

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

No. SCI 2012 4538

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 ANDREW JOHN WATSON

Date of Document:

16 March 2016

Filed on behalf of:

The Plaintiff

Prepared by:

Maurice Blackburn Lawyers
Level 10, 456 Lonsdale Street
Melbourne Vic 3000

Solicitor's Code: 564
Tel: (03) 9605 2700
DX: 466 Melbourne
Ref: AW/3052534

I, Andrew John Watson, Solicitor, of Level 10, 456 Lonsdale Street, Melbourne in the State of Victoria, make oath and say as follows:

1. I am a Principal in the firm of Maurice Blackburn Pty Ltd (**Maurice Blackburn**), the solicitors for the Plaintiff in this proceeding and pursuant to Orders of this Court dated 27 May 2015, I am the Scheme Administrator.

2. On 27 May 2015 the Court approved a settlement of the proceeding and a Settlement Distribution Scheme (**SDS**) as the procedure for distributing the settlement sum among the Plaintiff and the group members. I make this Affidavit for the purpose of:
- a) advising the Court of the progress made in establishing the processes and mechanisms for the assessment of group member claims under the SDS;
 - b) advising the Court of the number of assessments completed and/or underway;
 - c) detailing the work performed by the Scheme Administrator and the Settlement Distribution Scheme team (**SDS Team**); and
 - d) seeking approval for the disbursement of funds from the Distribution Sum for the payment of Administration Costs.

3. 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

I. ASSESSMENT PROCESS ADOPTED

4. The assessment of claims in the proceeding is being conducted concurrently with the assessment of claims in *Carol Matthews v SPI Electricity Pty Ltd & Ors* (**the Kilmore proceeding**). The SDS in this proceeding is in near identical form to that which was approved in the Kilmore proceeding.
5. Consequently, in order to most efficiently administer the claims in this proceeding:
- a) the assessment process and IT infrastructure;
 - b) the SDS Team; and
 - c) the assessors appointed under the SDS;

mirror those of the Kilmore proceeding.

6. I refer to my Affidavits dated 13 April 2015 and 9 October 2015 filed in relation to the progress of the settlement administration in the Kilmore proceeding. These

Affidavits document in detail the steps taken to establish the personal injury and dependency claim and the economic loss and property damage (ELPD) assessment processes in the Kilmore proceeding. Broadly speaking, these steps have been replicated in relation the Murrindindi proceeding and the details of establishing such processes have not been repeated in this Affidavit. Where relevant, this Affidavit instead refers to the pertinent paragraphs of the Affidavits filed in the Kilmore proceeding.

II. PERSONAL INJURY AND DEPENDENCY CLAIMS

A. Overview of the personal injury and dependency claims assessment process

7. I refer to my Affidavit of 13 April 2015 filed in the Kilmore proceeding (**April Affidavit**). The assessment process adopted in this proceeding mirrors the assessment process developed for the Kilmore proceeding, which is detailed in Section A, paragraph 5 of the April Affidavit.
8. I refer to my Affidavit of 9 October 2015 details filed in the Kilmore proceeding (**October Affidavit**). The changes made to the assessment process in the Kilmore proceeding which are detailed Section C paragraphs 11 and 13 have been adopted in the assessment process in this proceeding.

B. Summary of the Assessment Process to date

9. There are 394 registered personal injury and dependency group members who registered an on time claim before class closure on 6 June 2014. As at 15 March 2016, 9 additional personal injury and dependency group members have been accepted as late registrants.
10. As at 16 March 2016, of the 403 registered personal injury and dependency group members:
 - a) 390 electronic surveys have been completed by group members.
 - b) 343 detailed personal injury questionnaires have been completed.
 - c) The SDS Team has requested 242 ATO records and 139 records have been received.
 - d) The SDS Team has requested 453 GP records and 306 records have been received.

- e) The SDS Team has requested 205 psychiatrist, psychologist, counsellor or hospital records and 149 records have been received.
- f) The Scheme Administrator has directly referred 1 group member for assessment by medico-legal specialist Dr Nigel Strauss.
- g) 13 group members have a conference scheduled with assessing counsel.
- h) 73 group members have attended a conference with assessing counsel.
- i) 41 Notices of Assessments and Statements of Reasons have been received from Assessing counsel.
- j) 22 Notices of Assessment and Statements of Reasons have been sent to group members.
- k) The Scheme Administrator has administered 35 \$Nil assessments to group members who have instructed they do not wish to proceed.
- l) No requests for review have been made by group members.

11. I refer to the Affidavit of Kimi Jean Nishimura affirmed 9 March 2016 in support of the application to amend the SDS. This Affidavit provides details of the bottlenecks encountered in the personal injury and dependency assessment process and the measures taken to address these bottlenecks.

C. Interaction between the SDS and other regimes

12. I refer to Section C, paragraphs 8 – 46 of the April Affidavit and to paragraphs 36 to 38 of the October Affidavit which detail the interactions between the Kilmore SDS and other regimes in the Kilmore proceeding. It is intended that the interaction between the SDS and other regimes in this proceeding will mirror that of the Kilmore proceeding.

13. Centrelink, the Transport Accident Commission (**TAC**) and the Victorian WorkCover Authority (**VWA**) have confirmed that the terms agreed in the Kilmore proceeding will also apply to this proceeding.

14. Maurice Blackburn has written to Medicare requesting confirmation that the terms agreed upon in the Kilmore proceeding will apply to this proceeding.

