IN THE SUPREME COURT OF VICTORIA
COMMERCIAL COURT
GROUP PROCEEDINGS (CLASS ACTIONS)

Not Restricted

S ECI 2023 01521

**BETWEEN:**

JAMES KENDALL MCCOY — Plaintiff

v

HINO MOTORS LTD — First Defendant

HINO MOTOR SALES AUSTRALIA PTY LTD (ACN 064 989 724) — Second Defendant

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| JUDGE: | Delany J |
| WHERE HELD: | Melbourne |
| DATE OF HEARING: | 20 March 2026 |
| DATE OF RULING: | 8 April 2026 |
| CASE MAY BE CITED AS: | McCoy v Hino Motors Ltd (No 3) |
| MEDIUM NEUTRAL CITATION: | [2026] VSC 195 |

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REPRESENTATIVE PROCEEDINGS – Part 4A group proceeding – Inadvertent error in modelling relied on when order made varying original group costs order – Application for leave to reopen by law practice – Internal rate of return – Prompt disclosure by law practice – Whether percentage allowance for legal costs specified in variation order should be amended – Modelling corrected for error – Necessary or appropriate that group costs order be amended to reflect same internal rate of return as underpinned variation order but corrected for modelling error – *Supreme Court Act 1986* pt 4A, ss 33ZDA(1) and 33ZDA(3) – *Allen v G8 Education Ltd (No 4)* [2024] VSC 487, *Byrnes v Origin Energy Ltd (No 2)* [2026] VSC 97, *Fox v Westpac Banking Corporation* [2025] VSC 643, *McCoy v Hino Motors Ltd* [2025] VSC 447 and *McCoy v Hino Motors Ltd (No 2)* [2025] VSC 553 referred to.

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| APPEARANCES: | Counsel | Solicitors |
|---|---|---|
| For the Intervener | William Edwards KC with Dion Fahey | Maurice Blackburn |
| The Contradictors | Melanie Szydzik SC with Stephanie Brenker | |

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HIS HONOUR:

## A The Error and the application

1 On 4 September 2025, I made an order pursuant to s 33ZDA(3) of the *Supreme Court Act 1986* (Vic) ('Act') varying the percentages specified in the group costs order ('GCO') made on 15 December 2023 ('original GCO') from an effective rate of 24.66% of the settlement sum of $87,000,000 ('Settlement Sum') to 17.392% of the Settlement Sum ('GCO Variation Order'). On 4 September 2025, I published reasons in support of the GCO Variation Order ('Variation Reasons').[1] The monetary effect of the GCO Variation Order was to reduce the amount payable to the law practice out of the Settlement Sum from a maximum of $21,450,000 — to which the law practice would otherwise have been entitled pursuant to the original GCO — to $15,131,000.

2 The GCO Variation Order followed a hearing on 22 August 2025 ('August hearing') and an order made on 18 July 2025 ('18 July Order') approving the settlement of the proceeding on the terms set out in:[2]

(a) a deed of settlement dated 14 February 2025; and

(b) the plaintiff's proposed settlement distribution scheme, being the proposed scheme for the allocation of the settlement monies ('Scheme').

3 On 30 October 2025, in the course of administering the Scheme, Maurice Blackburn became aware that the financial modelling prepared by it and upon which it relied as part of its evidence at the August hearing and its email to the Court dated 26 August 2025 ('26 August Email') contained a material error.

4 The error that was identified involved an erroneous assumption in the financial modelling as to the amount Maurice Blackburn was required to repay the litigation funder out of the GCO amount ('Error'). The effect of the Error was that the evidence relied on by Maurice Blackburn understated the firm's assumed share of

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1 *McCoy v Hino Motors Ltd (No 2)* [2025] VSC 553.

2 See generally *McCoy v Hino Motors Ltd* [2025] VSC 447.

the GCO and, consequentially, the firm's expected internal rate of return ('IRR') based on the Settlement Sum.

5 The confidential affidavit of Mr Taylor dated 16 March 2026 ('Eighth Taylor Affidavit') includes a table reproduced at paragraph 1 of Confidential Annexure A to these reasons, which clearly identifies the Error. The table sets out the respective allocations of the GCO as between Maurice Blackburn and the funder under the erroneous modelling and the corrected modelling.

