

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION**

No. 4538 of 2012

BETWEEN:

KATHERINE ROWE

Plaintiff

and

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

Defendants

(by original proceeding)

AND BETWEEN:

**AUSNET ELECTRICITY SERVICES PTY LTD
(ACN 064 651 118)**

Plaintiff by Counterclaim

and

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

Defendants by Counterclaim

(by counterclaim)

AFFIDAVIT OF BROOKE WENDY DELLAVEDOVA

Date of Document:	24 January 2017
Filed on behalf of:	The Plaintiff
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I, Brooke Wendy Dellavedova, Solicitor, of Level 10, 456 Lonsdale Street, Melbourne in the State of Victoria, make oath and say as follows:

1. I am a Principal in the firm of Maurice Blackburn Pty Ltd (**Maurice Blackburn**), the solicitors for the Plaintiff in this proceeding. Pursuant to clause A3.1 of the Settlement Distribution Scheme (**Scheme**), Mr Andrew John Watson has appointed me to act as

Scheme Administrator in his absence. I was the Principal responsible for the conduct of this matter from August 2014 until the settlement of that proceeding was approved on 27 May 2015.

2. I make this affidavit from my own knowledge unless otherwise stated. Where statements are not made from my own knowledge, they are made to the best of my information and belief after due enquiry and I have set out the source of my information.
3. Save where stated otherwise, nothing in this affidavit is intended to constitute a waiver of privilege.
4. I make this affidavit for the purpose of providing the Court with an update on:
 - (a) the final *pro rata* recovery of personal injury and dependency (**I-D**) Claimants (**Final I-D Claimant Recovery**);
 - (b) the progress made in relation to I-D settlement distribution;
 - (c) the estimated *pro rata* claimant recovery of economic loss and property damage (**ELPD**) Claimants in this proceeding (**Estimated ELPD Claimant Recovery**);
 - (d) the progress made in relation to the ELPD settlement distribution;
 - (e) a proposal for offering an opt-out resolution process to Claimants where entitlement to assessed compensation is disputed (mostly family law claims);
 - (f) communications with group members;
 - (g) the settlement administration costs; and
 - (h) the taxation issues affecting the Distribution Sum.
5. The team of lawyers and paralegals employed by Maurice Blackburn who are working on administration of the Scheme are referred to in this affidavit as the **SDS Team**.
6. This affidavit addresses the following:

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A. OVERVIEW

1. Since the Case Management Conference on 30 November 2016 (**November CMC**) significant progress has been made towards finalisation of the settlement administration. In particular:
 - a) All I-D Claims have been paid amounting to approximately \$31,300,919, save for six claims where unique issues are still being resolved (that is, distribution has been made to 307 of the 313 I-D Claimants entitled to receive compensation). Payments were made to almost all claimants before Christmas;
 - b) The Final I-D Claimant Recovery has been confirmed at 63.628%;
 - c) All 2,424 ELPD claims (1,170 above insurance claims and 1,254 subrogated claims) have been issued with a Final Notice of Assessment (**FNOA**). All FNOAs were issued to above insurance claimants by 20 December 2016, and to subrogated claimants by 5 January 2017;
 - d) I expect to distribute ELPD compensation to claimants by 7 April 2017. The main factors which will determine whether distribution occurs before or after that date relate to time periods and rights under the Scheme and the work of third parties which are beyond my direct control. However I and other senior members of the SDS Team are working hard to ensure distribution occurs as early as possible; and
 - e) I am confident that ELPD Claimants will recover within the previously quoted range of 55% to 70% of their assessed losses.

B. PERSONAL INJURY AND DEPENDENCY CLAIMS

FINAL I-D CLAIMANT RECOVERY

2. I refer to Mr Watson's comments at the November CMC in relation to the Estimated I-D Claimant Recovery and the Orders made by the Court in this proceeding dated 30 November 2016 (**30 November Orders**).
3. Following the November CMC and the 30 November Orders, the Final I-D Claimant Recovery has been confirmed at 63.628%. All assumptions and data used to determine the Estimated I-D Claimant Recovery remained unchanged following the 30 November Orders. I refer to Annexure AJW-1 to the Affidavit of Mr Watson sworn on 29 November 2016 which set out the calculation of the I-D Claimant Recovery.

4. Mr Kompos of KPMG was not asked to conduct a further review of the Final I-D Claimant Recovery as no changes were made after he determined, on 21 November 2016, that the *pro rata* recovery calculations had been performed in accordance with supporting documentation provided and the calculations had been correctly made.
5. I am informed by Kimi Nishimura, a Senior Associate employed by Maurice Blackburn and a member of the SDS Team, that Mr Kompos has advised her that he has substantially completed his expert report in relation to the I-D Settlement Distribution. The SDS Team anticipate that he will finalise this report following the resolution of the final ten I-D payments which remain to be processed. The details of these six payments are discussed further at paragraph 19.

PROGRESS MADE IN RELATION TO SETTLEMENT DISTRIBUTION

6. Since the November CMC and the 30 November Orders, I-D settlement distribution has been made to 307 of the 313 I-D Claimants entitled to receive compensation. Of the 307 payments, 275 were processed by external mailing house Dynamic Direct, and 32 payments were processed by the SDS Team. Six payments remain to be processed by the SDS Team for the reasons set out in paragraph 19.

Payments made by Dynamic Direct

7. Following the November CMC and the 30 November Orders, Maurice Blackburn identified that entitlements for 275 I-D Claimants could be regarded as finalised (there were no outstanding issues to be resolved, and claimant data could be sent to KPMG for verification), subject to receiving notice of final payment from Centrelink.
8. On 5 December 2016 Centrelink advised Maurice Blackburn of the final payback figures for I-D Claimants that had a repayment obligation or preclusion period. There were 54 I-D Claimants in total.
9. Centrelink sent notices containing information regarding repayment obligations, preclusion periods and review rights to the SDS Team who sent them to the relevant I-D Claimants.
10. On 5 December 2016 Maurice Blackburn sent an updated payment schedule for all 425 I-D Claimants including the Centrelink data to KPMG to review and approve. This payment schedule included Claimants who had received nil assessments.
11. On 6 December 2016, KPMG approved the updated payment schedule. Now produced and shown to me marked **Confidential Exhibit BWD1**, is a copy of that schedule.

12. On 6 December 2016 the SDS Team gave the approved payment schedule and a copy of a letter to I-D Claimants enclosing their cheques (**Covering Letter**) to Dynamic Direct. The Covering Letter contained:
- a) Confirmation of individual claimant's in-hand compensation and the pro rata recovery rate;
 - b) Generalised information regarding taxability of compensation, Medicare benefits, Centrelink, statutory schemes, private health insurance and other information regarding third parties;
 - c) A recommendation to seek financial advice,
 - d) An update regarding ongoing negotiations with the ATO; and
 - e) An individualised schedule reporting the calculation of the in-hand compensation amount received.
13. Now produced and shown to me and marked **Exhibit BWD2**. is a copy of the Covering Letter.
14. On 6 December 2016, Dynamic Direct prepared a blank sample cheque that was approved by Westpac on the same day.
15. On 13 December 2016 Dynamic Direct provided the SDS Team with a sample of printed cheques and covering letters enclosing cheques. I reviewed and approved these samples on the same day.
16. On 14 December 2016 Dynamic Direct sent by registered post settlement cheques and accompanying Covering Letters to 275 I-D Claimants. The SDS Team was contacted by one I-D Claimant who had not received their cheque by registered post within the expected time frame. This cheque has not yet been returned to the SDS Team, therefore the SDS Team is in the process of cancelling the cheque and making payment by EFT.

Payments Made by the SDS Team

17. Following the November CMC and the 30 November Orders, Maurice Blackburn identified 38 I-D Claimants whose entitlements could not be regarded as finalised because there were outstanding issues to be resolved (described below), and claimant data could not be sent to KPMG for verification. For these I-D Claimants, the SDS Team worked to resolve the outstanding matters, and upon resolution, process the compensation payments internally.



