

B E T W E E N :

KATHERINE ROWE

Plaintiff

- and -

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

Defendants

A N D B E T W E E N :

AUSNET ELECTRICITY SERVICES PTY LTD (ACN 064 651 118)

Plaintiff
by Counterclaim

- and -

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

Defendants
by Counterclaim

**SPECIAL REFEREE'S FURTHER REPORT
JOHN DAVID WHITE
21 NOVEMBER 2016**

Date of document	: 21 November 2016	
Filed	: Pursuant to an appointment in Orders made 6 May 2016	
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SPECIAL REFEREE'S FURTHER REPORT

PREVIOUS REPORT

1. By Orders made 6 May 2016 ("the Orders") His Honour Justice John Dixon appointed me as Special Referee pursuant to Rule 50.01 of the Supreme Court (General Civil Procedure) Rules 2015 in respect of the costs of administering the Settlement Distribution Scheme ("the Scheme") in this matter.
2. Pursuant to that appointment I am required to review the costs incurred by the Scheme Administrator in administering the Scheme and prepare a written report which responds to the two questions set out in Appendix A to the Orders and which states the reasons for my opinion. The two questions set out in Appendix A to the Orders are :
 - (a) Are the costs sought in relation to the administration of the settlement distribution scheme reasonable ?
 - (b) If not, in what amount should the costs be disallowed ?

FURTHER REPORT

3. On 30 June 2016 I filed my first Special Referee's Report ("my previous report") which was in respect of the costs of administering the Scheme over the period 13 February 2015 to 30 April 2016. I concluded that the quantum of costs and disbursements incurred by the Scheme Administrator over that period was reasonable and no amount should therefore be disallowed.
4. Administration of the Scheme has continued since 30 April 2016. I am advised the Scheme Administrator anticipates being in a position to make a final distribution in respect of personal injury and dependency claims ("I-D claims") by the end of December this year and also anticipates being in a position to make a final distribution in respect of economic loss and property damage claims ("ELPD claims") in early 2017.
5. By letter dated 29 October 2016 Ms Kimi Nishimura of the Scheme Administrator's staff advised me that that the Scheme Administrator also proposed to apply for authorization to make a transfer payment to be made from the Murrindindi Distribution Sum to the Kilmore Distribution Sum. I have been requested by the Scheme Administrator to comment on the method of calculation of the proposed transfer payment and whether the quantum of the proposed transfer payment is reasonable.

6. The Murrindindi class action settled in February of 2015 and the Court has previously considered the Expert Report of Catherine Mary Dealehr dated 6 May 2015 in respect of the Plaintiff's reasonable legal costs and disbursements of the proceeding. That report however is in respect of costs and disbursements of the proceeding up to and including 30 April 2015. The application for approval of settlement was heard on 13 May 2015 and Orders approving the settlement were made by Justice Emerton on 27 May 2015 and the Plaintiff's reasonable legal costs and disbursements of the proceeding for the period 1 May 2015 to 27 May 2015 remain unquantified. Maurice Blackburn has requested that I assess the Plaintiff's reasonable legal costs and disbursements of the proceeding for the period 1 May 2015 to 27 May 2015 as part of this further report.

7. This further report therefore covers :
 - (a) the costs of administering the Scheme in respect of General administration, the I-D claims and the ELPD claims over the period 1 May 2016 to 30 September 2016;
 - (b) the anticipated costs of administering the Scheme in respect of General administration and the I-D claims over the period 1 October 2016 to 31 October 2016;
 - (c) the anticipated costs of administering the Scheme in respect of the I-D claims over the period 1 November 2016 to 30 November 2016;
 - (d) the anticipated costs of administering the Scheme in respect of the I-D claims over the period 1 January 2017 to 31 January 2017;
 - (e) a proposed transfer payment from the Murrindindi Distribution Sum to the Kilmore Distribution Sum; and
 - (f) the Plaintiff's reasonable legal costs and disbursements of the proceeding for the period 1 May 2015 to 27 May 2015

and will therefore be in four parts being :

- (A) Scheme Administration costs for the period 1 June 2016 to 30 September 2016;
- (B) anticipated future Scheme Administration costs for the period 1 October 2016 to 31 January 2017;
- (C) the proposed transfer payment; and
- (D) the Plaintiff's reasonable legal costs and disbursements of the proceeding for the period 1 May 2015 to 27 May 2015.

(A) SCHEME ADMINISTRATION COSTS 1 JUNE 2016 – 30 SEPTEMBER 2016

8. In respect of paragraphs 7(a) to 7(d) above I do not propose in this further report to repeat the matters canvassed in paragraphs 3 to 9 ("My experience"), 10 to 18 ("Materials provided"), 19 to 23 ("Establishment of the settlement distribution scheme) and 30 to 40 ("The law relevant to my task and the methodology to be adopted") of my previous report. All of those matters are relevant to this aspect of my further report.

FURTHER MATERIALS PROVIDED

9. Since my report of 30 June 2016 I have been provided by the Scheme Administrator with copies of the following :

Affidavits		
(a)	Affidavit of Andrew John Watson and the exhibits thereto	7 Sep 2016
(b)	Affidavit of Andrew John Watson and the exhibits thereto	31 Oct 2016
Further Settlement Administration Itemised Invoices (which are exhibited to the Affidavit of Andrew John Watson sworn 31 October 2016)		
<i>Matter – Date of Invoice – Category – Dates of work – Invoice No</i>		<i>Amount</i>
Murrindindi Settlement Administration – 15 Sep 2016 – General 1 May 2016 – 31 May 2016 – Invoice No 438420		76,864.35
Murrindindi Settlement Administration – 15 Sep 2016 – Personal Injury 1 May 2016 – 31 May 2016 – Invoice No 438424		425,863.59
Murrindindi Settlement Administration – 15 Sep 2016 – Property 1 May 2016 – 31 May 2016 – Invoice No 438427		351,633.70
Murrindindi Settlement Administration – 30 Aug 2016 – General 1 June 2016 – 30 June 2016 – Invoice No 438422		114,937.35
Murrindindi Settlement Administration – 30 Aug 2016 – Personal Injury 1 June 2016 – 30 June 2016 – Invoice No (not advised)		523,587.36
Murrindindi Settlement Administration – 20 Oct 2016 – Property 1 June 2016 – 30 June 2016 – Invoice No (not advised)		559,212.79
Murrindindi Settlement Administration – 19 Oct 2016 – General 1 July 2016 to 31 July 2016 – Invoice No (not advised)		61,093.85
Murrindindi Settlement Administration – 19 Oct 2016 – Personal Injury 1 July 2016 to 31 July 2016 – Invoice No (not advised)		432,540.34
Murrindindi Settlement Administration – 19 Oct 2016 – Property 1 July 2016 to 31 July 2016 – Invoice No (not advised)		387,628.71
Murrindindi Settlement Administration – 19 Oct 2016 – General 1 August 2016 to 31 August 2016 – Invoice No (not advised)		90,927.41
Murrindindi Settlement Administration – 19 Oct 2016 – Personal Injury 1 August 2016 to 31 August 2016 – Invoice No (not advised)		386,734.39

<i>Matter – Date of Invoice – Category – Dates of work – Invoice No</i>	<i>Amount</i>
Murrindindi Settlement Administration – 19 Oct 2016 – Property 1 August 2016 to 31 August 2016 – Invoice No (not advised)	368,039.91
Murrindindi Settlement Administration – 19 Oct 2016 – General 1 September 2016 to 30 September 2016 – Invoice No (not advised)	60,385.58
Murrindindi Settlement Administration – 19 Oct 2016 – Personal Injury 1 September 2016 to 30 September 2016 – Invoice No (not advised)	229,837.76
Murrindindi Settlement Administration – 19 Oct 2016 – Property 1 September 2016 to 30 September 2016 – Invoice No (not advised)	478,802.24
	\$4,548,089.33

10. On 29 October 2016 Ms Kimi Nishimura of the Scheme Administrator's staff forwarded to me a letter attached to which were details of the professional fees and disbursements incurred and/or which the Scheme Administrator anticipated would be incurred over the period 1 May 2016 to 31 January 2017 together with an EXCEL spreadsheet which provided the calculation as to a proposed transfer payment to be made from the Murrindindi Distribution Sum to the Kilmore Distribution Sum and the data underlying that calculation.
11. I observe that the matters canvassed at paragraphs 15 to 17 of my previous report are also relevant to this further report however on 16 November 2016 I met with Ms Kimi Nishimura, Ms Claire Brown and (briefly) Ms Megan Greaves of the Scheme Administrator's staff at the offices of Maurice Blackburn. At that meeting I was provided with a detailed explanation of the proposed transfer payment from the Murrindindi Distribution Sum to the Kilmore Distribution Sum and the arithmetic calculations underlying the proposed transfer together with a detailed explanation of the basis upon which estimates were made of the value of the work likely to be done from 1 October 2016 to the end of January 2017.
12. I have once again been given full access to the Maurice Blackburn "Collaborate" electronic database as well as the "FileSite" and "Matter Centre" databases which are accessed through "Citrix".
13. I have again from time to time requested that Maurice Blackburn provide me with additional materials and each of those requests has been promptly and comprehensively complied with. The Scheme Administrator's staff have once again also provided me from time to time with additional material they consider may be relevant to my task.
14. I have conducted a detailed examination of all of the further materials provided to me by the Scheme Administrator and his staff and have again reviewed much of the material provided

to me by both the Court and Scheme Administrator at the time of preparation of my previous report.

15. In preparing this further report insofar as it relates to work done from 1 May 2016 to 30 September 2016 I have adopted the methodology referred to in paragraph 37 of my previous report, that is :
 - (a) step 1 – identify the scope of work done;
 - (b) step 2 – identify the nature of the costs incurred over particular periods of time;
 - (c) step 3 – examine the copy bills of costs/tax invoices and calculate the time spent on the proceeding by each of the lawyers and non-lawyers;
 - (d) step 4 – examine the copy bills of costs/tax invoices and take and examine :
 - (i) samples of charges claimed for work done by reference to selected operators and selected dates, and
 - (ii) samples of disbursements claimed by reference to selected service providers and selected dates;
 - (e) step 5 – apply the hourly rates to be allowed to the Scheme Administrator and administrator staff as approved by the Court and detailed in Schedule B to the Scheme;
 - (f) step 6 – identify the number of hours relating to non-recoverable work by reason of that work not being reasonably incurred or reasonable in amount and, if any, excise that work; and
 - (g) step 7 – identify and, if any, reduce or deduct disbursements which appear unreasonably incurred or unreasonable in amount.

