overall rate of return has to take that into account. Fifthly, one of the benefits of a GCO is simplicity and transparency for group members which may be lessened through a more complicated ratcheting arrangement.

34 I accept this submission. As I observed at the hearing, the terminology of 'windfall' is a little unfortunate. There is a big difference, it seems to me, between doing well in some instances and a windfall. A windfall is something which is disproportionate. Hence the issue is whether the GCO is proportionate and reasonable in light of the risks taken by the law firm in running a group proceeding on the basis of a GCO. In the case before me and based on the modelling done by Maurice Blackburn to date,

²⁵ *Warner v Ansell Ltd* [2024] VSC 491, [70].

I do not think it is particularly easy to determine at this juncture a figure as to the range of the settlement or award above which 33% may be too much of a windfall. This is something better left to be addressed at a later stage when the Court comes to make orders for payment to Maurice Blackburn by reason of the GCO.

35 Section 33ZDA(3) of the Act provides an important protection, in that the Court may amend the GCO and its percentage at a later stage. This means that when the Court comes to consider the order to be made at the end of the proceeding, it will have a better and more fulsome picture for assessing whether the GCO rate remains appropriate. Similar to Nichols J in *JB Hi-Fi*,²⁶ I consider that utilising s 33ZDA(3) is a preferable way to ensure that the GCO remains appropriate in this case, rather than imposing a tiered or ratcheted rate at this stage which, for the reasons I have expressed above, would be quite arbitrary at this point.

H Alternative forms of funding

36 Clause 13.2 of the retainer and costs agreement between the plaintiff and Maurice Blackburn provides that if a GCO is not made, then Maurice Blackburn may in its sole discretion elect either to:

- (a) procure and prosecute the Claims and Proceeding in accordance with a Third Party Funding Arrangement; or
- (b) continue to prosecute the Claims and Proceeding on a conditional basis, in which case MB will give to the Claimant notice that this Agreement continues to be operate as a conditional costs agreement; or
- (c) terminate this Agreement pursuant to clause 12.1.²⁷

37 In the First Taylor Affidavit, Mr Taylor sets out Maurice Blackburn's positions to the various options set out above if the Court declines to make a GCO.²⁸ As that part of Mr Taylor's affidavit is confidential, I am constrained by what I can say here, but having considered Maurice Blackburn's position regarding the alternative funding arrangements available if a GCO is not made, I am satisfied that it would be in the interests of the group members for a GCO to be made in this group proceeding.

²⁶ *JB Hi-Fi*, [27(j)].

²⁷ Bergman Affidavit exhibit, page 17.

²⁸ First Taylor Affidavit, [33]-[34].

I Conclusion

38 For the reasons set out above, I am satisfied that the plaintiff should be awarded a GCO at the rate of 33% (inclusive of GST). I will make orders accordingly.

CERTIFICATE

I certify that this and the 12 preceding pages are a true copy of the reasons for ruling of Matthews J of the Supreme Court of Victoria delivered on 28 August 2025.

DATED this 28th day of August 2025.



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Associate