IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

Not Restricted

S CI 2009 04788

CAROL ANN MATTHEWS	Plaintiff
v	
AUSNET ELECTRICITY SERVICES PTY LTD (formerly SPI ELECTRICITY PTY LTD) (ACN 064 651 118) and others according to the Schedule	Defendants
AND	
AUSNET ELECTRICITY SERVICES PTY LTD (formerly SPI ELECTRICITY PTY LTD) (ACN 064 651 118)	Plaintiff by Counterclaim
v	
ACN 060 674 580 PTY LTD and others according to the Schedule	Defendants by Counterclaim
AND	
ACN 060 674 580 PTY LTD	Plaintiff by UAM Counterclaim
v	
AUSNET ELECTRICITY SERVICES PTY LTD (formerly SPI ELECTRICITY PTY LTD) (ACN 064 651 118) and others according to the Schedule annexed to other rulings of the Court	Defendants by UAM Counterclaim

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JUDGE:	J FORREST J
WHERE HELD:	Melbourne
DATE OF HEARING:	21 June 2016
DATE OF REASONS:	15 July 2016
CASE MAY BE CITED AS:	Matthews v Ausnet (Ruling No.42)
MEDIUM NEUTRAL CITATION:	[2016] VSC 394

PRACTICE AND PROCEDURE – Case management conference – Progress of the Settlement Distribution Scheme – Amendment of the Settlement Distribution Scheme – Court declines to intervene in relation to amendment for interim distributions – Allowance for administration costs – Declaration made that administration costs are reasonable.

APPEARANCES:	Counsel	Solicitors
For the Scheme Administrator	Mr A Watson, the Scheme Administrator, appeared in person	Maurice Blackburn
No appearance by the other parties		
Ms V Ruhr and Mr D Spooner, Group Members, appeared with the leave of the Court		

HIS HONOUR:

Introduction

1 This is the third ruling concerning the supervision of the administration of the Settlement Distribution Scheme (**SDS**) approved by Osborn JA on 23 December 2014.[1]

2 Save where necessary, I do not propose to repeat what was said in either of the previous two rulings, nor the contents of the SDS, which can be inspected on the Court website.

3 This ruling concerns:

(a) the progress of the administration of the SDS to date;

(b) whether there should be any consideration of an interim distribution of the settlement funds;

(c) the appropriate allowances to be made to the Scheme Administrator, Mr Watson, for administration costs; and

(d) other minor procedural matters.

General observations

4 At the commencement of the hearing of the application I made the following statement, which I now repeat:

> The purpose of this case conference and previous case conferences is to ensure that the SDS is being administered in accordance with its terms as approved by Justice of Appeal Osborn in December 2014. It is not open to any person, the plaintiff, Mrs Matthews, the defendants, or group members to now challenge or debate the terms of the SDS. All parties, including group members, were given the opportunity between July and December 2014 to

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[1] See *Matthews v AusNet Electricity Services Pty Ltd (Ruling No.40)* [2015] VSC 131, *Matthews v AusNet Electricity Services Pty Ltd (Ruling No.41)* [2016] VSC 171 (rulings) and *Matthews v AusNet Electricity Services Pty Ltd* [2014] VSC 663 (approval).
A copy of the Deed and SDS is available on the Court website at:
http://www.supremecourt.vic.gov.au/home/law+and+practice/class+actions/kilmore+east+kinglake+bushfire+class+action+settlement/
The content and procedures for administering the SDS are contained in *Matthews v AusNet Electricity and Services Pty Ltd (Ruling No.40)* [2015] VSC 131 and therefore will not be repeated in this ruling.

> make submissions to the Court about the terms of the SDS. These submissions were considered by Justice Osborn, who ultimately approved the SDS in its current form, and I note there was no appeal from those orders.
>
> This proposition it seems to me is important in two respects. First, the SDS as approved provided for, payment of Maurice Blackburn & Co's costs and disbursements of the trial at a fixed sum. That cannot be challenged. Secondly, payment of the administrator's costs in the management of the scheme is set out in the SDS. Mr Watson was appointed as the Scheme Administrator and unless the Court orders otherwise he remains the Administrator. My task as the judge charged with overseeing the scheme is simply this: to ensure that the scheme is administered properly, consistent with the terms of the SDS.