STEP 1 – THE SCOPE OF WORK DONE

16. The first step in determining whether the costs claimed are reasonable is to identify the nature and scope of work done. As noted at paragraph 41 of my previous report this is to some extent evident from the copy bills of costs/tax invoices provided to me however the logistics of implementing the Scheme and the nature of work done is best explained in the Affidavit material filed in this proceeding. That Affidavit material comprehensively details the scope of work done in particular categories over particular periods of time during the course of the administration of the Scheme from 1 May 2016 to 28 October 2016. It is therefore appropriate in the context of this report to briefly summarize those parts of the relevant Affidavit material which detail the scope of work done.
17. The Affidavit of Andrew John Watson sworn 12 September 2016 (“Mr Watson’s Affidavit of 12 September 2016”) updates his earlier Affidavits of 16 March 2016 and 16 June 2016 and

the Affidavits of Brooke Wendy Dellavedova sworn 25 June 2015 and Kimi Jean Nishimura affirmed 9 March 2016, and provides an overview of the personal injury and dependency ("I-D") claims assessment process (paragraphs 4 and 5) together with a summary of the assessment process and administration generally in respect of those claims up to the date on which the Affidavit was sworn (paragraphs 6 to 42 and 96 to 109). The summary of the assessment process and administration generally in respect of these claims traverses, as at 12 September 2016 :

- (a) the Settlement Distribution Scheme team ("the SDS team");
- (b) the employment of Mr Argus to develop and maintain IT requirements need to prepare for settlement distribution;
- (c) the fact that no other changes have been made to the team of assessors since the previous Case Management Conference;
- (d) the stages in the assessment process which various registered claims had reached;
- (e) changes to the assessment process including the position in respect of pursuit of further outstanding material and the arrangement of medico-legal assessments if required;
- (f) the position in respect of backlog or long outstanding assessments;
- (g) instructions taken from 38 I-D group members who no longer wished to pursue the personal injury claims;
- (h) the steps taken in relation to 5 uncooperative group members;
- (i) the steps taken to prepare for distribution including :
 - (i) preparation and dissemination of an updated Personal Injury Brochure,
 - (ii) interactions between the SDS team and others regimes, including the Department of Human Services (Centrelink), Private Health Insurers and the Department of Veterans Affairs,
 - (iii) IT reporting and infrastructure,
 - (iv) the auditing processes including sub-audits of assessment data, third party involvement, Centrelink data, private health insurance matters, Senior Master's Office matters, reviews, dependency claims, undertakings to third parties, interim payments and "not proceeding/uncooperative group member" assessments; and
 - (v) the engagement of KPMG to draft agreed-upon procedures re proposed distribution payments for review by the SDS team;
- (j) the position in respect of late registrants;
- (k) the number of applications for interim payment made as at 7 September 2016, the outcome of consideration of those applications and details of the number of applications still to be assessed;
- (l) the audit of I-D and ELPD databases in respect of Order 15 claimants;

- (m) the position as at 7 September 2016 in respect of estate claims where group members had passed away;
- (n) the general update letters of 8 July 2016, 8 August 2016 and 6 September 2016 forwarded to all group members and the update letter and revised Personal Injury Brochure forwarded on 12 August 2016 to all group members with a registered personal injury claim; and
- (o) a detailed examination of taxation issues including discussion and correspondence with the Australian Taxation Office and discussions with PricewaterhouseCoopers ("PwC") regarding taxation issues.

18. Mr Watson's Affidavit of 12 September 2016 also provides an overview of the economic loss/property damage ("ELPD") claims assessment process together with a summary of the assessment process and administration generally in respect of those claims up to the date on which the Affidavit was sworn (paragraphs 47 to 95). The summary of the assessment process and administration generally in respect of these claims traverses, as at 9 September 2016 :

- (a) the allocation of above-insurance claims and subrogated claims to ELPD Assessors;
- (b) the number of Provisional Notices of Assessment ("PNOAs") issued to above-insurance group members, the explanatory documentation forwarded with those PNOAs and the small number of Dispute Notices received in response to the PNOAs;
- (c) the position in respect of assessment of properties which involve subrogated-only losses, the process developed to facilitate provision of a single PNOA to each insurer and issues arising out of the assessment of subrogated claims;
- (d) the anticipated timeline for the issuing of remaining PNOAs which was then likely to be in mid to late October 2016;
- (e) progress in issuing finalized assessments including the necessity to increase ELPD SDS team resourcing and the refining of existing processes and the anticipated timeline for the issuing of Final Notices of Assessment (FNOAs") which was then likely to be by early November 2016;
- (f) the review of assessments to identify minor data or administrative errors identified by the ELPD SDS team in the process of issuing final assessments and the methodology to be utilised to rectify those errors;
- (g) substantive errors identified by ELPD SDS team in the process of issuing final assessments and the proposal to amend the SDS (which is dealt with in paragraphs 110 to 117 of Mr Watson's Affidavit of 12 September 2016);
- (h) the fact that no applications for review of an FNOA had been received;
- (i) weekly monitoring of ELPD Assessors;

- (j) the matter of proposed incentive payments to ELDP assessors Hall & Wilcox, Crawford and Company (Australia) or RM Consulting Group and the fact that no incentive payments have yet been made;
 - (k) progress under the ELPD Assessor Audit to ensure consistency in assessments, additional "spot audits" conducted, a separate audit of assessments prepared by Cunningham Lindsay and an audit of all the registered plantation and forestry loss claims assessed by Mr David Geddes
 - (l) instructions taken from 23 group members who advised they no longer wished to pursue their ELPD claims and the issuing of 20 \$Nil assessments; and
 - (m) the steps taken in relation to a small number of uncontactable group members;
19. The matters deposed to in Mr Watson's Affidavit of 12 September 2016 were updated in the his Affidavit sworn 31 October 2016 ("Mr Walsh's Affidavit of 31 October 2016") which provided a summary of the assessment process and administration generally in respect of the I-D claims from 8 September 2016 to 26 October 2016 (paragraphs 4 to 36 and 109 to 132). The summary of the assessment process and administration generally in respect of these claims traverses :
- (a) changes made to the SDS team such that there are now 5 full-time lawyers and 2 part-time lawyers all of varying levels of seniority spending varying levels of their time devoted to the Murrindindi settlement administration and with the number of paralegals being reduced from 7 to 6;
 - (b) the fact that there had been no changes to the team of assessors;
 - (c) the stage in the assessment process which various registered claims had reached as at 27 October 2016, including the position in respect of 11 requests for review;
 - (d) the fact that all initial assessments have been finalized;
 - (e) the fact that the position in respect of group members who instructed they did not wish to proceed with their claims and the position in respect of group members who were regarded as uncooperative had both remained static;
 - (f) the steps being undertaken to prepare for final distribution including :
 - (i) liaising with the Victorian WorkCover Authority, the Transport Accident Commission, the Country Fire Authority, Centrelink, private health insurers and the Department of Veteran's Affairs,
 - (ii) IT reporting and infrastructure,
 - (iii) contacting all creditors in respect of the submission of outstanding invoices,
 - (iv) the engagement of an external mailing house to effect final distribution,
 - (vi) contacting all group members living overseas,
 - (vii) the continued conduct of internal audits on an "as needs" basis, and

- (viii) the retention of Mr George Kompos of KPMG's Forensics department to provide a report on settlement distribution and progress of preparation of that report.
 - (g) the position in respect of late registrants;
 - (h) the number of applications for interim payment made as at 26 October 2016 and the outcome of consideration of those applications;
 - (i) dealings with the Senior Master's Office in respect of the approval and payment process for Order 15 personal injury group members;
 - (j) the position as at 31 October 2016 in respect of the 47 estate claims where group members had passed away;
 - (k) the general update of 6 October 2016 provided to all group members and the proposal to provide a further update to all group members towards the end of November 2016; and
 - (l) a detailed examination of taxation issues including correspondence with the Australian Taxation Office, contact made by PwC with the Australian Taxation Office, a recent discussion with the Australian Taxation Office, the ramifications of the position adopted by the Australian Taxation Office and possible options for future conduct in this respect.
20. Mr Watson's Affidavit of 31 October 2016 also provides a summary of the assessment process and administration generally in respect of the ELPD claims from 8 September 2016 to 26 October 2016 (paragraphs 38 to 108). The summary of the assessment process and administration generally in respect of these claims traverses :
- (a) changes made to the SDS team such that there are now 6 full-time lawyers and 2 part-time lawyers of varying levels of seniority, 1 trainee lawyer, 15 part-time paralegals working an equivalent of 11.5 full-time positions and one part-time data analyst all spending varying levels of their time devoted to the Murrindindi settlement administration;
 - (b) PNOAs issued to above-insurance group members as at 27 October 2016;
 - (c) the position in respect of assessment of properties which involve subrogated-only losses and the fact that no statements were received from insurers detailing perceived errors or omissions although it was expected that insurers will raise an error or omission for approximately 5% of the PNOAs issued in line with the dispute rate in the Kilmore Scheme;
 - (d) insurer registration issues where the total assessed value exceeds the amount registered by the insurer at class closure and the process for dealing with these issues;
 - (e) the position in respect of outstanding assessments and the anticipated timeline for issuing the remaining PNOAs;

- (f) issues in respect of cooperation by group members such as the failure of group members to provide documents to an ELPD Assessor after multiple requests and finalization of the relevant assessment and issuing of a PNOA in those circumstances;
- (g) the position in respect of complex assessments, being those in respect of some large plantation claims, and the appointment of Mr Min Guo as an ELPD Assessor to assist Mr Geddes;
- (h) the estimated date for completion of EPD assessments, the impact thereon of a significant drop in the volume of assessments being completed by one ELPD Assessor and steps taken to rectify that problem including the involvement of one solicitor from the SDS team to assist in finalising assessments;
- (i) progress made in the issuing of FNOAs;
- (j) minor data or administrative errors identified by the ELPD SDS team in the process of issuing final assessments and the steps taken to rectify those errors;
- (k) the position in respect of substantive errors and the facilitation of amending affected assessments pursuant to Orders made by the Court on 17 October 2016;
- (l) the review of complex assessments by a lawyer or trainee lawyer prior to being issued;
- (m) the allocation of compensation to trusts, partnerships or companies;
- (n) payment issues arising as a result of the de-registration of companies and consideration of the position in respect of small company claims;
- (o) the ELPD review process whilst noting however that no applications for review have been received out of more than 306 issued FNOAs;
- (p) continued progress under the ELPD Assessor Audit to ensure consistency in assessments;
- (q) the further steps being undertaken to prepare for final distribution including internal audits of all data, being specifically an Assessment Data Audit, an Audit of "not proceeding/uncooperative" Assessments and an Assessments Status Audit;
- (r) preparatory work necessary to allow Mr Kompos to commence his review once all ELPD assessments have been finalized;
- (s) the estimated duration of the ELPD assessment process with the likelihood of a final distribution to ELPD claimants being made in early 2017;
- (t) instructions taken as at 27 October 2016 from 27 group members who advised they no longer wished to pursue their ELPD claims and the issuing of 26 \$Nil assessments;
- (u) further steps taken in relation to the 8 registered ELPD group members who are uncontactable;
- (v) in the event that FNOAs are returned as "return to sender" the process to be undertaken to make contact with those group members ; and
- (w) the position in respect of 2 FNOAs issued to group members who are involved in Family Law disputes and the possibility that funds may have to be held in trust in respect of

those matters for some time following final distribution, the process established for dealing with those matters and the Advice being sought from Ms Tulloch of Counsel as to the potential impact that some Family Court Orders may have on payment of distribution monies;

21. As can be seen from the above, the scope of work has again changed and, particularly in respect of the ELPD claims, expanded over the period 1 May 2016 to 30 September 2016 as (a) issues have arisen which could not have been foreseen until their emergence as a result of the operation of the Scheme itself and the vagaries of human nature and (b) the administration of the I-D claims on the one hand and the administration of the ELPD claims on the other entered different phases. It is clear that the SDS teams have continued working to ensure that all claims are dealt with as expeditiously as possible.
22. I have no reason to consider that the descriptions of the scope of work done over particular periods of time as broadly deposed to in the Affidavits of Mr Watson are anything other than accurate and in fact my view in this respect has been confirmed as a result of having undertaken the sampling process referred to as step 4(i) in paragraph 15 above and having regard to my examination of the other relevant hard copy and electronic material.