18. The SDS Team processed payments to 32 of these 38 I-D Claimants by 23 December 2016. As at the date of swearing my affidavit there are six I-D Claimants to whom the SDS Team is yet to make payment. The SDS Team continues to take steps to make these payments as soon as possible.
19. The details of the 38 I-D Claimants whose payments were or are being processed by the SDS Team internally are as follows:
- a) 18 I-D Claimants are included on the Order 15 Register and therefore the SDS Team paid their settlement money to Funds in Court;
 - b) Two I-D claimants were awaiting confirmation from Centrelink as to any applicable repayments or preclusions. These issues have now been resolved and the SDS Team has made these payments;
 - c) Five I-D Claimants currently live overseas and the SDS Team had to make their payments by EFT or send their cheques by international post. This had been done;
 - d) Seven I-D claims are in respect of deceased claimants in circumstances where a grant of probate was yet to be made and provided to the SDS Team. Of these seven, the SDS Team has been able to make payment to two. The SDS Team awaits information in relation to the remaining five I-D Claimants and will make payment as soon as possible;
 - e) Three I-D Claimants were receiving Department of Veterans Affairs (**DVA**) entitlements and the SDS Team was awaiting confirmation of what, if any, impact their settlement money would have on the I-D Claimants' ongoing DVA entitlements. Of these three, two have now been resolved with the DVA and the SDS has made payment. In relation to the one remaining I-D Claimant, the SDS Team is working closely with the DVA and will ensure payment is processed when or if appropriate to do so;
 - f) One I-D Claimant was receiving Department of Defence entitlements and the SDS Team was awaiting confirmation of what, if any, impact their settlement money would have on the I-D Claimant's ongoing Department of Defence entitlements. This has now been resolved and the SDS Team has made payment to the I-D Claimant;
 - g) One I-D Claimant was receiving South Australian Work Cover entitlements and the SDS Team was awaiting confirmation of what, if any, impact their settlement money would have on the I-D Claimant's ongoing entitlements.



This has now been resolved and the SDS Team has made payment to the I-D Claimant; and

- h) One I-D Claimant had engaged legal representation and sought a late interim payment. The SDS Team was communicating with the I-D Claimant's legal representatives. This issue has now been resolved and the SDS Team has made payment to the I-D Claimant.
20. Prior to the SDS Team making the payments referred to in paragraph 19 it gave to KPMG the individual I-D Claimant final settlement distribution payment schedule for review and approval. Once KPMG approved the calculation, SDS Team made the payment by cheque or EFT. Once the remaining six payments have been reviewed and approved by KPMG, the SDS Team will provide KPMG with a final schedule consolidating all internal payments approved by KPMG for annexure to Mr Kompos' expert report

Payments to Third Parties

The Victorian WorkCover Authority (VWA), the Transport Accident Commission (TAC) & the Country Fire Authority (CFA)

21. I refer to paragraph 15 of Mr Watson's affidavit dated 31 October 2016 (**October Affidavit**). Pursuant to the terms of agreements with VWA, TAC & CFA, the SDS Team has provided each authority with confirmation of the in-hand compensation paid to the relevant I-D Claimants. I confirm that the Scheme Administrator's obligations pursuant to the above agreements have now been fulfilled and no further action is required by the SDS Team.

Centrelink

22. The SDS Team provided Centrelink with final in-hand compensation awards paid to relevant I-D Claimants. As outlined above, the SDS Team sent the Centrelink notices regarding repayments of benefits and preclusion periods to the relevant I-D Claimants.
23. The SDS Team made a repayment to Centrelink of \$498,452.71 on 21 December 2016 pursuant to the relevant repayment notices in fulfilment of our obligations. I confirm that the Scheme Administrator's obligations pursuant to the *Social Security Act 1991* have now been discharged.

Medicare

24. The SDS Team will shortly give Medicare a schedule of all relevant I-D Claimants who are required to make repayment to Medicare in accordance with the Bulk Payment Agreement. The SDS Team will make payment to Medicare on behalf of the relevant I-D Claimants within four weeks.

Private Health Insurers

25. The SDS Team will make payments within four weeks in accordance with agreed terms to the 12 interested private health funds in fulfilment of relevant I-D Claimants' obligations.

The Department of Veteran Affairs (DVA)

26. As noted above, compensation has been paid to all DVA I-D Claimants except one. In relation to the relevant I-D Claimant, the advice received from the DVA is under review by that Claimant and by the SDS Team. Compensation payable to this I-D Claimant will remain in the settlement distribution fund until this review is complete.
27. The DVA has been provided with confirmation of the in-hand compensation received by the relevant I-D Claimants and the SDS Team will prepare the required repayment to be made within four weeks.

Department of Defence

28. The SDS Team are in communication with the Department of Defence to obtain payment details in relation to one I-D Claimants. Payment will be made once these details are finalised within four weeks.

Senior Master's Office

29. The Honourable Associate Justice Derham made orders dated 17 November 2016 approving the compromise for Order 15 I-D Claimants. The SDS Team provided all relevant I-D Claimants with a copy of their final letter, the Funds in Court information guide and further information as requested by the Senior Master's Office.
30. Payment on behalf of the Order 15 I-D Claimants for \$1,950,882.24 was made by the SDS Team to Funds in Court on 14 December 2016.

Distribution Issue

31. Since effecting final distribution, the DVA has communicated an adverse decision in respect of one I-D Claimant.

32. Now produced and shown to me and marked **Confidential Exhibit BWD3**, is a confidential note containing an explanation of this issue. The exhibit has been marked confidential as it contains details of the individual's I-D assessment.

FINALISING DISTRIBUTION

33. The SDS Team is continuing to attend to the following:
- a) Finalising payments to third parties;
 - b) Responding to inquiries by I-D Claimants regarding their compensation and the settlement distribution process generally;
 - c) Reconciling I-D Claimant data with presented cheques; and
 - d) Identifying and following up any I-D Claimants who fail to present their cheques. The SDS Team will continue to monitor the status of settlement cheques.

C. ECONOMIC LOSS AND PROPERTY DAMAGE CLAIMS

34. There are 2,479 registered ELPD Claimants. In total, 2,424 claims have been assessed pursuant to the SDS, of which 1,170 were above insurance claims and 1,254 subrogated claims.
35. In respect of the remaining number of claims, Maurice Blackburn has received instructions not to proceed by the ELPD-Claimant for the following number of claims:

Number of claims not assessed as election not to proceed:	
Above insurance	Subrogated
28	8

36. The SDS Team also identified instances where a claim had been registered twice. This usually occurred where an above insurance claimant registered a claim and an insurer registered a claim on their behalf, to preserve their rights at the time of class closure. In other instances, this was an administrative error made by an insurer upon registration. The following number of claims were not assessed due to being duplicate claims:

Number of claims not assessed	
Above insurance	Subrogated
12	4

37. Finally, one above insurance and two subrogated claims were not assessed as their losses fell outside of the Murrindindi Bushfire Area. This was confirmed to be the case with the ELPD claimant and relevant insurers.

38. Based on the current ELPD assessment data, I am confident that ELPD Claimants will recover within the previously quoted range of 55% to 70% of their assessed losses.

THE SDS TEAM

39. Since the November CMC the following changes have been made to the SDS Team working on ELPD claims (**ELPD SDS Team**):
- a) Laura Opperman, Data Analyst has departed Maurice Blackburn; and
 - b) The number of paralegals has been reduced from 15 to 7 (working an equivalent of 6.6 full time positions). Approximately one third of the paralegals' time is directed towards the Murrindindi settlement administration. The reduction in staff reflects the changing nature of the work required to be performed. As the ELPD assessments have been completed, the labour-intensive tasks referred to in paragraph 41 below are no longer being performed, and the less labour-intensive tasks referred to in paragraph 42 below are being performed instead.

