

B E T W E E N :

CAROL ANN MATTHEWS

Plaintiff

- and -

AUSNET ELECTRICITY SERVICES PTY LTD (formerly SPI ELECTRICITY PTY LTD) (ACN 064 651 118) and others according to the Schedule

Defendants

A N D B E T W E E N :

AUSNET ELECTRICITY SERVICES PTY LTD (formerly SPI ELECTRICITY PTY LTD) (ACN 064 651 118) and others according to the Schedule

Plaintiffs by
Counterclaim

- and -

ACN 060 674 580 PTY LTD and others according to the Schedule

Defendants
by Counterclaim

A N D B E T W E E N :

ACN 060 674 580 PTY LTD and others according to the Schedule

Plaintiff

- and -

AUSNET ELECTRICITY SERVICES PTY LTD (formerly SPI ELECTRICITY PTY LTD) (ACN 064 651 118) and others according to the Schedule

Defendants
by Counterclaim

**SPECIAL REFEREE'S REPORT
JOHN DAVID WHITE
20 JUNE 2016**

Date of document	: 20 June 2016	
Filed	: Pursuant to an appointment in Orders made 5 November 2015	
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SPECIAL REFEREE'S REPORT

APPOINTMENT

1. By Orders of His Honour Justice J Forrest made 5 November 2015 I was appointed as a special referee pursuant to Rule 50.01 of the Supreme Court (General Civil Procedure) Rules 2015.
2. The appointment requires me to report in writing to the Court on each occasion the Scheme Administrator seeks approval from the Court for payment of the costs of administering the Settlement Distribution Scheme ("the Scheme"). Specifically, my written report is to respond to the two questions set out in Appendix A to the Orders made 5 November 2015 and is to state my opinion with reasons. The two questions set out in Appendix A are as follows :
 - (a) Are the costs sought in relation to the administration of the settlement distribution scheme reasonable ?
 - (b) If not, in what amount should the costs be disallowed ?

MY EXPERIENCE

3. I was admitted to practice on 1 November 1979. After working as a litigation lawyer for some years in 1983 I took a position with the then Department of Professional Conduct and Practice of the Law Institute of Victoria. Subsequently from 1984 to 1987 I was Manager of the Law Institute's then Costs Advisory Service of Victoria. During that period I was Secretary to a number of Costs Committees of the Law Institute and was also Secretary to the Costs (Federal) Committee of the Law Council of Australia. I was one of the Law Institute's representatives on the Attorney-General's 1986 Committee to review the Rules of the Supreme Court relating to costs and the Supreme Court scale of costs.
4. Since leaving the Law Institute in 1987 I have practised exclusively as a costs lawyer and from 1989 I have been engaged in practice on my own behalf.
5. My practice involves tendering advice on the Law of Costs, the preparation of assessments of costs on a solicitor-own-client and an inter partes basis, the preparation of itemized bills of costs in taxable form on both a solicitor-own-client and an inter partes basis, the preparation of Notices of Objections to itemized bills of costs and appearances in all Victorian and Federal jurisdictions on taxations of costs and reviews of costs both on a solicitor-own-client and an inter partes basis.

6. I have also been engaged as a costs expert to prepare reports in respect of security for costs applications and have been instructed to prepare advices in respect of costs disputes, costs agreements, gross sum cost applications and the like.
7. I was a member of the panel established in the 1980's by the Master T Bruce, the then Taxing Master of the Supreme Court of Victoria, to represent the interests of Creditors and Contributories in taxations of costs in respect of liquidations.
8. I have been accredited as a costs law specialist by the Law Institute since 2010. I was a member of the Law Institute of Victoria Review of Scale of Costs Committee and am one of three costs lawyers who co-drafted the new Supreme Court scale of costs which came into operation on 1 April 2013. I was a member of the Law Institute's Costs Lawyers Group and until recently a member of the Law Institute's Costs Law Specialisation Committee. I am currently a member of the Law Institute's Costs Law Section Executive.
9. Since 1984 I have conducted numerous seminars on the law of costs and for more than 20 years until 2010 I delivered the annual introductory lecture on the law of cost to students at the Leo Cussen Institute for Continuing Legal Education.

MATERIALS PROVIDED

10. At the time of my appointment I was provided by the Court with a folder of "Working Documents" which comprised copies of the following :
 - (a) Settlement Distribution Scheme,
 - (b) Orders of Osborn JA 23 December 2014,
 - (c) Ruling of J Forrest J and Daly AsJ 4 May 2015,
 - (d) Orders of J Forrest J 17 April 2015,
 - (e) Orders of Daly AsJ 19 July 2015,
 - (f) E-mail and letter from the Court to me 23 September 2015,
 - (g) Affidavit of Andrew John Watson sworn 20 October 2015 (but not the exhibits), and
 - (h) Summary of payments authorised or sought as at 14 October 2015.
11. Additionally, the Court provided me with a copy of the Orders of J Forrest J made 5 November 2015 which relate to my appointment as special referee.
12. On 20 November 2015 I met with Ms Kimi Nishimura, Ms Megan Greaves, Ms Rhiannon Reed and Ms Claire Brown of the Scheme Administrator's staff at the offices of Maurice

Blackburn. At that meeting I was given a most comprehensive overview of the work done by the Scheme Administrator's staff in establishing and refining the procedure for processing claims and the electronic systems necessary for the efficient handling of that procedure, work done and continuing to be done in refining the electronic systems and the process generally and work being done by the Scheme Administrator's staff in actually processing claims.

13. I have been given full access to the Maurice Blackburn "Collaborate" electronic database as well as the "FileSite" and "Matter Centre" databases which are access through "Citrix". I was also provided with four folders of relevant documents which comprised the following :

1. Settlement Administration Personnel		
1.1	Settlement Administration Staff Description List	17 Nov 2015
1.2	External Parties Description List	17 Nov 2015
2. Settlement Distribution Scheme		
2.1	Settlement Distribution Scheme	Undated
3. Settlement Administration Brochures		
3.1	Personal Injury compensation in the Kilmore East – Kinglake Bushfire Class Action	Undated
3.2	Property damage compensation in the Kilmore East – Kinglake Bushfire Class Action	Undated
4. Maurice Blackburn System Access		
4.1	Citrix Login Details	18 Nov 2015
4.2	Collaborate Login Details	18 Nov 2015
5. Training & Process Documents		
5.1	Matter Workflow re Personal Injury and Dependency Claims Assessment Process in the Kilmore East – Kinglake Bushfire Class Action Settlement	17 Nov 2015
5.2	FileSite User Guide	Sep 2007
5.3	Structure of FileSite Folders	16 Nov 2015
5.4	Overview of Matter Centre	17 Nov 2015
5.5	Reference Guide for Personal Injury Paralegals	Undated
5.6	How to edit your User Profile on Collaborate	06 Feb 2015
5.7	Accessing and completing the Assessment of Claim Document on Collaborate re Personal Injury	29 Jan 2015
5.8	Reviewing your ID Claim Books on Collaborate re Personal Injury	29 Jan 2015
5.9	How to Upload Content to Claim Books	02 Oct 2015
6. Affidavits		
6.1	Affidavit of Andrew John Watson but not the exhibits	13 Apr 2015
6.2	Affidavit of Rory John Walsh but not the exhibits	17 Jun 2015
6.3	Affidavit of Andrew John Watson but not the exhibits	09 Oct 2015

7. Court Approved Settlement Administration Itemised Invoices		
	<i>Matter – Date of Invoice – Category – Dates of work – Invoice No</i>	<i>Amount</i>
7.1	Kilmore Settlement Administration – 10 Apr 2015 – General 1 July 2014 – 28 February 2015 – Invoice No (not advised)	354,064.30
7.2	Kilmore Settlement Administration – 10 Apr 2015 – Personal Injury 1 July 2014 – 28 February 2015 – Invoice No (not advised)	2,006,722.21
7.3	Kilmore Settlement Administration – 10 Apr 2015 – Property 16 July 2014 – 31 March 2015 – Invoice No (not advised)	382,284.51
7.4	Kilmore Settlement Administration – 30 Jun 2015 – Personal Injury 1 February 2015 – 31 March 2015 – Invoice No 417527	61,971.80
7.5	Kilmore Settlement Administration – 16 Jun 2015 – General 1 March 2015 – 31 March 2015 – Invoice No 410714	124,979.10
7.6	Kilmore Settlement Administration – 16 Jun 2015 – Personal Injury – 1 March 2015 – 30 May 2015 – Invoice No 410712	2,106,868.86
7.7	Kilmore Settlement Administration – 16 Jun 2015 – Property 3 March 2015 – 29 May 2015 – Invoice No 410717	631,594.57
7.8	Kilmore Settlement Administration – 30 Jun 2015 – General 30 June 2015 – Invoice No 411988	61,471.85
7.8	Kilmore Settlement Administration – 24 Sep 2015 – General 1 June 2015 – 30 June 2015 – Invoice No 416984	6,630.80
7.9	Kilmore Settlement Administration – 30 Jun 2015 – Personal Injury – 1 June 2015 – 30 June 2015 – Invoice No 411989	922,037.28
7.16	Kilmore Settlement Administration – 24 Sep 2015 – Personal Injury – 1 June 2015 – 29 June 2015 – Invoice No 416987	9,117.37
7.10	Kilmore Settlement Administration – 30 Jun 2015 – Property 26 June 2015 – 30 June 2015 – Invoice No 411993	818,355.56
7.10	Kilmore Settlement Administration – 24 Sep 2015 – Property 1 June 2015 – 30 June 2015 – Invoice No 416990	11,028.60
7.11	Kilmore Settlement Administration – 24 Sep 2015 – General 1 July 2015 – 31 July 2015 – Invoice No 416985	49,514.08
7.12	Kilmore Settlement Administration – 1 Oct 2015 – Personal Injury – 1 July 2015 – 31 July 2015 – Invoice No 417520	923,349.92
7.13	Kilmore Settlement Administration – 24 Sep 2015 – Property 1 July 2015 – 31 July 2015 – Invoice No 416992	260,392.88
7.14	Kilmore Settlement Administration – 24 Sep 2015 – General 1 August 2015 – 31 August 2015 – Invoice No 416986	21,866.90
7.15	Kilmore Settlement Administration – 30 Sep 2015 – Personal Injury – 1 August 2015 – 31 August 2015 – Invoice No 417522	747,922.78
7.15A	Kilmore Settlement Administration – 24 Sep 2015 – Property 1 August 2015 – 31 August 2015 – Invoice No 416993	250,294.22
	Subtotal	\$9,750,467.59

14. Since that date I have from time to time requested that Maurice Blackburn provide me with additional materials and each of those requests has been promptly and comprehensively complied with. The Scheme Administrator's staff have also provided me from time to time with additional material they consider may be relevant to my task.
15. I have also recently been provided with three additional folders of relevant documents which comprise the following :