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

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

The categories of bills of costs/tax invoices

24. In respect of the categories of costs and disbursements incurred by the Scheme Administrator in the course of the settlement administration I repeat the matters referred to in paragraphs 53 to 55 of my previous report.

The bills of costs/tax invoices

25. Identification of the nature of the costs incurred over particular periods of time is to a very large extent evident from a close examination of the copy bills of costs/tax invoices provided to me. The bills of costs/tax invoices prepared by the Scheme Administrator, copies of which have been exhibited as "AJW-4" to Mr Watson's Affidavit of 31 October 2016 are very comprehensive and by far the greater number of the entries contain a detailed narrative of the work done.

26. Save for the missing element of the statutory requirements for an itemized bill under Order 63.42(2)(a) of the Supreme Court (General Civil Procedure) Rules 2015 that the items be individually numbered, those bills of costs/tax invoices are largely in itemized form and therefore reflect the actual work done.

The Affidavit material

27. The nature of costs incurred for work done over the period 1 May 2016 to 30 September 2016 is also explained in detail in Mr Watson's Affidavit of 12 September 2016 and Mr Watson's Affidavit of 31 October 2016. Having regard to the matters canvassed in paragraphs 17 to 20 above I do not consider it necessary for me to once again summarize in this report those parts of the relevant Affidavit material which detail both the scope and the nature of costs incurred over the relevant period.

Attachment B to the letter dated 29 October 2016

28. The nature of costs incurred for work done over the period 1 May 2016 to 30 September 2016 is also explained in one of the attachments to the letter of 29 October 2016 which is a document entitled "*Attachment B – Murrindindi Bushfire Settlement Administration – Costs and Estimated Anticipated Costs for Period 1 May 2016 to 31 January 2017*". This document details, inter alia, the costs and disbursements incurred by the Scheme Administrator over the period 1 May 2016 to 30 September 2016. This document is noted as **Attachment A** to this report and I have reviewed it in detail.
29. The document which is Attachment A to this report provides the following broad summary of the tasks carried out by lawyers overseeing the settlement administration process over the period 1 May 2016 to 30 June 2016 :

(i) General settlement administration

- (a) Overseeing the settlement administration process;
- (b) Ongoing recruitment, training and supervision of settlement administration staff;
- (c) Ongoing development and monitoring of internal processes for assessing claims, including IT system requirements and infrastructure;
- (d) Management and administration of settlement monies;
- (e) Ongoing liaison work with organisations regarding taxation and interest accrued on the distribution sum;

- (f) Ongoing monitoring and estimating of settlement administration costs and process of distribution;
- (g) Overseeing late registrant process, reviewing and determining late registrant applications, and providing direction on late registrant enquiries and liaising with group members;
- (h) Overseeing interim payment process, reviewing and determining interim payment applications, providing direction on interim payment enquiries and liaising with group members;
- (i) Preparing correspondence to group members regarding update on processes and responding to similar enquiries;
- (j) Preparing procedure for assessing estate claims and distributing funds to estate claims;
- (k) Monitoring the process for Order 15 claimants and maintaining a register of Order 15 claimants;
- (l) Reviewing and approving various invoices;
- (m) Liaison with the Special Referee; and
- (n) Preparing for the Case Management Conference of 21 June 2016, including preparation of affidavits and supporting material.

(ii) *I-D settlement administration*

- (a) Ongoing monitoring and development of the I-D settlement administration process;
- (b) Overseeing and managing the SDS I-D team;
- (c) Ongoing recruitment, training and supervision of I-D settlement administration staff;
- (d) Ongoing development and monitoring of internal processes for assessing claims, including IT system requirements and infrastructure;
- (e) Reviewing completed I-D assessments received from I-D assessors and drafting letter to I-D group members enclosing I-D assessment;
- (f) Ongoing liaison work with I-D assessors regarding conferences and assessments;
- (g) Reviewing various agreements with statutory compensation authorities and preparing procedures for assessment of I-D group members with cross-over claims;
- (h) Ongoing liaison work with organisations holding claimant information relevant to the I-D assessment process, including government agencies, statutory authorities and medical practices;
- (i) Implementing and monitoring the process for reviews by I-D group members, including bond waiver applications;
- (j) Reviewing I-D claim books prepared for I-D assessors;
- (k) Responding to individual I-D group member enquiries;

- (l) Drafting and settling correspondence to I-D group members and various organisations;
- (m) Providing direction on individual cases;
- (n) Administering detailed telephone questionnaire with I-D group members, reviewing and finalising assessment memoranda, action plans and records for the I-D claim book;
- (o) Monitoring progress of all I-D group members claims, including those who are not proceeding or uncooperative, by preparing and interrogating various IT reports;
- (p) Identifying claims that can be assessed in the absence of certain records;
- (q) Overseeing further material requests received from I-D assessors;
- (r) Implementing and overseeing various audits to ensure data is reflected accurately in system databases in preparation for final distribution;
- (s) Monitoring personal injury statistics, preparing and reviewing various reports and interrogating data; and
- (t) Reviewing and approving various invoices relating to the assessment of individual group members' claims.

(iii) *ELPD settlement administration*

- (a) Overseeing the ELPD settlement administration process;
- (b) Overseeing and managing the SDS ELPD team;
- (c) Ongoing recruitment, training and supervision of ELPD settlement administration staff;
- (d) Ongoing development and monitoring of internal processes for assessing claims, including IT system requirements and infrastructure;
- (e) Responding to ELPD group member enquiries;
- (f) Providing direction on individual cases;
- (g) Monitoring progress of ELPD loss assessors, including capacity and speed allocation;
- (h) Ongoing liaison with ELPD loss assessors regarding assessment of ELPD claims, including potential new assessors;
- (i) Working with ELPD loss assessors on loss assessment principles and methods for streamlining assessment processes whilst maintaining quality control;
- (j) Drafting and settling correspondence to ELPD group members and loss assessors;
- (k) Designing, implementing and overseeing systems and procedures for issuing final notices of assessment, including IT system requirements and infrastructure;
- (l) Producing documentation for loss assessors and SDS ELPD team regarding understanding and responding to ELPD group member enquiries;
- (m) Preparing procedures for assessing trusts, business partnerships and deregistered companies' claims;
- (n) Reviewing and responding to loss assessor enquiries, including estate claims and deregistered companies;

- (o) Preparing procedures for uncontactable group members;
- (p) Overseeing audit of assessments completed by ELPD loss assessors and providing feedback;
- (q) Reviewing preliminary and final assessments completed by ELPD loss assessors to ensure consistency and reduce errors;
- (r) Co-ordinating processes for correcting ELPD registration errors;
- (s) Monitoring progress of all ELPD group members claims, including those who are not proceeding or uncooperative, by preparing and reviewing various IT reports;
- (t) Overseeing the collection and collation of supporting documentation related to above insurance claims and small insurer claims;
- (u) Monitoring ELPD statistics, reviewing and interrogating data; and
- (v) Reviewing and approving various invoices and overseeing the auditing of invoices pertaining to ELPD assessments.

30. The document which is Attachment A to this report provides the following broad summary of the tasks carried out by non-lawyers in the settlement administration process over the period 1 May 2016 to 30 June 2016 :

(i) General settlement administration

- (a) Assisting with late registrant processes, enquiries and applications, including liaising with group members; drafting memoranda, collating documentation and maintaining the database and spread sheets monitoring the status of such applications;
- (b) Assisting with interim payment processes, enquiries and applications, including liaising with group members, drafting memoranda, collating documentation, preparing controlled money withdrawal advice and maintaining the database and spread sheets monitoring the status of such applications;
- (c) Assisting with preparation of correspondence to group members regarding update on processes;
- (d) Assisting with the process for Order 15 claimants and maintaining a register of Order 15 claimants;
- (e) Updating accounting database systems, and collating, reviewing and processing invoices and vouchers; and
- (f) Monitoring settlement distribution fund accounts.

(ii) I-D settlement administration

- (a) Responding to individual I-D group member enquiries;

- (b) Administering detailed telephone questionnaire with I-D group members, reviewing and finalising assessment memoranda, action plans and records for the I-D claim book;
- (c) Gathering documents required for I-D assessment from various organisations, such as government agencies, statutory authorities, private health insurers and medical practices, including maintaining the database and spread sheets monitoring the status of such requests;
- (d) Ongoing liaison with I-D group members and various organisations regarding outstanding documentation required for I-D Claim Book;
- (e) Reviewing and identifying I-D group members that are ready to be assessed by I-D assessors;
- (f) Monitoring process and scheduling conferences between I-D group members and medico-legal expert;
- (g) Preparing I-D claim books for I-D assessors;
- (h) Scheduling I-D assessment conferences between I-D group members and I-D assessors and preparing letters to be sent to I-D group members confirming conference;
- (i) Drafting correspondence to I-D group members and various organisations;
- (j) Assisting with the process for processing claims for I-D group members who are not proceeding or uncooperative;
- (k) Assisting with the process for reviews submitted by I-D group members, including liaising with group members and review assessors, bond waiver applications, trust cheque requisitions and maintaining review spread sheet;
- (l) Updating various system databases including Matter Centre, Collaborate, FileSite and accounting systems;
- (m) Developing, testing and diagnosing configuration changes to system databases and tools, and building various reports;
- (n) Updating index, collating, reviewing and processing invoices and vouchers from I-D assessors and various organisations relating to the assessment of individual group members' claims;
- (o) Assisting with various audits to ensure data is reflected accurately in system databases in preparation for final distribution;
- (p) Undertaking initial review of invoices received from I-D assessors in relation to completed I-D assessments, including maintaining invoice spread sheet; and
- (q) Undertaking initial review and assisting with the preparation of I-D assessments received from I-D assessor and letter to be sent to I-D group members enclosing I-D assessment.

