

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION

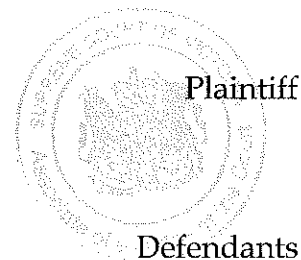
Not Restricted

S CI 2009 04788

CAROL ANN MATTHEWS

v

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



and

AUSNET ELECTRICITY SERVICES PTY  
LTD (formerly SPI ELECTRICITY PTY LTD)  
(ACN 064 651 118)

Plaintiff by Counterclaim

V

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

Defendants by Counterclaim

and

ACN 060 674 580 PTY LTD

Plaintiff by UAM Counterclaim

v

AUSNET ELECTRICITY SERVICES PTY  
LTD (formerly SPI ELECTRICITY PTY LTD)  
(ACN 064 651 118)  
and others according to the Schedule  
annexed to other rulings of the Court

Defendants by UAM Counterclaim

---

JUDGE: J FORREST J  
WHERE HELD: Melbourne  
DATE OF HEARING: 30 March 2017  
DATE OF REASONS: 11 April 2017  
CASE MAY BE CITED AS: Matthews v Ausnet Pty Ltd & Ors (Ruling No. 45)  
MEDIUM NEUTRAL CITATION: [2017] VSC 187

PRACTICE AND PROCEDURE - Case Management Conference - Progress of the Settlement Distribution Scheme - Declaration made that administration costs are reasonable - Treatment of tax liability of the interest incurred - Concern by group members regarding tax treatment of interest - Quarantining of \$750,000 for contingency risks - Court declines to intervene in outcomes of individual assessments - Application for further redaction category granted.

---

APPEARANCES:

Counsel

Solicitors

For the  
Scheme Administrator

Mr A Watson, the  
Scheme Administrator,  
appeared in person

Maurice Blackburn

Group Members

Ms Carol Matthews  
Ms Vicki Ruhr  
Mr Gary Angus

---

HIS HONOUR:

**Introduction**

- 1 This is the sixth ruling concerning the supervision of the administration of the Settlement Distribution Scheme (SDS) approved by Osborn JA on 23 December 2014.<sup>1</sup>
- 2 Save where necessary, I do not propose in the course of this ruling to re-state matters I have covered in rulings 40,<sup>2</sup> 41,<sup>3</sup> 42,<sup>4</sup> 43,<sup>5</sup> and 44,<sup>6</sup> nor the contents of the SDS, which can be inspected on the Court's website.
- 3 At the case management conference on 30 March 2017, Mr Andrew Watson, the Scheme Administrator, advised the Court as to progress made in relation to the processing of both I-D and ELPD claims.
- 4 This ruling concerns eight matters arising out of that hearing:
- (a) the progress of the assessment of claims pursuant to the SDS to date;
  - (b) the adoption of the Special Referee's report and the approval of the Scheme Administrator's costs;
  - (c) an update as to the status of the tax liability on the interest incurred;
  - (d) the quarantining of \$750,000 as a contingency fund;
  - (e) whether there should be a donation to charity for residue amounts that are uneconomical for distribution;
  - (f) the Court's inability in its supervisory role, to intervene in outcomes of

---

<sup>1</sup> See *Matthews v AusNet Electricity Services Pty Ltd (Ruling No.40)* [2015] VSC 131; *Matthews v AusNet Electricity Services Pty Ltd (Ruling No.41)* [2016] VSC 171 (rulings); *Matthews v AusNet Electricity Services Pty Ltd* [2014] VSC 663 (approval).

A copy of the Deed and SDS is available on the Court's website at:

<http://www.supremecourt.vic.gov.au/home/law+and+practice/class+actions/kilmore+east+kinglake+bushfire+class+action+settlement/>

The content and procedures for administering the SDS are contained in *Matthews v AusNet Electricity Services Pty Ltd (Ruling No.40)* [2015] VSC 131 and therefore will not be repeated in this ruling.

<sup>2</sup> [2015] VSC 131.

<sup>3</sup> [2016] VSC 171.

<sup>4</sup> [2016] VSC 394.

<sup>5</sup> [2016] VSC 583.

<sup>6</sup> [2016] VSC 732.

individual assessments including Mr Gary Angus and the son of group member Ms Vicki Ruhr;

- (g) an application for the redaction of a further category of personal and confidential information; and
- (h) the next case management conference.

