

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION

No. 4788 of 2009

BETWEEN:

CAROL ANN MATTHEWS

Plaintiff

and

SPI ELECTRICITY PTY LTD (ACN 064 651 118)
& ORS (according to the schedule of parties)

Defendants

(by original proceeding)

AND BETWEEN:

SPI ELECTRICITY PTY LTD (ACN 064 651 118)

Plaintiff by Counterclaim

and

(ACN 060 674 580)
& ORS (according to the schedule of parties)

Defendants by Counterclaim

(by counterclaim)

AFFIDAVIT OF ANDREW JOHN WATSON

Date of Document:	29 November 2016
Filed on behalf of:	The Plaintiff
Prepared by:	
Maurice Blackburn Lawyers	AWatson@mauriceblackburn.com.au
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I, Andrew John Watson, Solicitor, of Level 10, 456 Lonsdale Street, Melbourne in the State of Victoria, make oath and say as follows:

1. I am a Principal in the firm of Maurice Blackburn Pty Ltd (**Maurice Blackburn**), the solicitors for the Plaintiff in this proceeding (**the proceeding**) and pursuant to Orders of this Court dated 23 December 2014, I am the Scheme Administrator.




2. I make this affidavit from my own knowledge unless otherwise stated. Where statements are not made from my own knowledge, they are made to the best of my information and belief after due enquiry and I have set out the source of my information.
3. I make this affidavit for the purpose of providing the Court with an update as to:
 - (a) the estimated pro rata recovery of personal injury and dependency ("I-D") Claimants in this proceeding;
 - (b) the estimated pro rata recovery of economic loss and property damage ("ELPD") Claimants in this proceeding;
 - (c) settlement administration costs;
 - (d) taxation issues affecting the Distribution Sum; and
 - (e) communications with group members.

A. ESTIMATED PRO RATA RECOVERY OF PERSONAL INJURY AND DEPENDENCY CLAIMANTS

4. I refer to my comments at the Case Management Conference of 14 November 2016 ("November CMC") confirming that:
 - (a) all assessments of I-D Claimants' entitlements, including review assessments, had been finalised; and
 - (b) all that remained to be determined in order to calculate the entitlements of I-D Claimants was the extant costs applications in this proceeding and in the Murrindindi Bushfire Class Action settlement administration.
5. I refer also to the following documents prepared by Mr John White, Special Referee, Costs:
 - (a) Report in this proceeding dated 21 November 2016, which concluded that all costs sought in relation to this settlement administration are reasonable and that no costs should be disallowed;
 - (b) Report in the Murrindindi Bushfire Class Action settlement administration dated 21 November 2016, which concluded that both the method of calculating and the




quantum of the proposed transfer payment from the Murrindindi Distribution Sum to the Kilmore Distribution Sum ("**Proposed Transfer Payment**", referred to in my affidavit sworn 31 October 2016 and discussed during the November CMC) are reasonable.

6. Whilst the Court in each of the Kilmore and Murrindindi proceedings may ultimately determine to adopt, not adopt or adopt in part each of Mr White's reports, Maurice Blackburn performed a pro rata calculation of I-D Claimants' entitlements assuming the Court's adoption of Mr White's conclusions ("**Estimate of I-D Claimant Recovery**"). Now produced and shown to me and marked "**AJW-1.**" is the Estimate of I-D Claimant Recovery.
7. On 21 November 2016 Maurice Blackburn gave the Estimate of I-D Claimant Recovery to Mr George Kompos of KPMG and instructed him to review the calculations performed.
8. I determined that preparing the Estimate of I-D Claimant Recovery at this point and having it reviewed by Mr Kompos, notwithstanding the extant costs applications, would expedite the I-D settlement distribution, as it would permit Mr Kompos to more quickly review and confirm any amendments to the I-D pro rata calculation required following the Court's consideration of Mr White's reports.
9. The Estimate of I-D Claimant Recovery takes into account each of the following additions to and deductions from the Settlement Fund to enable the calculation of the pro rata entitlements of the I-D Claimants:
 - (a) The addition of interest;
 - (b) The deduction of potential taxation liabilities;
 - (c) The addition of interim payments made which would otherwise have remained in the Settlement Fund;
 - (d) The addition of review and bond costs payable to the Settlement Fund; and
 - (e) The deduction of settlement administration costs.