I concluded:

> I repeat, though, it is not the Court's role to provide advisory opinions on the way in which the scheme is being administered; rather, to ensure that it is being administered appropriately.

The application

5 The following affidavits were filed on this application:

(a) the plaintiff, Ms Carol Ann Matthews, of 15 June 2016; and

(b) the Scheme Administrator, Mr Andrew Watson, of 16 and 17 June 2016.

Both Ms Matthews and Mr Watson also gave viva voce evidence at the hearing.

6 Mr John David White, special referee costs consultant, provided a report dated 20 June 2016 of his assessment of the administration costs of the SDS.

7 Ms Vicky Ruhr, a Group Member, provided a letter dated 14 June 2016, which raised a number of issues concerning the administration of the SDS.

8 Ms Ruhr and Mr Dennis Spooner (also a Group Member) appeared at the hearing and were given the opportunity to cross-examine Mr Watson and Mrs Matthews, and made submissions concerning the administration of the SDS.

Progress of the administration of the SDS

9 A major concern of some of the group members (including Ms Ruhr and Mr Spooner) is the length of time it has taken to undertake the individual assessment

of claims. This is important because, as provided by the SDS, the funds cannot be distributed until all claims have been assessed. I should interpolate here that this provision of the SDS makes sense. For there to be a satisfactory and just distribution of the funds, it is essential that in determining the quantum of the distribution the Administrator knows exactly the individual amounts to be awarded to each group member. Absent those figures, the Administrator cannot make the pro rata allocation necessary to ensure that there is an equitable distribution.

I-D Claims

10 There are 1,901 claimants within this group. In Mr Watson's affidavit (of 17 June 2016), the position as at 14 June 2016 is set out:

> 9. (a) 1,741 detailed personal injury questionnaires have been completed which equates to approximately 99.4 per cent of registered personal injury and dependency group members.
>
> (b) 1,711 group members have attended a conference with an assessor which equates to approximately 97.7 per cent of registered personal injury and dependency group members.
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> (c) 14 group members currently have conferences scheduled with an assessor and a further 18 group members are ready to be assessed by an assessor. The SDS Team is in the process of scheduling these 18 conferences. Combined these will equate to approximately a further 1.8 per cent of registered personal injury and dependency group members.
>
> (d) 216 Notices of Assessments and Statements of Reasons are currently outstanding from assessors. In a number of cases, assessors are waiting upon the provision of further material required for the completion of their assessment.
>
> (e) 1,495 Notices of Assessments and Statements of Reasons have been received from assessors to date. Of these, 256 are currently being reviewed or are awaiting review by the SDS Team. The increase in the number of assessments to be reviewed by the SDS Team is largely due to the recent increase in the number of assessments being submitted by assessors and the temporary redeployment of solicitors to undertake personal injury questionnaires, which is discussed below. I anticipate that the backlog of assessments awaiting review will be cleared over the next few weeks, as there are now 3 full time members of the SDS team and one external contractor responsible for reviewing Notices of Assessments and Statements of Reasons, each of whom can review approximately 30 assessments per day.

(f) 1,239 Notices of Assessments and Statements of Reasons have been reviewed by the SDS Team and have been sent or are ready to send to group members.

(g) 21 requests for review have been received from group members to date. Of these, 10 are quantum reviews and 11 are threshold reviews. 3 quantum reviews have been determined, with 2 being in favour of the group member and 1 upholding the original assessment. 7 quantum reviews remain to be determined by review counsel. 2 threshold reviews have been determined, both being in favour of the group member. 9 threshold reviews remain to be determined by a medicolegal specialist.

11 The end result is that by mid-June, over 80 per cent of assessments had been undertaken. This is a vast improvement on the position three months ago.