6.3A	Affidavit of Andrew John Watson but not the exhibits	18 Mar 2016
8. Further Settlement Administration Itemised Invoices		
<i>Matter – Date of Invoice – Category – Dates of work – Invoice No</i>		<i>Amount</i>
Brought forward		9,750,467.59
Kilmore Settlement Administration – 18 Mar 2016 – General 1 September 2015 – 30 September 2015 – Invoice No (not advised)		79,915.00
Kilmore Settlement Administration – 18 Mar 2016 – Personal Injury 1 September 2015 – 30 September 2015 – Invoice No (not advised)		820,161.54
Kilmore Settlement Administration – 18 Mar 2016 – Property 1 September 2015 – 30 September 2015 – Invoice No (not advised)		445,512.13
Kilmore Settlement Administration – 18 Mar 2016 – General 1 October 2015 to 31 October 2015 – Invoice No (not advised)		51,033.40
Kilmore Settlement Administration – 18 Mar 2016 – Personal Injury 1 October 2015 to 31 October 2015 – Invoice No (not advised)		768,014.49
Kilmore Settlement Administration – 18 Mar 2016 – Property 1 October 2015 to 31 October 2015 – Invoice No (not advised)		325,816.52
Kilmore Settlement Administration – 18 Mar 2016 – General 1 November 2015 to 30 November 2015 – Invoice No (not advised)		51,533.90
Kilmore Settlement Administration – 18 Mar 2016 – Personal Injury 1 November 2015 to 30 November 2015 – Invoice No (not advised)		615,431.92
Kilmore Settlement Administration – 18 Mar 2016 – Property 1 November 2015 to 30 November 2015 – Invoice No (not advised)		271,754.00
Kilmore Settlement Administration – 18 Mar 2016 – General 1 December 2015 to 31 December 2015 – Invoice No (not advised)		27,233.80
Kilmore Settlement Administration – 18 Mar 2016 – Personal Injury 1 December 2015 to 31 December 2015 – Invoice No (not advised)		514,231.55
Kilmore Settlement Administration – 18 Mar 2016 – Property 1 December 2015 to 31 December 2015 – Invoice No (not advised)		215,903.08
Kilmore Settlement Administration – 18 Mar 2016 – General 1 January 2016 to 31 January 2016 – Invoice No (not advised)		51,352.62
Kilmore Settlement Administration – 18 Mar 2016 – Personal Injury 1 January 2016 to 31 January 2016 – Invoice No (not advised)		441,351.15
Kilmore Settlement Administration – 18 Mar 2016 – Property 1 January 2016 to 31 January 2016 – Invoice No (not advised)		177,266.76

<i>Matter – Date of Invoice – Category – Dates of work – Invoice No</i>	<i>Amount</i>
Kilmore Settlement Administration – 27 May 2016 – General 1 February 2016 to 29 February 2016 – Invoice No (not advised)	164,987.59
Kilmore Settlement Administration – 27 May 2016 – Personal Injury 1 February 2016 to 29 February 2016 – Invoice No (not advised)	649,320.91
Kilmore Settlement Administration – 27 May 2016 – Property 1 February 2016 to 29 February 2016 – Invoice No (not advised)	308,014.50
Kilmore Settlement Administration – 27 May 2016 – General 1 March 2016 to 31 March 2016 – Invoice No (not advised)	134,797.30
Kilmore Settlement Administration – 27 May 2016 – Personal Injury 1 March 2016 to 31 March 2016 – Invoice No (not advised)	506,602.07
Kilmore Settlement Administration – 27 May 2016 – Property 1 March 2016 to 31 March 2016 – Invoice No (not advised)	465,436.40
Kilmore Settlement Administration – 27 May 2016 – General 1 April 2016 to 30 April 2016 – Invoice No (not advised)	113,858.26
Kilmore Settlement Administration – 27 May 2016 – Personal Injury 1 April 2016 to 30 April 2016 – Invoice No (not advised)	773,435.71
Kilmore Settlement Administration – 27 May 2016 – Property 1 April 2016 to 30 April 2016 – Invoice No (not advised)	503,225.11
	\$18,226,657.30

16. On 31 May 2016 I had a further lengthy meeting with Ms Kimi Nishimura, Ms Megan Greaves and Ms Claire Brown of the Scheme Administrator's staff at the offices of Maurice Blackburn at which I was provided with a more detailed review of the assessment processes. At that meeting I was also shown in soft copy and examined the "FileSite" and "Matter Centre" records as well as the "Collaborate" database. In addition at that meeting I also examined and audited a number of hardcopy files in respect of late registrants, interim payment requests and bond waiver applications as well as a file evidencing the review by four solicitors of Counsels' assessments.
17. On 17 June 2016 I was provided with a copy of the Affidavit of Andrew John Watson sworn that day and the exhibits to that Affidavit. I refer later in this report to that Affidavit insofar as it relates to costs and disbursements incurred over the period 1 February 2016 to 30 April 2016.
18. I have conducted a detailed examination of all of the materials provided to me by both the Court and the Scheme Administrator's staff.

ESTABLISHMENT OF THE SETTLEMENT DISTRIBUTION SCHEME

19. The Kilmore East-Kinglake Bushfire Black Saturday Class Action ("the Class Action") was commenced in 2009. The trial of the proceeding began in March of 2013 and was concluded in June 2014. After the conclusion of evidence and submissions, but before any decision was handed down by the trial Judge, the parties agreed on terms of settlement of the Class Action for the sum of \$494,666,667.00.
20. Settlement of the Class Action required that each individual claim be assessed and at the time of settlement there were more than 10,000 claims registered on behalf of more than 5,000 individuals. The registered claims then comprised some 1,731 personal injury claims and around 9,000 claims for economic loss and property damage.
21. The settlement was approved by His Honour Justice Osborn on 23 December 2014 and on that date the Court also considered and approved the Scheme.
22. Broadly, the Scheme establishes a comprehensive framework for distributing the settlement sum among the Plaintiff and the Class Action group members including (a) the actual procedures to be utilized in assessing the individual claims of group members depending on whether the particular claim relates to personal injury and dependency claims on the one hand or economic loss and property claims on the other, (b) the manner in which the settlement fund is to be split between the personal injury and dependency claims on the one hand and the economic loss and property claims on the other, (c) the manner in which claims by minors or persons under a disability are to be dealt with and (d) the procedure to be adopted where a claimant is dissatisfied with the initial assessment.
23. The Scheme also provides that the Scheme Administrator's costs of and incidental to the implementation of the scheme be paid out of the settlement sum.

COSTS FOR WHICH APPROVAL IS SOUGHT BY THE SCHEME ADMINISTRATOR

24. The first occasion on which the Scheme Administrator applied for approval of costs was at the Case Management Conference on 20 October 2015 when approval was sought for payment of costs of administering the Settlement Distribution Scheme over the period 1 June 2015 to 31 August 2015 together with some previously unbilled costs for the period 2 February 2015 to 2 March 2015. In respect of costs of administering the Scheme prior to those sought at the Case Management Conference on 20 October 2015 my report is to be retrospective. Costs of administering the Scheme incurred prior to those sought at the Case Management Conference on 20 October 2015 cover the period 1 July 2014 to 31 May 2015.

25. Subsequent to the Case Management Conference on 20 October 2015 the Scheme Administrator has incurred further costs over the period 1 September 2015 to 30 April 2016.
26. The costs for which approval is sought covered by this report are therefore all costs incurred over the period 1 July 2014 to 30 April 2016.

THE LAW RELEVANT TO MY TASK AND THE METHODOLOGY TO BE ADOPTED

27. The task for which I was appointed is to assist the Court in making a determination as to whether the costs claimed by the Scheme Administrator have been reasonably incurred and are reasonable in amount.
28. There is well-established case law in respect of the methodology to be adopted when assessing a claim for gross sum costs on an inter partes basis in Class Actions – indeed, in his Judgment delivered on 23 December 2014 in the present matter Osborn J considered the law in relation to the approval of inter partes as costs at considerable length, including the decisions of Sackville J in *Courtney v Medtel Pty Limited* [2013] FCA 636 and Gordon J in *Modtech Engineering Pty Limited v GPT Management Holdings Ltd* [2013] FCA 626 (“*Modtech*”).
29. At paragraph 37 of her Judgment in *Modtech* Gordon J considered the requirement that sufficient information be provided to the Court by the solicitors seeking approval of their professional fees should not be unduly onerous.
30. Her Honour further considered that the information useful to the Court in assessing the reasonableness of the fees and disbursements claimed as a gross sum involved a review and consideration of :
 - (a) whether the work in a particular area, or in relation to a particular issue, was undertaken efficiently and appropriately;
 - (b) whether the work was undertaken by a person of appropriate level of seniority;
 - (c) whether the charge out rate was appropriate having regard to the level of seniority of that practitioner and the nature of the work undertaken;
 - (d) whether the task (and associated charge) was appropriate, having regard to the nature of the work and the time taken to complete the task; and
 - (e) whether the ratio of work and interrelation of work undertaken by the solicitors and Counsel retained was reasonable.

31. At paragraph 353 of his Judgment in the present matter, Osborn J set out the principles underlying the methodology ultimately accepted by Gordon J in *Modtech Engineering Pty Limited v GPT Management Holdings Limited (No 3)* [2014] FCA 680 as follows :
- (a) 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)* [2001] 3 NZLR 145;
 - (b) 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)* (1995) 57 FCR 119; *Seven Network Ltd v News Ltd* (2007) FCA 2059 and *Leary v Leary* [1987] 1 WLR 72;
 - (c) 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*;
 - (d) 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; and
 - (e) The considerations enunciated in *Modtech* and *Modtech Engineering Pty Ltd v GPT Management Holdings (No 2)* [2013] FCA 1163.
32. On the basis that it reflected the methodological principles approved by Gordon J in *Modtech* and was very comprehensive Osborn J 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 partes 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.

33. My task here is however slightly different. I am asked to advise whether the costs incurred in administering the Scheme are reasonable. The nature of work done in administering the Scheme is inherently different to the nature of work done in prosecuting a claim through the Court – to paraphrase Osborn J at paragraph 400 of his Judgment of 23 December 2014 in the present matter, although Mr Watson of Maurice Blackburn is acting as Scheme Administrator, his role is almost entirely administrative and supervisory.
34. In addition, the SDS explicitly provides that the Scheme Administrator will not be involved in assessing claims and is not to act as a lawyer representing individual group members.
35. Further, pursuant to Clause I.1(a) of the SDS the costs incurred by the Scheme Administrator and his staff are to be calculated pursuant to the hourly rates specified in Schedule B to the SDS. Reasonable costs are therefore to be calculated on a time basis rather than by reference to a statutory scale of costs.
36. It is evident from the bills of costs/tax invoices referred to above that in calculating costs on a time basis the hourly rates for work done by the Scheme Administrator and his staff have been applied in units of 6 minutes or part thereof, which accords with what could now be said to be the usual convention in respect of charging on a time basis.
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.