(iii) *ELPD settlement administration*

- (a) Preparing, reviewing and allocating files for ELPD loss assessors, including running subrogated claim checks;
- (b) Responding to individual ELPD group member enquiries;
- (c) Drafting correspondence to ELPD group members and ELPD loss assessors;
- (d) Liaising with and completing information requests to and from ELPD loss assessors;
- (e) Liaising with ELPD group members re unreturned workbooks;
- (f) Reviewing the Order 15 claimant process for ELPD group members;
- (g) Assisting with the process for ELPD group members who are not proceeding, uncooperative or uncontactable;
- (h) Ongoing monitoring of interactions between group members with ELPD claims and I-D claims, including ELPD group members who have met the I-D assessment threshold;
- (i) Administering the collection and collation of supporting documentation related to above insurance claims and small insurer claims;
- (j) Reviewing and amending preliminary notices of assessments to rectify errors;
- (k) Developing processes for sending final notices of assessment to ELPD group members, including conducting initial visual checks, reviewing system databases to ensure information is accurately reflected, and if necessary escalating issues to lawyers;
- (l) Updating various system databases including Matter Centre, Collaborate, FileSite and accounting systems;
- (m) Developing, testing and diagnosing configuration changes to system databases and tools, and building various reports;
- (n) Investigating and amending errors in ELPD group member data population;
- (o) Amending and maintaining the ELPD Allocation reports and ELPD statistics report;
- (p) Assisting with the assessment of Estate and Trust claims;
- (q) Assisting with the assessment of plantation claims and responding to expert plantation loss assessor enquiries;
- (r) Conducting various audits to ensure data is reflected accurately in system databases; and
- (s) Updating index, collating, reviewing and processing invoices relating to the assessment of ELPD claims.

31. The document which is Attachment A to this report provides the following broad summary of the tasks carried out by lawyers overseeing the settlement administration process over the period 1 June 2016 to 30 September 2016 :

(i) General settlement administration

- (a) Overseeing the settlement administration process;

- (b) Ongoing recruitment, training and supervision of settlement administration staff;
- (c) Ongoing development and monitoring of internal processes for assessing claims, including IT system requirements and infrastructure;
- (d) Management and administration of settlement monies;
- (e) Ongoing liaison work with PwC regarding taxation and interest accrued on the distribution sum;
- (f) Ongoing monitoring and estimating of settlement administration costs and process of distribution;
- (g) Liaison with Centrelink in relation to paybacks for interim payments;
- (h) Overseeing late registrant process, reviewing and determining late registrant applications, and providing direction on late registrant enquiries and liaising with group members;
- (i) Overseeing interim payment process, reviewing and determining interim payment applications, providing direction on interim payment enquiries and liaising with group members;
- (j) Preparing correspondence to group members regarding update on processes and responding to similar enquiries;
- (k) Overseeing procedure for assessing estate claims and distributing funds to estate claims;
- (l) Monitoring the process for Order 15 claimants and maintaining a register of Order 15 claimants;
- (m) Reviewing and approving various invoices;
- (n) Ongoing liaison with the Special Referee;
- (o) Ongoing liaison with KMPG in preparation of external audit of data;
- (p) Implementing processes and procedures in preparation for final distribution; and
- (q) Preparing for the Case Management Conference of 19 September 2016, including preparation of affidavits and supporting material.

(ii) *I-D settlement administration*

- (a) Ongoing monitoring and development of the I-D settlement administration process;
- (b) Overseeing and managing the SDS I-D team;
- (c) Ongoing recruitment, training and supervision of I-D settlement administration staff;
- (d) Ongoing development and monitoring of internal processes for assessing claims, including IT system requirements and infrastructure;
- (e) Reviewing completed I-D assessments received from I-D assessors and drafting letter to I-D group members enclosing I-D assessment;
- (f) Ongoing liaison work with I-D assessors regarding conferences and assessments;

- (g) Reviewing various agreements with statutory compensation authorities and preparing procedures for assessment of I-D group members with cross-over claims;
- (h) Ongoing liaison work with organisations holding claimant information relevant to the I-D assessment process, including government agencies, statutory authorities and medical practices;
- (i) Overseeing the process for reviews by I-D group members, including bond waiver applications;
- (j) Reviewing I-D claim books prepared for I-D assessors;
- (k) Responding to individual I-D group member enquiries;
- (l) Drafting and settling correspondence to I-D group members and various organisations;
- (m) Providing direction on individual cases;
- (n) Administering detailed telephone questionnaire with I-D group members, reviewing and finalising assessment memoranda, action plans and records for the I-D claim book;
- (o) Conducting conferences with I-D group members for assessment and preparing I-D assessments;
- (p) Attending review conferences with review assessor and I-D group member;
- (q) Monitoring progress of all I-D group members claims, including those who are not proceeding or uncooperative, by preparing and interrogating various IT reports;
- (r) Overseeing further material requests received from I-D assessors;
- (s) Implementing and overseeing multiple audits to ensure all data is reflected accurately in system databases in preparation for final distribution;
- (t) Undertaking detailed data comparison between I-D Assessments and Matter Centre client database to ensure all assessment amounts are reflected accurately;
- (u) Implementing processes and procedures in preparation for final distribution for I-D claims;
- (v) Monitoring personal injury statistics, preparing and reviewing various reports and interrogating data; and
- (w) Reviewing and approving various invoices relating to the assessment of individual group members' claims.

(iii) *ELPD settlement administration*

- (a) Overseeing the ELPD settlement administration process;
- (b) Overseeing and managing the SDS ELPD team;
- (c) Ongoing recruitment, training and supervision of ELPD settlement administration staff;
- (d) Ongoing development and monitoring of internal processes for assessing claims, including IT system requirements and infrastructure;
- (e) Responding to ELPD group member enquiries;
- (f) Providing direction on individual cases;

- (g) Monitoring progress of ELPD loss assessors, including capacity and speed allocation;
- (h) Ongoing liaison with ELPD loss assessors regarding assessment of ELPD claims, including assessment errors and application of SDS principles;
- (i) Drafting and settling correspondence to ELPD group members and loss assessors;
- (j) Designing, implementing and overseeing systems and procedures for issuing final notices of assessment, including IT system requirements and infrastructure;
- (k) Implementing and overseeing procedures for allocation disputes and family law issues;
- (l) Monitoring processes for assessing estate claims, trusts, business partnerships and deregistered companies' claims;
- (m) Reviewing and responding to loss assessor enquiries, including estate claims, trusts, business partnerships and deregistered companies;
- (n) Overseeing processes for uncontactable group members;
- (o) Overseeing audit of assessments completed by ELPD loss assessors and providing feedback;
- (p) Reviewing preliminary and final assessments completed by ELPD loss assessors to ensure consistency and reduce errors and liaising with ELPD loss assessors to rectify errors;
- (q) Overseeing distribution of preliminary and final notices of assessments to group members and insurers, including visual check processes, ensuring compliance with Schedule A, SDS, requirements and addressing errors;
- (r) Monitoring processes for correcting ELPD registration errors;
- (s) Monitoring progress of all ELPD group members claims, including those who are not proceeding or uncooperative, by preparing and reviewing various IT reports;
- (t) Overseeing the collection and collation of supporting documentation related to above insurance claims and small insurer claims;
- (u) Overseeing the assessment of plantation claims, responding to expert plantation loss assessor enquiries and conducting audit of plantation assessments;
- (v) Monitoring ELPD statistics, reviewing and interrogating data; and
- (w) Reviewing and approving various invoices and overseeing the auditing of invoices pertaining to ELPD assessments.

32. The document which is Attachment A to this report provides the following broad summary of the tasks carried out by non-lawyers in the settlement administration process over the period 1 June 2016 to 30 September 2016 :

(i) General settlement administration

- (a) Assisting with interim payment processes, enquiries and applications, including liaising with group members, liaison with Centrelink, drafting memoranda, collating

- documentation, preparing controlled money withdrawal advice and maintaining the database and spread sheets monitoring the status of such applications;
- (b) Assisting with Centrelink paybacks for interim payments, including maintaining the database and spread sheets;
- (c) Assisting with late registrant processes, enquiries and applications, including liaising with group members; drafting memoranda, collating documentation and maintaining the database and spread sheets monitoring the status of such applications;
- (d) Assisting with preparation of correspondence to group members regarding update on processes;
- (e) Assisting with the process for Order 15 claimants and maintaining a register of Order 15 claimants;
- (f) Updating accounting database systems, and collating, reviewing and processing invoices and vouchers; and
- (g) Monitoring settlement distribution fund accounts.

(ii) I-D settlement administration

- (a) Responding to individual I-D group member enquiries;
- (b) Assisting with multiple audits to ensure all data is reflected accurately in system databases in preparation for final distribution;
- (c) Gathering documents required for I-D assessment from various organisations, such as government agencies, statutory authorities, private health insurers and medical practices, including maintaining the database and spread sheets monitoring the status of such requests;
- (d) Ongoing liaison with I-D group members and various organisations regarding outstanding documentation required for I-D Claim Book;
- (e) Reviewing and identifying I-D group members that are ready to be assessed by I-D assessors;
- (f) Monitoring process and scheduling conferences between I-D group members and medico-legal expert;
- (g) Preparing I-D claim books for I-D assessors;
- (h) Scheduling I-D assessment conferences between I-D group members and I-D assessors and preparing letters to be sent to I-D group members confirming conference;
- (i) Drafting correspondence to I-D group members and various organisations;
- (j) Assisting with the process for processing claims for I-D group members who are not proceeding or uncooperative;

- (k) Assisting with the process for reviews submitted by I-D group members, including liaising with group members and review assessors, bond waiver applications, trust cheque requisitions and maintaining review spread sheet;
- (l) Updating various system databases including Matter Centre, Collaborate, FileSite and accounting systems;
- (m) Developing, testing and diagnosing configuration changes to system databases and tools, building and updating various reports and bulk updating group member data to system databases;
- (n) Updating index, collating, reviewing and processing invoices and vouchers from I-D assessors and various organisations relating to the assessment of individual group members' claims;
- (o) Assisting with various audits to ensure data is reflected accurately in system databases in preparation for final distribution;
- (p) Undertaking initial review of invoices received from I-D assessors in relation to completed I-D assessments, including maintaining invoice spread sheet; and
- (q) Undertaking initial review and assisting with the preparation of I-D assessments received from I-D assessor and letter to be sent to I-D group members enclosing I-D assessment.