Agreement reached with the Country Fire Authority (CFA) in the Kilmore proceeding

15. On 17 December 2015, Maurice Blackburn reached agreement with the CFA regarding the interaction between group members' entitlements under the CFA compensation scheme and the Kilmore SDS. The agreement specifies that:

- a) group members' assessments under the SDS for various heads of damage (such as loss of earnings or medical and like expenses) will be reduced by any statutory benefits received from the CFA which are relevant to such heads of damage;
- b) receipt of compensation for a particular head of damage under the SDS will result in the termination of future statutory benefits relevant to that particular head of damage from the CFA;
- c) group members will be able to elect to receive compensation under the SDS for a particular head of damage or maintain their entitlement to CFA statutory benefits relevant to that head of damage;
- d) there will be no impact upon group members' statutory benefits from the CFA until such time as they are in receipt of compensation; and
- e) group members who are receiving compensation under the CFA compensation scheme will not lodge claims for permanent disability under the CFA scheme whilst the settlement process is underway.

16. Maurice Blackburn has written to the CFA requesting confirmation that the terms agreed upon in the Kilmore proceeding will also apply to this proceeding.

D. Administration of Electronic Survey

17. I refer to Section E paragraphs 57 – 67 of the April Affidavit. Except for the dates referred to, the administration of the electronic survey in this proceeding has mirrored that of the Kilmore proceeding.

E. Personal Injury Questionnaire

18. I refer to Section F, paragraphs 68 – 74 of the April Affidavit. The Personal Injury Questionnaire developed in the Kilmore proceeding, and the processes for administering that questionnaire, have been adopted in this proceeding.

F. Recruitment and Training of SDS Team

19. I refer to Section G, paragraphs 75 – 78 of the April Affidavit and to Section D, paragraphs 14 -18 of the October Affidavit which provides detail of the recruitment and training of the SDS Team for the Kilmore proceeding. The SDS Team for this proceeding is comprised of the same staff members as the SDS Team for the Kilmore proceeding.

20. Since the October Affidavit, the following changes have been made to the SDS Team:

- a) Rhiannon Reid, Associate, has departed for maternity leave. She has been replaced by Elizabeth Mukherji. Ms Mukherji is a Senior Associate with extensive personal injury and class action experience, having worked at Maurice Blackburn in the Class Action Department from 2005 to 2008 and at Slater & Gordon as a personal injury lawyer from 2009 to January 2016.
- b) Kathleen Sheehy, Solicitor, has departed for maternity leave. The SDS Team has recruited a replacement for Ms Sheehy who will commence in April 2016. The replacement is an Associate with over 5 years post-admission experience as a personal injury lawyer.
- c) Kate McFarlane has commenced on the team. Kate McFarlane is a Lawyer who has extensive experience working on both the Kilmore and the Murrindindi proceedings, having worked on the preparation for and the trial of the Kilmore proceeding and on the preparation for the Murrindindi proceeding.

21. The SDS Team members who are responsible for the administration for personal injury and dependency claims assessment under both the Kilmore SDS and under the SDS in this proceeding is currently comprised of:

- a) Andrew Watson, Scheme Administrator. Approximately 5% of his time is directed towards the Murrindindi settlement administration.
- b) Kimi Nishimura, Senior Associate, engaged three days per week. Approximately 30 per cent of her time is directed towards the Murrindindi settlement administration.
- c) Elizabeth Mukherji, Senior Associate, engaged three days per week. Approximately 30 per cent of her time is directed towards the Murrindindi settlement administration.
- d) Simba Makoni, Associate, engaged on a full-time basis. Approximately 30 per cent of his time is directed towards the Murrindindi settlement administration.
- e) Megan Greaves, Lawyer, engaged on a full time basis. Approximately 30 per cent of her time is directed towards the Murrindindi settlement administration.
- f) Five paralegals working an equivalent of 4.2 full time positions. Approximately one third of their time is directed towards the Murrindindi settlement.
- g) Seven administrative assistance working an equivalent of 5.9 full time positions. Approximately one third of their time is directed towards the Murrindindi settlement.

G. Engagement and Training of Assessing Counsel

22. We have now appointed 34 members of counsel, experienced in acting for plaintiffs in personal injury litigation, to participate in the assessment process of personal injury and dependency claims. The process of engagement and training of these counsel is detailed in Section H, paragraphs 79 - 84 of the April Affidavit and to Section F, paragraphs 22 - 23 of the October Affidavit, together with the Affidavit of Kimi Jean Nishimura affirmed on 9 March 2016 in this proceeding:

- a) Adam Hill
- b) Amy Wood
- c) Andrew Dimsey
- d) Andrew Keogh SC
- e) Angus Macnab
- f) Bruce Anderson

- | | |
|-----------------------|---------------------|
| g) Christine Boyle | u) Melanie Szydzik |
| h) Conor O'Sullivan | v) Michael Clarke |
| i) Daniel Wallis | w) Michael Schulze |
| j) Fiona Ellis | x) Miguel Belmar |
| k) Fiona Ryan | y) Neil Rattray |
| l) Gary Clarke | z) Nick Dubrow |
| m) Gavin Coldwell | aa) Nick Dunstan |
| n) James Fitzpatrick | bb) Nikki Wolski |
| o) John Valiotis | cc) Patrick Over |
| p) Julia Frederico | dd) Raph Ajensztat |
| q) Kim Bradey | ee) Rebecca Dal Pra |
| r) Marcus Fogarty | ff) Simon Martin |
| s) Maria Pilipasidis | gg) Steve Carson |
| t) Marietta Bylhouwer | hh) Tim Tobin SC |

H. Engagement of medicolegal psychiatrist to undertake medical legal assessments as required

23. I refer to Section H, paragraphs 85 - 88 of the April Affidavit and to Section E, paragraphs 19 - 21 of the October Affidavit. Dr Nigel Strauss has also been engaged to undertake medico-legal assessments in this proceeding.