STEP 1 – THE SCOPE OF WORK DONE

- 38. The first step in determining whether the costs claimed are reasonable is to identify the nature and scope of work done. This is to some extent evident from the copy bills of costs/tax invoices provided to me however the logistics of implementing the Scheme and the nature of work done is best explained in the Affidavit material filed in this proceeding following establishment of the Scheme.
- 39. That Affidavit material also comprehensively details the scope of work done in particular categories over particular periods of time during the course of the administration of the Scheme to 30 April 2016. For the purposes of this report it is therefore appropriate to briefly summarize those parts of the relevant Affidavit material which detail the scope of work done.
- 40. The Affidavit of Andrew John Watson sworn 13 April 2015 ("Mr Watson's Affidavit of 13 April 2015") provides an overview of the personal injury and dependency ("I-D") claims assessment process (paragraph 5) together with a summary of the assessment process in respect of those claims up to the date on which the Affidavit was sworn (paragraphs 6 to 124). The summary of the assessment process in respect of these claims traverses, as at 13 April 2015 :
 - (a) the Settlement Distribution Scheme team ("the SDS team");
 - (b) the stages in the assessment process which various registered claims had reached;
 - (c) interactions between the SDS team and others regimes, including Centrelink, Medicare, Private Health Insurers and Statutory Compensation Schemes such as the

Transport Accident Commission, the Victoria WorkCover Authority, the Department of Veterans Affairs and the Country Fire Authority;

- (d) trialling of the assessment process;
- (e) administration of the electronic survey;
- (f) development of the personal injury questionnaire;
- (g) recruitment and training of the SDS team;
- (h) engagement and training of assessing Counsel;
- (i) engagement of a team of psychiatrists and psychologists to undertake medico-legal assessments as required;
- (j) development of the bespoke IT system;
- (k) identification and liaising with the major medical practices in order to facilitate the process of obtaining relevant records;
- (l) development of a series of precedent assessment documents;
- (m) development, production and distribution of the personal injury assessment information brochure for group members in both hard copy and electronic form;
- (n) the obtaining of bulk records and details from Centrelink, the Australian Taxation Office and medical clinics;
- (o) discussions and correspondence with the Senior Master's office in respect of group members to who Order 15 of the Supreme Court Rules applies;
- (p) referral of group members for medico-legal appointments directly by the Scheme Administrator; and
- (q) review of assessments undertaken by assessing Counsel.

41. Mr Watson's Affidavit of 13 April 2015 also provides an overview of the economic loss/property damage ("ELPD") claims assessment process (paragraphs 125 to 163) together with a summary of the assessment process in respect of those claims up to the date on which the Affidavit was sworn (paragraphs 164 to 213). The summary of the assessment process in respect of these claims traverses, as at 13 April 2015 :

- (a) the four firms then appointed as ELPD assessors, being Hall & Wilcox, Ligeti Partners, RM Consulting Group and Crawford and Company (Australia);
- (b) progress achieved to date by Hall & Wilcox and Ligeti Partners;
- (c) the subsequent auditing by RM Consulting Group and Crawford and Company (Australia) of the work completed by Hall & Wilcox and Ligeti Partners;
- (d) discussions held with and appointment of RM Consulting Group, Hall & Wilcox and Ligeti Partners to deal with around 4,000 above insurance claims;
- (e) the expertise and specific nature of other work done and being done by RM Consulting Group, Hall & Wilcox, Crawford and Company (Australia) and Ligeti Partners;

- (f) appointment of each of the ELPD assessors to undertake assessments for fixed costs and at an agreed rate for assessment of claims;
- (g) contact made with smaller insurers to obtain relevant loss material; development of a system of audit and cross-check the assessment work undertaken by ELPD assessors;
- (h) development of a "Principles of Assessment" documents and an "Assessment Template" with the ELPD assessors;
- (i) the steps taken by the Maurice Blackburn IT and Knowledge Practice Analysts to develop an efficient and secure method of information exchange and audit;
- (j) development of a brochure setting out the process and procedure for claims assessment to be distributed to ELPD group members;
- (k) the appointment of Senior Counsel to act as ELPD Review Assessors and the likely appointment of at least additional two junior barristers to assist;
- (l) the assessments conducted to date by RM Consulting Group, Hall & Wilcox, Ligeti Partners and Crawford and Company (Australia); and
- (m) the matter of payment of ELPD assessors.

42. The matters deposed to in Mr Watson's Affidavit of 13 April 2015 were updated in the Affidavit of Rory John Walsh sworn 17 June 2015 ("Mr Walsh's Affidavit of 17 June 2015") which provided a summary of the assessment process in respect of the I-D claims from 16 April 2015 to 16 June 2015 (paragraphs 8 to 33). The summary of the assessment process in respect of these claims traverses :

- (a) the stages in the assessment process which various registered claims had reached;
- (b) changes which refined and improved the assessment process;
- (c) administration of the electronic survey;
- (d) further interaction between the SDS team and Medicare and the Country Fire Authority;
- (e) the establishment of a register within the Senior Master's Office identifying Order 15 Claimants and ongoing identification of claimants to be included on that register; and
- (f) arrangements to obtain and inspect Victorian Bushfire Appeal Fund records.

43. Mr Walsh's Affidavit of 17 June 2015 also provides a summary of the assessment process in respect of the ELPD claims from 16 April 2015 up to the date on which the Affidavit was sworn (paragraphs 34 to 57). The summary of the assessment process in respect of these claims traverses, as at 17 June 2015 :

- (a) finalization and distribution to ELPD group members of the brochure setting out the process and procedure for claims assessment;

- (b) the stages in the assessment process which various registered claims had reached including the completion of 336 Preliminary Notices of Assessment, the position re assessment of 636 above insurance claims;
- (c) the management of data obtained from insurers in respect of the ELPD, the unique challenges encountered in dealing with ELPD claims and the consequent refining of the IT process; and
- (d) resourcing issues including the engagement of additional staff to augment to the ELPD SDS team.

44. The position in respect of I-D claims was further updated in the Affidavit of Andrew John Watson sworn 9 October 2015 ("Mr Walsh's Affidavit of 9 October 2015") which provided an overview of the I-D claims assessment process (paragraphs 7 and 8 – as at 30 September 2015 the number of I-D claims had increased to 1,797 in number) together with a summary of the assessment process in respect of the I-D claims from 16 June 2015 to 9 October 2015 (paragraphs 9 to 45). The summary of the assessment process in respect of these claims traverses :

- (a) the stages in the assessment process which various registered claims had reached;
- (b) changes which refined and improved the assessment process;
- (c) changes to the I-D SDS team;
- (d) requests for review;
- (e) changes to the team of assessing Counsel;
- (f) the process for dealing with group members who instruct that they do not wish to proceed;
- (g) the process for dealing with group members who have not completed the electronic survey;
- (h) the process for dealing with uncooperative group members;
- (i) further negotiations with Medicare;
- (j) continuing discussions with the Country Fire Authority; and
- (k) service of a subpoena on the Victorian Bushfires Appeal Fund and inspection of the records produced.

45. Mr Watson's Affidavit of 9 October 2015 also provides a summary of the assessment process in respect of the ELPD claims from 16 April 2015 to 9 October 2015 (paragraphs 46 to 83). The summary of the assessment process in respect of these claims traverses :

- (a) changes to the ELPD SDS team;
- (b) progress to date;

- (c) changes to the assessment process including reviewing the Provisional Notice of Assessment ("PNOA") template and identifying improvement required to areas of that template;
 - (d) employment of the specialist data management firm BizData to assist in amending the PNOA template, in testing the amended PNOA template and to complete the template retrofitting process;
 - (e) IT developments including improvement of the IT systems used to manage the ELPD assessment and the creation of a unified database to enable a claims-per-property report to be generated;
 - (f) the complex and lengthy tasks of preparation of the claims-per-property report, preparation of the multiple-claims-per-property report, preparation of the dominant-insurer report and hard copy digitisation of material supplied by the claimants into the Collaborate on-line system;
 - (g) the establishment of an ELPD Assessor audit procedure;
 - (h) the necessity to engage a specialised assessor to assess forestry and plantation losses; and
 - (i) other ELPD administrative developments including preparation of precedent assessment documents and formulating a procedure to deal with requests to withdraw an ELPD claim from the settlement assessment process.
46. The position in respect of I-D claims was again updated in the Affidavit of Andrew John Watson sworn 18 March 2016 ("Mr Walsh's Affidavit of 18 March 2016") which provides an overview of the I-D claims assessment process (paragraphs 4 and 5 – as at 18 March 2016 the number of I-D claims had increased to 1,854 in number) together with a summary of the assessment process in respect of the I-D claims from 10 October 2015 to 18 March 2016 (paragraphs 6 to 25). The summary of the assessment process in respect of these claims traverses :
- (a) the stages in the assessment process which various registered claims had reached;
 - (b) changes to the assessment process;
 - (c) changes to the SDS team;
 - (d) changes to the team of assessing Counsel;
 - (e) the position re group members who had instructed that they did not wish to proceed;
 - (f) the position re uncooperative group members;
 - (g) the process for dealing with the 10 group members who are uncontactable;
 - (h) the agreement reached with the Country Fire Authority re the interaction between group members' entitlements under the CFA compensation scheme and the SDS;
 - (i) the position re obtaining and inspecting Victorian Bushfires Appeal Fund records;

47. Mr Watson's Affidavit of 18 March 2016 also provides a summary of the assessment process in respect of the ELPD claims from 10 October 2015 to 18 March 2016 (paragraphs 26 to 81). The summary of the assessment process in respect of these claims traverses :
- (a) allocation to ELPD assessors of claims in respect of an estimated 3,523 unique property addresses, of which 2,012 unique property addresses include and above-insurance claim;
 - (b) PNOAs completed to date;
 - (c) the position re PNOAs issued to above insurance group members;
 - (d) the position re assessment of claims for subrogated-only losses;
 - (e) the position re the issuing of Final Notices of Assessment;
 - (f) discussions held with ELPD assessors with a view to increasing assessment speed;
 - (g) changes to the assessment process including generation of the claims-per-property report, progress of the retrofit of claims completed prior to completion of the ELPD Assessment Report and the new PNOA template, further revision of the PNOA template and identification of claims ready for assessment;
 - (h) monitoring by the SDS team of progress of the ELPD loss assessments and the performance of the ELPD Assessors and identifying the possibilities in re-allocating claims to additional ELPD Assessors with a view to increasing the volume of completed assessments;
 - (i) reviewing the results of the peer-to-peer audit of each ELPD Assessor, identifying issues arising therefrom which require rectification, discussing these with the relevant ELPD Assessors and arranging an audit conference between all ELPD Assessors and senior members of the ELPD SDS team;
 - (j) the establishment of an ELPD Assessor high level audit review process and the outcome thereof;
 - (k) the establishment of an audit procedure for auditing new ELPD Assessors;
 - (l) the position re group members who had instructed that they did not wish to proceed; and
 - (m) the establishment of a process for dealing with group members who are for various reasons uncontactable;
48. Finally, the position in respect of I-D claims was further updated in the Affidavit of Andrew John Watson sworn 17 June 2016 ("Mr Walsh's Affidavit of 17 June 2016") which provides an overview of the I-D claims assessment process (paragraphs 4 to 7 – as at 14 June 2016 the number of I-D claims had increased to 1,901 in number) together with a summary of the assessment process in respect of the I-D claims from 19 March 2016 to 14 June 2016

(paragraphs 8 to 35). The summary of the assessment process in respect of these claims traverses :