6 I have no doubt the Error and the resulting understatement as to Maurice Blackburn's IRR in the evidence relied on at the August hearing and in the 26 August Email was inadvertent. Maurice Blackburn is to be commended for its full and frank disclosure of the Error upon it coming to its attention.

7 On 19 December 2025, Maurice Blackburn filed a summons seeking leave to reopen the part of the plaintiff's earlier summons that sought approval pursuant to s 33V(2) of the Act of a distribution of the plaintiff's costs from the Settlement Distribution Fund. It sought leave to reopen so as to file further evidence and submissions on the appropriate GCO percentage.

8 As submitted by Maurice Blackburn, the GCO Variation Order was premised on IRR calculations contained in the confidential affidavit of Mr Taylor dated 27 June 2025 ('Fourth Taylor Affidavit') and in the 26 August Email.

9 The confidential affidavit of Mr Taylor dated 14 November 2025 ('Sixth Taylor Affidavit') includes a table of GCO dollar amounts and percentages that correspond to the IRRs in the 26 August Email, using the corrected financial model. A copy of that table is reproduced at paragraph 2 of Confidential Annexure A to these reasons.

10 As can be seen from that table, and as will be elaborated on below, if the GCO percentage specified in the GCO Variation Order stands, the effect is that Maurice Blackburn will recover an amount for costs which reflects a materially higher IRR than was the premise for the GCO Variation Order.

## B The material relied upon

11 In support of the relief sought, Maurice Blackburn relied on the Sixth and Eighth Taylor Affidavits and on the confidential affidavit of Mr Taylor dated 17 February 2026 ('Seventh Taylor Affidavit').

12 The following submissions were filed in advance of the hearing:

(a) Maurice Blackburn's outline of submissions dated 17 February 2026;

(b) Contradictors' outline of submissions dated 9 March 2026; and

(c) Maurice Blackburn's reply submissions dated 16 March 2026.

13 Maurice Blackburn contends for confidentiality orders in relation to the Sixth, Seventh and Eighth Taylor Affidavits and the submissions. Given the commercially sensitive nature of the subject matter, the making of confidentiality orders in relation to each of those documents is necessary to prevent a real and substantial risk of prejudice to the proper administration of justice that cannot be prevented by other reasonably available means. I will make orders accordingly pursuant to ss 17 and 18(1)(a) of the *Open Courts Act 2013* (Vic).

## C The competing submissions

### C.1 Maurice Blackburn

14 Maurice Blackburn submitted the Court should grant leave to reopen and that upon doing so the Court should leave the GCO percentage unchanged at 17.392%.

15 It submitted that if it had known of the Error at the time of filing its evidence, it would have put forward material at the August hearing that would have led the Court to find that tying the GCO outcome to the IRR adopted as the basis for the GCO Variation Order would not compensate Maurice Blackburn for the risk it had assumed and would penalise it for securing a favourable early outcome for group members.

16 Taking into account the effect of the Error on the modelling, Maurice Blackburn contended that retaining the same IRR that underpinned the GCO Variation Order

would result in a reduction to the GCO to one materially below 17.392%.[3] Maurice Blackburn submitted this would give insufficient weight to other comparator metrics and would not be a just outcome.

17 It submitted that upon the Court being satisfied the GCO Variation Order should be set aside and the proceeding reopened, with Maurice Blackburn being permitted to rely on new evidence, the task of setting the appropriate GCO percentage should be approached afresh.

18 Maurice Blackburn submitted the GCO Variation Order percentage of 17.392% is already heavily discounted from the original GCO percentage of 24.66%, which was awarded following the competitive process that occurred during the carriage contest. That percentage represented the best price at which anyone was prepared to conduct the litigation.

19 The key submission advanced by Maurice Blackburn is that the Court does not have power to vary the tiered percentage the subject of the original GCO to a percentage that is outside the percentages of the forward-looking risk assessment undertaken by Maurice Blackburn at that time.