24. As at 10 March 2016, one medico-legal assessment has been arranged with Dr Nigel Strauss by direct referral by the Scheme Administrator.

I. Obtaining bulk records and details from the ATO and Medical Clinics

25. As at 1 March 2016, the SDS Team has requested 182 ATO records and 110 records have been received.

26. As at 1 March 2016, the SDS Team has requested 480 GP records and 280 records have been received. As stated in the Affidavit of Kimi Nishimura affirmed on 9 March 2016, a significant number of outstanding requests relate to the Marysville Medical Clinic.
27. As at 1 March 2016, the SDS Team has requested 164 psychiatrist, psychologist or counsellor records and 108 have been received.

J. Senior Master's Office

28. I refer to Section O, paragraphs 111 to 114 of the April Affidavit, which describes the processes adopted in the Kilmore proceeding in relation to group members to whom Order 15 of the Rules of Court applies. These processes have been adopted in relation to this proceeding.
29. In accordance with Section H of the SDS, the SDS Team has provided the Senior Master's Office with a register of each Order 15 group member and the contact details of the personal representative of each of these group members.

III. PROGRESS OF THE ELPD ASSESSMENT PROCESS

A. OVERVIEW

30. There are 2234 ELPD Claims, comprising 989 claims for uninsured or underinsured property losses (**above insurance claims**) and 1245 claims for insured property losses (**subrogated claims**).
31. ELPD claims are being assessed on an individual property basis. There may be four to five registered ELPD claims at one address, including subrogated claims. Based on the current reconciliation of claims to addresses, I estimate that there are approximately 1029 individual properties to assess.
32. The assessment of ELPD claims is being completed by five firms appointed as ELPD Assessors:
- a) RM Consulting Group (**RMCG**);
 - b) Hall and Wilcox Lawyers (**Hall and Wilcox**);
 - c) Crawford and Company (Australia) (**Crawfords**);
 - d) Ligeti Partner Lawyers (**Ligeti Partners**); and

e) Technical Assessing (**Technical Assessing**).

33. Technical Assessing have recently been appointed as an ELPD assessor. The SDS Team has arranged for Technical Assessing to be trained and audited by Crawfords in order to ensure ongoing consistency between ELPD Assessors.

B. THE SDS TEAM

34. The SDS Team members who are responsible for the administration ELPD claims assessment under both the Kilmore SDS and under the SDS in this proceeding is currently comprised of:
- a) Andrew Watson, Scheme Administrator. Approximately 5% of his time is directed towards the Murrindindi settlement administration.
 - b) Kimi Nishimura, Senior Associate, engaged three days per week. Approximately 30 per cent of her time is directed towards the Murrindindi settlement administration.
 - c) Claire Brown, Lawyer. Approximately 30 per cent of her time is directed towards the Murrindindi settlement administration.
 - d) Five paralegals working an equivalent of 3.3 full time positions. Approximately one third of their time is directed towards the Murrindindi settlement.

C. ELPD ASSESSMENT PROCESS

35. I refer to Section A, paragraphs 28 – 163 of the April Affidavit which details the ELPD assessment process developed for the Kilmore proceeding. I refer also to paragraphs 48 - 75 of October Affidavit which describes the alterations made to the Kilmore process and the reasons for such alterations being made, which primarily related to increasing the efficiency of the Kilmore ELPD assessment process.
36. The Kilmore ELPD assessment process, as amended, has been adopted in this proceeding, albeit with a time lag. This time lag was adopted to ensure that the Kilmore ELPD assessment process, as amended, was fully efficient and could be rolled out in this proceeding without requiring further process amendments.

37. Since December 2015, the SDS Team has undertaken the following work on the assessment of ELPD claims in this proceeding:
- a. The creation of a single database of all ELPD group members;
 - b. The creation of a claims-per-property report;
 - c. The allocation of claims for assessment; and
 - d. The collation of information requested by assessors to assist with the assessment of claims where little information is presently available.

Single database of all ELPD group members

38. In order to facilitate the assessment of ELPD claims, the SDS Team required a single database of all registered ELPD claims (subrogated and above insurance). Previously our database only contained above-insurance claims. Unifying the claims into a single database was a necessary step to enable a claims-per-property report to be generated.

Claims-per-Property Report

39. After creating a single database of all ELPD claimants, the SDS Team undertook the task of reconciling, matching and amending the addresses of registered ELPD claims. This was a lengthy task involving many procedures, including:
- a. applying an address standardisation tool from Australia Post, which identified and amended addresses to reflect standard, recognised addresses in the Australia Post database;
 - b. creating a report of near-duplicate addresses from the Matter Centre database, and tasking paralegals with inspecting and manually amending those addresses where the ELPD claims were determined to be in respect of the same address; and
 - c. identifying subrogated and above insurance claims where the address was listed as 'unknown', and tasking paralegals with reviewing the ELPD claim file or contacting the claimant to establish a relevant address for the claim.