Role of the SDS Team

40. The duties undertaken by members of the ELPD SDS Team were outlined in paragraphs 35 and 36 of Mr Watson's affidavit sworn 16 June 2016. As we are nearing the end of the ELPD Assessment process, the duties of the ELPD SDS Team have changed as set out below.
41. Over the period of November and December 2016, paralegals from the ELPD SDS Team performed the following tasks:
- a) identifying and correcting errors in Provisional Notices of Assessment (**PNOAs**);
 - b) responding to disputed subrogated PNOAs;
 - c) auditing invoices from assessors;
 - d) auditing the client database, including to check for duplicate claims;
 - e) conducting preliminary reviews of applications for interim payment;
 - f) preparing and distributing FNOAs and custom correspondence;
 - g) contacting group members;
 - h) re-issuing FNOAs; and

- i) preparing FNOAs for estates without grants of representation.
42. Since January 2017, the paralegals have performed the following tasks:
- a) auditing all subrogated claims;
 - b) contacting group members to invite return of Election Notices (referred to at paragraph 65 below) and monitoring the return of Election Notices;
 - c) conducting audits of ELPD claim data;
 - d) reviewing issues related to Order 15 claimants; and
 - e) preparing briefs for ELPD Review Assessors.
43. Over the period of November and December 2016, lawyers on the ELPD SDS Team have largely been involved in overseeing the work of paralegals, and responding to more complicated inquiries and resolving issues regarding complex claims. Most notably, they have been responsible for the following tasks:
- a) responding to escalated issues regarding the PNOAs to ensure FNOAs can be issued;
 - b) contacting group members to request return of Election Notices;
 - c) attending to complex requests by group members regarding issues with subrogated and/or above insurance losses;
 - d) liaising with insurers;
 - e) reviewing disputes received by insurers in relation to PNOAs, remitting disputed assessments to assessors, escalating disputed assessments to the Scheme Administrator and issuing assessments as final notices of assessment;
 - f) reviewing requests for review in relation to final notices of assessment and remitting to assessors or allocation to ELPD Review Assessors;
 - g) preparation for the KPMG audit; and
 - h) liaising with assessors regarding re-issued FNOAs.
44. Since January 2017, the lawyers have been involved in the following tasks and enquiries:
- a) amending allocation splits after final notices of assessments have been issued;

- b) endeavouring to determine procedures for disputed allocation of compensation for family law disputes;
- c) finalising outstanding internal audit tasks in preparation for the KPMG audit;
- d) conducting an internal audit of above insurance and subrogated claims;
- e) overseeing the estate claim process and an audit of estate claims;
- f) reviewing requests for reviews and allocating review assessments to ELPD Review Assessors;
- g) overseeing the process of contacting group members to invite return of Election Notices; and
- h) preparing appropriate procedures regarding the distribution to companies, trusts, partnerships and dissolved entities.

ASSESSMENT OF ABOVE INSURANCE CLAIMS

Provisional Notices of Assessment

- 45. Mr Watson set out the steps taken to assess each of the 3919 above-insurance claims in his affidavits of 13 April 2015, 9 October 2015, 25 February 2016, 16 June 2016, 12 September 2016 and 31 October 2016.
- 46. In paragraphs 67 to 69 of his October Affidavit, Mr Watson deposed that Maurice Blackburn had requested each ELPD Assessor to note the estimated final date on which all assessments would have been provided to Maurice Blackburn, with provisional notice periods having expired. This date was previously estimated to be mid to late November.
- 47. Following the November CMC, senior members of the ELPD Team closely monitored the completion of each outstanding individual assessment to ensure that this timeframe was met. By early December, all 1,170 above insurance ELPD-Claimants had been issued with a PNOA by one of the ELPD Assessors retained under the SDS.
- 48. Pursuant to E4.2 of the SDS, an ELPD Claimant has 14 days to consider their PNOA, and identify any errors or omissions. If a group member wishes to raise any errors or omissions with their PNOA, they are directed to deliver to the ELPD Assessor a written statement outlining the error or omission (**Dispute Notice**).
- 49. By late December the ELPD Assessors had provided all PNOAs to Maurice Blackburn after the provisional review periods had expired or any dispute had been




addressed. This was 2 to 3 weeks later than the timeframe estimated by the ELPD Assessors.

Final Notices of Assessment

50. All FNOAs were issued to above insurance claimants by 20 December 2016.
51. Under clause E5.1 of the Scheme, an ELPD Claimant who wishes to obtain a review of a FNOA may request the review by delivering a Request for ELPD Review to the Scheme Administrator within 42 days after the date shown on the FNOA (**Review Period**).
52. After 20 December 2016, the SDS Team identified 3 assessments that needed to be re-issued due to errors resulting in a decrease to the value of the assessments. All FNOAs affected by this issue were re-issued by 23 December 2016. In accordance with the orders of the Court dated 17 October 2016, which provided that where the assessed ELPD value is reduced by more than 5% or more than \$5000 (whichever is the lesser), the provisions of E5 of the SDS shall apply to the re-issued FNOA, the Review Period commenced again for these claims.
53. The SDS Team identified one assessment that needed to be re-issued due to an error which resulted in an increase to the value of the assessments. The FNOA was re-issued on 10 January 2017. As the amendment to this assessment resulted in an increase to the value of the assessment, the Review Period did not commence again.
54. In total, the SDS Team has issued FNOAs to 593 Loss Addresses with an above insurance claim, covering 1024 individual above insurance claims. This amounted to approximately 589 separate assessments. In addition, some claimants received more than one FNOA because they suffered losses at multiple properties and an FNOA was issued for each property

Complex assessments

55. FNOAs involving a complex claim were escalated to a solicitor or trainee solicitor, and if necessary the Scheme Administrator, before being issued to ELPD Claimants. The types of issues escalated by paralegals involved claims where:
- a) the identity of the ELPD Claimant was uncertain or had changed;
 - b) the ownership of property by an ELPD Claimant was in question;
 - c) the allocation of compensable property between ELPD Claimants at a loss address was in dispute; and/or




d) there were queries from ELPD Claimants about the application of Schedule A of the SDS.

56. All FNOAs involving estate and trust property were escalated to a solicitor or trainee solicitor for a final check because of the large number of ELPD Claims registered by a person other than the Executor, a person holding a grant of representation or the relevant Trustee.

Allocation of compensation to trusts, partnerships or companies

57. In the process of issuing finalised assessments, the SDS Team has identified instances where the contact person in their capacity as trustee, partner, company director or authorised contact for the ELPD Claimant have instructed the Scheme Administrator to allocate \$0 to the entity where there are multiple claims at the address. The SDS Team has written to claimants who have allocated \$0 to such an entity to remind them that as authorised contact for the company, trust or partnership, they are under a legal obligation to ensure that any compensation is distributed to its rightful owner. At the date of swearing this affidavit, no group members have contacted the SDS Team to make an amendment to their assessment after their FNOA was sent out.

Review Assessments

58. Under section E5.3 of the SDS, where a request for review has been received, I must give notice of the referral of the review to the group member seeking the review and provide 21 days to provide materials in support of the review application.

59. To date, the SDS Team has received eleven applications by above insurance ELPD Claimants for Review Assessment.

60. In relation to one application for review, I have determined that it is appropriate to direct the original ELPD Assessor to amend the alleged error or omission raised by the review application with a view to the assessment being reissued as an FNOA. I believe this expedited the resolution of the issue and resulted in the group member obtaining a resolution that was also more cost effective for the scheme as there was an obvious error that could be corrected.

61. Nine applications for review have now proceeded to review. One of these ELPD Claimants is yet to pay the review bond. The claimant has been notified that the review will cease immediately if the bond is not returned within the period required.

62. One application for review was withdrawn by the group member after discussion with a member of the SDS Team. The review concerned losses not recoverable under the Scheme.
63. In respect of the ELPD reviews referred to an ELPD Review Assessor, the requests for review vary greatly according to the specific details and loss of the particular ELPD claimant. Some of the requests for review are general requests to review the assessment without specifying the aspect of the assessment the ELPD Claimant contends to be in error. The other requests for review relate to perceived errors or omissions in the:
- a) property included in the assessment;
 - b) calculation of the quantum of loss relating to particular property in the assessment; and
 - c) Interpretation and application of Schedule A of the SDS as it affects what is determined to be compensable as well as the application of any caps and multipliers.