(iii) *ELPD settlement administration*

- (a) Preparing, reviewing and allocating files for ELPD loss assessors, including running subrogated claim checks;
- (b) Responding to individual ELPD group member enquiries;
- (c) Drafting correspondence to ELPD group members and ELPD loss assessors;
- (d) Liaising with ELPD loss assessor including completing information requests, responding to enquiries and following up outstanding assessments;
- (e) Liaising with ELPD group members in relation to unreturned workbooks and workbook enquiries;
- (f) Reviewing the Order 15 claimant process for ELPD group members;
- (g) Assisting with the process for ELPD group members who are not proceeding, uncooperative or uncontactable;
- (h) Ongoing monitoring of interactions between group members with ELPD claims and I-D claims, including ELPD group members who have met the I-D assessment threshold;
- (i) Administering the collection and collation of supporting documentation related to above insurance claims and small insurer claims;
- (j) Reviewing and amending preliminary and final notices of assessments and rectifying errors if necessary;

- (k) Issuing final notices of assessment to ELPD group members and insurers, including conducting initial visual checks, performing Matter Centre checks, resolving errors, consolidating letters and assessment, reviewing system databases to ensure information is accurately reflected, overseeing bulk mail-outs and if necessary escalating issues to lawyers;
 - (l) Updating various system databases including Matter Centre, Collaborate, FileSite and accounting systems;
 - (m) Developing, testing and diagnosing configuration changes to system databases and tools, building and updating various reports and bulk updating group member data to system databases;
 - (n) Amending and maintaining the ELPD Allocation reports, ELPD statistics report and ELPD Load Error Report;
 - (o) Assisting with the assessment of estate claims, trusts, business partnerships and deregistered companies';
 - (p) Assisting with the assessment of plantation claims, responding to expert plantation loss assessor enquiries and conducting audit of plantation assessments
 - (q) Conducting audit of loss addresses and undertaking comparison between Collaborate client database and Matter Centre client database;
 - (r) Assisting with correcting ELPD registration errors and auditing data;
 - (s) Undertaking initial review and assisting with the preparation of I-D assessments received from I-D assessor and letter to be sent to I-D group members enclosing I-D assessment.
 - (t) Undertaking initial review of invoices in relation to completed assessments, including maintaining invoice spread sheet;
 - (u) Conducting various audits to ensure data is reflected accurately in system databases; and
 - (v) Updating index, collating, reviewing and processing invoices relating to the assessment of ELPD claims.
33. It is also clear from an examination of (a) the bills of costs/tax invoices and (b) those parts of the Affidavit material which detail the scope and nature of costs incurred over the relevant periods and (c) Attachment A to this report that as the settlement distribution process progressed through its various phases and as more claims were progressively dealt with, administrative and/or logistic issues arose or otherwise became evident and were likewise progressively dealt with.
34. Accordingly, I have no reason to consider that the descriptions of the nature of the costs incurred over particular periods of time as broadly deposed to in the Affidavits of Mr Watson

referred to above and referred to in Attachment A to this report are anything other than accurate and once again my view in this respect has been confirmed as a result of having undertaken the sampling process referred to as step 4(i) in paragraph 15 above and having regard to my examination of the other relevant hard copy and electronic material available to me.

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

35. When preparing my previous report the Scheme Administrator's staff, from time to time and at my request, provided me with copies of updated staff lists which detailed (i) the name of the file operator, (ii) the file operator's billing code, (iii) the position held by the file operator, (iv) whether the file operator does work in respect of the I-D settlement administration and/or the ELPD settlement administration, (v) the period of time worked by the file operator and (v) the nature of work carried out by the file operator.
36. Both the Affidavit of Mr Watson of 12 September 2016 and the Affidavit of Mr Watson of 31 October 2016 detailed changes made since his Affidavit of 16 June 2016 to the Scheme Administrator's staff in respect of both the I-D and the ELPD teams.
37. It is apparent from Attachment A to this report and from the bills of costs/tax invoices exhibited to Mr Watson's Affidavit of 31 October 2016 that over the period 1 May 2016 to 31 August 2016 one Principal (Mr Timothy Dionyssopoulos whose hourly rate under Schedule B to the Scheme is \$790.00 exclusive of GST) entered some 6.8 hours of work into the "Elite" system but at an hourly rate of \$0.00. Paragraph 6(a) of the Affidavit of Andrew John Watson sworn 16 June 2016 deposes to the secondment of Mr Dionyssopoulos from Maurice Blackburn's TAC practice to the SDS team. In paragraph 8 of that Affidavit Mr Watson also deposes that Mr Dionyssopoulos had been appointed to the team of I-D Assessors. Accordingly, as at 16 June 2016 the team of I-D Assessors comprised 31 members of Counsel and 2 solicitors.
38. I am informed by Ms Nishimura of the Administrator's staff that in order to ensure the total amount billed for solicitor I-D Assessors did not exceed the fixed rates of remuneration established in respect of I-D assessments conducted by Counsel (see paragraph 86 of my previous report) any time which resulted in charges higher than the fixed rates was written off. Accordingly, over the period 1 May 2016 to 31 August 2016 a total of 6.8 hours of Mr Dionyssopoulos' time was written off.
39. In order to calculate the time spent by lawyers and non-lawyers on the work claimed in the bill of costs/tax invoices I instructed my assistant, Mrs Nadine Straney, to review all the bills

of costs/tax invoices and prepare three separate tables in respect of each of (a) the General settlement administration, (b) the I-D settlement administration and (c) the ELPD settlement administration which detailed (i) the name of each of the file operators, (ii) the hourly rate of each of the file operators, (iii) the number of 6 minute units of time worked by each file operator over each bill period in respect of the bills of costs/tax invoices detailed on pages 3 and 4 of this report, (iv) the total amount claimed for each file operator over each bill period and (v) the total amount claimed for each file operator from 1 May 2016 to 30 September 2016. These tables are noted, respectively, as **Attachments B, C and D** to this report.

40. I have reviewed each of the attached tables in light of the staff list which is **Attachment 1** to my previous report and the details of staff changes deposed to in the two most recent Affidavits of Mr Watson and am satisfied that the charges claimed in the bills of costs/tax invoices prepared for the period 1 May 2016 to 30 September 2016 have been calculated by applying the appropriate Court approved hourly rates under the SDS to the items of work done by the respective file operators.

STEP 4 – SAMPLE THE BILLS OF COSTS/TAX INVOICES

Charges

41. The bill of costs/tax invoices prepared for the period 1 May 2016 to 30 September 2016 in respect of (i) the general settlement administration, (ii) the I-D settlement administration and (iii) the ELPD settlement administration comprise 974 pages including formal parts and pages detailing summaries, disbursement accounts and the like. In order to conduct the sampling process referred to as step 4(i) in paragraph 15 above, I therefore determined to :
- (a) examine in detail the work done by all file operators on a particular date on every 20th page of the bills of costs/tax invoices, and
 - (b) examine in detail a sample of the claims for work done by a particular file operator on every alternate 20th page of the bills of costs/tax invoices.

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

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

particular file operator on a particular date extended beyond the randomly selected page I also examined in detail all other work done by that particular file operator on that particular date as noted in the surrounding pages.

42. My detailed examination of the randomly selected claims involved considering (a) the nature of work done, (b) whether the work was reasonably done at the time, (c) whether the work was done by the appropriate level of file operator given the nature of the task, (d) whether the time claimed for the work was reasonable and (e) whether the correct hourly rate had been applied given the level of file operator doing the work. Where a claim referred to an attendance (such as a delegation and/or reporting conference) on another file operator in addition to considering (a) to (e) above I cross-referenced the claims of both file operators to confirm that the time claimed was accurate and reasonable.
43. As part of my detailed examination of the randomly selected work I also compared the work noted in the bill of costs/tax invoice with other relevant material provided to me. In some instances I also compared the work noted in the bill of costs/tax invoice with the electronic files maintained by the Scheme Administrator. I once again observe that a random comparison with the electronic files, which are compiled over a period of time, is not especially helpful in confirming that particular items of work were done by particular file operators on particular dates however the electronic files themselves remain solid evidence of the substantial amount of work actually done by the respective file operators in relation to particular claims.
44. My detailed examination revealed that some of the work was in respect of tasks which would normally not be allowed on a taxation of costs as between solicitor and own client (such as administrative claims for **collating, reviewing and processing disbursement fee vouchers; database management; etc**) but in my view those claims should be allowed in the context of the SDS since the work was done either as a result of particular requirements under the SDS or, most often, to ensure the integrity and efficiency of the settlement distribution process, particularly having regard to the number of claims to be dealt with. It should also be recalled that the nature of the SDS means that by far the greater bulk of work done is almost entirely in respect of an administrative process rather than a legal process.
45. I am therefore satisfied that the randomly sampled work I examined was in all instances reasonably done at the time by the appropriate level of file operator, that the time claimed for the randomly sampled work was reasonable and that the correct hourly rate had been applied given the level of file operator doing the work.

46. This task was particularly involved and time consuming however I am satisfied that the cross-referenced sample was sufficiently large and provided a sufficiently accurate series of “snapshots” of the work done for me to extrapolate the results across the total of the charges claimed by file operators in all of the bills of costs/tax invoices covering the period 1 May 2016 to 30 September 2016 and to state that in my view the work claimed in those tax invoices was reasonably done at the time by the appropriate level of file operator, that the time claimed for the randomly sampled work was reasonable and that the correct hourly rate had been applied given the level of file operator doing the work.

47. In order to give a visual representation of the time spent by lawyers and non-lawyers in administering the SDS to date I requested that the Scheme Administrator provide me with “stack graphs” which break down the total time spent by each type of file operator for work done in respect of administration of (a) all aspects of the SDS (“Murrindindi – Overview”), (b) the General settlement administration aspect only (“Murrindindi – General File”), (c) the I-D settlement administration aspect only (“Murrindindi – Personal Injury File”) and (d) the ELPD settlement administration aspect only (“Murrindindi – Property File”). These stack graphs are noted, respectively, as **Attachments E, F, G and H** to this report.

48. Examination of the attached stack graphs reveals that (a) in respect of all aspects of the SDS by far the greater bulk of work has been done by paralegals; (b) in respect of the General settlement administration aspect the greater bulk of the work has been done by lawyers, i.e. principals and special counsel, senior associates, associates, solicitors and trainee lawyers; (c) in respect of the I-D settlement administration aspect by far the greater bulk of the work has been done by paralegals and legal assistants/litigation support staff and (d) in respect of the ELPD administration aspect by far the greater bulk of the work has been done by paralegals.

49. Having regard to the scope of work done from 1 May 2016 to 30 September 2016 and given the nature of costs incurred over that period of time I make the following observations :
 - (a) it is appropriate that in respect of all aspects of the SDS far less time was spent by principals and special counsel, senior associates, associates, solicitors and trainee lawyers with the majority of expended time being spent by paralegals and legal assistants/litigation support staff;
 - (b) it is appropriate that in respect of the General settlement administration aspect more time was spent by principals and special counsel, senior associates, associates, solicitors and trainee lawyers than by paralegals and legal assistants/litigation support staff;

- (c) it is appropriate that in respect of the I-D settlement administration aspect by far the greater amount of time was expended by paralegals and legal assistants/litigation support staff; and
 - (d) it is appropriate in respect of the ELPD settlement administration aspect by far a greater amount of time was spent by paralegals with much less time now being spent by principals and special counsel, senior associates, associates, solicitors and trainee lawyers.
50. In my opinion the division of time amongst file operators apparent from the attached stack graphs also reflects an appropriate and reasonable allocation of work across all file operators and particularly as between lawyers and non-lawyers.