ELPD claims

12 There are over 9,000 claims arising out of approximately 3,500 'unique property addresses'. About two-thirds of those include claims by the owners and/or occupants seeking an amount above that was covered by insurance at the time of the fire.[2]

13 Of the insurance only claims (that is about one-third), over 93 per cent have been allocated for assessment to ELPD assessors. Of the above insurance claims, 91 per cent have been allocated to ELPD assessors.[3]

14 As of mid-June 2016, 1,161 assessments have been received from ELPD assessors – which, pursuant to the SDS, can be reviewed. Mr Watson, in his affidavit of 17 June 2016, deposed as follows:

> 94. At present, one of the most significant impediments to the completion of ELPD assessments is the difficulty that ELDP Assessors are experiencing in contacting group members and delays in group members returning requested documents and phone calls. While the SDS Team and ELPD Assessors are aware that completing forms and providing information in respect of their losses can be a traumatic experience for many group members, these issues are resulting in a longer than expected timeframe required to complete some assessments.

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2 Mr Andrew Watson's affidavit of 17 June 2016, [40].

3 Ibid [42].

15 I should add that the assessment is only the first step in the ELPD process with the Group Members having a right to question an assessment – and a right of review of the final decision.

Analysis of the progress of the SDS to date

16 Ms Matthews, the lead plaintiff, said that she had maintained, at a general level, a watching brief over the progress of the settlement distribution. She was, to use her words, 'nobody's puppet'. She went on to say as to the adequacy of the administration:

> I don't have any problems with the way the scheme is being administered. I was expecting that the 18 months as was outlined in the distribution booklet was an estimate and I was expecting, as with everything since post-2009, everything seems to have blown out.

17 Mr Watson also gave evidence, summarising the progress of the SDS as outlined in his affidavits of 16 and 17 June 2016, noting that he was 'particularly conscious of the need to ensure that payment is effected in the most timely manner possible'.

18 The affidavits of Ms Matthews and Mr Watson are posted on the Court website.

19 I am satisfied that the steps taken to date by Mr Watson as Scheme Administrator have been reasonable and in the best interests of the Group Members. I am particularly impressed by the increase over the past six months in the assessment and processing of claims in both the I-D and ELPD categories. The prospect that there may be a distribution by the end of the year (or, in my view, more likely in the first quarter of 2017) is commendable.

20 I think it worthwhile to ponder for a moment whether a scheme for distribution of settlement funds could have operated in any more expeditious a fashion. One option would have been for individual assessments of damages to be carried out by judges or associate judges of this Court. Simply put, the Court does not have the resources (either in personnel or courtroom facilities) to accommodate such a process. It would also have been overly legalistic, cumbersome and traumatic for

many of the Group Members who would have been required to travel to Melbourne CBD, perhaps for several days. The alternative would been to engage a scheme administrator other than a lawyer from Maurice Blackburn. Essentially, this would have meant reinventing the wheel in terms of communications with Group Members and knowledge of the facts of the case and the circumstances of thousands of Group Members. It would have significantly delayed the processing of the claims and provided no discernible benefit. For my part, I do not see how this could have been a viable option.

21 Finally, comparisons with other class action schemes in this State indicate that a delay of a couple of years between settlement and final distribution is relatively common. On settlement or verdict, parties generally put to the Court a scheme which best suits the needs of the case. What is common in mass tort claims is the need for individual assessments of losses sustained by Group Members (whether injury, death or property). In other Black Saturday bushfire class actions – comprising much smaller numbers than here, individual compensation payments have been made over several years, with a number still outstanding.[4] I also note recent media reports that in New Zealand the processing of claims arising out of the disastrous 2011 Canterbury earthquake will not be completed until, at the earliest, 2020.[5]

22 The end result is that it is unfortunate and regrettable that there has to be any delay from the date of settlement to date of distribution, but for there to be an equitable and cost efficient distribution amongst the group members, the SDS must be complied with. What is important is endeavouring to minimise the delay, but at the same time ensuring that the assessment process is carried out fairly. For my part, I am satisfied that has occurred here.

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4 Although in respect of those claims payments have been made on a rolling basis consistent with the terms of the scheme.