40. As referred to above, there may be four to five ELPD claims at an address registered by separate claimants. Each of these claimants may have given slightly different address data, such as:
- (a) Identification of the state of Victoria differed between "Vic", "Vic.", and "Victoria";
 - (b) Street addresses differed between "St", "Street" and "St.";
 - (c) Identification of roads such as "Marysville-Murrindindi Rd" were mixed with "Murrindindi-Marysville Rd"; and
 - (d) Other assorted spelling errors and differences in address naming conventions.
41. Once all the ELPD claims were standardised and reconciled, the SDS Team was able to generate a report which generates a list of every claim registered in relation to a property (**Claims-per-Property report**). This report maximises the efficiency of the assessment process as it enables the SDS Team to allocate all claims (including subrogated claims) relating to a property to the same ELPD Assessor, so that they may be assessed at the same time.
42. The Claims-per-Property report for this proceeding was completed in early January 2016.

B. ALLOCATION OF CLAIMS

43. The SDS Team provides any relevant loss information held by the SDS Team about a claim to the allocated ELPD Assessor allocated via Collaborate. This includes the upload of completed property loss workbooks where available. Where there is an above-insurance claim this will usually include an insurer's file, which will often contain relatively significant detail regarding the claimant's building, contents and motor vehicle losses.
44. In January 2016, after completing the creation of the Claims-Per-Property report, the SDS team began selected tranches of properties to allocate to the ELPD Assessors for assessment and began the process of uploading files to Collaborate to facilitate such assessment.
45. 542 of the 1029 unique properties to be assessed include an above insurance claim. Maurice Blackburn is prioritising the assessment of these properties as

these assessments require ELPD Assessors to consult with claimants about their uninsured losses; and is more time-intensive.

46. As at 16 March 2016, the following mix of properties have been allocated for assessment:
- a. 177 the 542 or 33% of properties with an above-insurance claim have been allocated for assessment to the ELPD Assessors; and
 - b. 73 properties which involve the assessment of insurer claims only have been allocated for assessment to one ELPD Assessor.

Previous work undertaken

47. Crawfords were appointed as the independent property loss assessor during mediation. A large number of the assessments allocated to Crawfords were previously assessed by Crawfords as part of the exercise undertaken to estimate the quantum of ELPD claims prior to the settlement of this proceeding. This included the assessment of 53 of the largest ELPD claims in the proceeding.
48. I anticipate that the allocation of these claims to Crawfords to assess pursuant to the SDS will ensure that the assessment of such claims will benefit from and be accelerated by their previous work on such claims.

C. COLLATION OF INFORMATION REQUESTED BY ASSESSORS

49. The SDS Team has undertaken a series of discussions with the ELPD Assessors in order to identify what it can do to assist with increasing their assessment speed. Both Crawfords and RMCG requested that the SDS Team send property loss workbooks to group members who have not previously completed an ELPD property loss workbook.
50. To this end, in early 2016 together with RMCG, a property loss workbook was developed. On 1 March 2016 the SDS Team distributed this property loss workbook to all Murrindindi group members who had not previously been allocated to an ELPD Assessor for assessment.
51. The distribution of workbooks has meant that in order to ensure that assessments can be completed as quickly as possible, the SDS Team has taken on the role of gathering information from ELPD claimants for provision to the ELPD Assessors.

It was previously envisaged that this role would be assumed by the ELPD Assessors.

D. ESTIMATED DURATION

52. The SDS Team closely monitors the progress of the ELPD loss assessments and the performance of each of the ELPD Assessors. In early February 2016, RMCG communicated to the SDS Team that it could not assess as many Murrindindi claims by 29 July 2016 as had previously been anticipated.
53. The SDS Team has since conducted negotiations with both Hall and Wilcox and Crawfords who have agreed to increase the volume of assessments to be completed by these two firms and the speed with which such assessments can be completed. I have also recently engaged Technical Assessing as an additional ELPD Assessor with a view to ensuring that the ELPD assessments can be conducted within as short a time frame as is reasonably possible.
54. The SDS Team has communicated to all ELPD Assessors that if their assessment rate does not meet their stated commitment, we may re-allocate claims to another ELPD Assessor.
55. The SDS Team is also presently in discussions with a large global loss adjusting firm. If I am not satisfied with the loss assessment rate of the current ELPD Assessors, it is my intention to engage this firm as an additional ELPD Assessor to assist in the assessment of ELPD claims. The appointment of additional loss assessors in the interests of increasing the assessment speed must, however, be balanced with the benefit of the experience of the ELPD Assessors currently engaged.
56. Based on agreed numbers and timeframes reached with each of the ELPD Assessors, I anticipate that the ELPD Assessor firms will be able to issue Provisional Notices of Assessments (**PNOAs**) for all Murrindindi ELPD assessments by 29 July 2016. Taking into account review periods, this will permit the distribution of settlement funds towards the end of 2016 or early 2017.

E. ELPD Assessor Audit

57. The SDS Team has established an ELPD Assessor audit procedure, whereby ELPD Assessors audit a small sample of assessments completed by another ELPD Assessor.