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

51. Pursuant to clause A1.1(b)(iii) of the Scheme all reasonable disbursements are to be allowed.
52. I note that in paragraph 5 of the Affidavit of Kimi Jean Nishimura affirmed 9 March 2016 (“Ms Nishimura’s Affidavit of 9 March 2016”) it is deposed that Counsel retained to conduct assessments of group members with personal injury and dependency (“I-D”) claims in the *Kilmore* proceeding have also been retained to conduct assessments of group members with personal injury and dependency (“I-D”) claims in this proceeding.
53. In paragraph 224 of his Affidavit sworn 13 April 2015 in the *Kilmore* proceeding Mr Watson deposed that the following fixed rates of remuneration had been established in respect of I-D administration and ELPD administration service providers :
- (a) \$400.00 per hour for Counsel attending training in the I-D assessment process conducted by Dr Nigel Strauss, Mr Andrew Keogh SC and Mr Rory Walsh of Maurice Blackburn;
 - (b) \$2,000.00 for each I-D assessment conducted by Counsel;
 - (c) \$3,500.00 for each I-D review assessment conducted by Senior Counsel;
 - (d) \$4,000.00 for each I-D assessment of sample and special Group Members conducted by Senior Counsel;
 - (e) \$1,100.00 per hour for training in the medico-legal assessment process conducted by Dr Nigel Strauss;
 - (f) \$1,650.00 for each comprehensive psychiatric assessment;
 - (g) \$880.00 for each comprehensive psychological assessment;
 - (h) \$550.00 for psychiatric oversights;

- (i) \$300.00 for ELPD assessments of insured only losses conducted to a reasonable standard but not in accordance with the Settlement Distribution Scheme;
- (j) \$650.00 for ELPD assessments of incurred only losses conducted by ELPD assessors in accordance with the Settlement Distribution Scheme;
- (k) \$1,800.00 for ELPD assessments of above-insurance claims (non-business); and
- (l) \$2,400.00 for ELPD assessment of above-insurance business claims.

54. I also note that in his Affidavit sworn 16 June 2016 in this proceeding Mr Watson deposed that in respect of I-D claims from 1 April 2016 the standard rate per assessment paid to I-D assessors was increased by \$250.00 and a further incentive payment of \$250.00 was also introduced at that time for those assessments submitted within two weeks of the I-D assessor meeting with the group member. Additionally, on 3 June 2016 a further incentive payment was introduced to encourage assessments to be submitted by 30 June 2016.

55. Further, in his Affidavit of 16 June 2016 in this proceeding Mr Watson deposed that in order to facilitate the timely completion of ELPD claims a conditional rate increase was implemented payable to Hall & Wilcox and Crawford and Company (Australia) if they were able to increase the volume of assessments completed over a four week cycle above the agreed-upon numbers. The conditional rate payable was \$250.00 for all above insurance assessment completed over two specified four week cycles. I note the Scheme Administrator had at about that time proposed a similar conditional rate increase to RM Consulting Group although RM Consulting Group had not then confirmed their interest in such a proposal.

56. According to the bills of costs/tax invoices for the period 1 May 2016 to 31 May 2016, the following tranches of disbursements have been incurred :

(i) General settlement administration :

- (a) \$10,018.80 to PricewaterhouseCoopers for work done re accounting and taxation issues;
- (b) \$2,860.00 to Pitcher Partners for work done re accounting and taxation issues;
- (c) \$1,980.00 to BizData Pty Ltd for providing services to improve IT systems and build reporting systems;
- (d) \$2,464.84 to e.law International Pty Ltd for hosting services;
- (e) \$660.00 to NuLegal Pty Ltd for hosting services;
- (f) \$954.51 to Law In Order for document processing and photocopying charges;
- (g) \$26.30 for miscellaneous photocopying; and
- (h) \$76.20 to the Supreme Court for Court fees.

(ii) I-D settlement administration :

- (a) \$1,796.30 to medical practitioners, hospitals, etc for providing I-D claimant treatment records and reports; and
- (b) \$473.00 for Fol fees; and

(iii) ELPD settlement administration :

- (a) \$122,587.15 to Crawford and Company for conducting and auditing ELPD assessments;
- (b) \$40,355.80 to RM Consulting Group for conducting ELPD assessments; and
- (c) \$17.66 for miscellaneous disbursements including telephone calls and photocopying charges.

57. According to the bill of costs/tax invoices for the period 1 June 2016 to 30 June 2016, the following tranches of disbursements have been incurred :

(i) General settlement administration :

- (a) \$9,055.20 to PricewaterhouseCoopers for work done re accounting and taxation issues;
- (b) \$37.73 to Law In Order for photocopying charges; and
- (c) \$53.02 for miscellaneous disbursements including couriers and telephone charges

(ii) I-D settlement administration :

- (a) \$17,500.00 to Mr A Dimsey of Counsel for conducting I-D assessments;
- (b) \$2,000.00 to Mr A Hill of Counsel for conducting I-D assessments;
- (c) \$21,750.00 to Mr C O'Sullivan of Counsel for conducting I-D assessments;
- (d) \$78,500.00 to Mr D Wallis of Counsel for conducting I-D assessments;
- (e) \$5,500.00 to Mr G Clark of Counsel for conducting I-D assessments;
- (f) \$9,500.00 to Mr M Schulze of Counsel for conducting I-D assessments;
- (g) \$7,750.00 to Mr N Dubrow of Counsel for conducting I-D assessments;
- (h) \$13,750.00 to Mr N Rattray of Counsel for conducting I-D assessments;
- (i) \$27,500.00 to Mr S Martin of Counsel for conducting I-D assessments;
- (j) \$10,750.00 to Ms C Boyle of Counsel for conducting I-D assessments;
- (k) \$5,500.00 to Ms F Ryan of Counsel for conducting I-D assessments;
- (l) \$11,000.00 to Ms K Bradley of Counsel for conducting I-D assessments;

- (m) \$16,500.00 to Ms M Bylhouwer of Counsel for conducting I-D assessments;
- (n) \$32,750.00 to Ms N Wolski of Counsel for conducting I-D assessments;
- (o) \$920.02 to Law In Order for document processing;
- (p) \$3,635.70 to medical practitioners, hospitals, etc for providing I-D claimant treatment records and reports;
- (q) \$166.40 for Fol fees; and
- (r) \$125.13 for miscellaneous disbursements including telephone calls.

(iii) ELPD settlement administration :

- (a) \$1,056.00 to BizData for providing services to improve IT systems and build reporting systems;
- (b) \$125,410.00 to Crawford and Company for conducting and auditing ELPD assessments;
- (c) \$79,450.00 to Hall & Wilcox for conducting ELPD assessments;
- (d) \$21,450.00 to Ligeti Partners for conducting ELPD assessments;
- (e) \$30,050.00 to RM Consulting Group for conducting ELPD assessments;
- (f) \$1,797.89 to Law In Order for document processing and photocopying; and
- (g) \$14.79 for miscellaneous disbursements including telephone calls, photocopying and courier charges.

58. According to the bill of costs/tax invoices for the period 1 July 2016 to 31 July 2016, the following tranches of disbursements have been incurred :

(i) General settlement administration :

- (a) \$709.51 to Law In Order for photocopying charges; and
- (b) \$43.84 for miscellaneous telephone charges.

(ii) I-D settlement administration :

- (a) \$37,350.00 to Kauthen Legal for conducting I-D assessments;
- (b) \$2,000.00 to Mr A Hill of Counsel for conducting I-D assessments;
- (c) \$2,500.00 to Mr B Anderson of Counsel for conducting I-D assessments;
- (d) \$2,250.00 to Mr C O'Sullivan of Counsel for conducting I-D assessments;
- (e) \$7,000.00 to Mr D Wallis of Counsel for conducting I-D assessments;
- (f) \$11,500.00 to Mr P Over of Counsel for conducting I-D assessments;
- (g) \$6,750.00 to Mr R Ajzensztat of Counsel for conducting I-D assessments;

- (h) \$2,500.00 to Mr S Carson of Counsel for conducting I-D assessments;
- (i) \$2,500.00 to Mr S Martin of Counsel for conducting I-D assessments;
- (j) \$2,500.00 to Ms F Ryan of Counsel for conducting I-D assessments;
- (k) \$14,750.00 to Ms K Bradley of Counsel for conducting I-D assessments;
- (l) \$7,500.00 to Ms M Bylhouwer of Counsel for conducting I-D assessments;
- (m) \$7,903.52 to medical practitioners, hospitals, etc for providing I-D claimant treatment records and reports;
- (n) \$416.45 for Fol fees; and
- (o) \$15.68 for miscellaneous disbursements including telephone calls.

(iii) ELPD settlement administration :

- (a) \$16,335.00 to BizData for providing services to improve IT systems and build reporting systems;
- (b) \$79,650.00 to Crawford and Company for conducting and auditing ELPD assessments;
- (c) \$16,119.14 to Geddes Management Pty Ltd for conducting ELPD assessments;
- (d) \$16,200.00 to Hall & Wilcox for conducting ELPD assessments;
- (e) \$43,200.00 to RM Consulting Group for conducting ELPD assessments;
- (f) \$1,645.00 to Law In Order for document processing;
- (g) \$142.29 to SAI Global Property for search fees; and
- (h) \$2.75 for miscellaneous disbursements including telephone calls and photocopying.

59. According to the bill of costs/tax invoices for the period 1 August 2016 to 31 August 2016, the following tranches of disbursements have been incurred :

(i) General settlement administration :

- (a) \$23,337.60 to PricewaterhouseCoopers for work done re accounting and taxation issues;
- (b) \$1,069.51 to Law In Order for document processing; and
- (c) \$9.90 for miscellaneous telephone charges.

(ii) I-D settlement administration :

- (a) \$5,000.00 to Mr A Dimsey of Counsel for conducting I-D assessments;
- (b) \$4,500.00 to Mr M Schulze of Counsel for conducting I-D assessments;
- (c) \$41,250.00 to Mr N Dunstan of Counsel for conducting I-D assessments;
- (d) \$2,750.00 to Mr N Rattray of Counsel for conducting I-D assessments;

- (e) \$9,000.00 to Mr P Over of Counsel for conducting I-D assessments;
- (f) \$2,500.00 to Mr S Martin of Counsel for conducting I-D assessments;
- (g) \$4,750.00 to Ms C Boyle of Counsel for conducting I-D assessments;
- (h) \$11,250.00 to Ms F Ryan of Counsel for conducting I-D assessments;
- (i) \$23,750.00 to Ms K Bradley of Counsel for conducting I-D assessments;
- (j) \$15,000.00 to Ms M Bylhouwer of Counsel for conducting I-D assessments;
- (k) \$2,000.00 to Ms M Szydzik of Counsel for conducting I-D assessments;
- (l) \$2,200.00 to Ms C Boyle of Counsel for conducting I-D assessments;
- (m) \$204.00 to Law In Order for document processing;
- (n) \$2,703.25 to Milo's in Good Company Pty Ltd for amendments to brochure;
- (o) \$5,111.00 to medical practitioners, hospitals, etc for providing I-D claimant treatment records and reports;
- (p) \$56.70 for Fol fees; and
- (q) \$17.66 for miscellaneous disbursements including telephone calls.

(iii) ELPD settlement administration :

- (a) \$9,600.00 to Mr M Guo for conducting assessments;
- (b) \$104,644.36 to Crawford and Company for conducting and auditing ELPD assessments;
- (c) \$40,150.00 to Hall & Wilcox for conducting ELPD assessments; and
- (d) \$320.45 to SAI Global Property for search fees.