**The hearing**

5 The following material was provided by the Scheme Administrator and the Group Members for the purpose of the case management conference:

- (a) affidavit of Mr Watson sworn 28 February 2017 and a supplementary affidavit of Mr Watson sworn on 28 March 2017;
- (b) letters from Mr Denis Spooner on behalf of himself and Ms Vicki Ruhr, Mr Norman Archibald and Ms Suzi Kerr of 3 March 2017 and 13 March 2017;
- (c) letter from Mr Watson dated 14 March 2017 in response to letter from group members dated 13 March 2017;
- (d) letter from Ms Ruhr dated 15 March 2017;
- (e) letter from Mr Watson dated 17 March 2017 in response to letter of Ms Ruhr dated 15 March 2017;
- (f) email from Ms Ruhr dated 17 March 2017; and
- (g) letter from Mr Denis Spooner on behalf of himself and Ms Vicki Ruhr, Mr Norman Archibald and Ms Suzi Kerr dated 17 March 2017.

**Progress of the assessment of claims (ELPD & I-D)**

6 Mr Watson informed the Court that on Monday 27 March 2017, distribution of the settlement monies for ELPD claims commenced.<sup>7</sup> Mr Watson confirmed that a total

---

<sup>7</sup> The cheques for the distribution of the ELPD settlement monies were sent out by Dynamic Direct, an external mailing house used by the SDS Team.

sum of just short of \$260 million<sup>8</sup> will have been distributed in relation to the ELPD claims, and that this would bring the total distribution to group members, including the I-D claims, to \$418.5 million.<sup>9</sup>

### **I-D Claims**

7 The Scheme Administrator confirmed that the total number of personal injury claimants is 1,481.<sup>10</sup>

8 Mr Watson advised that there are now only seven I-D claimants who have not received a compensation payment.<sup>11</sup> Of these:

(a) four relate to deceased estates where there is still an outstanding issue;<sup>12</sup>

(b) two relate to family law disputes;<sup>13</sup>

(c) one claimant is seeking advice on the impact of any settlement money on an ongoing Department of Veterans Affairs entitlement.<sup>14</sup>

9 As at 30 March 2017, there are nine unrepresented cheques. Of those, three intended claimants have been uncontactable by phone and Mr Watson advised that his staff are in the process of sending these claimants a letter by registered mail to encourage them to present their cheques. The remaining six claimants have received their cheques but are yet to present them.

10 Although now rectified, the Scheme Administrator identified an instance where (1) due to a data error, one I-D claimant's personal injury compensation was not captured in the database at the time of the final distribution; and (2) due to human error during the initial registration process in March 2013, an individual's I-D and ELPD registration had not been recorded and therefore their claim was not assessed.<sup>15</sup> Steps

---

<sup>8</sup> \$259,432,177.99 is the actual distribution sum, Exhibit AJW-11.

<sup>9</sup> T 4, of the hearing of 30 March 2017.

<sup>10</sup> Ibid T 7.

<sup>11</sup> Ibid T 6.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Affidavit of Andrew John Watson dated 28 February 2017, [18]-[34]; T 8, of hearing of 30 March 2017.

have now been taken to ensure those claimants will not suffer disadvantage and those entitlements have been paid by the Scheme Administrator.<sup>16</sup> If there is a residual sum to distribute, the Scheme Administrator will apply to be reimbursed for those payments.<sup>17</sup>

11 I am satisfied that the steps taken by the Scheme Administrator in relation to I-D claims have been reasonable and consistent with the provisions of the settlement deed.

#### **ELPD claims**

12 On 21 March 2017, Mr Kompos of KMPG finalised an external review of the ELPD claims list and confirmed its accuracy.<sup>18</sup>

13 The Scheme Administrator confirmed that there are approximately 9,174 ELPD claims registered in the proceeding, comprised of:

(a) 4,138 above insurance claims made by approximately 3,772 above insurance claimants; and

(b) 5,036 subrogated claims made by approximately 25 insurers.<sup>19</sup>

14 Approximately 3,092 above insurance claimants and 25 insurers will receive payments as part of the ELPD final distribution. The remaining claimants will not receive payments because they have (a) withdrawn their claims, (b) been assessed as having no compensable losses in this proceeding, or (c) the deductions applicable to their claims equal their ELPD compensation.<sup>20</sup>

15 On 27 March 2017, a mailing organisation, Dynamic Direct, forwarded payments to 2,936 of the 3,092 ELPD above insurance claimants.<sup>21</sup> The Scheme Administrator confirmed that the 25 insurers will receive payments by electronic funds transfer.<sup>22</sup> The remaining 156 ELPD above insurance claimants will be processed in-house by

---

<sup>16</sup> Ibid.