Outstanding Review Periods

64. As at the date of swearing this affidavit, 10 FNOAs have a Review Period that is yet to expire. Of those, 8 will expire by the end of January, with 2 Review Periods expiring in early February.
65. As referred to at paragraph 84 of the October Affidavit, the SDS Team commenced the process in late December of contacting claimants to invite them, if they did not plan to seek a review, to return a notice confirming their election not to exercise any rights of review (**Election Notice**).
66. As at the date of swearing this affidavit, 2 ELPD Claimants have indicated that they would seek a review. The SDS Team is continuing to attempt to contact all of the above insurance ELPD Claimants whose Review Period has not expired to encourage them to promptly seek a review or return an Election Notice.

Additional counsel appointed as ELPD Review Assessors.

67. The Scheme Administrator has had to appoint additional ELPD Review Assessors as most of the ELPD Review Assessors previously retained to undertake this work were on leave in January. All ELPD Review Assessors are members of the Victorian Bar. The following counsel have to date been appointed to review ELPD FNOA assessments:

- a) Lachlan Armstrong QC;
- b) Peter R Best;
- c) Kathleen Foley;
- d) Min Guo; and
- e) Daniel Wallis.

ASSESSMENT OF SUBROGATED CLAIMS

Provisional Notices of Assessment

68. The process for issuing PNOAs for subrogated-only losses was outlined broadly in the affidavits of Mr Watson dated 17 June 2016 and 9 September 2016.
69. As of 22 December 2016, the SDS Team had issued 1237 PNOAs (100%) to insurers in respect of registered subrogated ELPD claims.

Amended procedures

70. The Scheme Administrator directed ELPD loss assessors to assess multiple claims relating to a single Loss Address, including above insurance and subrogated claims, at the same time.
71. Early in the assessment process, the procedure was that:
- a) The ELPD Assessor would issue a PNOA to the above insurance claimant;
 - b) after the 14-day PNOA dispute period had passed, the ELPD Assessor would provide the PNOAs pertaining to any subrogated claims to the SDS Team;
 - c) the SDS Team would issue PNOAs to insurers in respect of multiple claims and multiple loss addresses.
72. In order to ensure all FNOAs for subrogated claims were issued by the end of December 2016, the SDS Team asked the ELPD Assessors to submit PNOAs pertaining to subrogated claims to Maurice Blackburn as they were completed, even where the review period for any above insurance claim for the corresponding loss address had not yet expired. Upon receipt of the PNOAs from the ELPD Assessors, the SDS Team immediately issued PNOAs for the subrogated components of these claims to the relevant insurers. The ELPD Assessors notified the SDS Team of any amendments to the above-insurance PNOAs made during the 14-day review period, and notified them when FNOA dispute periods expired with no dispute received.

73. The amended procedures facilitated the SDS Team being able to issue the majority of PNOAs to the insurers before the end of 2016.

Insurer Disputes

74. In total, the SDS Team received 117 statements detailing a perceived error or omission from the insurers (being 9.46% of all PNOAs issued to insurers). Of these disputes, 1 was subsequently withdrawn by the insurers and an FNOA was issued.
75. Of the 117 disputes received, 53 were remitted to the relevant ELPD Assessor for further investigation. Most of the errors were relatively minor and consisted of the following:
- a) Incorrect calculations and allocations of payments by the loss assessor;
 - b) Data entry or data extraction errors;
 - c) Errors occurring where a loss assessor had omitted payments received for clearing debris, towing or demolition; and
 - d) Insurer registration issues, which are discussed further below.

Registration Issues

76. In paragraph 59 of Mr Watson's affidavit dated 12 September 2016 and paragraphs 55 to 59 of his October Affidavit, Mr Watson set out the process for responding to registration class closure cap issues.
77. The SDS Team identified that 63 statements alleging an error or omission related to insurer registration issues that could be more efficiently resolved by the SDS Team rather than being remitted to the relevant ELPD Assessor.

Final Notices of Assessment

78. As of 5 January 2017, the SDS Team had issued 100% of FNOAs to insurers.

Review Assessments

79. A member of the SDS Team has been closely liaising with the solicitors for the insurers, and to date one request for review has been received. The insurers have indicated they may submit further requests for review.
80. On 16 January 2017 the Scheme Administrator and a member of the SDS Team met with Hall and Wilcox, the solicitors for a large number of the insurers. Hall and Wilcox had concerns about 5 claims which they disputed at the PNOA stage but

which the loss assessor, Crawford & Co declined to amend and were subsequently issued as an FNOA.

81. At the meeting Hall and Wilcox indicated that they would like the loss assessor to reconsider the disputes raised and that if they couldn't be resolved they would consider applying for a Review Assessment for each claim. I agreed to facilitate a meeting between Hall and Wilcox and Crawford and Co to enable Hall and Wilcox to have as much information as possible regarding the reasons for the declined amendments, to assist Hall and Wilcox to promptly form a view as to which if any claims they would submit for Review Assessment.
82. Prior to the conference with Crawford and Co, Hall and Wilcox provided a spreadsheet with details of 3 claims to the SDS Team.
83. On 17 January 2017 the Scheme Administrator and the SDS Team met with Crawford & Co and Hall and Wilcox. Hall and Wilcox outlined their issues with each of the 3 claims and Crawford and Co provided them with a detailed explanation of how each assessment was undertaken. Following this exercise one claim was withdrawn, one claim was reviewed and amended by Crawford & Co and one claim is outstanding following provision of further information to Hall and Wilcox by Crawford & Co.

Outstanding Review Periods

84. As at the date of swearing this affidavit, 269 FNOAs have a review period that is yet to expire. Ninety-eight percent of these reviews periods will all expire within the next two weeks.
85. To reduce delays, Maurice Blackburn has asked insurers who were sent FNOAs in late November and December 2016 and January 2017 to waive their review rights by completing and returning an Election Notice, similar to the Election Notice distributed to above insurance claimants.
86. Of the 269 FNOAs still within the review period, insurers have returned election notices for only 5 claims.
87. I and other members of the SDS Team are in close communication with the relevant insurers or their lawyers to exhort them to return Election Notices for claims they have reviewed and in respect of which they do not intend to seek review. I will report to the Court on our progress at the Case Management Conference on 30 January 2017.

FINALISING DISTRIBUTION**Estimated Timeline**

88. As referred to above, all 2,479 claims have now been assessed pursuant to the Scheme, and issued with a FNOA unless the claim was not assessed due the reasons outlined above in paragraphs 34 to 37. However, as noted previously, the Scheme provides generous periods in relation to seeking a review of finalised notices of assessment (42 days to request an ELPD Review with a further 21 days to provide written contentions -to the ELPD Review Assessor in support of the application).
89. In Mr Watson's October Affidavit, he deposed that he remained of the view that final distribution will occur in early 2017. This timeframe was dependent on all FNOAS being issued and any Requests for Review being finalised in January 2017.
90. As stated above, the SDS Team were not able to issue all FNOAs until towards the end of December 2016 for above insurance claims, and early January 2017 for subrogated claims. The SDS Team also did not receive any reviews to be referred to an ELPD Review Assessor at the time of Mr Watson's affidavit. However, since then 9 applications for review have been sent to an ELPD Review Assessor.
91. Clause E6.2 of the Scheme specifies that ELPD Review Assessors are required to deliver to the Scheme Administrator a Notice of ELPD Review Assessment and a Statement of Reasons (finalised assessment) within 60 days of receipt of the last of the materials required under clause E6.1. The last materials to be delivered to an ELPD Review Assessor will in each case be the written contentions that the ELPD Claimant has 21 days to deliver to the Scheme Administrator in support of their review application.
92. The ELPD Review Assessors contacted by senior members of the SDS Team have confirmed that where no further materials are required from the claimant other than the written contentions, they are unlikely to require the 60 days to complete their review. In these cases the ELPD Review Assessors will take steps to finalise their reviews within 30 days of receiving the written contentions or earlier if possible.
93. However, under clause E6.2 of the SDS the ELPD Review Assessor may undertake the review as they deem appropriate, including without limitation by requiring the claimant to submit further material relating to the ELPD Claim. In these cases, the ELPD Review Assessors are not able to confirm whether they can return the



finalised assessment to the Scheme Administrator in less than the 60 days timeframe.