60. According to the bill of costs/tax invoices for the period 1 September 2016 to 30 September 2016, the following tranches of disbursements have been incurred :

(i) General settlement administration :

- (a) \$538.98 to Law In Order for document processing and photocopying charges;

(ii) I-D settlement administration :

- (a) \$7,000.00 to Mr C Blanden of Counsel for conducting I-D assessments;
- (b) \$2,250.00 to Mr P Over of Counsel for conducting I-D assessments;
- (c) \$25,750.00 to Ms J Frederico of Counsel for conducting I-D assessments;
- (d) \$2,500.00 to Ms M Bylhouwer of Counsel for conducting I-D assessments;
- (e) \$920.79 to Law In Order for document processing;
- (f) \$3,323.10 to medical practitioners, hospitals, etc for providing I-D claimant treatment records and reports;
- (g) \$10.00 for Fol fees; and

- (h) \$23.48 for miscellaneous disbursements including telephone calls and courier charges.

(iii) ELPD settlement administration :

- (a) \$6,050.00 to Mr M Guo for conducting assessments;
- (b) \$105,058.54 to Crawford and Company for conducting and auditing ELPD assessments;
- (c) \$21,650.00 to Cunningham Lindsay Australia Pty Ltd for conducting ELPD assessments;
- (d) \$32,600.00 to Hall & Wilcox for conducting ELPD assessments;
- (e) \$57,950.00 to RM Consulting Group for conducting ELPD assessments; and
- (f) \$105.59 to SAI Global Property for search fees.

61. As a result of my earlier report I am familiar with the accounts and charges of such service providers as Hall & Wilcox, Crawford & Company, Ligeti Partners and RM Consulting Group, medical clinics, treating doctors, treating psychologists, clinical psychologists, various agencies including the Transport Accident Commission and hospitals, BizData, Law In Order; SAI Global Australia, Milo's in Good Company Pty Ltd, Victorian Transcript Services Pty Ltd and the like.
62. I have generally reviewed the claims for disbursements as made out in each of the bills of costs/tax invoices for the period 1 May 2016 to 30 September 2016. I make the following observations :

Counsel, Medical providers and ELPD assessors

63. The rates fixed for Counsel, including Senior Counsel and Junior Counsel appointed as assessors in the I-D settlement administration are detailed in paragraphs 90 and 91 of my previous report.
64. In my experience the rates negotiated for Counsel are all well within the range of hourly and daily rates one would expect and in my view they are reasonable. Likewise the rates fixed for comprehensive psychiatric assessments, comprehensive psychological assessment and psychiatric oversights all appear to be well within the range of rates one would expect and again in my view they are reasonable.
65. In my experience the rates charged by providers of medical reports and clinical notes are well within the range one would expect and are therefore reasonable.

66. As mentioned in my previous report, whilst I am not especially familiar with the usual rates charged by assessors in respect of economic loss/property damage assessments of insured only losses, above-insurance non-business claims and above-insurance business claims, the negotiated rates do not appear to me to be unreasonable and I note in passing that two of the ELPD assessors are firms of solicitors who should have a clear understanding of the concept of “reasonableness” in its legal sense.

Court and transcript fees

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

Other service providers and miscellaneous disbursements

68. I having reviewed the bills of costs/tax invoices for the period 1 May 2016 to 30 September 2016 in respect of the accounts rendered by other service providers, such as BizData, Law In Order, Milo’s in Good Company Pty Ltd and SAI Global Australia and I am satisfied that all remaining disbursements have been reasonably incurred and are reasonable in amount.
69. Finally I refer to and repeat the matters canvassed in paragraphs 105(a) and 105(b) of my previous report in respect mobile telephone charges, courier charges and cab charges.

STEP 5 – APPLY THE HOURLY RATES APPROVED BY THE COURT

Administration Costs

70. In respect of the definition of “Administration Costs” and “Administrator staff” I repeat paragraphs 101 to 103 of my previous report.
71. In respect of the GST exclusive hourly rates to be allowed to the Scheme Administrator and Administrator staff I repeat paragraph 104 of my previous report.

Time recording

72. In respect of the time recording system utilized by the Scheme Administrator and time recording protocols followed by fee earners at Maurice Blackburn I repeat paragraphs 105 and 106 of my previous report.

73. My examination of the bills of costs/tax invoices for the period 1 May 2016 to 30 September 2016, both in a broad sense as referred to in paragraph 14 above and in a detailed sense as part of the sampling process referred to as step 4(i) in paragraph 15 above, suggests that these time recording protocols have been conscientiously followed and applied.

Application of the approved hourly rates to the recorded time

74. Utilising the tables in Attachment B, Attachment C and Attachment D to this report I have reviewed the hourly rates applied as detailed in all of the bills of costs/tax invoices covering the period 1 May 2016 to 30 September 2016 for the Scheme Administrator and for each member of his administration staff in light of the “qualification” of each file operator.
75. Having done that exercise and as a result of the sampling process referred to as step 4(i) in paragraph 15 above, I am satisfied that in all instances the appropriately qualified operator has done the work at the appropriate standard hourly rate approved by the Court.

STEP 6 – EXCISE WORK UNREASONABLY DONE or UNREASONABLE IN AMOUNT

76. In light of my review of the materials provided to me, having regard to the outcome of the sampling process referred to as step 4(i) in paragraph 15 above and reiterating the matters generally canvassed, I once again do not consider it could reasonably be said that any of the work claimed in the bills of costs/tax invoices was unreasonably done or is unreasonable in amount.

STEP 7 – DISBURSEMENTS UNREASONABLY INCURRED or UNREASONABLE IN AMOUNT

77. In light of my review of the materials provided to me and reiterating the matters generally canvassed above, I once again do not consider that any of the disbursements claimed in the bills of costs/tax invoices were unreasonably incurred and or are unreasonable in amount.

(B) ANTICIPATED FUTURE COSTS 1 OCTOBER 2016 – 31 JANUARY 2017

78. As mentioned in paragraph 10 above, by letter dated 29 October 2016 the Scheme Administrator advised his intention to file an application in this proceeding which sought approval of the Scheme Administration costs for the period 1 May 2016 to 31 January 2017. The matter of anticipated costs for the period 1 May 2016 to 31 January 2017 is briefly raised in paragraphs 133(c) to 133(e) of Mr Watson’s Affidavit of 31 October 2016.

79. The attachment to the letter of 29 October 2016 entitled "*Attachment B – Murrindindi Bushfire Settlement Administration – Costs and Estimated Anticipated Costs for Period 1 May 2016 to 31 January 2017*" (**Attachment A** to this report) details the costs and disbursements incurred by the Scheme Administrator over the period 1 May 2016 to 30 September 2016 but more importantly also details the quantum of costs and disbursements which the Scheme Administrator anticipates would be incurred over the periods (a) 1 October 2016 to 31 October 2016 in the General administration and the I-D administration (see paragraphs 43 to 46 of Attachment A), (b) 1 November 2016 to 31 December 2016 in the I-D administration (see paragraphs 47 to 54 of Attachment A), and (c) 1 January 2017 to 31 January 2017 in the I-D administration (see paragraphs 55 to 60 of Attachment A). As mentioned above I have reviewed Attachment A to this report in detail.
80. On 16 November 2016 I met with Ms Nishimura of the Administrator's staff to discuss, inter alia, the estimate of anticipated costs over the period 1 October 2016 to 31 January 2017. As mentioned in paragraph 11 above, at that meeting I was provided with a detailed explanation of the basis upon which estimates were made of the value of the work likely to be done from 1 October 2016 to the end of January 2017 and the arithmetic calculations underlying those estimates. I was also provided with a table of the arithmetic calculations which form the basis for the estimates. That table is noted as **Attachment I** to this report.
81. From paragraphs 43 to 46 of Attachment A to this report and from my discussion with Ms Nishimura on 16 November 2016 it is clear that the estimate for the period 1 October 2016 to 31 October 2016 is in fact more than a simple estimate as the Scheme Administrator when calculating anticipated costs for that period had the benefit of being able to rely on the "raw" data on the "Elite" system as to the time expended by his staff over the period 1 October 2016 to 27 October 2016.
82. From paragraphs 47 to 60 of Attachment A to this report and from my discussion with Ms Nishimura on 16 November 2016 it is also clear that the estimates for the periods 1 November 2016 to 31 December 2016 and 1 January 2017 to 31 January 2017 were based on the considered advice of senior members of the SDS team as to their view of work likely to be done over those periods. In this connection I observe that the file operators themselves are the ones most qualified to give such estimates having regard to their undoubted knowledge and experience of the manner in which administration of the Scheme has unfolded and their understanding of the additional work required to enable final distributions to be made.

83. On the advice of senior members of the SDS team the Scheme Administrator provides, in Attachment A, the following broad categories of work which will be required in the I-D settlement administration over the period 1 November 2016 to 31 December 2016 :

- (a) Instructing and liaising with Dynamic Direct for the production and mailing of cheques for distribution;
- (b) Preparing correspondence to group members regarding the outcome of the Case Management Conference and an update on the anticipated settlement distribution timeframe;
- (c) Assisting with any issues in relation to the mailing of cheques for group members living in Australia or the processing of EFT payments for group members living overseas;
- (d) Instructing and briefing KPMG in relation to the external review of I-D assessment data and for the production of an expert report pertaining to the outcome of the review and the proposed schedule of payments to I-D claimants;
- (e) Ongoing liaison with the Special Referee regarding settlement administration costs;
- (f) Ongoing liaison with PwC regarding taxation on the distribution sum;
- (g) Ongoing liaison with the Senior Masters Office in relation to the distribution of funds for group members under a legal incapacity;
- (h) Ongoing liaison with various organisations, such as Centrelink, private health insurers, WorkCover, DVA, TAC and the Department of Defence to ensure all terms of agreements are met;
- (i) Drafting and settling correspondence to I-D group members and various organisations;
- (j) Calculating and determining the pro-rated rate for distribution and ensuring all payment and payback amounts are accurately determined and reflected in system databases, this will include developing a distribution report to assist with this process;
- (k) Undertaking a number of checks and balances to ensure system databases and distribution report are accurate;
- (l) Processing and finalising the remaining review applications by I-D group members;
- (m) Responding to individual I-D group member enquiries;
- (n) Ensuring all I-D group member details are up-to-date and reflected in system databases;
- (o) Overseeing and managing the SDS I-D Team in preparation for final distribution;
- (p) Conducting internal audits on an "as needs" basis when any new data is added to the Matter Centre data base such as Review Assessments;
- (q) Reviewing and approving various invoices; and
- (r) Determining and processing remaining interim payment applications.