58. The audit was designed to ensure that ELPD Claimants under the SDS are being assessed on a consistent basis, regardless of which ELPD Assessor conducts the assessment, and that the assessments are being completed in accordance with the SDS.
59. The audit identified issues that required rectification. The substantive issues consisted of the following:
- a. PNOA containing insufficient detail for group members to understand the reasons for their assessments.
 - b. Incorrect application of loss assessor principles under the SDS;
 - c. Inconsistencies between the ELPD Assessors; and
 - d. Inadequate quality assurance processes.
60. As a result of the audit, the SDS Team met with two ELPD Assessors to discuss the audit results, provided guidance as to how to rectify these issues and requested that these firms rectify such issues prior to issuing any PNOAs. The SDS Team subsequently organised for an additional random spot audit to be conducted once these firms had stated that all previous assessments had been rectified. I am now satisfied that these firms have addressed the issues identified through the audit process.
61. In addition to the above, the SDS Team organised for an audit conference between all ELPD Assessors on 25 November 2015. At this conference, and under the guidance of the SDS Team, the ELPD assessors further discussed the application of loss assessment principles under the SDS.
62. While the audit was undertaken on Kilmore assessments, the process adopted will ensure that Murrindindi assessments are also being conducted on a consistent basis, regardless of which ELPD Assessor conducts the assessment.
63. In order to ensure that such quality and consistency is maintained by Technical Assessing, the SDS Team has arranged for Crawfords to audit their work before any PNOAs are issued by Technical Assessing.

64. The SDS Team will continue to conduct random spot audits in order to ensure that ELPD assessments are being assessed consistently and to a high quality by all ELPD Assessors.

IV. LATE REGISTRANTS

65. As at the date of this Affidavit, Maurice Blackburn has received late registration forms from 113 claimants.
66. Together with other members of the SDS Team, I have convened separate sessions to consider the late registration forms and evidence from the latecomers in support of their application. Under the Settlement Distribution Scheme, I am required to consider, for each claim, whether in my opinion the evidence discloses a basis for inclusion of that claim in the scheme.
67. To date, I have considered the evidence of 29 of the 113 claimants.
68. In respect of 18 of these late registrants, I have determined that the evidence discloses a basis for inclusion of these claims in the scheme. I have caused notices to be sent to these claimants advising them of this decision. I have rejected 7 late registration applications on the basis that there were no grounds for the inclusion of these claims in the scheme. In respect of the remaining 4 claims that have been considered, there is presently insufficient evidence to allow me to decide whether they should be included or excluded. For these, I have caused further inquiries to be made.
69. I recently formed a view that it was necessary to impose a deadline for the receipt of late registration applications in order to allow sufficient time for accepted late registrant claims to be assessed and finalised without affecting the anticipated distribution date. At my direction, any individuals who have made late registration inquiries since 3 March 2016 have been told that the deadline for making a late registration application has passed and no further applications will be considered. In limited circumstances, I will exercise my discretion to consider late registration inquiries referred to the SDS Team by ELPD Assessors; for example, where an ELPD claim for a jointly owned property has been registered in the name of one member of a couple only and that couple has subsequently separated, or for small businesses identified by ELPD Assessors which have not been correctly registered.

V. INTERIM PAYMENTS

70. Under section D1.4 of the SDS, the Scheme Administrator retains the discretion to make an interim payment for a portion of assessed losses to group members who, when compared to the typical circumstances of other group members, are in a position of exceptional need and the interim payment is appropriate on compassionate grounds.
71. As at 15 March 2016, I have received 11 applications for interim payment on the basis of extraordinary need pursuant to section D1.4 of the SDS. Of these, 2 group members have been assessed as being eligible to receive compensation from the settlement sum and 9 have claims which are yet to be assessed. One of the two group members who have been assessed as being eligible to receive compensation has been successful in their application for an interim payment. The remaining group member who has been assessed as eligible to receive compensation is yet to be assessed for eligibility for interim payment.
72. In addition to the 11 applications received as at 15 March 2016, the SDS Team has received a further 19 inquiries regarding interim payment applications. Interim payment application forms and information has been sent to these group members.

VI. INDEPENDENT REVIEW OF COSTS

73. At the October Case Management Conference held in relation to the Kilmore proceeding, his Honour Justice Forrest made orders appointing Mr John White, costs consultant, as an independent costs expert to conduct an audit of settlement administration costs and disbursements incurred in the Kilmore settlement administration.
74. I propose that similar orders appointing Mr White be made in relation to this proceeding.

VII. COSTS

75. Subject to the satisfactory completion of any independent costs review ordered by the Court, I seek approval to pay to Maurice Blackburn \$1,805,688.11, comprised of:




- (a) \$434,450.43 for the Plaintiff's costs and disbursements for the period of 1 May 2015 to 27 May 2015; and
- (b) \$1,371,551.18 for settlement administration costs and disbursements for the period of 20 June 2015 to 31 January 2016.

A. Plaintiff's costs and disbursements

76. On 27 May 2015, her Honour Justice Emerton made orders approving the settlement of this proceeding pursuant to sections 33V and 33ZF of the Supreme Court Act 1986 (Vic) (**Approval Orders**). By Order 4 of the Approval Orders her Honour Justice Emerton fixed the Plaintiff's costs and disbursements incurred up until 30 April 2015 in the sum of \$20,164,595.26.
77. The material before the Court in respect of those costs and disbursements was comprised of an expert report of independent cost consultant Catherine Dealehr. Ms Dealehr's report was filed on 6 May 2015 in accordance with orders requiring the filing of the Plaintiff's material in support of the application for settlement approval by that date. The report related to costs incurred and disbursements for which invoices had been received as at 30 April 2015.
78. During the settlement approval hearing held on 13 May 2015, counsel for the Plaintiff foreshadowed that Maurice Blackburn would seek approval of costs incurred in the period 1 May 2015 to 27 May 2015.¹

May 2015 Costs

79. The costs incurred between the 1 and 27 May 2015 have been calculated in accordance with the Conditional Costs Agreement (**Costs Agreement**) signed by the plaintiff (the **Plaintiff**) on 28 August 2014. Now produced and shown to me and marked "**AJW-1 Costs Agreement**" is a copy of this Costs Agreement.
80. The rates in the Cost Agreement were subsequently amended on 26 October 2014. Now produced and shown to me and marked "**AJW-2 Letter dated 26 September 2014**" is a copy of the letter dated 26 September 2014 setting out the rate increase.
81. For the purpose of seeking approval, Maurice Blackburn has prepared a bill of costs for fees and disbursements incurred between 1 and 27 May 2015 (and a

small number of older disbursements which Maurice Blackburn omitted to provide to Ms Dealehr and which were accordingly omitted from her report).