<sup>17</sup> Affidavit of Andrew John Watson dated 28 February 2017, [28], [34].

<sup>18</sup> Supplementary Affidavit of Mr Andrew Watson sworn 28 March 2017, [4].

<sup>19</sup> Ibid [10].

<sup>20</sup> Ibid [11].

<sup>21</sup> Ibid [13], [15].

<sup>22</sup> Ibid [16]; T 9, of hearing of 30 March 2017.

the SDS Team as they concern outstanding matters for resolution.<sup>23</sup>

16 I am satisfied that the steps taken to date by the Scheme Administrator in relation to ELPD claims have been reasonable and consistent with the provisions of the settlement deed.

**Adoption of the Special Referee's report and the approval of the Scheme Administrator's costs**

17 On 5 November 2015, I appointed Mr White, an experienced costs consultant, as a Special Referee. The purpose of doing so was to ensure the costs charged by the Scheme Administrator were reasonable.<sup>24</sup>

18 Mr White has prepared two previous reports.<sup>25</sup> The third report of Mr White dated 1 March 2017 is comprehensive and can be viewed on the Court website.<sup>26</sup>

19 The third report covers:

- (a) the costs of administering the SDS in respect of general administration, the I-D claims and the ELPD claims over the period 1 October 2016 to 31 December 2016;
- (b) the proposal to split general administration costs and disbursements incurred over the period 1 November 2016 to 31 December 2016 between the I-D administration and the ELPD administration;
- (c) the estimated costs of administering the SDS in respect of general administration over the period 1 January 2017 to finalisation of the Settlement Administration which is expected to be sometime after 1 July 2017;

---

<sup>23</sup> Supplementary Affidavit of Mr Andrew Watson sworn 28 March 2017, [16].

<sup>24</sup> *Matthews v AusNet Electricity Services Pty Ltd (Ruling 41)* [2016] VSC 171, [26]-[28].

<sup>25</sup> A copy of Mr John David White's second report dated 21 November 2016 is available at <http://assets.justice.vic.gov.au//supreme/resources/3d542af7-6c1c-4f00-b502-e5a54683b81d/costsauditreportofmrjohndavidwhitedated21november2016+%28compressed%29.pdf>; A copy of Mr John David White's first report dated 20 June 2016 is available at <http://assets.justice.vic.gov.au//supreme/resources/b255d719-80af-4e4c-816a-3f87567ea357/costs+audit+report+of+mr+john+david+white+dated+20+june+2016.pdf>.

<sup>26</sup> A copy of Mr John David White's third report dated 1 March 2017 is available on the Court website at: <http://www.supremecourt.vic.gov.au/home/law+and+practice/class+actions/kilmore+east+kinglake+bushfire+class+action+settlement/>.

- (d) the estimated costs of administering the SDS in respect of the ELPD claims over the period 1 January 2017 to 30 June 2017; and
- (e) other miscellaneous matters raised by the Scheme Administrator.

20 In his report, Mr White reached the following conclusions as to the Scheme Administrator's costs:

123. Having regard to the matters canvassed in this report and the reasons expressed in paragraphs 24 to 58 and 70 to 76 above I am of the opinion that the quantum of the Administrator's costs claimed in the bills of costs/tax invoices covering the period 1 October 2016 to 31 December 2016 is reasonable.

124. Having regard to the matters canvassed in this report and the reasons expressed in paragraphs 24 to 43, 59 to 69 and 77 above I am of the opinion that the quantum of disbursements claimed in the bills of costs/tax invoices covering the period 1 October 2016 to 31 December 2016 is reasonable.

125. Having regard to the matters canvassed in this report and the reasons expressed in paragraphs 78 to 81 above I am of the opinion that the proposal to split General administration costs and disbursements incurred over the period 1 November 2016 to 31 December 2016 as to 3/8ths to the I-D administration and 5/8ths to the ELPD administration is reasonable.

126. Having regard to the matters canvassed in paragraphs 84 to 93 above I am of the opinion that the estimate of the likely costs and disbursements in respect of the General administration and the ELPD administration for the period from 1 January 2017 to 31 January 2017 is reasonable.