- (a) changes to the SDS team;
- (b) changes to the team of assessors (now 33 Counsel and 1 solicitor);
- (c) the stages in the assessment process which various registered claims had reached;
- (d) changes to the assessment process;
- (e) the appointment of solicitor assessors;
- (f) measures taken to increase assessor availability and throughput rate;
- (g) increases in assessment conference availability and throughput rate;
- (h) changes to the process for preparing group members' claims for assessment;
- (i) the scheduling of assessment conferences and changes to the medicolegal appointment and reporting process;
- (j) the position re assessors with a large backlog of assessments and/or long outstanding assessments;
- (k) the position re group members who had instructed that they did not wish to proceed;
- (l) the position re uncooperative group members; and
- (m) the position re the 10 group members who for various reasons are uncontactable;

49. Mr Watson's Affidavit of 17 June 2016 also provides a summary of the assessment process in respect of the ELPD claims from 19 March 2016 to 14 June 2016 (paragraphs 36 to 103). The summary of the assessment process in respect of these claims traverses :

- (a) the current composition of the ELPD SDS team;
- (b) the increased role of the ELPD SDS team;
- (c) the position re allocation to ELPD loss assessors of more than 9,000 claims at approximately 3,506 unique property addresses, of which 2,052 unique properties;
- (d) PNOAs completed as at 10 June 2016;
- (e) the position re PNOAs issued to above insurance group members;
- (f) the position re the assessment of claims for subrogated-only losses;
- (g) the position re the issuing of Final Notices of Assessment;
- (h) the position re initial checks of finalised assessments;
- (i) development with BizData of the "FirstUpload" software program to review finalised assessments and extracts and uploads the assessment data to the existing database;
- (j) the issuing of Final Notices of Assessment;
- (k) progress made in issuing finalised assessments;
- (l) the position re the ELPD Review process;
- (m) the appointment of new ELPD Assessors

- (n) the weekly monitoring of ELPD Assessors;
- (o) the implementation of a conditional incentive rate increase and the terms upon which the increased rate is to be paid;
- (p) the position in respect of the ELPD Assessor audit procedure;
- (q) the continuation of the ELPD Assessor high level audit review;
- (r) the estimated duration of the ELPD assessment process with the aim of having all PNOAs issued by the end of July 2016;
- (s) the position re group members who had instructed that they did not wish to proceed;
and
- (t) the position re the 53 group members who are for various reasons are uncontactable;

50. As can be seen from the above, the scope of work has of necessity expanded over time as problems have arisen which could not have been foreseen until the Scheme was actually implemented. In addition there has clearly been a concerted effort on the part of the SDS teams to ensure that all claims are being dealt with as expeditiously as possible.
51. I have no reason to consider that the descriptions of the scope of work done over particular periods of time as broadly deposed to in the Affidavits of Mr Watson and Mr Walsh are anything other than accurate and in fact my view in this respect has been confirmed as a result of having undertaken the sampling process referred to as step 4(i) in paragraph 37 above and having regard to my examination of the other relevant hard copy and electronic material available to me.

STEP 2 – THE NATURE OF COSTS INCURRED OVER PARTICULAR PERIODS OF TIME

52. The second step in determining whether the costs claimed are reasonable is to identify the nature of the costs incurred over particular periods of time.

The categories of bills of costs/tax invoices

53. The costs and disbursements incurred by the Scheme Administrator to date in the course of the settlement administration have been allocated into three categories, according to whether they relate to :
- (a) processes common to all Group Members, including but not limited to developing and drafting the settlement scheme, developing appropriate electronic systems for handling the distribution process, handling the settlement fund, processing applications for late registration, processing applications for interim payments, processing applications for

bond waiver, dealing with Estate claims, dealing with taxation issues, Court reporting and liaison and reporting to and liaising with Michael Wilson QC who is the Settlement Distribution Coordinator appointed under a recent Court Order. This aspect is broadly referred to as the "General settlement administration" although in the itemized invoices this category is referred to as the "Kilmore Settlement Admin – General" category,

- (b) processes specific to the assessment of Group Members' personal injury and dependency claims. This aspect is broadly referred to as the "I-D settlement administration" although in the itemized invoices this category is referred to as the "Kilmore Settlement Admin – PI" category, or
- (c) processes specific to the assessment of Group Members' economic loss and property damage claims. This aspect is broadly referred to as the "ELPD settlement administration" although in the itemized invoices this category is referred to as the "Kilmore Settlement Admin – Property" category.

- 54. The latter two categories correspond to the division of the Distribution Sum into an "I-D Claims Fund" for personal injury and dependency claims and an "ELPD Claims Fund" for economic loss and property damage claims, as set out in clause B1.1 of the Scheme.
- 55. Costs for each of the above categories are further separated into two sections being (i) professional charges and (ii) disbursements.

The bills of costs/tax invoices

- 56. Identification of the nature of the costs incurred over particular periods of time is to a very large extent evident from a close examination of the copy bills of costs/tax invoices provided to me. The bills of costs/tax invoices prepared by the Scheme Administrator, copies of which have been exhibited to the various Affidavits filed by the Scheme Administrator and his staff since approval of the SDS, are very comprehensive and by far the greater number of the entries contain a detailed narrative of the work done.
- 57. Save for the missing element of the statutory requirements for an itemized bill under Order 63.42(2)(a) of the Supreme Court (General Civil Procedure) Rules 2015 that the items be individually numbered, those bills of costs/tax invoices are largely in itemized form and therefore reflective of the actual work done.

The Affidavit material

- 58. The nature of costs incurred for work done over particular periods of time during the course of the administration of the Scheme to 18 March 2016 is also broadly explained in the Affidavit

material filed in this proceeding following establishment of the Scheme. For the purposes of this report it is therefore appropriate to also briefly summarize those parts of the relevant Affidavit material which detail the nature of costs incurred over the relevant periods.

59. Mr Watson's Affidavit of 13 April 2015 provides the following broad summary of the tasks carried out by lawyers overseeing the settlement administration process in respect of work done up to the date on which that Affidavit was sworn (paragraph 222) :
 - (a) developing, implementing and monitoring internal processes for assessing claims;
 - (b) engaging and training Counsel in the I-D assessment process;
 - (c) establishing arrangements with organisations holding claimant information relevant to the I-D assessment process to deal with bulk requests for information;
 - (d) working with ELPD loss assessors on loss assessment principles and methods for streamlining assessment processes whilst maintaining quality control;
 - (e) establishing agreements with loss valuers for the ELPD assessment process;
 - (f) recruiting, training and supervising support staff responsible for administrative processes;
 - (g) reviewing and finalising assessment memoranda for assessing Counsel; and
 - (h) providing direction on complex individual cases.

60. Mr Watson's Affidavit of 13 April 2015 notes that most of the work done by non-lawyers up to the date on which that Affidavit was sworn related to carrying out the administrative tasks required for the I-D assessment process. He provides the following broad summary of the work undertaken by non-lawyers (paragraph 223) :
 - (a) administering detailed telephone questionnaires for I-D claimants;
 - (b) gathering documents required for I-D assessment;
 - (c) preparing draft assessment memoranda; and
 - (d) scheduling I-D assessment conferences with Counsel.

61. The matters deposed to in Mr Watson's Affidavit of 13 April 2015 were updated in Mr Walsh's Affidavit of 17 June 2015 which provided the following broad summary of the tasks carried out by lawyers overseeing the settlement administration process in respect of work done from 16 April 2015 to 16 June 2015 (paragraph 69) :
 - (a) developing, implementing and monitoring internal processes for assessing claims;
 - (b) training Counsel in the I-D assessment process;
 - (c) reviewing completed I-D assessments;

- (d) ongoing liaison work with organisations holding claimant information relevant to the I-D assessment process, including government agencies and medical practices;
- (e) working with ELPD loss assessors on loss assessment principles and methods for streamlining assessment processes whilst maintaining quality control;
- (f) recruiting, training and supervising support staff responsible for administrative processes;
- (g) reviewing and finalising assessment memoranda for assessing Counsel;
- (h) providing direction on complex individual cases; and
- (i) responding to individual group member inquiries.

62. Mr Walsh's Affidavit of 17 June 2015 notes that most of the work done by non-lawyers over the period 16 April 2015 to 16 June 2015 again related to carrying out the administrative tasks required for the I-D assessment process. He provides the following broad summary of the work undertaken by non-lawyers over that period (paragraph 70) :

- (a) administering detailed telephone questionnaires for I-D claimants;
- (b) gathering documents required for I-D assessment;
- (c) preparing draft assessment memoranda; and
- (d) scheduling I-D assessment conferences with Counsel.

63. Mr Walsh's Affidavit of 9 October 2015 provided the following further broad summary of the tasks carried out by lawyers overseeing (i) general settlement administration (paragraph 108), (ii) the I-D settlement administration (paragraph 111) and (iii) the ELPD settlement administration (paragraph 114) :

(i) General settlement administration :

- (a) overseeing the settlement administration process
- (b) developing, implementing and monitoring internal processes for assessing claims, including IT system requirements;
- (c) reviewing and determining late registrant applications;
- (d) ongoing liaison work with organisations regarding interest accrued on the Distribution Sum;
- (e) preparing for the Case Management Conference of 19 June 2015, including preparation of affidavit and supporting material

(ii) I-D settlement administration :

- (a) developing, implementing and monitoring internal processes for assessing claims, including IT system requirements;

- (b) reviewing completed I-D assessments;
- (c) overseeing and managing the SDS team;
- (d) ongoing liaison with organisations holding claimant information relevant to the I-D assessment process, including government agencies and medical practices;
- (e) recruiting, training and supervising support staff responsible for administrative processes;
- (f) reviewing and finalising assessment memoranda and action plans for assessing Counsel;
- (g) reviewing ID Claim Books;
- (h) drafting various correspondence to group members;
- (i) providing direction on individual cases; and
- (j) responding to individual group member inquiries.

(iii) *ELPD settlement administration :*

- (a) developing, implementing and monitoring internal processes for assessing claims, including IT system requirements;
- (b) working with ELPD loss assessors on loss assessment principles and methods for streamlining assessment processes whilst maintaining quality control;
- (c) reviewing claimant files provided by ELPD loss assessors;
- (d) training, supervising and allocating tasks to support staff responsible for administrative processes;
- (e) drafting and settling various correspondence is to group members and ELPD loss assessors;
- (f) supervising and reviewing the collation of small insurer subrogated claims;
- (g) reviewing and interrogating assessment data;
- (h) drafting and finalising the ELPD information brochure to be provided to all ELPD group members;
- (i) reviewing and providing direction on individual cases; and
- (j) responding to individual group member inquiries.

64. Mr Watson's Affidavit of 9 October 2015 also provided the following further broad summary of the tasks carried out by non-lawyers undertaking paralegal and administrative work over the relevant period in respect of (i) general settlement administration (paragraph 109), (ii) the I-D settlement administration (paragraph 112) and (iii) the ELPD settlement administration (paragraph 115) :

(i) *General settlement administration :*

- (a) developing, implementing and monitoring internal processes for assessing claims, including IT system requirements; and
- (b) preparing for Case Management Conference, including preparation of affidavit and supporting material.