94. If no or few additional reviews are received, and none of the reviews require further extensive information to be submitted by the claimant, the appointed ELPD Review Assessors have indicated they will be able to finalise the existing reviews and return them in the first two weeks of February 2017. On this basis I estimate that distribution should occur by 7 April 2017, assuming finalisation of the external audit processes and processing of cheques by Dynamic Direct does not cause delay.
95. I will be in a better position to estimate the ELPD distribution date once all ELPD review applications have been received. The last of the above insurance Claimants still in a position to seek a review of the ELPD assessment have until 3 February 2017 to make a review. Five subrogated Claimants have until 16 February 2017.
96. Senior members of the SDS Team are working closely with ELPD Review Assessors to determine the earliest date by which Review Assessments can be finalised. The SDS Team is also attempting to contact all ELPD Claimants group members who have a review period outstanding. Where a group member has indicated that they might seek a review, a senior member of the SDS Team has been requested to contact these group members to discuss any potential review, and encourage the group member to seek a review as soon as possible.

Internal review

97. As referred to at paragraphs 85-86 of Mr Watson's October Affidavit the SDS Team undertook an internal audit of all data in preparation for the KPMG audit.
98. This audit was comprised of a number of separate audits that covered different scenarios and types of claims.
99. The purpose of this audit was to confirm that a FNOA has been issued in relation to all registered claims and that the assessed losses detailed in the FNOA is reflected in Maurice Blackburn's client management database, MatterCentre.
100. There were no issues relating to data identified during the audit process and it has been confirmed that all registered claims that required assessing have been assessed.
101. The SDS Team largely completed this internal audit at the end of December 2016. The SDS Team will continue to conduct internal audits on an as needs basis when new data such as updated assessment data following a successful review is added

to the Matter Centre database or where the data has changed because of a change in the split of compensation between group members at a loss address.

Subrogated Claim Audit

102. The subrogated audit was completed after all PNOA disputes were resolved and all FNOAs had been sent out to insurers. The purpose of the Subrogated Claim Audit was to ensure that all subrogated claims have been assessed, that insurers have received a FNOA for all of their registered claims, and the FNOA received lists the correct assessed losses as reflected in Matter Centre.

Filesite Audit

103. The Filesite Audit involved a review of all above insurance claims. Filesite is the electronic document management program used by Maurice Blackburn. Specifically it was confirmed that every above insurance claimant has been issued with an FNOA, that the assessed losses detailed in the FNOA is reflected in Matter Centre, and that the assessment is saved to the claimant's Filesite folder.

Additional Address Audit

104. The purpose of the Additional Address Audit was an additional check to ensure that all above insurance claimants with multiple loss addresses have received an assessment for each of their loss addresses and that the sum of the assessed losses for all addresses is recorded correctly on Maurice Blackburn's Matter Centre database.

Re-issued FNOA Audit

105. The purpose of the FNOA audit was ensure that where a FNOA has been re-issued to an above insurance claimant, the re-issued FNOA and accompanying letter have also been saved to the relevant claimant's Filesite folder, and further that the assessed losses have been updated on Matter Centre in accordance with the re-issued FNOA.

Uncontactable Claimants Audit

106. The purpose of the Uncontactable GMs Audit was to ensure that where approved by the Scheme Administrator, uncontactable claimants have been issued with both a PNOA and a FNOA and a letter stating that the GM was uncontactable to their last known postal address. It was also confirmed that the \$nil assessment issued to all uncontactable claimants is reflected in Matter Centre.

Withdrawn Claimants Audit

107. The purpose of the Withdrawn claimant Audit was to ensure that where a claimant has decided to cease their claim within the class action, they have still been issued with a FNOA and that Matter Centre reflects the \$nil assessment issued. The audit also confirmed that all claimants marked as withdrawn have been confirmed as withdrawals and that the required process has been followed for each withdrawal.

Duplicate Registered Claim Audit

108. The purpose of the Duplicate Registered Claim Audit was to ensure that all claims marked as duplicates are correctly marked as such and therefore have not been assessed.

External review

109. I refer to paragraph 87 of the October Affidavit regarding the audit to be conducted by Mr George Kompos of KPMG.
110. Since the last Case Management Conference:
- a) Senior members of the SDS Team met with KPMG on 16 December 2016 to discuss the infrastructure required for the ELPD audit.
 - b) KPMG supervised the extraction of group member assessment data from Matter Centre in late December for the purpose of preparing the expert report in this proceeding;
 - c) KPMG have requested and been provided with assessment data reports for the purpose of preparing the expert report in this proceeding; and
 - d) KPMG will advise the SDS Team shortly regarding the anticipated timeframe for completion of the ELPD audit once they have finalised their review of data provided.

Dynamic Direct

111. A senior member of the SDS Team has contacted Dynamic Direct, the mailing house who will distribute cheques who have confirmed that an additional 2 to 3 days, is required to distribute cheques to ELPD Claimants given the higher volume to be distributed than I-D Claimants.

DISTRIBUTION ISSUES**Changed Legal Identity**

112. The SDS Team is aware that the legal identity of some ELPD Claimants has changed since registering ELPD Claims in the class action. This may impede or delay distribution of compensation to the following ELPD Claimants:
- a) companies which have been wound up and deregistered with ASIC;
 - b) partnerships which have dissolved; and
 - c) trustees whose role has ceased on termination of the trust.

Deregistered companies

113. The SDS Team are not presently aware of any ELPD Claimants in the Murrindindi proceeding where there is an entitlement to receive a distribution of compensation but the company has been deregistered. It is expected that when the cheques are distributed to the contacts for all corporate ELPD Claimants, it is likely the SDS Team will be notified of such Claimants affected by deregistration.
114. The SDS Team is aware that for any such ELPD Claimant, there is the potential for the costs and burden of complying with this requirement to exceed the value of the estimated distribution of compensation. The SDS Team is aware that this may impede distribution of compensation to these particular ELPD Claimants. The SDS Team is determining the most appropriate approach to distribute compensation in respect of these ELPD Claims.

Dissolved partnerships

115. The SDS Team is aware of one ELPD Claimant which is a partnership that has subsequently dissolved since registering as a group member.
116. The Scheme Administrator is determining the most appropriate approach to distribution in respect to this claimant (and any others that are similarly placed claimants who come forward). One approach is to make payment to the partner who registered the ELPD claim on behalf of the partnership, on receipt of an indemnity and statutory declaration confirming the partner registered the claim on behalf of the partnership and that on receipt of a payment the partner will distribute the compensation monies in accordance with partnership law.




Termination of trust

117. The SDS Team is aware of one instance where the ELPD claim is in respect of the loss of trust property and the trust has subsequently terminated.
118. The Scheme Administrator is determining the most appropriate approach to distribution in respect of this claim. One approach would be to make payment to the last known trustee who has been the contact on behalf of the ELPD Claimant, on receipt of an indemnity and statutory declaration confirming that the contact was the trustee of the trust and that on receipt of payment the trustee will distribute the compensation monies in accordance with trust law.

Uncontactable ELPD Claimants

119. There are 9 registered ELPD Claimants who were uncontactable throughout the assessment process. The SDS Team sent letters to the addresses of all 9 of these group members, requesting that they contact Maurice Blackburn in relation to their claim. Members of the SDS Team searched the Australian Electoral Commission (AEC) records for all 9 of these claimants. The additional investigations undertaken by the ELPD SDS Team in attempt to locate uncontactable group members are detailed in paragraph 96 of the affidavit of Mr Watson sworn 16 June 2016.
120. In respect of all of those ELPD Claimants, the SDS Team identified some evidence in relation to the losses sustained at the relevant loss address. ELPD Assessors were directed to complete their assessment based on the evidence available and issue PNOAs to the group member's last known address. The SDS Team subsequently also issued FNOAs.
121. Of the nine ELPD claims assessed on the limited material available, three have been assessed as having suffered an above-insurance loss and remain uncontactable, one has been assessed as having suffered an above-insurance loss and relates to a Claimant who is under a legal disability and whose personal representative is uncontactable, and another one has been assessed as having an above-insurance loss but relates to a loss address where another Claimant at that address is contactable. The value of the assessed loss in these three claims where the Claimant remains uncontactable (but is not subject to a Senior Master Order) ranges from \$30,950.07 to \$250,648.51, with a total amount of \$312,584.65 being assessed for these three ELPD Claimants. On the basis of a 55% - 70% recovery rate, this means that approximately \$171,921.56 – \$218,809.26 will not be able to be distributed to the relevant ELPD Claimant unless they make contact with the SDS Team prior to distribution.