Addition of interest

10. The Estimated I-D Claimant Recovery takes into account estimated interest earned on the Settlement Fund up until 30 November 2016 based on estimates provided by the




banks holding each of the funds. I chose the 30 November 2016 calculation date as I anticipate that the funds required to make the settlement distribution to I-D Claimants will be required to be made available shortly after this date to enable claimants to receive funds by the end of 2016.

Deduction of taxation

11. In preparing the Estimate of I-D Claimant Recovery Maurice Blackburn has deducted taxation payable consistent with:
- (a) the ATO's informal decision that all interest earned on the Distribution Sum is assessable and that settlement administration costs are not deductible (referred to further below); and
 - (b) PwC's advice that the applicable rate of taxation is 49%.

Interim payments, review costs and bond repayments

12. The Estimated I-D Claimant Recovery takes into account:
- (a) interim payments made to date, treating such payments as deductions which have been made from the Settlement Fund which need to be added back into the fund prior to the calculation of I-D Claimants' entitlements; and
 - (b) outstanding bond and review costs payable to the Settlement Fund on account of unsuccessful reviews under the Settlement Distribution Scheme, as such costs properly form part of the Settlement Fund and as such need to be added back in prior to the calculation of I-D Claimants' entitlements.

Deduction of settlement administration costs

13. The Estimated I-D Claimant Recovery takes into account all settlement administration costs approved to date and, as foreshadowed above, assumes that all extant costs applications in this proceeding and the Murrindindi Bushfire Class Actions settlement administration are successful. As such, the estimate takes into account:
- (a) ELPD settlement administration costs up to 30 September 2016;
 - (b) General settlement administration costs up to 31 October 2016;
 - (c) I-D settlement administration costs up to 31 January 2016; and
 - (d) The Proposed Transfer Payment.




14. During the November CMC, I commented that in order to calculate the I-D Claimant recovery rate it would be necessary to estimate future ELPD settlement administration costs beyond those which are covered by the outstanding costs application. Since making those comments I have sought to make such estimation and ascertained that:
- (a) so doing at this point in time of the ELPD assessment process required the making of a large number of assumptions and thus was inherently uncertain;
 - (b) in order to ensure consistency of treatment, so doing would require the estimation of future interest on the ELPD Fund up until the final ELPD settlement distribution which also required the making of a large number of assumptions and was also thus inherently uncertain;
 - (c) due to such uncertainties Mr Kompos of KPMG could not reasonably opine on the reasonableness or otherwise of such estimations; and
 - (d) because of the comparative quantum of the I-D Fund and the ELPD Fund, ignoring the future ELPD settlement administration costs and future income on the ELPD Fund served to increase the I-D pro rata recovery by approximately 0.5% whilst only decreasing the anticipated ELPD pro rata recovery (based on current estimates of the total ELPD assessed losses) by 0.1%.
15. In light of the above uncertainties and the minimal impact that ignoring future ELPD costs and income would have on the anticipated ELPD pro rata recovery, I have ignored such future costs and income in calculating the I-D Claimant recovery rate.

KPMG review of draft I-D pro rata calculation of 21 November 2016

16. On 21 November 2016, Mr Kompos advised Maurice Blackburn that he had determined that the Estimated I-D Claimant Recovery had been performed in accordance with the supporting documentation provided to KPMG and that all calculations had been correctly made.
17. I intend to instruct Mr Kompos to file a report confirming this opinion at the same time as he provides an expert opinion as to the individual in-hand assessment amounts calculated from the final I-D pro rata assessment rate which take into account individual paybacks.