(ii) I-D settlement administration :

- (a) administering detailed telephone questionnaires for ID group members;
- (b) responding to individual group member inquiries;
- (c) gathering documents required for I-D assessment from various organisations, including government agencies and medical practices;
- (d) preparing assessment memoranda for assessing Counsel;
- (e) identifying I-D group members that are ready to be assessed;
- (f) preparing I-D claim books for assessing Counsel;
- (g) scheduling I-D assessment conferences with assessing Counsel;
- (h) drafting various correspondence to group members;
- (i) updating system databases; and
- (j) reviewing completed I-D assessments.

(iii) ELPD settlement administration :

- (a) preparing, reviewing and allocating files for ELPD loss assessors;
- (b) responding to individual group member inquiries;
- (c) administering the collection and collation of supporting documentation related to small insurer subrogated claims;
- (d) updating system databases with supporting documentation for individual group members;
- (e) drafting various correspondence to group members;
- (f) liaising with and completing information requests from ELPD loss assessors; and
- (g) developing and updating a master spreadsheet of all ELPD group members.

65. Mr Watson's Affidavit of 18 March 2016 provided the following further broad summary of the tasks carried out by lawyers overseeing (i) general settlement administration (paragraph 102), (ii) the I-D settlement administration (paragraph 105) and (iii) the ELPD settlement administration (paragraph 109) :

(i) General settlement administration :

- (a) overseeing the settlement administration process;

- (b) recruiting, training and supervising settlement administration staff;
- (c) developing, implementing and monitoring internal processes for assessing claims, including IT system requirements and infrastructure;
- (d) management and administration of settlement monies;
- (e) ongoing liaison work with organisations regarding taxation and interest accrued on the distribution sum;
- (f) implementing practices to monitor and estimate settlement administration costs;
- (g) reviewing and determining late registrant applications and processes, and providing direction on late registrant enquiries;
- (h) reviewing and determining interim payment applications and processes, and providing direction on interim payment enquiries;
- (i) monitoring the process for Order 15 claimants;
- (j) reviewing and approving various invoices;
- (k) liaison with, and preparing brief for, independent costs assessor John White; and
- (l) preparing for the Case Management Conference on 20 October 2015, including preparation of Affidavit and supporting material.

(ii) I-D settlement administration :

- (a) establishing and monitoring the I-D settlement administration process;
- (b) overseeing and managing the I-D settlement administration team;
- (c) recruiting, training and supervising support staff responsible for administrative processes;
- (d) developing, implementing and monitoring internal processes for assessing claims, including IT system requirements and infrastructure;
- (e) reviewing completed I-D assessment received from Counsel;
- (f) attending assessment conferences with sample group members;
- (g) ongoing liaison work with assessing Counsel regarding assessment conferences and assessments;
- (h) ongoing liaison work with organisations holding claimant information relevant to the I-D assessment process, including government agencies and medical practices;
- (i) implementing and monitoring the process for reviews by I-D group members;
- (j) reviewing I-D Claims Books prepared for assessing Counsel;
- (k) reviewing psychiatric assessments of I-D group members;
- (l) implementing and monitoring the process for reviews by I-D group members;
- (m) reviewing and summarising internal files of I-D group members with crossover claims;

- (n) responding to individual group members and various organisations;
- (o) providing direction on individual cases;
- (p) reviewing and finalising assessment memoranda, action plans and records for assessing Counsel;
- (q) monitoring progress of all I-D group members claims, including those who are not proceeding or uncooperative, by preparing and reviewing various IT reports;
- (r) identifying claims that can be assessed in the absence of certain records;
- (s) preparing Affidavit of service regarding the Victorian Bushfire Appeal Fund subpoena and various communications with the Department of Health and Human Services regarding progress;
- (t) monitoring personal injury statistics, reviewing and interrogating data; and
- (u) reviewing and approving various invoices.

(iii) *ELPD settlement administration :*

- (a) establishing and monitoring the ELPD settlement administration process;
- (b) overseeing and managing the SDS ELPD team;
- (c) recruiting, training and supervising support staff responsible for administrative processes;
- (d) developing, implementing and monitoring internal processes for assessing claims, including IT system requirements and infrastructure;
- (e) responding to group member inquiries;
- (f) providing direction on individual cases;
- (g) ongoing liaison with ELPD loss assessors regarding the assessment of ELPD claims;
- (h) working with ELPD loss assessors on loss assessment principles and methods for streamlining assessment processes whilst maintaining quality control;
- (i) drafting and settling correspondence to group members and loss assessors;
- (j) auditing assessments completed by ELPD loss assessors and providing feedback;
- (k) reviewing claimant files provided by ELPD loss assessors; and
- (l) monitoring ELPD statistics, reviewing and interrogating data.

66. In addition Mr Watson's Affidavit of 18 March 2016 also provided the following further broad summary of the tasks carried out by non-lawyers undertaking paralegal and administrative work over the relevant period in respect of (i) general settlement administration (paragraph 103), (ii) the I-D settlement administration (paragraph 106) and (iii) the ELPD settlement administration (paragraph 110) :

(i) General settlement administration :

- (a) assisting with late registrant processes, enquiries and applications including drafting memoranda and maintaining the database and spreadsheets monitoring the status of such applications;
- (b) assisting with interim payment processes, enquiries and applications including drafting memoranda and maintaining the database spreadsheets monitoring the status of such applications;
- (c) assisting with preparing brief for independent costs assessor John White; and
- (d) updating accounting database systems in relation to disbursements relating to the assessment of individual group members' claims.

(ii) I-D settlement administration :

- (a) responding to individual group member inquiries;
- (b) assisting I-D group members with completing electronic survey;
- (c) administering detailed telephone questionnaire for I-D group members;
- (d) preparing assessment memoranda for assessing Counsel;
- (e) gathering documents required for I-D assessment from various organisations, including government agencies and medical practices;
- (f) ongoing liaison with I-D group members and various organisations regarding outstanding documentation required for I-D Claim Book;
- (g) reviewing and identifying I-D group members that are ready to be assessed by assessing Counsel;
- (h) preparing I-D Claim Books for assessing Counsel;
- (i) scheduling I-D assessment conferences between I-D group members and assessing Counsel;
- (j) drafting correspondence to group members and various organisations;
- (k) assisting with the process for I-D group members who are not proceeding or uncooperative;
- (l) updating various system databases including Matter Centre, Collaborate, FileSite and accounting systems;
- (m) updating index, collating, reviewing and processing invoices and vouchers from assessing Counsel and various organisations;
- (n) conducting various audit to ensure data is reflected accurately in the system database; and
- (o) undertaking initial review of completed I-D assessments received from assessing Counsel.

(iii) ELPD settlement administration :

- (a) preparing, reviewing and allocating files for ELPD loss assessors;
- (b) responding to individual group member inquiries;
- (c) drafting correspondence to group members and loss assessors;
- (d) liaising with and completing information requests from ELPD loss assessors;
- (e) establishing interactions between group members with ELPD claims and I-D claims;
- (f) administering the collection and collation of supporting documentation related to above insurance claims and small insurer claims;
- (g) updating various system databases including Matter Centre, Collaborate, FileSite and accounting systems;
- (h) investigating and amending errors in claimant data;
- (i) amending and maintaining the ELPD Allocation report;
- (j) overseeing the assessment of Estate and Trust claims;
- (k) conducting various audits to ensure data is reflected accurately in the system databases; and
- (l) updating index, collating, reviewing and processing invoices pertaining to ELPD assessments.

67. Finally, Mr Watson's Affidavit of 17 June 2016 provides the following further broad summary of the tasks carried out by lawyers overseeing (i) general settlement administration (paragraph 223), (ii) the I-D settlement administration (paragraph 226) and (iii) the ELPD settlement administration (paragraph 229) :

(i) General settlement administration :

- (a) overseeing the settlement administration process;
- (b) ongoing recruitment, training and supervision of settlement administration staff;
- (c) ongoing development and monitoring internal of processes for assessing claims, including IT system requirements and infrastructure;
- (d) management and administration of settlement monies;
- (e) ongoing liaison work with organisations regarding taxation and interest accrued on the distribution sum;
- (f) ongoing monitoring and estimating of settlement administration costs and the process of distribution;
- (g) overseeing the late registration process, reviewing and determining late registrant applications and providing direction on late registrant enquiries;

- (h) overseeing the interim payment process, reviewing and determining interim payment applications and providing direction on interim payment enquiries;
- (i) preparing correspondence to group members with updates on the processes and responding to similar enquiries;
- (j) preparation of the procedure for assessing estate claims and distributing funds to estate claims;
- (k) monitoring the process for Order 15 claimants;
- (l) reviewing and approving various invoices;
- (m) liaison with independent costs assessor John White; and
- (n) preparing for the Case Management Conference held on 31 March 2016, including preparation of Affidavit and supporting material.

(ii) I-D settlement administration :

- (a) Ongoing monitoring and development of the I-D settlement administration process;
- (b) overseeing and managing the SDS I-D team;
- (c) ongoing recruitment, training and supervision of I-D settlement administration staff;
- (d) ongoing development and monitoring of internal processes for assessing claims, including IT system requirements and infrastructure;
- (e) reviewing completed I-D assessments from I-D assessors and drafting letters to I-D group members enclosing I-D assessments;
- (f) ongoing liaison work with I-D assessors regarding assessment conferences and assessments;
- (g) reviewing agreements with statutory compensation authorities and preparing procedures for assessment of I-D group members with cross-over claims;
- (h) ongoing liaison work with organisations holding claimant information relevant to the I-D assessment process, including government agencies and medical practices;
- (i) implementing and monitoring the process for reviews by I-D group members, including bond waiver applications;
- (j) reviewing I-D Claims Books prepared for I-D assessors;
- (k) reviewing and summarising internal files of I-D group members with crossover claims;
- (l) responding to individual I-D group member inquiries;
- (m) drafting and settling correspondence to I-D group members and various organisations;

- (n) providing direction on individual cases;
- (o) administering detailed telephone questionnaire with ID group members, reviewing and finalising assessment memoranda, action plans and records for the I-D claim book;
- (p) monitoring progress of all I-D group members claims, including those who are not proceeding or uncooperative, by preparing and reviewing various IT reports;
- (q) identifying claims that can be assessed in the absence of certain records;
- (r) overseeing further material requests received from I-D assessors;
- (s) overseeing various audits to ensure data is reflected accurately in system databases;
- (t) monitoring personal injury statistics, preparing and reviewing various reports and interrogating data; and
- (u) reviewing and approving various invoices relating to the assessment of individual group members' claims.