122. In the event that contact is not made by the current list of uncontactable ELPD Claimants prior to distribution, the monies to which the three Claimants would be entitled will be paid into the Maurice Blackburn trust account in accordance with F3.1 of the SDS.
123. The Scheme Administrator intends to approach the Court with a proposal for holding this money on trust for a certain period and then paying unclaimed amounts to a charity.

ELPD Claimants Living Overseas

124. The SDS Team has identified group members currently living overseas to whom Maurice Blackburn will not be able to pay settlement money by cheque. The SDS Team will shortly contact these group members to confirm that they would like payment of settlement monies by electronic funds transfer. Where a group member has previously received compensation by electronic funds transfer in relation to any personal injury compensation, the same arrangements will be put in place for ELPD distribution.

Change in allocation of compensation

125. Assessments are completed on a loss address basis. Where losses of multiple claimants have been prepared on the same assessment, the ELPD Assessors have been directed to obtain instructions from each ELPD Claimant to confirm the allocation of compensation i.e. 50% to the wife and 50% to the husband.
126. These instructions were then recorded on the assessment. Where the ELPD Assessor was not able to obtain instructions, it was recorded as a dispute.
127. Where disputed, claimants have been requested to return statutory declarations or provide court orders instructing as to the split before compensation can be paid. When all statutory declarations or court orders for an FNOA have been received, the SDS Team calls the affected group members to confirm that the FNOA has now been amended to reflect the statutory declarations or court orders. The SDS Team then sends correspondence to the affected group members confirming the change in split. As at the date of swearing this affidavit, three assessments have been amended in these circumstances.
128. Where the FNOA has been issued with an agreed split, sometimes the group members contact Maurice Blackburn to change their previous instructions. A member of the SDS Team will then contact all group members listed on the FNOA to confirm agreement to the change in split. The SDS Team then amends the



allocation of compensation to reflect the new split as instructed by all affected group members. The SDS Team then sends correspondence to the affected group members confirming the change in split. At the date of swearing this affidavit, four assessments have been amended in these circumstances.

129. Where an estate is a group member, but the executor was not known at the time of issue, FNOAs have been issued as disputed. In these instances, the SDS Team follows estate procedures to identify the executor. The executor is then contacted to instruct on the split. The allocation of compensation is then amended in accordance with the instructions of the executor. As at the date of swearing this affidavit, 5 assessments have been amended in these circumstances.
130. The SDS Team in consultation with Maurice Blackburn's information technology department has established procedures to facilitate the automatic upload of data to record the amended allocation of compensation in Maurice Blackburn's Matter Centre database. The SDS Team will shortly begin to issue letters generated using this data to group members to confirm any amendments.

ELPD Claimants Who do Not Wish to Proceed

131. As at the date of swearing this affidavit, 26 group members have advised the SDS Team that they do not wish to proceed with an ELPD claim for compensation.
132. These group members fall into two categories:
- a) Group members who lodged an ELPD claim in error; and
 - b) Group members who have an ELPD claim but do not want to proceed.
133. The SDS Team has identified that a large proportion of the claims have been lodged in error. Many of these claims were lodged in error because when the group member registered a PI claim, they also registered an ELPD claim as they were unsure whether or not they were required to tick the box indicating economic loss and property loss. These group members often had economic loss claims consequent to their personal injuries, but not any property damage or pure economic loss.
134. The SDS Team has contacted all of these group members in order to explain the settlement process, ensure those group members are not overwhelmed by the process, to offer additional assistance where appropriate and to confirm the group member's instructions.




135. Following these calls, correspondence has been sent to all group members confirming their instructions that they do not wish to be assessed and allowing a period of time for them to change their instructions.
136. The SDS Team has informed these group members that we will be issuing them with \$nil assessments. To date, 26 \$nil assessments have been issued.

FNOAs returned to sender

137. The SDS Team has implemented procedures in relation to FNOAs which are returned to the SDS Team as undeliverable. As at the date of swearing this affidavit, approximately two group members' FNOAs have been returned to sender. Where the SDS Team is unable to contact the group member, the SDS Team implements procedures similar to the uncontactable group member procedure, such as inspecting AEC records. As the date of swearing this affidavit, this has only been required in relation to one group member.

Estate Claims

138. There are a number of ELPD claims that are made on behalf of deceased estates, including both people who perished in the bushfires and people who have died subsequent to the bushfires.
139. There are 42 claims for ELPD made on behalf of deceased estates. Of those estate claims, 21 estates have also claimed compensation for PI, and 21 of those claims are for ELPD only.

Determining executorship

140. The SDS Team has been required to determine the executorship of each estate claim for the purposes of:
- a) Determining that they are in touch with a party authorised to act on behalf of the estate;
 - b) Seeking instructions from the estate and facilitating assessment of the claim; and
 - c) Determining the appropriate person to whom the cheque containing the settlement distribution for the estate should be sent.
141. For the purpose of determining executorship of the relevant estates, the SDS Team has been requesting that claimants provide a grant of representation made in the Probate Jurisdiction of the Supreme Court.

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Requirement of grant of representation

142. The Scheme Administrator decided to waive the requirement for the provision of a grant of representation in circumstances where one had not yet been obtained and it would not be economically efficient to seek one, considering the size of the proposed distribution and the costs involved.
143. The Scheme Administrator determined that a grant of representation should not be required if the estate stood to receive an amount likely to be equal to or less than approximately \$10,000 and there were no circumstances which meant that such grant ought be obtained, such as the circumstances discussed at paragraph 151.
144. Further, the Scheme Administrator retained discretion to waive the requirement for a grant of representation if the estate stood to receive an amount likely to be equal to or less than approximately \$50,000 if compelling reasons existed to support the granting of such a waiver.
145. If a request for a waiver of the requirement of a grant of representation is made by an executor of a deceased estate, the Scheme Administrator considers the circumstances of the request, including:
- a) The risk of distribution being made to a person who is not the executor of the estate if the requirement for a grant of representation is waived; and
 - b) The economic or pragmatic hardship occasioned upon the executor by the requirement of the provision of a grant of representation.
146. If a grant of representation is not required because a claim value is likely to be less than \$10,000 or the Scheme Administrator has exercised their discretion to waive the requirement for a grant of representation, the Scheme Administrator instead requires a copy of the last will and testament of the deceased and a signed statutory declaration from the executor or next of kin to confirm that:
- a) They are the executor in the last will made by the deceased or that the deceased died intestate and they are the next of kin;
 - b) No grant of representation has been applied for or obtained;
 - c) They undertake to distribute any monies received for and on behalf of the estate of the deceased in accordance with the will or the laws of intestacy, as appropriate; and
 - d) They indemnify Maurice Blackburn from any and all liabilities or claims of whatsoever nature in relation to the deceased estate.




147. The Scheme Administrator determined that no grant of representation or indemnity should be required if the estate has an assessed loss of nil.
148. The circumstance of an estate claim with an assessed loss of nil is relatively common due to the application of the rule of survivorship, whereby all jointly-held property is taken to have passed to the surviving owner upon the death of the other owner. Thus, if one party to a marriage or de-facto relationship dies, their surviving partner is entitled to claim compensation for damage to all jointly-held property, which is often the entire claim in that circumstance.

Processes involved in dealing with estate claims

149. Once the SDS Team has identified that a claim is an estate claim, they undertake to do the following, where necessary:
- a) Determine the identity of the executor of the estate;
 - b) Determine whether or not a grant of representation is required to be provided by the executor prior to distribution;
 - c) Advise the executor of the requirement, or otherwise, of a grant of representation for the deceased estate;
 - d) Request and collect grants of representation from the Probate Office of the Supreme Court;
 - e) Correspond with the executor in regards to the nature of a grant of representation and why they are required for the purposes of distributing the settlement of a class action;
 - f) Raise a request for waiver of the requirement of a grant of representation to the Scheme Administrator;
 - g) Prepare indemnity documents for estate claims that do not require provision of a grant of representation; and
 - h) Provide assistance where loss assessors have sought clarification of issues arising in regards to the legal implications of a death on the assessment of loss or the allocation of losses.