5 See also the decision of *Quake Outcasts v Minister for Canterbury Earthquake Recovery on appeal from Minister for Canterbury Earthquake Recovery v Fowler Developments Ltd* [2016] 1 NZLR 1, [386]–[388].

Should the Administrator consider an interim distribution to Group Members?

23 If I was satisfied that the delay in finalising the assessment of the claims was of such significance in holding up the distribution to the Group Members, then I would invite the Scheme Administrator to consider whether he ought to make an interim distribution. I repeat what I said in Ruling No.41 – the SDS deliberately gives the Administrator an unfettered discretion in terms of making the decision.[6] It is not for the Court to superimpose its views on the Administrator although, of course, it can air its concerns.

24 Fortunately, for reasons I shall now set out, I do not think that the Administrator should be asked to consider an interim distribution. This is primarily because, as I have mentioned, the process of assessment of both the I-D and the ELPD claims has progressed quickly over the past few months and completion dates are well in sight.

25 In Mr Watson's affidavit of 17 June 2016, the following was said in relation to completion of I-D assessments:

> 33. The SDS Team currently estimates that all group members will have attended a conference with an assessor by 30 June 2016. This is up to 12 weeks ahead of the estimate provided in my 18 March 2016 Affidavit. Allowing time for outstanding documents to be obtained and considered by assessors and any medicolegal assessments and reviews to occur, the SDS Team is confident that the distribution of settlement monies will be able to take place in the final quarter of 2016, or in the first quarter of 2017.

26 Mr Watson went on to outline the possibility of any interim distribution of I-D claims:

> 110. Pursuant to Section D1.1 and D1.2 of the SIDS, in an exercise of my absolute discretion I may commence making distributions from the I-D Fund to resolved I-D claims upon resolution of the Final Assessed Values of at least 30% of I-D claims, subject to the considerations and limitations in Section D1.3 of the SDS.
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> 111. This threshold was met on approximately 11 March 2016.
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> 112. I have considered whether, in the circumstances, it is appropriate to commence making interim distributions to group members with assessed I-D claims. Completing this process would involve the diversion of significant resources from the SDS Team responsible for

6 *Matthews v AusNet Electricity Services Pty Ltd (Ruling No.41)* [2016] VSC 171, [34]-[40].

preparing claims for I-D claims for assessment to administer an interim distribution, including due to:

(a) Data verification of all files assessed to date to ensure that the assessment data as recorded as against a group member's file in Matter Centre accurately reflects the assessment data as set out in the group member's Notice of Assessment to ensure that no over or underpayment occurs;

(b) A widespread review of group members' files in order to determine the potential interim liability under social security legislation of group members who would receive an interim distribution, in part, for economic loss due to injury;

(c) The coordination of a widespread mail-out to eligible group members advising them of the proposed distribution and requesting that they sign and return an authority to release funds;

(d) The monitoring of the return of authorities to release funds and the coordination of a widespread mail-out to group members by cheque;

(e) The coordination of a widespread mail-out to ineligible group members explaining why they are not entitled to participate in the interim distribution; and

(f) The fielding of an anticipated large number of telephone calls and emails from ineligible group members seeking to advance their claims more quickly in order to expedite their eligibility for an interim payment.

113. For these reasons, I have determined that making an interim distribution to I-D group members had great potential to disrupt and delay the progress of the I-D assessment process, potentially by up to a month or longer, and practically could have the effect of delaying the final distribution from this year until next. Consequently in the interests of finalising the assessment process and distributing compensation to all group members in as short a time frame as possible I have determined not to make an interim distribution at this time.

114. If, in October 2016 it looks likely that final settlement distribution in respect of I-D group members will not occur in the fourth quarter of 2016, I propose to revisit this issue.