Rate of recovery calculated in draft I-D pro rata calculation of 21 November 2016

18. The rate of I-D Claimant recovery calculated by Maurice Blackburn and verified by Mr Kompos is 64.497%. As noted above, this rate of recovery assumes the Court's

adoption in full of Mr White's conclusions in both this proceeding and the Murrindindi Bushfire Class Action settlement administration. To the extent that such conclusions are not adopted by the Court, this rate of recovery could increase (if any costs are disallowed) or decrease (if the Proposed Transfer Payment is disallowed in part or in full).

19. The estimated I-D Claimant recovery is slightly lower than the estimated 65% to 70% recovery rate range quoted in the Personal Injury Brochure sent to I-D Claimants.

B. ESTIMATED PRO RATA RECOVERY RATE OF ELPD CLAIMANTS

20. During the November CMC I noted that there remained a small number of ELPD claims which are yet to be assessed. Whilst it will not be possible to calculate the actual ELPD pro rata recovery rate until all claims are assessed, any review assessments have been conducted and future ELPD Fund interest and settlement administration costs are more certain, based on the assessed losses to date and estimates of future costs and interest an ELPD pro rata recovery rate can be approximately estimated.
21. Based on this approximate estimate, it is likely that the actual ELPD Claimant recovery rate will remain within the estimated 20% to 35% recovery rate range quoted in the ELPD notices of assessment sent to ELPD Claimants, and will likely be in the top half of that range.

C. UPDATE AS TO SETTLEMENT ADMINISTRATION COSTS

22. As recorded in Exhibit **AJW-1** total interest on the funds is \$29.0m. If the Proposed Transfer Application is approved, total settlement administration costs for this proceeding are \$25.2m; I-D costs are \$13.6m and the likely pro rata recovery for I-D claims will be approximately 64.5%.
23. At the time of settlement of this proceeding I estimated that all settlement administration costs would be defrayed by the interest on the fund. My estimates at settlement approval were for I-D costs of \$14m. If the Proposed Transfer Payment is authorised, actual I-D costs in this proceeding will be less than the estimated I-D costs.
24. In the I-D brochure claimants were advised that the estimated range of recovery was between 65% and 70%. Even with the maximum potential tax liability the current estimated recovery is only just below that range. If that tax is not payable the recovery rate will be 66.6%.



25. At the time the rate of recovery was estimated there were 1731 personal injury claimants. There are currently 1905 personal injury claimants, a 10% increase because of late registrants. If there had been fewer late registrants it is likely the rate of return to claimants would have exceeded 70%. In addition, and notwithstanding the number of late registrants up until quite recently it seemed likely that close to a 70% return would be achieved however the substantial upward revision of compensation assessed for some individuals did have the effect of reducing the pro rata rate by approximately 1%.
26. ELPD Claimants have been advised of a likely settlement range of between 20% to 35%. Even with the maximum potential taxation liability, current projections are for a recovery in the upper half of that range. At settlement, ELPD costs were estimated to be up to \$10m. At the conclusion of the distribution process this estimate will be exceeded (they are currently \$9.9m assuming the Proposed Transfer Payment is authorised).
27. A substantial contributor to this anticipated increase in ELPD costs will be the 199 ELPD late registrants, representing an increase of 5% in the number of Above Insurance ELPD claims. In addition there has been much more work associated with providing support to and checking the work of the ELPD Assessors than had been anticipated at the time of my original costs estimate.

D. TAXATION ISSUES

Application of interest earned on the settlement sum

28. In accordance with the Settlement Distribution Scheme:
- (a) the settlement funds have been invested for the duration of the settlement administration process (SDS sections A1.1 (i) (iii) and A1.1 (m) (vi)); and
 - (b) interest earned on the settlement funds to date has been used to offset any settlement administration costs which have been approved by the Court (SDS section A4.2).
29. To date all settlement administration costs have been covered by the interest earned on the settlement funds and there has been no reduction to the principal of the settlement funds.
30. The Settlement Distribution Scheme further specifies that all taxes arising in connection with the administration of the Scheme are to be paid from the Distribution Sum (SDS




section A4.1(a)). This means that any tax payable on the interest earned by the Scheme is to be paid from the Distribution Sum.