20 In support of that submission, significant reliance was placed on the Seventh Taylor Affidavit, the substance of which was to put forward the submissions Maurice Blackburn would have made and the evidence it would have adduced if the Error had never been made or if it had been discovered prior to the making of the GCO Variation Order. The thrust of Mr Taylor's evidence is that if the Error had not been made, Maurice Blackburn would have adduced further evidence and instructed counsel to make submissions accepting there should be a reduction from the original GCO percentage of 24.66% but to one not below 20%.

21 While contending that a higher IRR than the IRR adopted by the Court in the Variation Reasons is warranted based on the corrected modelling, given that group members have already been informed of the GCO Variation Order, Maurice Blackburn is content for the GCO percentage to be re-fixed at 17.392%.

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[3] See Confidential Annexure A, paragraph 2 (percentage specified in row 2, column 3 of table).

**C.2 The Contradictors**

22 The Contradictors agree that in the prevailing circumstances, it is appropriate for the Court to revisit the GCO Variation Order. They submitted that the proper relief is not to 'reopen' the plaintiff's earlier summons, but rather, the proper relief depends on the applicable procedural mechanism.

23 The Contradictors submitted s 33ZDA(3) of the Act confers power on the Court to vary an earlier GCO, including as to the percentage specified. Section 33ZDA(3) provides that the Court may amend a GCO by order during the course of the proceeding, including, but not limited to, amendment of any percentage ordered under subsection (1). The Court may do so if it is satisfied that it is appropriate or necessary to ensure that justice is done in the proceeding.

24 The Contradictors submitted that when proceeding pursuant to s 33ZDA(3), the Court's task is not to start afresh from the position of the original GCO. The GCO Variation Order and the Variation Reasons provide the starting point.

25 The Contradictors submitted the IRR allowed by the GCO Variation Order was above the IRR that was held to be within the contemplation of the Court and Maurice Blackburn at the time of the carriage dispute. If that reasoning is applied to the corrected modelling, the resultant GCO percentage is 13.253% in lieu of 17.392%.

26 Consistent with the Variation Reasons, leaving 17.392% unchanged based on the corrected modelling would be to determine a percentage that reflects an IRR well outside the contemplation of the Court and of Maurice Blackburn at the time of the original GCO hearing and well outside the range to which the modelling evidence was directed. Because of this, a GCO percentage of less than 17.392% is appropriate.

27 The Contradictors submitted that while a percentage less than 17.392% is appropriate, a percentage of 13.253% would be the lowest GCO percentage ordered to date. Such a percentage is significantly lower than the original GCO percentage of 24.66%. It may be contended a reduction of that magnitude in the GCO and to

such a low percentage may act as a disincentive to firms to engage in early settlement discussions.

28 The Contradictors submitted that balancing these matters, and considering the Variation Reasons, it would be appropriate to allow some further return above the IRR adopted in the Variation Reasons, but not as high as contended for by Maurice Blackburn. They submitted by reference to the table reproduced at paragraph 2 of Confidential Annexure A to these reasons, it would be appropriate for a GCO percentage of 14.738% or 16.336%, or somewhere in between those values, to be ordered.

## D Power to vary the GCO percentage

29 The power being exercised informs the task that the Court is required to undertake. As submitted by the Contradictors, s 33ZDA(3) empowers the Court to amend the GCO Variation Order.

30 Section 33ZDA relevantly provides:

> (1) On application by the plaintiff in any group proceeding, the Court, if satisfied that it is appropriate or necessary to ensure that justice is done in the proceeding, may make an order—
>
> (a) 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; and
>
> …
>
> …
>
> (3) The Court, by order during the course of the proceeding, may amend a group costs order, including, but not limited to, amendment of any percentage ordered under subsection (1)(a).

31 Section 33ZDA(3) limits the power of the Court to amend a GCO to an amendment made 'during the course of the proceeding'.

32 While the 18 July Order approved the settlement of the proceeding and the administration of the Scheme, it did not dismiss the proceeding.

33 The supervisory role of the Court in relation to the Scheme requires the proceeding to remain on foot while the Scheme is administered in the interests of group members. The 18 July Order expressly contemplates future applications being made in the proceeding and provides for further reporting by the Scheme Administrator. Nothing in any subsequent order has changed this. The proceeding remains on foot.