Complications

150. The SDS Team has found the tasks arising from estate claims to be time-consuming due to:
- a) The sheer number of permutations with regards to:




- i. The allocation of loss between living and deceased claimants; and
 - ii. The requirement, or lack thereof, of a grant of representation;
- b) Claimants' unfamiliarity with the laws of probate leading to a large volume of telephone conversations about the nature of grants of representation and the purpose of those grants;
 - c) The oftentimes sensitive nature of the claims; and
 - d) The demands of balancing a robust and efficient mechanism to determine who is entitled to receive money on behalf of an estate with the risk of distributing to a party not entitled to receive money on behalf of an estate.
151. In some circumstances, the SDS Team has determined that a grant should be obtained prior to distribution notwithstanding that the allocation to an estate means that the estate is likely to recover less than \$10,000. The circumstances where that has occurred are as follows:
- a) Where the person purporting to act on behalf of the estate is also making a claim in their own right at the same loss address; and
 - b) The allocation towards the estate is either very low or nil; and
 - c) The reasoning for the allocation split is either not self-evident or depends solely on the instructions of the surviving claimant.
152. The Scheme Administrator has deemed it appropriate to create an exception to the usual policy regarding the requirements for grants of representation due to the obvious potential for interests of a deceased estate to be prejudiced in the circumstances described above or similar.

Progress

153. The SDS Team has been tracking estate claims for the purpose of determining which estates have fulfilled the requirements for distribution and the most recent data is as follows:
- a) There are 22 estate claims where a grant of representation has been determined to be required;
 - b) There are 11 estate claims where a grant of representation has been determined to be required and has been received; and
 - c) There are 11 estate claims where it has been determined that a grant of representation is required but remains outstanding.




154. In circumstances where the SDS Team has identified that a grant is required but has not been provided by the executor of an estate, the Scheme Administrator proposes to withhold distribution until the grant of representation is provided, such that the executorship of the estate can be confirmed.
155. The SDS Team has been in regular contact with estate claimants to confirm the intention to withhold distribution of settlement money in circumstances where a grant of representation has been determined to be required but remains outstanding.
156. In cases where an estate claimant has sought a referral to Maurice Blackburn for assistance with obtaining a grant of representation, the SDS Team has referred those claimants to the Maurice Blackburn Wills Department.
- a) There are two ELPD estate claimants and one I-D-only claimant that have instructed Maurice Blackburn's Wills Department to seek to obtain a grant of representation for the estate. One has been finalised and the compensation distributed to the estate;
- b) In each of these cases, the costs of the legal work involved in obtaining the grant of representation will be or has been deducted from the estates' entitlement to compensation; and
- c) The cost of the one grant of representation that has been obtained was \$2,558.30.

DISPUTED ALLOCATIONS

157. I refer to paragraphs 106-108 of the October Affidavit.
158. There are 4 loss addresses relating to 9 ELPD Claimants which have been assessed where the relevant Claimants do not agree on the division or allocation of compensation awarded for that loss address (**Disputing Claimants**).
159. The Scheme Administrator requested and received advice from Ms Bronia Tulloch of counsel, who was of the opinion that the Scheme Administrator would not be in a position to determine these allocations disputes. Now produced and shown to me marked **Exhibit BWD4**, is a copy of Ms Tulloch's advice dated 10 November 2016. As this advice and the advices referred to below were obtained by the Scheme Administrator to assist the Scheme Administrator to form a view as to how to deal with disputed claims; and I am relying upon them to propose a process for resolving disputed claims for the benefit of Disputing Claimants; and there is no controversy between the Scheme Administrator and Disputing Claimants, I have elected to waive privilege in the advices and exhibit them to my affidavit.




160. I requested and obtained further advice from Mr David Brown, QC and Mr Paul Glass of counsel in December 2016 to assist in establishing a procedure for resolution of these claims. Now produced and shown to me and marked **Exhibit BWD5**. is a copy of Mr Glass' advice dated 23 December 2016.
161. Mr Glass provided a further advice and proposed orders dated 19 January 2017. Now produced and shown to me and marked **Exhibit BWD6**. is a copy of Mr Glass' advice and proposed orders dated 19 January 2017.
162. I believe that a resolution process such as proposed by the orders would assist Disputing Claimants to access their compensation promptly and efficiently. I further believe that it is appropriate for the cost of the procedure to be a cost of the settlement administration. This is because the cost will be relatively modest; and the Scheme Administrator has sought to assist various other groups of Claimants in accessing their compensation (for example, where claimants' companies have been deregistered, or there have been competency issues) and those costs have been costs of the administration.
163. The proposed orders contemplate establishing a process whereby counsel are appointed to determine the apportionment of entitlements between Disputing Claimants. The process is an opt-out procedure, and where a Disputing Claimant elects to opt-out the funds will instead be transferred to a nominated solicitor's trust account.

SENIOR MASTER'S OFFICE

164. The SDS Team is presently conducting an audit to ensure that all ELPD Claimants under a legal disability are accurately recorded in the Matter Centre Client Database and that all steps required under the SDS have been taken in relation to such ELPD Claimants. This audit is also designed to ensure that any ELPD Claimants who are no longer minors are removed from this process and to record Claimants who are presently minors who are likely to have an ongoing legal disability once they turn 18 are presented to the Senior Master's Office.

INTERIM PAYMENTS

165. As at the time of swearing this affidavit, Mr Watson or I have received 61 applications for interim payment on the basis of exceptional need pursuant to sections D1.4 and F1.4 of the Scheme. Each of the applications had been assessed as being eligible to receive ELPD compensation. Mr Watson or I have considered each of the applications, and granted 57 and denied four.



D. COMMUNICATIONS WITH GROUP MEMBERS

166. I refer to paragraph 44 of Mr Watson's affidavit sworn on 29 November 2016.
167. An update was sent to I-D and ELPD Claimants on 1 December 2016 confirming:
- a) This Honourable Court had provided orders allowing for the final steps of distribution for I-D Claimants to occur before the end of 2016;
 - b) The likely timeframe for the ELPD settlement distributions;
 - c) The Court's position regarding costs; and
 - d) The position with the ATO.
168. Now produced and shown to me and marked **Exhibit BWD7**, is a copy of the update letter dated 1 December 2016.
169. I intend to send a further update to I-D and ELPD Claimants following the CMC on 30 January.

E. SETTLEMENT ADMINISTRATION COSTS***GENERAL AND I-D SETTLEMENT ADMINISTRATION COSTS AND DISBURSEMENTS FOR THE PERIOD 1 OCTOBER 2016 TO 31 OCTOBER 2016***

170. The 30 November Orders permitted Maurice Blackburn to transfer \$258,997.81 on account of estimated anticipated General and I-D settlement administration costs and disbursements for the period 1 October 2016 to 31 October 2016.
171. I confirm that the costs have now been finalised and the General and I-D settlement administration costs and disbursements incurred for the period 1 October 2016 to 31 October 2016 totalled \$262,002.44.
172. Now produced and shown to me marked **Confidential Exhibit BWD8**, is a copy of the itemised invoices for the General and I-D settlement administration costs and disbursements currently recorded for the period 1 October 2016 to 31 October 2016. I request that this and the other itemized invoices exhibited to this affidavit be kept confidential, as they contain details pertaining to individual Claimants' claims.
173. This has resulted in a shortfall in the General and I-D settlement administration costs and disbursements approved in the 30 November Orders and costs and disbursements actually incurred of \$3,004.63.
174. I confirm that no application in relation to this amount will be made.