127. Having regard to the matters canvassed in paragraphs 94 to 108 above I am of the opinion that the estimate of the likely costs and disbursements in respect of the General administration for the period from 1 February 2017 to finalisation of the settlement administration is reasonable.

128. Having regard to the matters canvassed in paragraphs 109 to 115 above I am of the opinion that the estimate of the likely costs and disbursements in respect of the ELPD administration for the period from 1 February 2017 to 30 June 2017 is reasonable.

129. Having regard to the matters canvassed in paragraphs 116 to 126 above I am of the opinion that (a) the quantum of costs and disbursements actually incurred in respect of the General and I-D administrations over the period 1 October 2016 to 31 October 2016 is reasonable, (b) the manner in which the Scheme Administrator proposes to deal with these and other excess (or withheld) funds is reasonable and (c) it is premature for me to comment on the PwC estimate of costs likely to be incurred in respect of the "Taxation Controversy", save to say that that I assume PwC has been circumspect in preparing the estimate.<sup>27</sup>

---

<sup>27</sup> Ibid [123]-[129].



21 The costs for which approval was sought were those amounts incurred between 1 October 2016 and 31 December 2016. The Scheme Administrator said that although the third White report provided for estimates for costs from 1 January 2017 and following, he was not seeking approval for those costs at this hearing. Rather, approval would be sought at the appropriate time once the actual costs were known.<sup>28</sup>

22 I have read Mr White's report closely. In my opinion, the exercise that he has carried out has been performed competently and thoroughly. Specifically, I am satisfied that the methodology used is appropriate and has ensured that the costs charged by the Scheme Administrator are reasonable. In the circumstances, I need not do more than make a declaration that the payments made by the Scheme Administrator pursuant to the SDS are reasonable and that no amount is required to be refunded by the Scheme Administrator.

#### **Potential tax liability for the interest earned on the settlement fund**

23 The Court was advised by the Scheme Administrator as to the position in respect of the dispute between himself and the Australian Taxation Office (ATO) in relation to the taxation liability on interest earned on the settlement distribution fund.

24 In his November 2016 Affidavit, the Scheme Administrator noted that it was important that he take all appropriate steps to investigate whether the ATO's informal decision, that interest is assessable and settlement administration costs are not deductible, should be challenged.<sup>29</sup>

25 Most recently, concerns have been raised in correspondence from group members, Mr Spooner, Ms Ruhr, Ms Kerr and Mr Archibald about how the Scheme Administrator has approached this issue.<sup>30</sup> In summary, the following issues were raised by group members:

(a) that the Scheme Administrator should have applied to the Australian Charities

---

<sup>28</sup> T 10, of the hearing of 30 March 2017.

<sup>29</sup> Affidavit of Andrew John Watson dated 29 November 2017, [28]-[39]; Affidavit of Brooke Wendy Dellavedova dated 23 January 2017, [205].

<sup>30</sup> Letters from Mr Denis Spooner on behalf of himself and Ms Vicki Ruhr, Mr Norman Archibald and Ms Suzi Kerr dated 3 March 2017, 13 March 2017 and 17 March 2017.

and Not-for-profits Commission for charitable status in order to avoid any tax liability;<sup>31</sup>

- (b) that the Scheme Administrator did not take 'all available and necessary steps to protect the funds available to class action claimants'<sup>32</sup>; and
- (c) that group members are seeking access to any confidential correspondence between Maurice Blackburn and the ATO.<sup>33</sup>

26 The group members also relied on a letter received by them from the Acting Chief of Staff Mr Gerry Antioch on behalf of the Office of The Honourable Kelly O'Dwyer MP, Minister for Revenue and Financial Services dated 7 March 2017. In that letter, Mr Antioch responds to the question as to whether the issue of taxation on the interest income could have been foreseen:

the Commissioner (of Taxation) advises that in other instances of large compensation payouts which have been held as a single fund, the representatives for the injured parties have taken steps to eliminate or reduce tax assessed on interest earned by, for example, paying beneficiaries their entitlements before the end of the income year so that earnings are not taxed at the highest marginal rate. Alternative courses of action may include:

- Applying to the Australian Charities and Not-for-profits commission to determine, having regard to all the relevant facts and the framework set out in the Australian Charities and Not-for-profits Commission Act 2012, whether the fund is eligible to be registered as a charity, in which case it can be granted tax exempt status by the ATO; or
- Seeking additional funds to be awarded by the court to cover costs associated with administering the compensation fund, interest payments and other associated expenses, including tax, to ensure that these are not taken from the compensation fund.