31. In the establishment and conduct of the Settlement Distribution Scheme, Maurice Blackburn acted in accordance with professional tax advice including as to the process of engagement with the ATO.

Prior Advice and Practice

32. Maurice Blackburn has requested and received professional tax advice on multiple occasions that settlement administration costs are deductible expenses against interest income.
33. Consistent with prior advice, Maurice Blackburn has taken steps to ensure that where possible Administration Costs incurred in a given tax year were approved prior to the end of that year. The practical effect of having sought such approvals, if administration costs are held to be deductible, is that the tax liability on the interest earned will have been very significantly reduced.
34. The advice received regarding deductibility of administration costs affected the *timing* of seeking the approval of those costs but would have had no impact on the consideration of the court appointed referee as to whether those costs were properly incurred.

Informal Tax Office Decision

35. I refer to my comments at the November CMC that the ATO had communicated via our taxation advisors PwC that it had reached an informal decision that all interest earned on the Settlement Sum was assessable and that settlement administration costs were not deductible for taxation purposes ("**Informal Decision**"). As is evident from the Estimated I-D Claimant Recovery, the effect of this decision, if it takes effect, is that the taxation liability arising on this Settlement Sum is likely to exceed \$13 million.
36. In the circumstances, I consider it important that:
 - (a) Maurice Blackburn take all appropriate steps to investigate whether the ATO's informal decision that interest is assessable and settlement administration costs are not deductible should be challenged; and
 - (b) The issues relating to taxation of interest do not delay the I-D distribution to group members.




37. Accordingly I have determined that the prudent course is to withhold the full amount of the potential tax liability, distribute the I-D settlement as planned, and if the tax position changes make further distributions to group members.
38. I confirm that:
- (a) I have commenced the process of obtaining legal advice regarding these issues; and
 - (b) I will seek directions from the Court before commencing any proceedings against the ATO.
39. Now produced and shown to me marked "**Confidential Exhibit AJW-2**" is a document which sets out some further matters in relation to taxation issues. I make application for this exhibit to be confidential so as to ensure the maintenance of privilege.

E. COMMUNICATIONS WITH GROUP MEMBERS

40. On 14 November 2016, based on preliminary estimates of the I-D and ELPD recovery rates made as at that date, I sent an update letter to group members:
- (a) Updating group members as to the ATO's informal decision regarding the taxation payable on the interest earned on the Settlement Sum;
 - (b) Confirming that the I-D Claimant recovery rate would likely be slightly lower than the estimated 65% to 70% recovery rate quoted in the Personal Injury Brochure;
 - (c) Confirming that the ELPD pro rata recovery rate would likely be within the estimated 20% to 35% recovery rate range quoted in the ELPD notices of assessment; and
 - (d) Confirming the likely timeframe for the I-D and ELPD settlement distributions.

Now produced and shown to me and marked "**AJW-3**" is a copy of the update letter of 14 November 2016. The 14 November 2016 update letter resulted in a high volume of calls and emails about the taxation issues affecting the settlement administration.

41. On 17 November 2016 the Australian newspaper published an article entitled 'Black Saturday: law firm 'should foot huge tax bill' which stated:

The ATO has told The Australian the liability stems directly from the way the settlement scheme's financial arrangements were established, laying the blame with Maurice Blackburn.




The ATO has said tax liabilities do not arise in other instances of compensation payments because the lawyers involved work with the tax office upfront or establish settlement arrangements in a way that avoids adverse tax outcomes.

Now produced and shown to me and marked "**AJW-4**" is a copy of that article.