34 As is plain from its terms, the task of the Court pursuant to s 33ZDA(3) is not to consider whether to reopen the earlier hearing of an application. The task is to consider whether there should be an amendment of an existing GCO.

35 In *Byrnes v Origin Energy Ltd (No 2)* ('*Byrnes*'), Waller J identified the circumstances in which the power in s 33ZDA(3) may appropriately be exercised:[4]

> I accept that the language of s 33ZDA(3) does not expressly impose a requirement that there be a material change of circumstances or the discovery of new material before the power to amend may be exercised. The provision confers a broad discretion on the Court to amend a GCO 'during the course of the proceeding' and the only express limitation is that any GCO (whether original or amended) must be one that the Court is satisfied is 'appropriate or necessary to ensure that justice is done in the proceeding'.

36 Although Waller J held it was unnecessary that there be a material change of circumstances or the discovery of new material before the power in s 33ZDA(3) may be exercised, in this case there has been both the discovery of new material in the form of the Error and the corrected modelling and, as demonstrated by a comparison between the erroneous and corrected modelling, a material change in circumstances.

37 I agree with the Contradictors that the task pursuant to s 33ZDA(3) is not to go back to the original GCO. The task is to determine whether there should be an amendment to the GCO Variation Order in relation to which there has been both the discovery of new material and a material change in circumstances.

38 The Error does not relate in any way to the original GCO or to the reasons in support of that order.[5] The Error being unrelated to the original GCO, it is not

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4 [2026] VSC 97, [71]. See also at [67]–[80].

5 *Maglio v Hino Motor Sales Australia Pty Ltd* [2023] VSC 757.

appropriate to revisit the question 'afresh' and turn the clock back to 2023 when the original GCO was made, as Maurice Blackburn submitted to be the case.

39 While detailed submissions were advanced as to whether the GCO Variation Order is interlocutory or final in nature, s 33ZDA(3) does not impose a condition on the exercise of the power based on whether the GCO under consideration is interlocutory or final in nature.

40 The impact of the Error, which is detailed in Confidential Annexure A to these reasons, means that it is appropriate or necessary for the Court to consider whether to amend the GCO in the interests of justice.

## E The intersection between the Variation Reasons and the Error

### E.1 The Variation Reasons

41 In *Allen v G8 Education Ltd (No 4)*, Watson J held the power to amend under s 33ZDA(3) should only be exercised if the Court is satisfied that circumstances now mean that an amendment is appropriate or necessary to ensure that justice is done in the proceeding.[6] As his Honour observed when considering whether to exercise that power, close attention should be paid to the reasons for the GCO first ordered.[7] In the present context, those reasons are the Variation Reasons that sit behind the GCO Variation Order.

42 Because the Variation Reasons provide the starting point, it is convenient to reproduce some extracts from them. In particular, from those parts of the Variation Reasons where I set out why I considered the original GCO percentage of 24.66% to be inappropriate and why, in light of the updated information available at the August hearing and in the 26 August Email, I determined the percentage of 17.392% to be appropriate:[8]

> [93] The question that must be addressed is whether the percentage of the settlement sum payable to the law practice in return both for undertaking the legal work, and assuming the burden of the risk, continues to be reasonable and proportionate.

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6 [2024] VSC 487, [63(c)].

7 *Allen v G8 Education Ltd (No 4)* [2024] VSC 487, [63(d)].

8 *McCoy v Hino Motors Ltd (No 2)* [2025] VSC 553, [93]–[94], [114], [120]–[124].

[94] Although potentially relevant to an amendment of a GCO pursuant to s 33ZDA(3), in this case the risk of establishing liability and quantum undertaken by the law practice may be put to one side. That is because there has been no material change to the risk on liability or quantum since the GCO.