(iii) ELPD settlement administration :

- (a) overseeing the ELPD settlement administration process;
- (b) overseeing and managing the SDS ELPD team;
- (c) ongoing recruitment, training and supervision of ELPD settlement administration staff;
- (d) ongoing development and monitoring of internal processes for assessing claims including IT system requirements and infrastructure;
- (e) responding to ELPD group member inquiries;
- (f) providing direction on individual cases;
- (g) monitoring progress of ELPD loss assessors, including capacity and speed allocation;
- (h) ongoing liaison with ELPD loss assessors regarding assessment of ELPD claims including potential new assessors;
- (i) working with ELPD loss assessors on loss assessment principles and methods for streamlining assessment processes whilst maintaining quality control;
- (j) drafting and settling correspondence to ELPD group members and loss assessors;
- (k) designing, implementing and overseeing systems and procedures for issuing final notices of assessment including IT system requirements and infrastructure;
- (l) producing documentation for loss assessors and the SDS ELPD team regarding understanding and responding to LPD group member inquiries;

- (m) preparing procedures for assessing trusts, business partnerships and deregistered companies' claims;
- (n) reviewing and responding to loss assessor enquiries including estate claims and deregistered companies;
- (o) preparing the procedure for an contactable group members;
- (p) overseeing the audit of assessments completed by ELPD loss assessors and providing feedback;
- (q) reviewing preliminary and final assessments completed by ELPD loss assessors;
- (r) monitoring the progress of all ELPD group members' claims including those who are not proceeding or who are uncooperative by preparing and reviewing various IT reports;
- (s) overseeing the collection and collation of supporting documentation related to above insurance claims and small insurer claims;
- (t) monitoring ELPD statistics, reviewing and interrogating data; and
- (u) reviewing and approving various invoices and overseeing the auditing of invoices pertaining to ELPD assessments.

68. In addition Mr Watson's Affidavit of 17 June 2016 also provides the following further broad summary of the tasks carried out by non-lawyers undertaking paralegal and administrative work over the relevant period in respect of (i) general settlement administration (paragraph 224), (ii) the I-D settlement administration (paragraph 227) and (iii) the ELPD settlement administration (paragraph 230) :

(i) General settlement administration :

- (a) assisting with late registrant processes, enquiries and applications including drafting memoranda, collating documentation and maintaining the database and spreadsheets monitoring the status of such applications;
- (b) assisting with interim payment processes, enquiries and applications including drafting memoranda, collating documentation, preparing controlled money withdrawal advice and maintaining the database spreadsheets monitoring the status of such applications;
- (c) assisting with preparation of correspondence to group members regarding update on processes; and
- (d) updating accounting database systems in relation to disbursements relating to the assessment of individual group members' claims.

(ii) I-D settlement administration :

- (a) responding to individual group member inquiries;

- (b) administering detailed telephone questionnaire for I-D group members;
- (c) preparing assessment memoranda for I-D assessors;
- (d) gathering documents required for I-D assessment from various organisations such as government agencies and medical practices including maintaining the database and spreadsheets monitoring the status of such requests;
- (e) ongoing liaison with I-D group members and various organisations regarding outstanding documentation required for I-D Claim Book;
- (f) reviewing and identifying I-D group members that are ready to be assessed by I-D assessors;
- (g) monitoring process and scheduling conferences between I-D group members and the medicolegal expert;
- (h) preparing I-D Claim Books for I-D assessors;
- (i) scheduling I-D assessment conferences between I-D group members and I-D assessors;
- (j) drafting correspondence to group members and various organisations;
- (k) assisting with the process for I-D group members who are not proceeding or who are uncooperative;
- (l) assisting with the process for reviews by I-D group members including bond waiver applications;
- (m) updating various system databases including Matter Centre, Collaborate, FileSite and accounting systems;
- (n) updating index, collating, reviewing and processing invoices and vouchers from I-D assessors and various organisations relating to the assessment of individual group members' claims;
- (o) assisting with various audit to ensure data is reflected accurately in the system database;
- (p) undertaking initial review of completed I-D assessments received from I-D assessors; and
- (q) assisting with the preparation of reviewed I-D assessments and letter to be sent to I-D group members in closing I-D assessment.

(iii) ELPD settlement administration :

- (a) preparing, reviewing and allocating files for ELPD loss assessors including running a subrogated claim checks;
- (b) responding to individual ELPD group member inquiries;
- (c) drafting correspondence to ELPD group members and ELPD loss assessors;
- (d) liaising with & completing information requests to and from ELPD loss assessors;

- (e) reviewing the Order 15 claimant process for ELPD group members;
- (f) assisting with the process for ELPD group members who are not proceeding, uncooperative or are not contactable;
- (g) ongoing monitoring of interactions between group members with ELPD claims and I-D claims including ELPD group members who have met the I-D assessment threshold;
- (h) administering the collection and collation of supporting documentation related to above insurance claims and small insurer claims;
- (i) reviewing and amending preliminary notices of assessments to rectify errors;
- (j) updating various system databases including Matter Centre, Collaborate, FileSite and accounting systems;
- (k) investigating and amending errors in ELPD group member data population;
- (l) amending and maintaining the ELPD Allocation reports and ELPD statistics reports;
- (m) assisting with the assessment of Estate and Trust claims;
- (n) assisting with the assessment of plantation claims and responding to expert plantation loss assessor enquiries;
- (o) conducting various audits to ensure data is reflected accurately in the system databases; and
- (p) updating index, collating, reviewing and processing invoices relating to the assessment of ELPD claims.

69. It is clear from the material provided that all administration staff, and particularly those who were not involved in developing and establishing the administrative systems, initially undertook substantial training in all aspects of the settlement distribution process. That training was mostly conducted by the more senior Administrative staff who continue to oversee the general conduct of the scheme.
70. It is also clear from an examination of (a) the bills of costs/tax invoices and (b) those parts of the relevant Affidavit material which detail the nature of costs incurred over the relevant periods that as the settlement distribution process was increasingly implemented and as more claims were progressively dealt with administrative and/or logistic issues arose or otherwise became evident. Dealing with those issues at times resulted in changes to the software and also at times resulted in some changes to the process generally.
71. Further it is clear from the material I have examined that both lawyer and non-lawyer staff have been actively involved in effecting change when and where necessary and have embraced the changes once made.

72. It is probably worth mentioning at this point that those file operators (generally paralegals) whose task it was to make contact with and interview claimants once the SDS was approved were required to bring an extraordinary degree of tact, skill and compassion to the conduct of these interviews – I am advised it was at these interviews that claimants in most cases for the first time discussed with a lawyer or paralegal, in the context of the litigation, intimate details of the devastation of the bushfires and the effect that the loss of life of family and/or friends and treasured possessions had on them. It is not surprising that some of these interviews may have taken quite some time to complete.
73. Accordingly, I have no reason to consider that the descriptions of the nature of the costs incurred over particular periods of time as broadly deposed to in the Affidavits of Mr Watson and Mr Walsh are anything other than accurate and once again my view in this respect has been confirmed as a result of having undertaken the sampling process referred to as step 4(i) in paragraph 37 above and having regard to my examination of the other relevant hard copy and electronic material available to me.
74. Further, in respect of the tasks carried out by lawyers overseeing the General settlement administration, the I-D settlement administration and the ELPD settlement administration since 18 March 2016 and the tasks carried out by non-lawyers undertaking paralegal and administrative work in respect of the general settlement administration, the I-D settlement administration and the ELPD settlement administration since 18 March 2016 my examination of the bills of costs/tax invoices indicates that much the same tasks continued to be carried out through to 30 April 2016.

STEP 3 – CALCULATE THE TIME SPENT BY LAWYERS AND NON-LAWYERS

75. The Scheme Administrator's staff have, from time to time and at my request, provided me with copies of updated staff lists which detail (i) the name of the file operator, (ii) the file operator's billing code, (iii) the position held by the file operator, (iv) whether the file operator does work in respect of the I-D settlement administration and/or the ELPD settlement administration, (v) the period of time worked by the file operator and (v) the nature of work carried out by the file operator. The most recent updated staff list is **Attachment 1** to this report.
76. It is apparent from the updated staff list and the bills of costs/tax invoices that over the period 14 July 2014 to 30 April 2016 three Administration Assistants [REDACTED] [REDACTED] were promoted to the position of Paralegal, one Paralegal [REDACTED] obtained his law degree and was promoted to the position of Trainee Lawyer, one Paralegal

[REDACTED] who in fact at all times admitted to practice but did not hold a practicing certificate until her promotion) was promoted to the position of Solicitor, one Associate [REDACTED] was promoted to the position of Senior Associate and one Senior Associate [REDACTED] was promoted to the position of Special Counsel. In advance of the March 2016 Case Management Conference it was realised that one file operator [REDACTED], although admitted to practice on 6 June 2011, had been incorrectly charged out at the Solicitor rate of \$440.00 when in fact she should have been charged out at the Associate rate of \$540.00 under Schedule B to the SDS. I am advised that in respect of [REDACTED] charge-out rate the Scheme Administrator determined not to apply for a retrospective increase to bills previously presented to the Court for approval but rather applied the increased rate from 30 September 2015.

77. In order to calculate the time spent by lawyers and non-lawyers on the work claimed in the bill of costs/tax invoices I instructed my assistant, Mrs Nadine Straney, to review all the bills of costs/tax invoices and prepare three separate tables in respect of each of (a) the General settlement administration, (b) the I-D settlement administration and (c) the ELPD settlement administration which detailed (i) the name of each of the file operators, (ii) the hourly rate of each of the file operators, (iii) the number of 6 minute units of time worked by each file operator over each bill period in respect of the bills of costs/tax invoices detailed on pages 5 to 7 of this report, (iv) the total amount claimed for each file operator over each bill period and (v) the total amount claimed for each file operator from 1 July 2014 to 30 April 2016. These tables are, respectively, **Attachments 2, 3 and 4** to this report.
78. I have cross-referenced each of the attached tables with the attached most recent updated staff list and am satisfied that the charges claimed in the bills of costs/tax invoices prepared for the period 14 July 2014 to 30 April 2016 have been calculated by applying the appropriate Court approved hourly rates under the SDS to the items of work done by the respective file operators.

STEP 4 – SAMPLE THE BILLS OF COSTS/TAX INVOICES

Charges

79. The bill of costs/tax invoices prepared for the period 14 July 2014 to 30 April 2016 in respect of (i) the general settlement administration, (ii) the I-D settlement administration and (iii) the ELPD settlement administration comprise more than 2,500 pages including formal parts and pages detailing summaries, disbursement accounts and the like. In order to conduct the sampling process referred to as step 4(i) in paragraph 37 above, I therefore determined to :

- (a) examine in detail the work done by all file operators on a particular date on approximately every 20th page of the bills of costs/tax invoices, and
- (b) examine in detail a sample of the claims for work done by a particular file operator on approximately every alternate 20th page of the bills of costs/tax invoices.

In other words on approximately every 10th page of the bills of costs/tax invoices I examined in detail either the work done on a particular date or the work done by a particular file operator.

Where the work done on a particular date extended beyond the randomly selected page I also examined in detail all other work done on that date as noted in the surrounding pages (which on occasions ran to three or four pages in total). Likewise if the work done by a particular file operator on a particular date extended beyond the randomly selected page I also examined in detail all other work done by that particular file operator on that particular date as noted in the surrounding pages.