42. I am surprised by the comments attributed to the ATO as they are inconsistent with my own experience of class action settlements, inconsistent with the professional advice we have received in this case and previously and inconsistent with the tenor of the discussions which were conducted with the ATO.
43. Following the 14 November 2016 letter, I commenced receiving signed pro forma letters raising concerns about the conduct of the settlement administration and the taxation issues (**Pro Forma Letter**). Now produced and shown to me and marked "**AJW-5**." is a copy of the Pro Forma Letter. As at the date of swearing this affidavit I have received letters signed by 20 separate signatories (5 of whom are minors).
44. I am concerned that the Pro Forma Letter is premised on a misconception of the operation of the Settlement Distribution Scheme and the nature of any liability to pay tax on interest which has accrued on the Distribution Sum and falsely asserts that Maurice Blackburn is considering a delay in the distribution of compensation payments to group members when the opposite is the case.
45. I have reviewed a series of Facebook posts which indicate that the Pro Forma Letter is being actively promoted to group members by [REDACTED] who is not a group member in the proceedings.
46. I draw these matters to the attention of the Court so that it is appraised of my concerns regarding apparent misinformation being promulgated to group members.
47. As a result of the queries about the taxation issues, media reporting concerning those issues and the Pro Forma Letter, I decided to send a further update letter to group members clarifying the taxation issues affecting the settlement administration.
48. Whilst the SDS Team were in the process of drafting that update::
 - (a) [REDACTED], [REDACTED], [REDACTED] and [REDACTED] sent a letter to the Court on 22 November 2016 (the "**22 November letter**", discussed further below);
 - (b) the Court adjourned the Case Management Conference scheduled for 23 November 2016 to 30 November 2016; and




- (c) Mrs Matthews (and 51 co-signatories) and Mrs Rowe sent letters to the Court in response to the matters raised in the 22 November letter;

and I referred to those matters in the further update letter to group members. Now produced and shown to me and marked "AJW-6." is a copy of the update letter of 25 November 2016.

49. Following the Court's consideration of:

- (a) the matters raised in the 22 November letter and the subsequent letter to the Court of 25 November 2016;
- (b) the matters raised by Mrs Rowe, Mrs Matthews and the 51 co-signatories to Mrs Matthews' letter;
- (c) Mr White's reports and evidence; and
- (d) the making of any orders or directions consequent upon such evidence;

I intend to send a further update letter to group members.

Response to questions and concerns raised by certain group members

50. I refer to the 22 November letter.

51. I note the following:

- (a) most, if not all of the matters raised in the 22 November letter pertain to Mr White's report filed in June 2016 (**Mr White's first report**).
- (b) many of the matters, such as those relating to the assignment of work within the SDS Team are expressly and specifically dealt with in Mr White's first report.
- (c) a copy of Mr White's first report was provided to the authors of the 22 November letter on 24 June 2016. Between that date and 22 November and despite CMCs occurring on 19 September 2016 and 14 November 2016, at no stage were any of these matters raised.
- (d) further, orders have already been made approving the costs which Mr White's first report addressed;
- (e) the questions raised regarding Mr White's independence and impartiality are wholly without foundation; and




- (f) any further audit of Mr White's costs audit will incur unnecessary delay and cost.

Allocation of work within SDS Team

52. Mr White has expressly considered this issue in each of his reports and concluded that work has been appropriately allocated as between more junior and more senior members of the SDS Team. I refer to paragraphs 80 to 88 of Mr White's first report and paragraphs 40 to 48 of Mr White's second report.

Bottlenecks

53. The 22 November letter falsely suggests there was a delay of more than a year in addressing bottlenecks in the administration of the SDS. This is based on the premise that an affidavit describing bottlenecks is dated 13 April **2015**. That affidavit was sworn on 13 April **2016**. Throughout the administration of the SDS, the SDS Team has addressed bottlenecks in any of the processes whenever they have occurred.