…

[114] … [T]o permit the law practice to obtain the very high rate of return which would flow if the GCO percentage remains undisturbed, a rate of return that was well outside the range to which the modelling evidence was directed, would be contrary to the interests of justice. It would be contrary to the interests of justice to permit an IRR and an ROI which was well outside the contemplation of the Court and of the law practice when the GCO was made. To permit the GCO rate to remain would result in a rate of return to the law practice which reflects, not a change in the risk, but a change in the return resulting from the cooperative, expeditious and effective settlement conferral process that occurred in this case.

…

[120] A balancing is required to ensure both that the percentage return following the settlement continues to be proportionate to the risk and that any adjustment made to the IRR does not act as a disincentive to law practices to engage proactively with early settlement negotiations and, where appropriate, early settlement.

[121] In recognition of the importance of the early settlement of group proceedings to group members, with a view to ensuring that early settlements are not discouraged, and noting the overarching obligations in ss 23 and 25 of the CPA to narrow the issues in dispute and to minimise delay, I have determined to allow an IRR that is above that which was in the contemplation of Maurice Blackburn and the Court at the time of the carriage dispute, as reflected in the modelling exhibited in the second Gilsenan affidavit.

[122] Having regard to the IRR modelling results summarised in the table reproduced in confidential Annexure B I have determined to order that the GCO rate applicable to the settlement be 17.392% or $15,131,000, in lieu of 24.66% or $21,450,000 which would have been payable to Maurice Blackburn in accordance with the original GCO.

[123] Although a GCO rate of 17.392% is well below the stepped percentage rate fixed at the outset of the proceeding for the settlement sum achieved, the rate is only marginally below the percentage rate applicable under the GCO had the settlement sum been or exceeded $225 million.

[124] A rate of 17.392% results in an IRR that is materially above the IRR at the 75th percentile that was modelled at the time of the GCO, but it remains well shy of the return that the unamended GCO rate would have generated.

43 In *Fox v Westpac Banking Corporation*, Harris J held that s 33ZDA(3) allows the Court to ensure that the terms of the GCO remain appropriate having regard to updated information that has become available.[9] In this case, the updated information includes the detailed information in Confidential Annexure A concerning the Error and the impact of the corrected modelling on IRR calculations previously relied on.

**E.2 Where the Variation Reasons and the Error intersect**

44 As submitted by the Contradictors, it is important to identify the point in the Variation Reasons at which the Error impacts on the reasoning.

45 The Error that has been discovered does not change or impact my finding in paragraph 94 of the Variation Reasons that there has been no material change to the risk on liability or quantum since the original GCO. The Error does not impact the evidence about what return to Maurice Blackburn was in the contemplation of the law practice and the Court at the time of the original GCO application. I agree with the Contradictors that the reasoning in paragraph 114 of the Variation Reasons is unaffected by the Error.

46 The Error does not concern the modelling exhibited to the second Gilsenan affidavit referred to at paragraph 121 of the Variation Reasons. Based on that modelling, I found the return to Maurice Blackburn that was within the contemplation of Maurice Blackburn and the Court at the time the original GCO was made was no higher than the 75th percentile IRR percentage identified in Confidential Annexure B to the Variation Reasons at footnote 23. For convenience, reproduced at paragraph 3 of Confidential Annexure A to these reasons is confidential footnote 23. The evidence referred to in that footnote is not altered or affected by the Error.

47 The Error relates to the balancing exercise and the allowance to be made referred to at paragraphs 120 and 121 of the Variation Reasons, respectively. As stated at paragraph 120 of the Variation Reasons, a balancing is required so as to ensure that any adjustment to the IRR should not act as a disincentive to law practices to engage

[9] [2025] VSC 643, [87(a)].

proactively with early settlement negotiations and, where appropriate, early settlement.

48 The Error does not impact upon my decision to allow an IRR that is above that which was in contemplation of Maurice Blackburn and the Court, as referred to in paragraph 121 of the Variation Reasons. However, it does impact directly and materially on the quantification of that allowance, as referred to at paragraphs 122 to 124 of the Variation Reasons. That is because the Error, once corrected, has a material impact upon the calculation of the IRR and also upon the calculation of the Return on Investment ('ROI'). I refer in that regard to the table at paragraph 69 of the Contradictors' written submissions, which is reproduced at paragraph 4 of Confidential Annexure A to these reasons.