27 In response to these letters, the Scheme Administrator replied in a letter to the Court of 14 March 2017: 'with respect to Mr Antioch, these comments do not appear to have the benefit of a full understanding of the circumstances surrounding the settlement funds or of the steps taken in relation to the tax treatment of interest earned on the

---

<sup>31</sup> Letter from Mr Denis Spooner on behalf of himself and Ms Vicki Ruhr, Mr Norman Archibald and Ms Suzi Kerr dated 3 March 2017.

<sup>32</sup> Letter from Mr Denis Spooner on behalf of himself and Ms Vicki Ruhr, Mr Norman Archibald and Ms Suzi Kerr dated 13 March 2017.

<sup>33</sup> Letters from Mr Denis Spooner on behalf of himself and Ms Vicki Ruhr, Mr Norman Archibald and Ms Suzi Kerr dated 13 March 2017 and 17 March 2017.

settlement’.

28 The Scheme Administrator told me that the SDS Team, together with their taxation advisors PwC and counsel, continued to work on this issue.<sup>34</sup>

29 As I indicated in the case management conference, there appear to be a few issues involved here.<sup>35</sup> Firstly, whether the Court has any power to deal with this issue. Secondly, even if it was thought that something else should have been done by the administrator in relation to the structure of the SDS, is there any scope for the court supervising a settlement to do anything about it? Thirdly, is this really a question that can only be answered by a separate piece of litigation?

30 At the case management conference, the Scheme Administrator informed the Court of the ways this dispute may be finalised include:

Speaking in the general...any dispute such as this might be resolved by agreement between the two parties. That conceivably might be just by discussions between them or under the processes of court assisted mediation. Failing a solution in that way, there might be a need for the matter to be resolved by some form of litigated process. There are a range of options that might be adopted in relation to that form of litigated process.<sup>36</sup>

31 \$16.274 million of the settlement fund has been set aside to meet any potential tax liability and related costs.<sup>37</sup> The Scheme Administrator stated that this sum is allowed on the basis that it is ‘the most adverse view of the tax outcome and .... the most adverse view of what costs might be expended’ and ‘as a matter of prudence, we thought we should hold back the maximum amount.’<sup>38</sup>

32 I am of the opinion that there is no scope for the Court to intervene on this issue. The Scheme Administrator has advised the Court of this potential problem on ten occasions since June 2015. Whether the SDS (which required the agreement of multiple parties) could have been structured differently is a matter that this Court should not consider given that the Scheme was approved by Osborn J as being reasonable and in

---

<sup>34</sup> Affidavit of Andrew John Watson dated 28 February 2017, [86].

<sup>35</sup> T 26, 27, of the hearing of 30 March 2017.

<sup>36</sup> Ibid T 28.

<sup>37</sup> Exhibit AJW-11; T 29, of the hearing of 30 March 2017.

<sup>38</sup> T 29, of the hearing of 30 March 2017.

the best interests of group members. In any event, I consider that a Court could only considers intervention if it was satisfied that the Scheme Administrator had plainly failed to exercise due diligence, and even then I am not certain it has the power to do so under the *Supreme Court Act*.

33 Whatever the position, I am not satisfied that the Scheme Administrator has not acted appropriately in dealing with this matter.

34 It will, of course, be open to group members who consider otherwise to take whatever action they wish in a separate proceeding.

#### **Quarantining of \$750,000 as a contingency fund**

35 The Scheme Administrator advised that \$750,000 has been set aside as a contingency fund. The setting aside of these funds was thought appropriate by the Scheme Administrator given 'the considerable complexities associated with the administration of the ELPD settlement administration and the fact a second ELPD distribution would be necessary in the event of success in relation to the taxation dispute, I consider it prudent to reserve a small percentage contingency of 0.29% of the ELPD Distribution Sum to deal with any errors in the pro rata calculation.'<sup>39</sup>

36 I consider this to be a prudent step by the Scheme Administrator in light of the circumstances arising out of the personal injury distribution where there were a couple of claimants who, as a result of data or human error, slipped through the system.

#### **Whether there should be a donation to charity for residue amounts that are uneconomical for distribution**

37 There were some concerns or perhaps misapprehension from group members following the Murrindini case management conference that there may be a donation to charity should there be any residue amounts from the settlement fund.<sup>40</sup> In a letter to the Court dated 14 March 2017, the Scheme Administrator clarified the position:-

---

<sup>39</sup> Affidavit of Andrew John Watson dated 28 February 2017, [70].