27 In relation to ELPD claims, Mr Watson, in his affidavit of 17 June 2016, said as follows:

95. The ELPD SDS Team and the ELPD Assessors are currently aiming to have all PNOAs [Provisional Notices of Assessment] issued by the end of July 2016. Based on the current completion rate being attained by the ELPD Assessors and given the delays that the ELPD Assessors

> are experiencing in finalising certain assessments, it may not be possible to issue all PNOAs prior to the end of August. Taking into account review periods, this will permit the distribution of settlement funds towards the end of 2016 or early 2017.
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> …
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> 115. Section F.1 of the SDS confers a similar discretion to make an interim distribution to ELPD group members upon resolution of the Final Assessed Values of at least 40% of ELPD claims. Whilst substantially more than 40% of ELPD claims by estimated value have reached the PNOA stage because of the issues surrounding finalisation of assessments detailed above this threshold has not yet been reached. I have given consideration as to whether to make an interim distribution to ELPD group members when this threshold is reached. For reasons which are similar to those which pertain to an interim distribution in relation to I-D claims I am concerned that a distribution under section F.1 may be very disruptive to the process of finalising the distribution to group members and could be the practical difference between a distribution this year and a distribution next.
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> 116. If, in October 2016 it looks likely that final settlement distribution in respect of ELPD group members will not occur in the fourth quarter of 2016, I propose to revisit this issue. Given the progress made in the assessment of the I-D and ELPD claims and the evidence of Mr Watson, I am satisfied that the Court should not interfere in relation to amendment to the SDS for interim distributions. Nor is any other action necessary.

28 Given the progress made in the assessment of the I-D and ELPD claims and the evidence of Mr Watson, I am satisfied that the Court should not interfere with the current distribution process. Specifically, there is no need for the Court to suggest to the Administrator that he provide an interim distribution. Nor is any other action necessary.

The allowance for administration costs

29 I repeat what I have said in my previous rulings: the SDS, as approved by Osborn JA, provided that the Administrator's costs of and incidental to the implementation of the scheme be paid out of the settlement sum.[7] It had been hoped (and this hope continues) that the interest earned on the capital sum will be able to be applied to all of the scheme administration costs. This is dependent upon the rate of interest on

[7] See *Matthews v AusNet Electricity Services Pty Ltd (Ruling No.40)* [2015] VSC 131, [28]-[31].

the original sum which can be achieved by the Administrator and the treatment of the interest earned by the ATO.[8]

30 In any event, the short point is that payment of fees for administration of the SDS comes out of the fund and any accrued interest.

31 On 5 November 2015, I appointed Mr White, an experienced costs consultant, as a special referee. As I have explained, the purpose for doing so was to ensure that the costs charged by the Administrator were reasonable.[9]

32 The administration costs from 1 July 2014 to 30 April 2016 amount to $18,226,657.30.[10] Payment of these costs has been approved by the Court, subject to Mr White's audit.

33 Mr White has now completed an audit of costs of the scheme administration to April of this year. The report of Mr White is comprehensive and can be viewed on the Court website.[11]

34 Mr White adopted a methodology based, in large part, on statements of principle by judges of the Federal Court (particularly the decision of Gordon J in *Modtech Engineering Pty Ltd v GPT Management Holdings Ltd*[12]) in assessing gross sum costs as between parties in a class action.

35 This process was adopted by Osborn JA in the approval of compromise in this proceeding when determining the costs payable to Maurice Blackburn. His Honour said as follows:[13]

> Gordon J initially declined to accept the plaintiff's costs evidence because the affidavit of the costs consultant was found to be lacking in detail and proper analysis. A registrar of the Court was appointed to

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8 See Mr Watson's affidavit of 17 June 2016, [196]-[199].
9 *Matthews v AusNet Electricity Services Pty Ltd (Ruling No.41)* [2016] VSC 171, [26]-[28].
10 See Mr John David White's report of 20 June 2016, [13] and [15].
11 A copy of the report is available on the Court website at: http://www.supremecourt.vic.gov.au/home/law+and+practice/class+actions/kilmore+east+kinglake+bushfire+class+action+settlement/costs+audit+report+of+mr+john+david+white+dated+20+june+2016
12 [2013] FCA 626.
13 *Matthews v AusNet Electricity Services Pty Ltd* [2014] VSC 663, [353] and [381] (citations omitted).