- (a) The Plaintiff's total professional fees between 1 May 2015 and 27 May are \$185,280.98, inclusive of a 25% uplift in accordance with the Plaintiff's retainer with Maurice Blackburn, as referred to in Ms Dealehr's report.
- (b) The Plaintiff's total residual disbursements are \$249,169.46, inclusive of 25% uplift on counsel deferred fees in accordance with conditional cost agreements entered into with counsel on the plaintiff's behalf, as referred to in Ms Dealer's report.

82. Now produced and shown to me and marked as "**AJW-3 MB Invoice May 2015**" is a copy of that invoice.

Work to which May 2015 costs relate

83. The fees and disbursements incurred between 1 and 27 May 2015 predominantly relate to work in the following categories:

- (a) Preparing material in support of the settlement;
- (b) Responding to objections to the settlement;
- (c) Settlement approval hearing; and
- (d) Preparation for the approval of the settlement ;

Preparing material in support of settlement

84. The application for settlement approval required preparation and filing of extensive affidavit material, detailed opinion of counsel, submissions, and expert report of the independent costs consultant.

85. Extensive work was undertaken by Maurice Blackburn lawyers and counsel² preparing this material prior to the settlement approval hearing on 13 May 2015.

Responding to objections

¹ Transcript of 13 May (part 2), p.61

² Fiona McLeod SC, Richard Attiwill QC, Andrew Fraatz, Fiona Forsyth and Melanie Szydzik.

86. In accordance with the orders of the Honourable Justice Dixon dated 18 February 2015, any group member who wished to object to the settlement was required to file an objection by 1 May 2015.
87. Maurice Blackburn received four Notices of Objection to the settlement. Extensive work was undertaken in response to these objections, including drafting submissions in response to one of the objections.
88. Maurice Blackburn also sought expert advice from RMCG in regards to one of these objections.

Settlement Approval Hearing

89. The Settlement Approval Hearing was heard over one day on 13 May 2015.
90. Fiona McLeod SC, Richard Attiwill QC, Andrew Fraatz, Fiona Forsyth and Melanie Szydzik were instructed to appear at the settlement approval hearing as each member had addressed different issues of liability risk.
91. I estimate that approximately 90% of professional fees related to the application for settlement approval and approximately 70% of disbursements related to counsel fees for the settlement approval application.

Approval of settlement

92. The fees incurred between 14 May 2015 and 27 May 2015 relate to work undertaken in preparation for the settlement approval hearing, including:
- (a) Communications with group members;
 - (b) Communications with defendants regarding payment of the settlement sum;
 - (c) Drafting communications to group members in preparation of approval; and
 - (d) Attendance at judgment for approval of the settlement;

Miscellaneous disbursements

93. There is an invoice of \$27,500 from Cate Dealehr, the independent costs expert from the Australian Legal Costing Group (ALCG). Ms Dealehr was engaged to assess the Plaintiff's reasonable costs and disbursements up until 30 April 2015.



94. There are two other large disbursements which do not relate to the settlement approval. These invoices relate to the following work undertaken which will were not billed for previously, including:

- a) an invoice from the University of Melbourne in respect of statistical consulting work relating to the method of assessment for the mediation assessment sample group; and
- b) an invoice from RMIT in respect of expert advice performed prior to settlement in preparation for trial.

B. Administration Costs & Disbursements

95. The costs and disbursements incurred to date in the course of the settlement administration have been allocated into three categories, according to whether they relate to:

- (a) processes common to all Group Members, including drafting the settlement scheme, handling settlement money and processing applications for late registration ('General Settlement Administration');
- (b) processes specific to the assessment of Group Members' personal injury and dependency claims ('I-D Settlement Administration'); or
- (c) processes specific to the assessment of Group Members' economic loss and property damage claims ('ELPD Settlement Administration').

96. These categories correspond to the division of the Distribution Sum into an I-D Claims Fund and an ELPD Claims Fund, as set out in Section B1.2 of the SDS.

97. In undertaking the work detailed in this Affidavit, the following settlement administration costs and disbursements have been incurred for work carried out between 20 June 2015 and 31 January 2016:

Settlement Administration Costs and Disbursements		
General Settlement Administration:		
Professional Fees		\$76,604.00
Disbursements		\$1916.24
Subtotal		\$78,520.24
I-D Settlement Administration:		
Professional Fees		\$995,959.80
Disbursements		\$91,503.70
Subtotal		\$1,087,463.50
ELPD Settlement Administration:		
Professional Fees		\$152,273.44
Disbursements		\$53,294.00
Subtotal		\$205,567.44
Total administration costs and disbursements:		
Professional Fees		\$1,224,837.24
Disbursements		\$146,713.94
Total		\$1,371,551.18

98. Now produced and shown to me marked “**AJW-4 Itemised MB Invoices**” is a copy of the itemised invoices for settlement administration costs and disbursements for work carried out between 20 June 2015 and 31 January 2016.