<sup>40</sup> Letter from Mr Denis Spooner on behalf of himself and Ms Vicki Ruhr, Mr Norman Archibald and Ms Suzi Kerr dated 13 March 2017.

I confirm there is no present proposal to distribute any settlement funds to charity. This proposal, which was foreshadowed in the context of the Murrindindi settlement administration, averted to the possibility of funds which were not economic to distribute being amalgamated for the purpose of distribution to charity. Any such proposal would necessarily be subject to Court supervision and approval.<sup>41</sup>

38 At the case management conference, the Scheme Administrator said that if there is a residual amount, the first priority will be to distribute that residue to claimants.<sup>42</sup> However, 'if we are talking about an amount that is a handful of dollars, then the processing associated with distributing a cheque for \$3 to a group members is clearly more than the \$3 and it's inefficient to do so. If we are in a world where we have those sorts of amounts, we had contemplated coming back to the court and seeking a direction of those amounts to an appropriate charity'.<sup>43</sup>

39 I consider this to be a sensible approach by the Scheme Administrator in the event that there are uneconomical amounts for distribution. Of course, if and when the appropriate times arises, the Scheme Administrator would be required to apply to the court to seek approval of such a course.

#### **The Courts inability in its supervisory role to intervene in outcomes of individual assessments**

40 Ms Ruhr and Mr Angus sought to make submissions in relation to their individual cases (in Ms Ruhr's case, that of her son). In particular, Ms Ruhr had earlier provided the Court with a letter dated 15 March 2017 and email dated 17 March 2017 in relation to concerns about her son's assessment. At the case management conference, Mr Angus tabled a submission in relation to a complaint about his assessment.<sup>44</sup> I explained that I was prepared to listen to what he had to say, however, as I had repeated in a couple of rulings,<sup>45</sup> there was little, if anything, this Court could do in relation to individual assessments other than make sure the SDS had been applied.<sup>46</sup>

---

<sup>41</sup> Letter from Andrew Watson, Scheme Administrator dated 14 March 2017.

<sup>42</sup> T 31, of hearing of 30 March 2017.

<sup>43</sup> Ibid.

<sup>44</sup> Exhibit 1, 'Re: Kilmore East - Kinglake Bushfire Class Action, Complaint about Maurice Blackburn Lawyers poor handling of class members Personal Injury & Property Damage Claims', tabled by Mr Garry Angus at the case management conference of 30 March 2017.

<sup>45</sup> *Matthews v Ausnet Electricity Services Pty Ltd (Ruling No. 42)* [2016] VSC 394; *Matthews v Ausnet Electricity Services Pty Ltd (Ruling No. 43)* [2016] VSC 583.

<sup>46</sup> T 38, of hearing of 30 March 2017.

41 I reiterate again what I said at the commencement in the hearing of an application on 21 June 2016, and in that ruling:

The purpose of this case conference and previous case conferences is to ensure that the SDS is being administered in accordance with its terms as approved by Justice of Appeal Osborn in December 2014..... My task as the judge charged with overseeing the scheme is simply this: to ensure that the scheme is administered properly, consistent with the terms of the SDS.<sup>47</sup>

I concluded:

I repeat, though, it is not the Court's role to provide advisory opinions on the way in which the scheme is being administered; rather, to ensure that it is being administered appropriately.<sup>48</sup>

42 At this case management conference, I drew Ms Ruhr's attention to my earlier decision of 29 September 2016,<sup>49</sup> involving concerns she had raised regarding the review assessment of the claim of her son. I reiterate again that:

[30] ".....The SDS is binding on all Group Members, including Mr Ruhr. His rights are determined under the SDS. There is no scope for the Court to conduct its own assessment or to give directions to the reviewing assessor or the Scheme Administrator about how he or she should go about their job.

[31] The only remedy available, as I see it, is that of judicial review – but that would need a party to establish that there was either jurisdictional error or procedural unfairness on the part of the administrator or the reviewer.

[32] Accordingly, there would have been no role for the Court in its supervisory capacity to play in relation to Mr Ruhr's claim. I should add the following, which I doubt is of much comfort, but nevertheless demonstrates the reality of the situation: the settlement of a class action and the process of assessment and review is by no means perfect. It is not intended to be so: it is intended to provide a reasonable process by which claims of Group Members can be processed fairly and efficiently without the need for court intervention. As I have remarked previously, if this process of assessment was left to the Court, there are simply insufficient resources available which could provide timely assessments – this is putting to one side questions of cost, legal jargon and travel.