80. My detailed examination of the randomly selected claims involved considering (a) the nature of work done, (b) whether the work was reasonably done at the time, (c) whether the work was done by the appropriate level of file operator given the nature of the task, (d) whether the time claimed for the work was reasonable and (e) whether the correct hourly rate had been applied given the level of file operator doing the work. Where a claim referred to an attendance (such as a delegation and/or reporting conference) on another file operator in addition to considering (a) to (e) above I cross-referenced the claims of both file operators to confirm that the time claimed was accurate and reasonable.
81. As part of my detailed examination of the randomly selected work I also compared the work noted in the bill of costs/tax invoice with other relevant material provided to me, particularly the documents referred to at tabs 1.1 to 6.3 in paragraph 13 above. In some instances I also compared the work noted in the bill of costs/tax invoice with the electronic files maintained by the Scheme Administrator. I observe that a random comparison with the electronic files, which are compiled over a period of time, was not particularly helpful in confirming that particular items of work were done by particular file operators on particular dates however the electronic files themselves are solid evidence of the substantial amount of work actually done by the respective file operators in relation to particular claims.
82. My detailed examination revealed that some of the work was in respect of tasks which would normally not be allowed on a taxation of costs as between solicitor and own client (such as administrative claims for reviewing spreadsheets, cleaning document metadata, updating

accounting database systems, etc) but in my view those claims should be allowed in the context of the SDS since the work was done either as a result of particular requirements under the SDS or simply to ensure the integrity and efficiency of the settlement distribution process, particularly having regard to the number of claims to be dealt with. It should also be recalled that the nature of the SDS means that by far the greater bulk of work done is almost entirely in respect of an administrative process rather than a legal process.

83. I am therefore satisfied that the randomly sampled work I examined was in all instances reasonably done at the time by the appropriate level of file operator, that the time claimed for the randomly sampled work was reasonable and that the correct hourly rate had been applied given the level of file operator doing the work.
84. This task was particularly involved and time consuming however I am satisfied that the cross-referenced sample was sufficiently large and provided a sufficiently accurate series of "snapshots" of the work done for me to extrapolate the results across the total of the charges claimed by file operators in all of the bills of costs/tax invoices covering the period 14 July 2015 to 30 April 2016 and to state that in my view the work claimed in those tax invoices was reasonably done at the time by the appropriate level of file operator, that the time claimed for the randomly sampled work was reasonable and that the correct hourly rate had been applied given the level of file operator doing the work.
85. In order to give a visual representation of the time spent by lawyers and non-lawyers in administering the SDS to date I requested that the Scheme Administrator provide me with "stack graphs" which break down the total time spent by each type of file operator for work done in respect of administration of (a) all aspects of the SDS ("Kilmore – Overview"), (b) the General settlement administration aspect only ("Kilmore – General File"), (c) the I-D settlement administration aspect only ("Kilmore – Personal Injury File") and (d) the ELPD settlement administration aspect only ("Kilmore – Property File"). These stack graphs are, respectively, **Attachments 5, 6, 7 and 8** to this report.
86. Examination of the attached stack graphs reveals that (a) in respect of all aspects of the SDS by far the greater bulk of work has been done by paralegals; (b) in respect of the General settlement administration aspect the greater bulk of the work has been done by lawyers, i.e. principals and special counsel, senior associates, associates, solicitors and trainee lawyers; (c) in respect of the I-D settlement administration aspect by far the greater bulk of the work has been done by paralegals and (d) in respect of the ELP DC administration aspect the greater bulk of the work has been done by paralegals and legal assistants/litigation support staff.

87. Having regard to the scope of work done from 14 July 2014 to 30 April 2016 and given the nature of costs incurred over particular periods of time from 14 July 2014 to 30 April 2016 I make the following observations :
- (a) it is appropriate that in respect of all aspects of the SDS far less time was spent by principals and special counsel, senior associates, associates, solicitors, trainee lawyers and legal assistants/litigation support staff;
 - (b) it is appropriate that in respect of the General settlement administration aspect more time was spent by principals and special counsel, senior associates, associates, solicitors and trainee lawyers;
 - (c) it is appropriate that in respect of the I-D settlement administration aspect by far the greatest amount of time was expended by paralegals; and
 - (d) it is appropriate in respect of ELPD settlement administration aspect a relatively higher amount of time was spent by principals and special counsel, senior associates, associates, solicitors and trainee lawyers than in respect of the I-D settlement administration but a larger amount of time was spent by paralegals and legal assistants/litigation support staff.
88. In my opinion the division of time amongst file operators apparent from the attached stack graphs also reflects an appropriate and reasonable allocation of work across all file operators and particularly as between lawyers and non-lawyers.

Disbursements – Counsel, providers of medico-legal reports and ELPD assessors

89. Pursuant with clause A1.1(b)(iii) of the Scheme all reasonable disbursements are to be allowed.
90. In respect of disbursements incurred in processing both the personal injury and dependency ("I-D") claims and the economic loss and property damage ("ELPD") claims, Mr Watson's Affidavit of 13 April 2015 deposes that the following fixed rates of remuneration had been established in respect of service providers :
- (a) \$400.00 per hour for Counsel attending training in the I-D assessment process conducted by Dr Nigel Strauss, Mr Andrew Keogh SC and Mr Rory Walsh of Maurice Blackburn;
 - (b) \$2,000.00 for each I-D assessment conducted by Counsel;
 - (c) \$3,500.00 for each I-D review assessment conducted by Senior Counsel;

- (d) \$4,000.00 for each I-D assessment of sample and special Group Members conducted by Senior Counsel;
- (e) \$1,100.00 per hour for training in the medico-legal assessment process conducted by Dr Nigel Strauss;
- (f) \$1,650.00 for each comprehensive psychiatric assessment;
- (g) \$880.00 for each comprehensive psychological assessment;
- (h) \$550.00 for psychiatric oversights;
- (i) \$300.00 for ELPD assessments of insured only losses conducted to a reasonable standard but not in accordance with the Settlement Distribution Scheme;
- (j) \$650.00 for ELPD assessments of incurred only losses conducted by ELPD assessors in accordance with the Settlement Distribution Scheme;
- (k) \$1,800.00 for ELPD assessments of above-insurance claims (non-business); and
- (l) \$2,400.00 for ELPD assessment of above-insurance business claims.

91. In addition, Mr Walsh's Affidavit of 17 June 2015 deposes that the following additional fixed rates of remuneration had been established in respect of service providers :

- (a) \$3,000.00 per day for each of Ms Rebecca Del Pra of Counsel and Ms Fiona Ryan of Counsel for assisting with finalising assessment memoranda in addition to their ongoing work conducting assessments;
- (b) \$200.00 per completed revised Notice of Assessment for draft Notices of Assessment identified as requiring review by assessing Counsel; and
- (c) \$700.00 per hour for Mr Andrew Keogh SC for assistance in designing, implementing, supervising and conducting training in the I-D assessment process.

92. According to the bills of costs/tax invoices provided to me and the matters deposed to in Mr Watson's Affidavit of 13 April 2015, disbursements incurred up to 28 February 2015 totalled \$496,970.02 and comprised the following :

- (a) \$161,895.94 to Counsel for work on the SDS, drafting, oversight and sample testing of the I-D claim assessment process;
- (b) \$9,900.00 to Counsel for conducting I-D assessments;
- (c) \$26,675.00 to Occupational Psychiatry Pty Ltd in respect of the work undertaken by Dr Nigel Strauss in developing the I-D questionnaire and assessment process;
- (d) \$23,140.06 to medical practitioners, hospitals and psychologists for providing I-D claimant treatment records;
- (e) \$180,600.00 to ELPD assessor RM Consulting Group for conducting 89 initial ELPD assessments;

- (f) \$6,000.00 to ELPD assessor RM Consulting Group for reviewing the house and contents calculation methods to be used in ELPD assessments; and
 - (g) miscellaneous administrative disbursements including telephone calls, photocopying and courier charges, totalling \$20,600.62.
93. According to the bills of costs/tax invoices provided to me and the matters deposed to in Mr Walsh's Affidavit of 17 June 2015, disbursements incurred between 1 March 2015 and 31 May 2015 totalled \$967,376.93 and comprised the following :
- (a) \$192,599.97 to Counsel for conducting I-D assessments, reviewing Notices of Assessment and attendance at training in the I-D assessment process;
 - (b) \$9,000.00 to Counsel for reviewing memoranda to identify claims ready for assessment;
 - (c) \$23,980.00 to Occupational Psychiatry Pty Ltd for training SDS staff and I-D Assessors and conducting psychiatric assessments of I-D claimants;
 - (d) \$48,736.55 to medical practitioners, hospitals and psychologists for providing I-D claimant treatment records;
 - (e) \$216,600.00 to ELPD assessor RM Consulting Group for conducting 112 assessments consisting of 87 above insurance ELPD assessments and 25 assessments including income and economic loss;
 - (f) \$174,850.27 to ELPD assessor Ligeti Partners for conducting 269 ELPD assessments;
 - (g) \$82,262.40 for design of the I-D and ELPD brochures and printing of the I-D brochure;
 - (h) \$188,457.50 for work carried out by Mr Andrew Keogh SC over the period November 2014 and 31 May 2015 (see paragraph 91(c) above); and
 - (i) miscellaneous administrative disbursements including telephone calls, photocopying and courier charges, totalling \$30,890.24.
94. According to the bills of costs/tax invoices provided to me and the matters deposed to in paragraphs 117 to 120 and 136 to 139 of Mr Watson's Affidavit of 9 October 2015, disbursements incurred between 1 June 2015 and 31 August 2015 totalled \$1,387,156.04 and comprised the following :
- (a) \$606,224.94 to Counsel for conducting I-D assessments, reviewing Notices of Assessment and attendance at training in the I-D assessment process;
 - (b) \$69,082.58 to medical practitioners, hospitals and psychologists for providing I-D claimant treatment records;
 - (c) \$9,361.81 to Law In Order for document processing and photocopying charges;
 - (d) \$858.00 to NuLegal for web-hosting fees;

- (e) \$172.10 to the Supreme Court for filing a subpoena directed to the Victorian Bushfire Appeal Fund;
- (f) \$159.90 to Victorian Transcript Services for transcript of the Case Management Conference 19 June 2015;
- (g) \$337,499.99 to ELPD assessor Hall & Wilcox for conducting 957 "insured only" ELPD assessments;
- (h) \$283,049.89 to ELPD assessor Ligeti Partners for conducting 859 "insured only" initial ELPD assessments and 39 "insured only" ELPD assessments;
- (i) \$44,028.88 for finalisation and printing of the ELPD brochure; and
- (j) miscellaneous administrative disbursements including telephone calls, photocopying, postal charges, Cabcharge expenses and courier charges, totalling approximately \$36,717.95.

95. According to the bills of costs/tax invoices provided to me and the matters deposed to in Mr Walsh's Affidavit of 18 March 2016, disbursements incurred between 1 September 2015 and 31 January 2016 totalled \$1,509,691.47 and comprised the following :

(i) General settlement administration :

- (a) \$10,103.50 to Pitcher Partners for providing advice in relation to taxation and interest derived on the settlement sum; and
- (b) Miscellaneous administrative disbursements, including photocopying charges, totalling \$1.32.