A. Professional Fees

99. Total professional fees for work carried out between 20 June 2015 and 31 January 2016 amounted to \$1,224,837.24, composed of:

- (a) \$76,604.00, being professional fees incurred in relation to General Settlement Administration;




- (b) \$995,959.80, being professional fees incurred in relation to I-D Settlement Administration; and
- (c) \$152,273.44, being professional fees incurred in relation to ELPD Settlement Administration.

General Settlement Administration

100. Total professional fees for work carried out in relation to General Settlement Administration between 20 June 2015 and 31 January 2016 amounted to \$76,604.00.
101. Professional fees incurred for tasks carried out by lawyers overseeing the settlement administration process amounted to \$64,629.40, with a total of 102.9 hours spent on the following and similar tasks:
- (a) Establishing and managing the settlement administration process;
 - (b) Recruiting, training and supervising settlement administration staff;
 - (c) Developing, implementing and monitoring internal processes for assessing claims, including IT system requirements and infrastructure;
 - (d) Management and administration of settlement monies;
 - (e) Reviewing and determining late registrant applications and processes, and providing direction on late registrant enquiries;
 - (f) Implementing processes for interim payment applications;
 - (g) Ongoing liaison work with organisations regarding taxation and interest accrued on the distribution sum;
 - (h) Implementing practices to monitor and estimate settlement administration costs;
 - (i) Ongoing liaison with external assessors regarding workflow and assessment rate;
 - (j) Preparing for the Case Management Conference of 25 June 2015, including preparation of affidavit and supporting material;

- (k) Preparing consent orders in response to subpoenas; and
- (l) Reviewing and approving various invoices.

102. Professional fees incurred for tasks carried out by non-lawyers undertaking paralegal and administrative tasks amounted to \$11,974.60, with a total of 40.9 hours spent on the following and similar tasks

- (a) Assisting with late registrant processes, enquiries and applications;
- (b) Assisting with interim payment processes, enquiries and applications;
- (c) Updating accounting database systems; and
- (d) Communicating with group members regarding late or excluded claims.

I-D Settlement Administration

103. Total professional fees for work carried out in relation to I-D Settlement Administration between 20 June 2015 and 31 January 2016 amounted to \$995,959.80.

104. Professional fees incurred for tasks carried out by lawyers overseeing the settlement administration process amounted to \$192,780.50, with a total of 355.2 hours spent on the following and similar tasks:

- (a) Establishing and managing the I-D settlement administration process;
- (b) Recruiting, training and supervising I-D settlement administration staff;
- (c) Developing, implementing and monitoring internal processes for assessing claims, including IT system requirements and infrastructure;
- (d) Reviewing completed I-D assessments received from assessing counsel;
- (e) Attending assessment conferences with sample group members;
- (f) Ongoing liaison work with assessing counsel;
- (g) Ongoing liaison work with organisations holding claimant information relevant to the I-D assessment process, including government agencies and medical practices;




- (h) Reviewing I-D Claim Books prepared for assessing counsel;
- (i) Responding to individual group member inquiries;
- (j) Drafting and settling various correspondence to group members;
- (k) Providing direction on individual cases;
- (l) Administrating detailed telephone questionnaire for sample I-D group members;
- (m) Preparing assessment memoranda for assessing counsel for sample I-D group members;
- (n) Reviewing and finalising assessment memoranda and action plans for assessing counsel;
- (o) Identifying claims that can be assessed in the absence of certain records;
- (p) Monitoring personal injury statistics and data; and
- (q) Reviewing and approving invoices from assessing counsel and medical practices.

105. Professional fees incurred for tasks carried out by non-lawyers undertaking paralegal and administrative tasks amounted to \$803,179.30, with a total of 2393.1 hours spent on the following and similar tasks:

- (a) Responding to individual group member inquiries;
- (b) Assisting group members with completing electronic survey;
- (c) Administering detailed telephone questionnaire for I-D group members;
- (d) Preparing assessment memoranda for assessing counsel;
- (e) Gathering documents required for I-D assessment from various organisations, including government agencies and medical practices;
- (f) Reviewing and identifying I-D group members that are ready to be assessed by assessing counsel;
- (g) Preparing I-D Claim Books for assessing counsel;

- (h) Scheduling I-D assessment conferences with assessing counsel;
- (i) Drafting various correspondence to group members;
- (j) Updating various system databases including Matter Centre, Collaborate, File Site and accounting systems;
- (k) Updating index, collating, reviewing and processing invoices and vouchers from assessing counsel and medical practices;
- (l) Conducting various audits to ensure data is reflected accurately in our system databases; and
- (m) Reviewing completed I-D assessments received from assessing counsel.

ELPD Settlement Administration

106. Total professional fees for work carried out in relation to ELPD Settlement Administration between 20 June 2015 and 31 January 2016 amounted to \$152,273.44.

107. Professional fees incurred for tasks carried out by lawyers overseeing the settlement administration process amounted to \$81,614.50, with a total of 142.1 hours spent on the following and similar tasks:

- (a) Establishing and managing the ELPD settlement administration process;
- (b) Recruiting, training and supervising ELPD settlement administration staff;
- (c) Developing, implementing and monitoring internal processes for assessing claims, including IT system requirements and infrastructure;
- (d) Responding to individual group member inquiries;
- (e) Providing direction on individual cases;
- (f) Liaison with ELPD Assessors on assessment processes and progress;
- (g) Drafting and settling various correspondence to group members;
- (h) Drafting, reviewing and finalising an ELPD brochure for distribution to all ELPD group members; and

- (i) Establishing processes for plantation assessments and engagement of an expert plantation assessor.