[33] The end result is that the Court would not have been able to intervene in relation to Mr Ruhr's claim.<sup>50</sup>

43 At the risk of being justifiably criticised for repetition, I note that I said the following

---

<sup>47</sup> *Matthews v Ausnet Electricity Services Pty Ltd (Ruling No. 42)* [2016] VSC 394, [4].

<sup>48</sup> *Ibid.*

<sup>49</sup> *Matthews v Ausnet Electricity Services Pty Ltd (Ruling No. 43)* [2016] VSC 583, [15]-[33].

<sup>50</sup> *Ibid* [30]-[33].

at this hearing:-

My role is to make sure the scheme is adhered to. The scheme sets out the way in which assessments will be carried out by way of initial determination and review. All I can do is make sure that occurs. I can't delve into what was decided or not decided and if you have a complaint about the actual decision making process, there is another forum you can bring and that is what is called a judicial review.<sup>51</sup>

and

there's no power given to me under the scheme which was approved by an order of the court to intervene in an administrator's decision, unless I thought, it seems to me, that Mr Watson hadn't complied with the terms of the scheme.<sup>52</sup>

44 As I explained to Mr Ruhr and Mr Angus, perhaps the only power I could exercise is that provided by section 33ZF of the *Supreme Court Act 1986* (Vic):

In any proceeding (including an appeal) conducted under this Part the Court may, of its own motion or on application by a party, make any order the Court thinks appropriate or necessary to ensure that justice is done in the proceeding.

45 In my opinion, I could only exercise this power if I was persuaded that, in some way, the terms of SDS have not been adhered to. Even then, it may be that the appropriate remedy is to seek judicial review of the decision of the Scheme Administrator.

46 Mr Angus explained that he was not in a position to afford legal representation should he wish to consider judicial review. At the conclusion of the hearing, my Associates provided Mr Angus with the name and contact details of the Supreme Court self-represented litigant coordinator in the hope that he may be able to assist Mr Angus to obtain legal advice.

#### **Application for redaction of further personal and confidential information**

47 On 21 February 2017, I made orders that the following categories of confidential information be redacted from the December 2016 I-D and ELPD settlement administration invoices for costs in order to ensure the confidentiality of information about individual group members and their claims:

---

<sup>51</sup> T 40, of hearing of 30 March 2017.

<sup>52</sup> Ibid T 43.

- a. The names and addresses of claimants;
- b. Medical information relating to individual claimants;
- c. Information relating or referring to family law disputes between individual claimants;
- d. Estate disputes between individual claimants; and
- e. The names of junior solicitors, trainee lawyers, paralegals and administrative assistants employed by Maurice Blackburn

48 The Scheme Administrator now applies for a further redacted category of personal and confidential information, being 'telephone numbers'; that is, telephone numbers called by the SDS Team (Maurice Blackburn explained overseen by the Scheme Administrator) and captured in the disbursement narratives. These are contained in Exhibit AJW-9 to the Affidavit of Andrew John Watson dated 28 February 2017. The Scheme Administrator makes application for that exhibit to be uplifted and replaced with a version in which telephone numbers are redacted.<sup>53</sup>

49 Prior to the release of the redacted bills to Ms Ruhr, the SDS Team redacted the telephone numbers in order to ensure that individual group members' personal confidential information was not disclosed.<sup>54</sup>

50 I am satisfied that this application should be granted, and that order 2(c) of the orders of 21 February 2017 be amended to include 'claimant telephone numbers'.

---

<sup>53</sup> Supplementary Affidavit of Andrew John Watson dated 28 March 2017, [20].

<sup>54</sup> Ibid [22].



**Next case management conference**

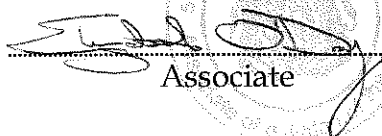
51 A further case management conference is fixed for 9 June 2017 at 9.30am.

---

**CERTIFICATE**

I certify that this and the 14 preceding pages are a true copy of the reasons for Judgment of J Forrest J of the Supreme Court of Victoria delivered on 11 April 2017.

DATED this eleventh day of April 2017.

  
Associate