Introduction of financial incentives

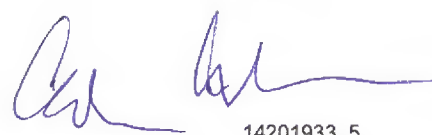
54. I refer to the questions raised in the 22 November letter regarding when assessors were paid, the rates of the assessments and the costs of the assessments.
55. I confirm that assessors were not paid at the time of the assessment interview. Under the processes established by the SDS Team, assessors were paid once completed assessments were submitted to Maurice Blackburn via the Collaborate database and internally reviewed by the SDS Team.
56. In total the assessors completed 1,763 individual group member assessments. It is impossible to determine the exact amount of assessments that have been completed per rate without manually reviewing each individual invoice that has been received by the assessors, which would be a time-consuming exercise. The reason for this is because many invoices submitted by the assessors included fees for multiple assessments.
57. We have however reviewed a data extract of all assessor invoices and can provide an estimate only of how many assessments were completed per rate. A total of 1,763 individual group member assessments have been completed. The SDS Team estimates:
- (a) 1,232 assessments were completed at a rate of \$2,000;
 - (b) 154 assessments were completed at a rate of \$2,250;




- (c) 316 assessments were completed at a rate of \$2,500;
 - (d) 61 assessments were completed at a rate of \$2,750.
58. I confirm that a further incentive payment of \$250 was introduced on 3rd June 2016 to encourage assessors to submit assessments before the end of financial year. This further incentive ceased on 30 June 2016.
59. In determining the increase in the base rate and the rate of the two incentive payments I formed the view that the total rates payable for assessments inclusive of incentive payments still fell within an overall range of reasonableness for the work performed on an assessment.
60. The incentive payments served a dual purpose of:
- (a) encouraging assessors to make themselves available for further assessment appointments; and
 - (b) encouraging assessors to complete their outstanding assessments.
61. The fee increases post 1 April 2016 cost approximately \$242,250.00, a substantial portion of this amount would be the \$250 increase in the base rate for assessments with the remainder referable to the incentive payments.

New software & system costs

62. I refer to the question raised in the 22 November letter regarding why Maurice Blackburn has incurred costs for the purchase of new software and programming and the provision of related training.
63. The costs in relation to software and systems that have formed part of the settlement administration costs are for bespoke systems that have been developed exclusively for the Kilmore and Murrindindi SDS. Without this software and systems we would not have been able to conduct the settlement administration efficiently or cost effectively. These are not systems or software that Maurice Blackburn had previously set up or required.
64. Where existing software or systems have been utilised without requiring bespoke modification these have not been charged to the Scheme.




Costs of reviewing completed assessments

65. The 22 November letter also raises questions regarding the necessity of internally reviewing every assessment completed by an assessor.
66. I confirm that all assessments were internally reviewed by a member of the SDS Team or by Henri Kauthen, retained to assist with the review process.
67. Maurice Blackburn retained 35 independent assessors throughout the administration of the SDS to complete the individual group member assessments. In order to ensure accuracy and consistency across all assessments it was necessary for the SDS Team to review each assessment. As mentioned above, in May 2016, Mr Henri Kauthen, Principal of Kauthen Legal, was appointed as a solicitor assessor under the SDS and he was also engaged to assist in reviewing the assessments of other assessors. Mr Kauthen is an experienced personal injury solicitor and a Law Institute of Victoria accredited specialist in personal injury law. Mr Kauthen was retained on an hourly rate of \$500 inclusive of GST, to assist the SDS Team in reviewing the assessments.
68. Members of the SDS Team who conducted the internal reviews of the assessments were at the level of associate lawyer or above. Each of their rates was charged in accordance with the SDS.
69. The 22 November letter queries why Senior Counsel was engaged to review some assessments at a cost of \$3,500 and the reasons behind this.
70. In accordance with the SDS, a group member could seek a review within 28 days after the date shown on their Notice of Assessment. If a group member sought a quantum review of their assessment, their ID Claim Book, original assessment and any further material submitted by the group member were provided to Senior Counsel to review. Senior Counsel would then meet with the group member to discuss their claim, following which Senior Counsel would provide a review assessment. In total, 39 group members sought a review, 13 of which were threshold reviews.