108. Professional fees incurred for tasks carried out by non-lawyers undertaking paralegal and administrative tasks amount to \$70,658.94, with a total of 227.3 hours spent on the following and similar tasks:

- (a) Responding to individual group member inquiries;
- (b) Collating information and documentation in relation to small insurer claims;
- (c) Collating priority assessments and interim payment requests;
- (d) Drafting internal memoranda regarding ELPD administrative procedures;
- (e) Drafting various correspondence to group members;
- (f) Establishing interactions between group members with ELPD claims and I-D claims;
- (g) Updating various system databases including Matter Centre, Collaborate, File Site and accounting systems;
- (h) Preparing, reviewing and allocating files to ELPD Assessors;
- (i) Liaising with and completing information requests from ELPD Assessor;
- (j) Conducting various audits to ensure data is reflected accurately in our system databases; and
- (k) Updating index, collating, reviewing and processing invoices and vouchers.

B. Disbursements

109. Disbursements for work carried out between 20 June 2015 and 31 January 2016 amounted to \$146,713.94, composed of:

- (a) \$1916.24 for disbursements incurred in relation to General Settlement Administration;
- (b) \$91,503.70 for disbursements incurred in relation to I-D Settlement Administration; and




- (c) \$53,294.00 for disbursements incurred in relation to ELPD Settlement Administration.

General Settlement Administration

110. Disbursements for work carried out in relation to General Settlement Administration between 20 June 2015 and 31 January 2016 include payments of administrative expenses totalling \$1916.24.

I-D Settlement Administration

111. Disbursements for work carried out in relation to I-D Settlement Administration between 20 June 2015 and 31 January 2016 total \$91,503.70 and include payments of:

- (a) \$26,945.89 to medical practitioners, hospitals, psychiatrists, psychologists and counsellors for providing I-D group member treatment records;
- (b) \$24,856.70 for the design, edits and printing of the Personal Injury brochure;
- (c) \$12,000 to counsel for conducting I-D assessments;
- (d) \$6,017 to BizData for providing services to improve IT systems and create reports;
- (e) \$4,104.06 to Law in Order for electronic document processing charges;
- (f) \$616.21 to NuLegal for web-hosting fees; and
- (g) Miscellaneous administrative disbursements, including telephone calls, photocopying and postal charges, totalling \$16,963.84.

ELPD Settlement Administration

112. Disbursements for work carried out in relation to ELPD Settlement Administration between 20 June 2015 and 31 January 2016 total \$53,294.00 and include payments of:

- (a) \$28,790.30 for the design, edits and printing of the ELPD brochure;
- (b) \$20,000 to RMCG for providing initial setup and ongoing design of the SDS ELPD settlement administration scheme;

- (c) \$2,046 to BizData for providing services to improve IT systems and create reports;
- (d) \$1,375 to NuLegal for web-hosting fees; and
- (e) \$184.71 to Law in Order for electronic document processing charges; and
- (f) Miscellaneous administrative disbursements, including telephone calls, photocopying and postal charges, totalling \$897.99

C. Total Amount Sought

113. The combined total of Plaintiff costs and disbursements for work carried out between 1 May 2015 and 27 May 2015 and settlement administration costs and disbursements for work carried out between 20 June 2015 and 31 January 2016 together total \$1,806,001.61. I seek approval to pay that sum from the Distribution Sum.

D. Projected total administration costs & disbursements

114. In the affidavit of Brooke Dellavedova sworn on 6 May 2015, the total costs of the I-D claim assessment process were estimated to be in the range of \$3.3m, and the total costs of the ELPD assessment process were estimated to be in the range of \$4.2m. I remain confident that the assessment process can be completed within those estimates and (at least at current interest rates) within the amount of interest earned on the Distribution Sum.



SWORN by the deponent at)
Melbourne in the State of Victoria)
this 16th day of March 2016)
)



Before me:



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FILED on behalf of the Plaintiff

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

SCHEDULE OF PARTIES**KATHERINE ROWE**

Plaintiff

- and -

AUSNET ELECTRICITY SERVICES PTY LTD (ACN 064 651 118)

First Defendant

ACN 060 674 580 PTY LTD (ACN 060 674 580)

Second Defendant

**SECRETARY TO THE DEPARTMENT OF ENVIRONMENT, LAND, WATER AND
PLANNING (formerly Secretary to the Department of Environment and Primary
Industries)**

Third Defendant

COUNTRY FIRE AUTHORITY

Fourth Defendant

STATE OF VICTORIA

Fifth Defendant

- AND -

AUSNET ELECTRICITY SERVICES PTY LTD (ACN 064 651 118)

Plaintiff by Counterclaim

- and -

ACN 060 674 580 PTY LTD

First Defendant to Counterclaim

**SECRETARY TO THE DEPARTMENT OF ENVIRONMENT, LAND, WATER AND
PLANNING (formerly Secretary to the Department of Environment and Primary
Industries)**

Second Defendant to Counterclaim

COUNTRY FIRE AUTHORITY

Third Defendant to Counterclaim

STATE OF VICTORIA

Fourth Defendant to Counterclaim

KATHERINE ROWE

Fifth Defendant to Counterclaim