(ii) I-D settlement administration :

- (a) \$857,159.38 to Counsel for conducting I-D assessments;
- (b) \$91,253.60 to medical practitioners, hospitals, psychiatrists, psychologists and counsellors for providing I-D group members treatment records and reports;
- (c) \$33,473.00 to BizData for providing services to improve IT systems and build reporting systems;
- (d) \$14,002.57 to Law in Order for electronic document processing charges;
- (e) \$583.00 to Medicolegal Communications for providing translation services for group members during assessing Counsel conferences;
- (f) \$239.86 to Victoria Transcript Services for the transcript of the Case Management Conference held 20 October 2016;
- (g) \$220.00 to NuLegal for web-hosting fees; and

- (h) miscellaneous administrative disbursements including telephone calls, photocopying and courier charges, totalling \$10,089.44.

(iii) ELPD settlement administration :

- (a) \$392,518.00 to RM Consulting Group for conducting ELPD assessments;
- (b) \$30,000.00 to RM Consulting Group for attendance at audit conference and auditing assessments completed by other ELPD loss assessors;
- (c) \$11,800.00 to RM Consulting Group for attendance at audit conference and auditing assessments completed by other ELPD loss assessors;
- (d) \$21,533.99 to Crawford and Company for auditing assessments completed by other ELPD loss assessors;
- (e) \$19,866.00 to BizData for providing services to improve IT systems and build reporting systems;
- (f) \$8,199.94 to Hall & Wilcox Lawyers for auditing assessments completed by other ELPD loss assessors; and
- (g) miscellaneous administrative disbursements, including telephone calls and photocopying charges totalling \$1,447.93.

96. According to the bills of costs/tax invoices provided to me and the matters deposed to in Mr Walsh's Affidavit of 17 June 2016, disbursements incurred between 1 February 2016 and 30 April 2016 totalled \$1,583,863.85 and comprised the following :

(i) General settlement administration :

- (a) \$3,386.59 to Law In Order for photocopying charges;
- (b) \$2172.50 to LitSupport for photocopying charges;
- (c) \$574.10 to Victorian Transcript Services for the transcript of the Case Management Conference held 31 March 2016; and
- (d) miscellaneous administrative disbursements, including photocopying charges, totalling \$0.66.

(ii) I-D settlement administration :

- (a) \$819,379.46 to I-D assessors for conducting I-D assessments;
- (b) \$41,398.78 to medical practitioners, hospitals, psychiatrists, psychologists and counsellors for providing I-D group member treatment records and reports;
- (c) \$5,300.40 to Law In Order for electronic document processing and photocopying charges;

- (d) \$143.00 to Medicolegal Communications for providing translation services for I-D group members during assessment conferences
- (e) \$46.80 to the County Court for photocopying charges; and
- (f) miscellaneous administrative disbursements including telephone calls, photocopying and courier fees, totalling \$2,271.15.

(iii) *ELPD settlement administration :*

- (a) \$322,050.00 to Hall & Wilcox Lawyers for conducting ELPD assessments;
- (b) \$251,478.00 to RM Consulting Group for conducting ELPD assessments;
- (c) \$102,966.19 to Crawford and Company for conducting ELPD assessments;
- (d) \$13,577.32 to Law In Order for photocopying charges;
- (e) \$11,033.55 to Crawford and Company for retrofitting subrogated loss entry work;
- (f) \$4,599.99 to Crawford and Company for attendance at audit conference and auditing assessments completed by other ELPD loss assessors;
- (g) \$2,973.58 to Crawford and Company for providing training to Technical Assessing; and
- (h) miscellaneous administrative disbursements, including telephone calls, photocopying and courier fees totalling \$511.78.

97. In respect of disbursements incurred I requested that the Scheme Administrator provide me with two folders comprising a random sample of the disbursement accounts received in this matter in order to cross-reference those disbursement accounts with the disbursement claims in the bills of costs/tax invoices. Pursuant to that request I have been provided with a number of folders containing copies of a selection of disbursement accounts rendered by :

- (a) Hall & Wilcox, Crawford & Company, Ligeti Partners and RM Consulting Group for ELPD assessment work;
- (b) Pitcher Partners Pty Ltd for accounting services and advice
- (c) medical clinics, treating doctors, treating psychologists and clinical psychologists for the provision of medical reports and clinical notes;
- (d) various agencies including the Transport Accident Commission and hospitals in response to FOI requests made to obtain records pertaining to group members;
- (e) service providers such as BizData, Dynamic Direct Pty Ltd, Law In Order, LitSupport, Medicolegal Communications Pty Ltd, NuLegal and Victorian Transcript Services Pty Ltd; and
- (f) the Supreme Court of Victoria for filing fees and the like.

98. I have examined in detail the folders of copy disbursement accounts provided to me and have generally reviewed the claims for disbursements as made out in the bills of costs/tax invoices. I make the following observations :

Counsel, Medical providers and ELPD assessors

99. The rates fixed for Counsel, including Senior Counsel and Junior Counsel appointed as assessors in the I-D settlement administration are detailed in paragraphs 90 and 91 above.
100. In my experience the rates negotiated for Senior and Junior Counsel are all well within the range of hourly and daily rates one would expect and in my view they are reasonable. Likewise the rates fixed for comprehensive psychiatric assessments, comprehensive psychological assessment and psychiatric oversights all appear to be well within the range of rates one would expect and again in my view they are reasonable.
101. In my experience the rates charged by providers of medical reports and clinical notes are well within the range one would expect and are therefore reasonable.
102. Whilst I am not especially familiar with the usual rates charged by assessors in respect of economic loss/property damage assessments of insured only losses, above-insurance non-business claims and above-insurance business claims, the negotiated rates do not appear to me to be unreasonable and I note in passing that two of the ELPD assessors are firms of solicitors.

Court and transcript fees

103. As Court fees are fixed there is no dispute that they are reasonable. Likewise, in my view the fees for transcripts of the Case Management Conferences have been reasonably incurred and are reasonable in amount.

Other service providers and miscellaneous disbursements

104. Having reviewed the bills of costs/tax invoices and examined in detail a random selection of disbursement accounts rendered by other service providers, such as Pitcher Partners, BizData, Dynamic Direct Pty Ltd, Law In Order, LitSupport, MedicoLegal Communications Pty Ltd and NuLegal I am satisfied that all remaining disbursements have been reasonably incurred and are reasonable in amount.
105. In this context I consider it appropriate for me to make two further observations :

- (a) there are separate claims or mobile telephone call charges. I am advised that the when a mobile phone call is made by a file operator that file operator enters a matter specific code so that the call is electronically billed to the correct SDS account. Whilst historically telephone charges have been subsumed into the scale allowances for attendances (with the exception of STD and ISD telephone charges) modern communication is such that the use of a mobile phone is commonplace and indeed may people now no longer have landlines. In addition the advent of the mobile phone has allowed for reminder messaging and the like all of which contribute a greater degree of efficiency in the contact of matters such as this. Finally, mobile telephone call charges are generally time-based and it is therefore in my view reasonable that these charges be claimed as disbursements; and
- (b) courier charges and cab charges are a fact of modern practice and I consider the thoughtful use of courier and cabs to be reasonable in all the circumstances of this matter.

STEP 5 – APPLY THE HOURLY RATES APPROVED BY THE COURT

Administration Costs

106. Administration Costs are defined in clause A1.1 of the Scheme as :

- (b)(i) *any obligation described in clause A4.1;*
- (b)(ii) *all professional costs, and disbursements, incurred by the Scheme Administrator and administrator staff in the preparation, testing, implementation or administration of this Scheme; and*
- (b)(iii) *all fees and reasonable disbursements incurred by any person appointed by the Scheme Administrator to perform any function in connection with the preparation, testing, implementation or administration of this Scheme (including reasonable preparation or training in anticipation of involvement in this Scheme), which fees and disbursements shall be invoiced to the Scheme Administrator and paid by him as a disbursement.*

107. Clause A4.1 provides that :

Notwithstanding any other provision of this Scheme, and without reducing any other rights which the Scheme Administrator might have :

- (a) *all costs, expenses, taxes, levies, duties, charges, fees or other imposts or obligations arising in connection with the administration of this Distribution Scheme (including without limitation the creation, retention, investment or disbursement of any part of the Distribution Sum) shall be paid from the Distribution Sum held by the Scheme Administrator from time to time; and*
- (b) *the Scheme Administrator and the administrator staff shall be indemnified from the Distribution Sum against all liabilities (including without limitation or liabilities described in "a" above) arising from or in connection with the administration of this Scheme.*

108. Administrator staff are also defined in clause A1.1 of the Scheme as :

- (c) *.....the persons delegated by the Scheme Administrator to perform the functions necessary or convenient for the efficient implementation of this Scheme, and includes Maurice Blackburn in respect of those administrator staff;*

109. The GST exclusive hourly rates to be allowed to the Scheme Administrator and administrator staff have been approved by the Court and as mentioned in paragraph 35 above are detailed in Schedule B to the Scheme. Those hourly rates are apparently applicable for the "life" of the administration of the SDS. Pursuant to both paragraph 1 of the Orders made by Osborn J on 23 December 2014 and Schedule A to those Orders, Schedule B to the Scheme forms part of a confidential exhibit.

Time recording

110. I am advised that the Scheme Administrator utilises the "Elite" automated time and billing system for time recording and that the Scheme Administrator and all administration staff are required to enter their time on the "Elite" system at the time or shortly after specific tasks are completed. As mentioned in paragraph 36 above the "Elite" system records time in units of 6 minutes or part thereof.

111. In this connection I have been provided with a document entitled "Time Recording Protocols" which I am advised is given to all fee earners at Maurice Blackburn and which in particular has been given to the SDS file operators. That document provides a comprehensive list of "DOs" and "DON'Ts" for data entry to the "Elite" system and also canvasses the importance of using the "non-billable codes" where appropriate. In addition, I have also been provided with a copy of a memorandum which deals with time recording protocols specific to the SDS.

112. My examination of the bills of costs/tax invoices, both in a broad sense as referred to in paragraph 16 above and in a detailed sense as part of the sampling process referred to as step 4(i) in paragraph 37 above, suggests that these time recording protocols have been conscientiously followed and applied.

Application of the approved hourly rates to the recorded time

113. Utilising the tables in Attachment 1, Attachment 2 and Attachment 3 and the updated staff list in Attachment 4 to this report I have reviewed the hourly rates applied as detailed in all of the itemized invoices covering the period 1 July 2014 to 30 April 2016 for the Scheme Administrator and for each member of his administration staff in light of the "qualification" of each file operator.
114. Having done that exercise and as a result of the sampling process referred to as step 4(i) in paragraph 37 above, I am satisfied that in all instances the appropriately qualified operator has done the work at the appropriate standard hourly rate approved by the Court.

STEP 6 – EXCISE WORK UNREASONABLY DONE or UNREASONABLE IN AMOUNT

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.

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

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.

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.
119. Should however the Court require any further information or analysis I would of course be most pleased to oblige.

DATED : 20 June 2016

A handwritten signature in blue ink, appearing to read 'John D White', with a long horizontal flourish extending to the right.

JOHN D WHITE