Proposed penalties for delays and mistakes

71. Throughout my administration of the SDS, I have considered and sometimes imposed punitive measures to deal with delays. Some of these are dealt with in previous affidavits. However, it became evident that punitive measures were not as effective as incentives and that incentive payments could be made within the range of reasonable fees for work performed. In those circumstances I regarded it as in the interests of




group members to make the incentive payments rather than persist with an approach which was punitive.

72. I did not regard it as appropriate to impose financial penalties on assessors for mistakes for the following reasons:

- (a) it is inevitable that with the significant volumes of assessments which were undertaken that mistakes and errors will occur but this does not necessarily mean work has been done in such a poor fashion that some form of reduction in payment would be appropriate or legally permissible;
- (b) the timely completion of assessments meant working with assessors to achieve appropriate throughput. I feared a regime of financial penalties was likely to create ill will and a further slow down in the rate of assessments;
- (c) as noted above, an incentive based regime produced better practical outcomes than punitive measures.

Cost of solicitor interviews

73. The 22 November letter raises a question regarding how many interviews were conducted to appoint a solicitor assessor and who conducted the interviews.

74. Under the Kilmore settlement administration, two solicitors were interviewed. The first interview was with John Voyage, who subsequently declined to be appointed as a solicitor assessor following his appointment as Road Safety Camera Commissioner for Victoria on 6 April 2016. Following this, Henri Kauthen was interviewed and subsequently accepted the appointment.

75. The interviews were conducted by Elizabeth Mukherji, a Senior Associate employed by Maurice Blackburn. In total 3.3 hours at a cost of \$2,046 were charged to the Kilmore settlement administration for interviews, training and internal conferences to assist in the appointment and training of a solicitor assessor.

Costs related to changes in the Questionnaire Process

76. The 22 November letter raises issues regarding the modification of the questionnaire process.

77. The personal injury questionnaire and process was originally developed under the guidance of Mr Andrew Keogh SC (as he then was) and Dr Nigel Strauss (medico-legal specialist) to ensure that the correct information was being obtained to assist the




assessors in their assessment whilst being mindful of the impact such questions would have on group members.

78. The modification of the questionnaire occurred after further consultation with Mr Andrew Keogh SC (as he then was) as well as other assessors to discuss ways to improve efficiency without detriment to claims.
79. It was decided that for those group members who were yet to undergo the personal injury questionnaire (predominantly late registrants), the questionnaire could be modified to reduce the amount of time taken by the SDS Team to gather the information necessary for an assessor to conduct the assessment. This step was able to be taken because of the large number of assessments which had already been undertaken and the familiarity with relevant issues which counsel had developed through the process and because it only applied to a relatively small number of assessments which were to be conducted on the modified questionnaire. It is my view that the modified process would not have been able to be implemented at the outset of the administration (and in any event at that stage would have been contrary to the advice received from Senior Counsel and Dr Strauss) and would not necessarily have been appropriate for implementation on a wide scale basis.
80. I determined that utilising solicitors for the conduct of the modified questionnaires where possible would be beneficial. As a result, Patricia McMullan and Simba Makoni, associate lawyers employed by Maurice Blackburn, conducted 58 questionnaires. These questionnaires were charged on a time-basis in accordance with the rates as set out in the SDS. I do not believe it would have been possible or appropriate to implement this system from the commencement of the assessment process or on a wide scale basis.

SWORN by the deponent at)
 Melbourne in the State of Victoria)
 this 29th day of November 2016)



Before me:



FILED on behalf of the Plaintiff

MEGAN FLORENCE GREAVES
 of 456 Lonsdale Street, Melbourne
 an Australian Legal Practitioner
 within the meaning of the Legal
 Profession Uniform Law (Victoria)