**E.3 What percentage is appropriate or necessary to ensure that justice is done?**

49 The corrected modelling evidence in Confidential Annexure A to these reasons shows that to allow the GCO percentage of 17.392% to stand would be to permit an IRR that is well outside the contemplation of the Court and of the law practice at the time of the carriage dispute and when the original GCO was made.

50 Contrary to Maurice Blackburn's submissions, I do not agree that the Court does not have power pursuant to s 33ZDA(3) to vary the tiered GCO percentage to one that is outside the percentages of the forward-looking risk assessment undertaken by Maurice Blackburn at the time of the carriage dispute. Such an asserted constraint upon the exercise of the Court's power to amend is not supported by the text of the subsection. Nor is it supported by the context and purpose of the subsection. The power to amend in s 33ZDA(3) is to be exercised where, as stated in s 33ZDA(1), it is appropriate or necessary to ensure that justice is done in the proceeding.

51 If the specified percentage in the GCO Variation Order were to remain, the IRR to Maurice Blackburn will be significantly above the 75th percentile IRR identified in Confidential Annexure B to the Variation Reasons at footnote 23. It is neither appropriate nor necessary to ensure that justice is done in the proceeding to fix a percentage that reflects an IRR which, based on the corrected modelling, is

materially in excess of the IRRs that were modelled and within the contemplation of Maurice Blackburn and the Court at the time of the original GCO application. In light of the corrected financial modelling, it would be contrary to the interests of justice to permit the GCO percentage of 17.392% to stand.

52 The Contradictors submitted that to determine a GCO percentage of 13.253% may be seen to act as a disincentive to firms engaging in early settlement discussions.

53 I accept the proposition that 13.253% — being the percentage reflecting the same IRR upon which I based my adopted percentage of 17.392% in the GCO Variation Order — is low in comparison to GCO percentages fixed pursuant to s 33ZDA(1) at the outset of group proceedings. The lowest such percentage of which I am aware is 14% in *DA Lynch v Star Entertainment Group* ('*DA Lynch*'),[10] following a hard fought carriage contest. While that is the case, I do not agree that a comparison between GCO percentages in other cases and 13.253% in this case is a valid or appropriate comparison:

(a) First, the comparison referred to is a comparison of GCO percentages fixed by the Court at different points in the litigation cycle. The 14% ordered in *DA Lynch* was fixed at the outset of group proceedings. It is a percentage that is comparable to the 24.66% original GCO percentage in this case. Both are initial GCO percentages determined under s 33ZDA(1), not percentages amended pursuant to s 33ZDA(3).

(b) Second, in order for s 33ZDA(3) to apply, there must already be an earlier GCO in existence. Section 33ZDA(3) is a power to amend; a power which requires as its starting point a previous GCO in the proceeding.

(c) Third, the percentages in other cases to which reference was made are not percentages that have been fixed taking into account or influenced by an early settlement as detailed in the Variation Reasons.

54 The early settlement of this proceeding meant both that the amount actually expended by Maurice Blackburn on legal costs and the time during which it was

[10] [2023] VSC 561.

'out of its money' relating to those costs was much less than was anticipated and was modelled at the time of the original GCO. These circumstances led to what would have been a very high IRR to Maurice Blackburn based on the original modelling, had the original GCO percentage of 24.66% not been reduced. The effect of the Error is that the very high IRR to which I have referred is an even higher IRR when regard is had to the corrected modelling.

55 The corrected modelling shows that if the original GCO percentage were to stand, the corrected IRR reflecting that percentage would be almost double the IRR at the 75th percentile modelled and exhibited to the second Gilsenan affidavit.

56 I accept that 13.253% is almost half the original GCO percentage of 24.66%. However, that does not mean that to fix such a percentage in this case would act as a disincentive for firms to engage in early settlement discussions and early settlements. It would not do so because to fix the percentage at 13.253% is to fix a percentage that reflects an IRR materially above the 75th percentile modelled by Maurice Blackburn.