make an assessment of the costs, and a further expert opinion was sought. Gordon J accepted the methodology of the second expert, and in *Modtech Engineering Pty Ltd v GPT Management Holdings Ltd (No 3)* commented on the process undertaken by her:

> What then was that methodology? The task was not a taxation and no itemised bill of costs was prepared. Instead, Ms Harris considered her task by reference to the following principles:
>
> 1. There was a need for an appropriate balance in relation to the level of information available to the court and the costs associated with the provision of that information: *Re Medforce Healthcare Services Ltd (in liq)*;
>
> 2. The principles applicable to the assessment of costs on a gross sum basis provided some guidance. When assessing costs in that way the methodology adopted and information provided must enable the Court to be confident that the approach taken is logical, fair and reasonable: *Beach Petroleum NL v Johnson (No 2)*; *Seven Network Ltd v News Ltd*; and *Leary v Leary*;
>
> 3. At a minimum, a statement of the work undertaken together with a sufficiently itemised account to enable the charges made to be related to the work done was required: *Re Medforce*;
>
> 4. The matters to be taken into account in a review of legal costs under s 3.4.44(1) of the *Legal Profession Act 2004* (Vic) (the LPA), which include whether or not it was reasonable to carry out the work to which the legal costs relate, whether or not the work was carried out in a reasonable manner and the fairness and reasonableness of the amount of legal costs in relation to that work, as well as the matters that may be taken into account in considering what costs are fair and reasonable under s 3.4.44(2) of the LPA;
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> 5. The considerations enunciated in *Modtech Engineering Pty Ltd v GPT Management Holdings Ltd* and *Modtech Engineering Pty Ltd v GPT Management Holdings (No 2)*.
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> …
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> Moreover, the approach taken by Ms Dealehr [the costs consultant] reflects the methodological principles approved by Gordon J in *Modtech* and is very comprehensive. The detail with which the breakdown of costs is presented provides the Court with the information required for the Court to undertake an independent assessment of the overall reasonableness of the costs.

36 Applying these principles, Mr White proposed the following exercise:

> 32. On the basis that it reflected the methodological principles approved by Gordon J in *Modtech* and was very comprehensive Osborn J[A] accepted, at paragraph 381 of his Judgment in the present matter, the

following as an appropriate methodology to be utilized in determining whether gross sum costs claimed on an inter parties basis are reasonable:

(i) calculate the time spent on the proceeding by each of the lawyers and non-lawyers;

(ii) apply the Supreme Court scale rates and charges to work done by lawyers and non-lawyers;

(iii) identify and excise the number of hours relating to non-recoverable matters by reference to costs that are not claimable under the Supreme Court scales;

(iv) apply any discounts after considering the nature of the work claimed or the manner in which the work was done;

(v) apply the factor for loading for skill, care and attention as claimable under each of the old or new Supreme Court scales:

(vi) apply the complexity loading factor as provided for under the Maurice Blackburn conditional costs agreements; and

(vii) apply the factor of the 25 per cent uplift fee to professional fees on obtaining a successful outcome as claimable under the Legal Profession Act 2004 and provided for under the Maurice Blackburn conditional costs agreements.

…

37. Accordingly, bearing in mind the information that Gordon J at paragraph 37 in *Modtech* considered would be useful to the Court in assessing the reasonableness of costs and having regard to the roles of the Scheme Administrator and his staff as well as the scope of the work done by them to date and the likely scope of work still to be done by Mr Watson and his staff, I propose to adopt the following methodology:

(a) step 1 - identify the scope of work done;

(b) step 2 - identify the nature of the costs incurred over particular periods of time;

(c) step 3 - examine the copy bills of costs/tax invoices and calculate the time spent on the proceeding by each of the lawyers and non-lawyers;

(d) step 4 - examine the copy bills of costs/tax invoices and take and examine:

(i) samples of charges claimed for work done by reference to selected operators and selected dates, and

(ii) samples of disbursements claimed by reference to selected service providers and selected dates;

(e) step 5 - apply the hourly rates to be allowed to the Scheme Administrator and administrator staff as approved by the Court and detailed in Schedule B to the Scheme;

(f) step 6 - identify the number of hours relating to non-recoverable work by reason of that work not being reasonably incurred or reasonable in amount and, if any, excise that work; and

(g) step 7 - identify and, if any, reduce or deduct disbursements which appear unreasonably incurred or unreasonable in amount.