175. I-D settlement administration costs and disbursements for the period 1 November 2016 to 31 December 2016
176. The 30 November Orders permitted Maurice Blackburn to be paid \$307,948.00 on account of estimated anticipated I-D settlement administration costs and disbursements for the period 1 November 2016 to 31 December 2016.
177. The I-D settlement administration costs and disbursements currently recorded on Maurice Blackburn's Elite accounting system as being incurred for the period 1 November 2016 to 31 December 2016 totals \$285,044.19.
178. Now produced and shown to me marked **Confidential Exhibit BWD9**, is a copy of the draft itemised invoices for the I-D settlement administration costs and disbursements currently recorded for the period 1 November 2016 to 31 December 2016.
179. I note that there still remain the following unpaid invoice for services rendered in relation to I-D settlement administration during December 2016:
- a) KPMG invoice dated 19 January 2017 for \$5,925.22 attributable to work conducted in relation to the I-D settlement administration for the period ended 31 December 2016.
180. Taking into account this KPMG invoice, the total I-D settlement administration costs and disbursements incurred for the period 1 November 2016 to 31 December 2016 totals \$290,969.41. This has resulted in I-D settlement administration costs and disbursements approved for the period 1 November 2016 to 31 December 2016 exceeding costs and disbursements actually incurred by \$16,978.59, prior to the adjustment being made for General settlement administration costs and disbursements which I propose below.
181. If the Court allows the below proposed adjustment to the I-D settlement administration costs on account of General settlement administration costs and disbursements, then this will result in a shortfall in the I-D settlement administration costs and disbursements approved in the 30 November Orders and costs and disbursements actually incurred of \$10,321.08.
182. I confirm that no application in relation to this amount will be made.

**SPLITTING OF GENERAL SETTLEMENT ADMINISTRATION COSTS AND
DISBURSEMENTS FOR THE PERIOD 1 NOVEMBER 2016 TO 31 DECEMBER 2016**

183. Consistent with the calculation of the *pro rata* rate for distribution to I-D Claimants, I propose to allocate a proportion (being the total I-D settlement fund divided by (total settlement fund less trial costs), see SDS page 1, section C) of the General settlement administration costs and disbursements incurred for the period 1 November 2016 to 31 December 2016 to the I-D settlement administration costs and disbursements for the same period and the remaining proportion to the ELPD settlement administration costs and disbursements for the same period. I consider that such allocation is justified as these costs were incurred for the benefit of both I-D claimants and ELPD claimants, and this is the manner in which such costs have previously been allocated as between I-D and ELPD claimants.
184. The General settlement administration costs and disbursements currently recorded on Maurice Blackburn's Elite accounting system as being incurred for the period 1 November 2016 to 31 December 2016 totals \$172,990.71.
185. Now produced and shown to me marked **Confidential Exhibit BWD10**. is a copy of the draft itemised invoices for the General settlement administration costs and disbursements currently recorded for the period 1 November 2016 to 31 December 2016.
186. There still remain the following unpaid invoices for services rendered in relation to General settlement administration during the period 1 November 2016 to 31 December 2016, a proportion of which I consider to be properly attributable to the I-D settlement administration:
- a) PwC invoice dated 2 December 2016 for \$ 26,572.70;
 - b) PwC invoice dated 21 December for \$24,776.40;
187. Once these invoices are taken into account, the General settlement administration costs for the period 1 November 2016 to 31 December 2016 are \$224,339.81.
188. In these circumstances and for the reasons outlined above, subject to the Court receiving a satisfactory report from Mr John White, Special Referee, Costs, appointed by the Court regarding this issue, I seek approval for \$27,299.67 of this amount to be allocated to the I-D settlement administration and \$197,040.14 to be allocated to the ELPD settlement administration.



ELPD SETTLEMENT ADMINISTRATION COSTS AND DISBURSEMENTS FOR THE PERIOD 1 OCTOBER 2016 TO 30 NOVEMBER 2016

189. Subject to the Court receiving a satisfactory report from Mr John White, Special Referee, Costs, appointed by the Court, I now seek approval for Maurice Blackburn to be paid \$1,265,785.86 for ELPD settlement administration costs and disbursements for the period 1 October 2016 to 30 November 2016.
190. Now produced and shown to me marked **Confidential Exhibit BWD11**, is a copy of the itemised invoices for the ELPD settlement administration costs and disbursements for the period 1 October 2016 to 30 November 2016.
191. In Mr Watson's previous affidavits he has set out extensive detail regarding the nature of the work performed by the SDS Team and the disbursements incurred by the Scheme. This information will be provided to Mr White for the purposes of his review of our costs and I do not propose to repeat it here.

RESOLVED IDENTIFIED COSTS ISSUE

192. We have recently identified two small discrepancies in our costs as previously approved by the Court and our costs as recorded in our Elite accounting system.
193. In relation to the ELPD August 2016 costs, the Court approved \$368,071.91, however, the correct amount is \$368,036.71 as recorded in our Elite accounting system. This has resulted in the amount approved by the Court exceeding actual costs recorded by \$35.20. I confirm that Maurice Blackburn was paid the amount recorded on Elite rather than the Court-approved amount.
194. In relation to the costs incurred on the settlement administration from 1 May 2016 to 30 June 2016, the Court approved \$952,009.14 due to a typographical error in the Court Order drafted by Maurice Blackburn, however our Elite accounting system recorded \$952,099.14. This has resulted in a shortfall approved by the Court of \$90.00. I confirm that no application in relation to this amount will be made.
195. As a result, in total there is a shortfall of \$54.80 to Maurice Blackburn which will not be pursued.

SUMMARY OF COSTS

196. Subject to the Court receiving a satisfactory report from Mr White, I seek the following Orders in relation to Costs:
- a) \$224,339.81 to be approved for General settlement administration costs and disbursements for the period 1 November 2016 to 31 December 2016;




- b) The allocation of \$27,299.67 of the General settlement administration costs to the I-D settlement administration and \$197,040.14 of this amount to the ELPD settlement administration for the period 1 November 2016 to 31 December 2016; and
 - c) \$1,265,785.86 to be approved for ELPD settlement administration costs and disbursements incurred between 1 October 2016 and 30 November 2016.
197. I confirm that no application in relation to the following costs will be made by Maurice Blackburn and those costs will be forgone:
- a) The shortfall in the General and I-D settlement administration costs and disbursements approved in the 30 November Orders and costs and disbursements actually incurred of \$3,004.63.
 - b) If the Court allows the proposed adjustment to the I-D settlement administration costs on account of General settlement administration costs and disbursements, the shortfall in the I-D settlement administration costs and disbursements approved in the 30 November Orders and costs and disbursements actually incurred of \$10,321.08.
 - c) The shortfall of \$90 in the settlement administration costs approved for the period 1 May 2016 to 30 June 2016 which occurred due to a typographical error made by Maurice Blackburn in the draft orders provided to the Court which was reflected in the costs order made by the Court for that period.

F. TAXATION ISSUES

198. I refer to:
- a) Mr Watson's comment at the 14 November 2016 CMC that the ATO had provided an informal decision through the Scheme Administrator's taxation advisors, PwC, that all interest earned on the Settlement Sum was assessable income and that settlement administration costs were not deductible for taxation purposes; and
 - b) Mr Watson's further comments at the November CMC, and the November Watson Affidavit, including Confidential Exhibit AJW-7.
199. As previously foreshadowed by Mr Watson and noted by the Court in its Reasons dated 7 December 2016, in calculating the *pro rata* rate used to determine the

distributions referred to at paragraph B.6, the SDS Team withheld the full amount of tax potentially payable from distribution.

200. In his November Affidavit, Mr Watson stated he considered it important that Maurice Blackburn take all appropriate steps to investigate whether the ATO's informal decision that interest is assessable and settlement administration costs are not deductible should be challenged; and that he had commenced obtaining legal advice regarding these issues, and would seek directions from the Court before embarking on any litigation with the ATO. Mr Watson annexed to his affidavit a document marked Confidential Exhibit AJW-7 containing a summary of the progress made in this regard.

201. I and other members of the SDS Team have been working closely with our taxation advisors PwC and counsel on this issue. We have been making progress in this regard, including through conferral with the ATO, and I expect to be able to report further on procedural steps taken at the next CMC.

202. Now produced and shown to me marked **Confidential Exhibit BWD12**. is a summary of progress made since the December Case Management Conference. I make application for this exhibit to be confidential so as to ensure the maintenance of privilege.

SWORN by the deponent at)
Melbourne in the State of Victoria)
this 24th day of January 2017)
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Before me:



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PATRICIA MARGARET McMULLAN

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

FILED on behalf of the Plaintiff