57 The desirability of ensuring that any amendment to 17.392% will not act as a disincentive is to be considered in the context of the overarching obligation in s 22 of the *Civil Procedure Act 2010* (Vic) upon parties and legal practitioners to use reasonable endeavours to resolve disputes by agreement unless it is not in the interests of justice to do so. That obligation is a statutory obligation the importance of which should not be understated, particularly in the class action context.

58 When I adopted 17.392% in the GCO Variation Order, as stated at paragraph 124 of the Variation Reasons, I did so on the basis that that percentage resulted in an IRR that was materially above the IRR at the 75th percentile modelled at the time of the original GCO. A percentage of 13.253% reflects that same IRR, one materially above the 75th percentile that was modelled at the time, but corrected for the Error.

59 In the Variation Reasons at paragraph 123, I noted the rate of 17.392% is only marginally below the applicable rate of 17.5% specified in the original GCO based on a settlement of over $225,000,000. A rate of 13.253% is materially below the original tiered rate of 17.5%. However, that difference is the result of correction of

the Error. The percentage adopted in the GCO Variation Order was premised on the IRR calculations contained in the Fourth Taylor Affidavit and the 26 August Email.

60 While I have given careful consideration to the Contradictors' submissions that a GCO percentage in the range of 14.738% to 16.336% would be appropriate, I consider that to order an amended percentage within that range would result in an IRR that was both not in the contemplation of the Court and Maurice Blackburn at the time of the original GCO application and one that is too high compared to the 75th percentile IRR referred to within the second Gilsenan affidavit. I do not consider it is in the interests of justice and nor is it in the interests of group members to order a percentage that would result in such an outcome.

61 A percentage of 13.253% reflects an IRR that is materially in excess but not, in my opinion, too far in excess of the IRR modelling in the contemplation of Maurice Blackburn and the Court at the time of the carriage dispute and the original GCO. While a reduction in monetary terms in the return to the law practice from the GCO Variation Order, 13.253% is still above the 75th percentile IRR that was modelled.

62 I consider the appropriate amendment pursuant to s 33ZDA(3) is to order a GCO percentage of 13.253% and an amount of $11,530,000 in lieu of the percentage of 17.392% and the amount of $15,131,000 specified in the GCO Variation Order. This amendment is one that provides a risk reward and return both in excess of Maurice Blackburn's actual legal costs and in excess of the 75th percentile IRR that was modelled. It is not an amendment that serves as a disincentive to early settlement, particularly when regard is had to the statutory obligation in s 22 of the *Civil Procedure Act 2010* (Vic).

## F **Disposition**

63 I will make the following orders:

(a) Pursuant to s 33ZDA(3) of the Act:

(i) in lieu of the percentage specified in paragraph 1(a) of the GCO Variation Order, the legal costs payable to the Intervener are 13.253% of the Settlement Sum; and

(ii) paragraph 1(b) of the GCO Variation Order be amended to substitute $11,530,000 for the GCO amount specified.

(b) Pursuant to s 33V(2) and/or s 33ZF of the Act, the reasonable costs of the Contradictors:

(i) are to be paid from the Settlement Distribution Fund within 30 days of the presentation of an invoice; or

(ii) if such costs are paid by the Intervener on behalf of the plaintiff in the first instance, they shall be reimbursed to the Intervener from the Settlement Distribution Fund.

(c) Pursuant to ss 17 and 18(1)(a) of the *Open Courts Act 2013* (Vic), the information contained in the following materials shall not be published or disclosed without the prior leave of the Court to any person or entity other than the plaintiff and his legal advisers, CF FLA Australia Investments 3 Pty Ltd and their legal advisers, the Contradictors and the Court:

(i) The Sixth, Seventh and Eighth Taylor Affidavits and the exhibits thereto.

(ii) The submissions of Maurice Blackburn and of the Contradictors referred to in paragraph 12 of these reasons.

(iii) The transcript of the hearing on 20 March 2026.

(iv) Confidential Annexure A to these reasons.

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**CERTIFICATE**

I certify that this and the 15 preceding pages are a true copy of the reasons for ruling of Delany J of the Supreme Court of Victoria delivered on 8 April 2026.

DATED this Eighth day of April 2026.


T. Varney

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Associate