37 Having carried out the exercise step by step, Mr White reached the following conclusions as to the administration costs:

> **STEP 6 - EXCISE WORK UNREASONABLY DONE or UNREASONABLE IN AMOUNT**
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> 115. In light of my review of the materials provided to me, having regard to the outcome of the sampling process referred to as step 4(i) in paragraph 37 above and reiterating the matters generally canvassed, I do not consider it could reasonably be said that any of the work claimed in the bills of costs/tax invoices was unreasonably done or is unreasonable in amount.
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> **STEP 7 - DISBURSEMENTS UNREASONABLY INCURRED or UNREASONABLE IN AMOUNT**
>
> 116. In light of my review of the materials provided to me and reiterating the matters generally canvassed above, I do not consider that any of the disbursements claimed in the bills of costs/tax invoices were unreasonably incurred and or are unreasonable in amount.
>
> **CONCLUSION**
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> 117. Having regard to the matters canvassed in this report and the reasons expressed in paragraphs 38 to 88 and 106 to 115 above of this report the quantum of charges claimed in the bills of costs/tax invoices covering the period 14 July 2015 to 30 April 2016 is reasonable.
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> 118. Having regard to the matters canvassed in this report and the reasons expressed in paragraphs 38 to 74, 89 to 105 and 116 above of this report the quantum of disbursements claimed in the bills of costs/tax invoices covering the period 14 July 2015 to 30 April 2016 is reasonable.

38 I have read Mr White's report closely. The exercise that he has carried out has been performed competently and thoroughly. Specifically, I am satisfied that the methodology used is appropriate and has ensured that the costs charged by the Administrator are reasonable. In the circumstances, I need not do no more than

make a declaration that the payments made to the Administrator pursuant to the SDS are reasonable and that no amount is required to be refunded by the Administrator.[14]

39 Finally, on this issue, Ms Ruhr queried (quite properly) whether the payment to the special referee comes out of the SDS.[15] The answer is yes: I think it essential, as I explained in Ruling No.40, that there be an independent audit of the costs. This is a legitimate incidental cost of administration of the SDS. If I am wrong about this then s 33ZF of the *Supreme Court Act 1986* empowers the Court to authorise such a payment.[16]

Other matters

40 Further case management conferences have been fixed for 12 September 2016 and 14 November 2016.

Conclusion

41 The purpose of this ruling has been to describe the progress of the SDS; to enquire as to the possibility and viability of an interim distribution; to clarify the source and reasonableness of the administration costs of and incidental to the implementation of the scheme; and to address any outstanding concerns held by the Group Members who were in attendance at the hearing. Hopefully this provides at least some comfort to Group Members awaiting a distribution under the SDS. It is also hoped that the provision of materials to Group Members (including the rulings, orders and affidavits referred to in this ruling), which are accessible through the 'In Focus' section of the Court website, will assist in resolving any communication concerns of Group Members. As indicated at the hearing, the Court website will serve as one of the future points of reference for Group Members, ensuring that they have a means

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14 See orders of Justice J Forrest made 15 July 2016, 21 June 2016, 31 March 2016, 20 October 2015 and 17 April 2015, which can be viewed on the Court website: http://www.supremecourt.vic.gov.au/home/law+and+practice/class+actions/kilmore+east+kinglake+bushfire+class+action+settlement/

15 Letter of Ms Vicky Ruhr dated 14 June 2016.

16 See *Matthews v AusNet Electricity Services Pty Ltd (Ruling No.41)* [2016] VSC 171, [26].

to be updated as to the progress of the administration of the SDS. Group Members are, of course, also welcome to attend any future case management conferences, details of which are also contained on the Court website.