84. The Scheme Administrator similarly provides, in Attachment A, the following broad categories of work which, on the advice of senior members of the SDS team, will be required in the I-D settlement administration over the period 1 January 2017 to 31 January 2017 :
- (a) Responding to individual I-D group member enquiries;
 - (b) Re-issuing return-to-sender cheques to individual I-D group members; and
 - (c) Cancelling and re-issuing lost cheques to individual I-D group members.
85. In paragraph 52 of Attachment A the Scheme Administrator provides an estimate of the disbursements likely to be incurred between 1 October 2016 and 31 December 2016 as follows :
- (a) I-D Review Assessor – \$25,000 approximately for review assessment costs;
 - (b) CFA – \$1,000 approximately for FOI fees;
 - (c) Special Referee – \$20,000 for second Special Referee report, with 34/280ths of such costs or \$2,500 approximately to be borne by I-D group members;
 - (d) KPMG – \$20,000.00 approximately for the review of personal injury assessment data and the proposed schedule of payments to I-D claimants;
 - (e) PwC – \$70,000 approximately, with 34/280ths or \$8,500 approximately to be borne by I-D group members;
 - (f) Dynamic Direct – \$6,000 approximately to process and issue cheques and the final distribution letters to I-D group members; and
 - (g) An additional \$20,000 for the payment of anticipated late invoices for services or goods already rendered in relation to I-D claims and for the payment of miscellaneous disbursements.
86. I have considered the Scheme Administrator's estimate of disbursements likely to be incurred over the period 1 October 2016 to 31 December 2016. I am of the view that amount estimated for each of the particular service provider is reasonable in all the circumstances.
87. The Scheme Administrator has apparently taken the view that no disbursements will be incurred over the period 1 January 2017 to 31 January 2017 as he does not appear to have factored any allowance for disbursements into his estimate for that period.
88. The total amount estimated for costs and disbursements over the period 1 October 2016 to 31 January 2017 is in the sum of \$1,160,901.63 being (a) estimated costs and disbursements for the General settlement administration and the I-D settlement administration for the period 1 October 2016 to 31 October 2016 in the sum of \$258,997.81, (b) estimated costs and disbursements for the I-D settlement administration for the period 1 November 2016 to 31

December 2016 in the sum of \$307,948.00, and (c) estimated costs for the I-D settlement administration for the period 1 January 2017 to 31 January 2017 in the sum of \$33,213.00.

89. In order to give a visual representation of the time anticipated to be spent by lawyers and non-lawyers in administering the SDS from 1 November 2016 to 31 January 2017 I requested that the Scheme Administrator provide me with a further “stack graph” which broke down the total estimated time spent by each type of file operator for work done in respect of administration of all aspects of both the Murrindindi Scheme and the Kilmore Scheme over that period. This stack graph is noted as **Attachment J** to this report.
90. Examination of the attached stack graph reveals that in respect of all aspects of both the Murrindindi Scheme and the Kilmore Scheme over the period 1 November 2016 to 31 January 2017 more than half of the work will most likely be done by paralegals and legal assistants/litigation support staff with less than half of the work being done by lawyers, i.e. principals and special counsel, senior associates, associates, solicitors and trainee lawyers. Given the nature of work to be done over that period this would appear to me to represent a reasonable division of labour which accords with the historical division of labour in the administration of each of the Murrindindi Scheme and the Kilmore Scheme.
91. I have examined the material provided in detail, reviewed the estimates both as to methodology and quantum and considered the matters discussed with Ms Nishimura on 16 November 2016. I am satisfied that the method of calculation of the anticipated likely costs for the period 1 October 2016 to 31 January 2017 is reasonable and that the estimate of anticipated likely costs from 1 October 2016 to 31 January 2017 is likewise reasonable.

(C) PROPOSED TRANSFER PAYMENT

92. At the hearing before Justice John Dixon on 23 March 2016 Mr Watson advised the Court that “...*The process which has been undertaken since the settlement was approved has been undertaken in conjunction with the Kilmore settlement scheme administration. There were obvious advantages in terms of efficiency in doing so. All of the set up work which had occurred in relation to Kilmore, in relation to bespoke databases and other forms of information technology processes was able to be rolled over with minor modification for...*” the Murrindindi settlement scheme administration (see page 3 lines 7 to 15 of the transcript of that hearing). It is clear from these comments that the Scheme Administrator has for some time been alive to the fact that the Murrindindi settlement scheme administration has benefited from work previously work done in respect of the Kilmore settlement scheme administration.

93. As mentioned in paragraph 10 above, by letter dated 29 October 2016 the Scheme Administrator also advised his intention to file an application in the Murrindindi proceeding (S CI 2012 04538) seeking authorization to make a transfer payment in the sum of \$3,782,340.77 from the Murrindindi Distribution Sum to the Kilmore Distribution Sum. The rationale behind the proposed transfer payment and method of quantification of the proposed transfer payment is detailed in paragraphs 138 to 143 of Mr Watson's Affidavit of 31 October 2016 and exhibit "AJW-5" to that Affidavit.
94. I have reviewed 138 to 143 of Mr Watson's Affidavit of 31 October 2016 and exhibit "AJW-5" to that Affidavit. On 16 November 2016 I met with Ms Nishimura and Ms Greaves of the Administrator's staff to discuss, inter alia, the proposed transfer payment. As mentioned in paragraph 11 above, at that meeting I was provided with a detailed explanation of the proposed transfer payment and the arithmetic calculations underlying it.
95. As a result I am satisfied that the method of calculation of the proposed transfer payment is reasonable and accordingly the quantum of the proposed transfer payment is likewise reasonable.

(D) THE PLAINTIFF'S REASONABLE COSTS AND DISBURSEMENTS OF THE PROCEEDING FOR THE PERIOD 1 MAY 2015 – 27 MAY 2015

96. At the meeting with Ms Kimi Nishimura, Ms Claire Brown and Ms Megan Greaves of the Scheme Administrator's staff on 16 November 2016 referred to in paragraph 11 above I was also provided with a detailed explanation of the work done in respect of the proceeding in May of 2015 leading up to the hearing on 13 May 2015 and the Orders made by Justice Emerton on 27 May 2015. In addition at that meeting I was provided with a folder of the following documents relevant to May 2015 hearing :

(a)	The Expert Report of Catherine Mary Dealehr of the Australian Legal Costing Group dated 6 May 2016
(b)	Murrindindi Settlement Administration Invoice No 438420 dated 16 March 2016 for the period 1 May 2015 to 27 May 2016 which claims the total sum of \$434,450.43
(c)	Feeslips for Mr R Attiwill QC and Ms F McLeod SC and Ms Szydzik, Ms Forsyth and Mr Fraatz of Counsel
(d)	Disbursement accounts for e.law International Pty Ltd, Nulegal Pty Ltd, RMIT University, the Australian Legal Costing Group (Ms Dealehr), Victorian Transcript Services Pty Ltd, Law In Order, Morgan Consulting Australia Pty Ltd, RMCG and The University of Melbourne

(e)	The four Notices of Objection to Proposed Settlement served by Bloodstock Breeder Services Pty Ltd, Don Brown, D.B.G. Builders Pty Ltd and HVP Plantations
(f)	The Plaintiff's Confidential Submission – HVP Plantation Objection dated 12 May 2015
(g)	The transcript of the hearing before Emerton J on 13 May 2015
(h)	The Judgment of Emerton J delivered 27 May 2015
(i)	A rather comprehensive file note/memorandum prepared by Ms Lauren Edwards of Maurice Blackburn which contained a synopsis of the nature of work done in respect of the application for approval

97. I was also given access to the hard copy Maurice Blackburn file in respect of work done over the period 1 May 2015 to 27 May 2015 and following the meeting on 16 November 2016 I also spent some time inspecting that file. As mentioned at paragraph 12 above I have also again been given full access to the Maurice Blackburn electronic files in respect of the proceeding.
98. I have conducted a detailed examination of all of the materials provided to me by the Scheme Administrator and his staff and the available electronic material in respect of the Plaintiff's costs and disbursements of the proceeding over the period 1 May 2015 to 27 May 2015.
99. I have had the benefit of being able to very carefully peruse the impressive Expert Report of Catherine Mary Dealehr dated 6 May 2016 as to the Plaintiff's reasonable costs of the proceeding up to and including 30 April 2015. This has given me invaluable insight into, inter alia :
- (a) the complexity of the proceeding itself;
 - (b) the difficulty and novelty of the questions involved in the proceeding;
 - (c) the skill, specialized knowledge and responsibility involved and the time and labour expended by Maurice Blackburn; and
 - (d) the general care and conduct exercised by Maurice Blackburn, having regard to all the relevant circumstances.
100. In paragraphs 8 to 18 of her report Ms Dealehr traversed the basis upon which Maurice Blackburn charged for work done in the proceeding, paying particular attention to (a) the terms of the first Costs Agreement, (b) the hourly rates detailed in that Costs Agreement, (c) the change to categories of file operators made in the July 2013 letter, (d) the rate increases in accordance with the terms of that Costs Agreement which were applied after appropriate notice was given in the July 2013 and September 2014 letters, (e) second Costs Agreement and (f) the rate increase in accordance with the terms of that second Costs Agreement which

was applied after appropriate notice was given in the September 2014 letter. Ms Dealehr was of the opinion that the initial hourly rates and the increased hourly rates under both Costs Agreements were reasonable and she applied those rates in making her calculations.

101. In paragraphs 19 to 21 Ms Dealehr traversed the uplift fee chargeable in the event of success which was a term in both the first Costs Agreement and the second Costs Agreement. Ms Dealehr was of the view that the definition of "success" in paragraph 5.3 of each of the Costs Agreements had been satisfied by settlement of the proceeding for \$300,000,000.00 inclusive of costs and was of the opinion that in the circumstances an uplift of 25% was fair and reasonable.
102. In paragraphs 22 to 29 Ms Dealehr traversed matters of interest on unpaid costs, the scope of the retainer with the lead Plaintiff, the scope of the retainer with group members and the estimates of costs made by Maurice Blackburn in accordance with the disclosure requirements of the Legal Profession Act 2004.
103. In paragraphs 30 to 46 Ms Dealehr detailed both a chronology of the proceedings and a summary of the work done by Maurice Blackburn up to and including 30 April 2015. Ms Dealehr also canvassed the matters of *inter partes* costs Orders made during the course of the proceeding, the complexity of issues in the proceeding, the responsibility of the lawyers and the core Maurice Blackburn team.
104. In paragraphs 47 to 140 Ms Dealehr (a) examined the law in respect of the Court's surveillance over legal costs in class actions and the methodology to be adopted in quantifying those costs, (b) identified the steps to be taken in determining whether the professional fees claimed by Maurice Blackburn were reasonable and then (c) applied that methodology.
105. In paragraphs 141 to 174 Ms Dealehr details the outcome of her manual audit of the disbursement accounts and invoices incurred by Maurice Blackburn up to and including 30 April 2015, with particular emphasis on the fees claimed for Counsel and expert witnesses. Apart from some relatively minor reductions Ms Dealehr was of the opinion that the fees claimed for Counsel were reasonable. In respect of expert witness fees Ms Dealehr was of the opinion that they were reasonable. Apart from a reduction made to (a) photocopying charges to reflect the position adopted by the Costs Court and (b) the disbursement claims made under the heading of "miscellaneous", Ms Dealehr was of the opinion that all other disbursements were reasonable.

106. I am informed that the Court accepted Ms Dealehr's expert report as to the Plaintiff's reasonable costs and disbursements of the proceeding up to and including to 30 April 2015. I accept and adopt where necessary paragraphs 8 to 52 of Ms Dealehr's expert report.
107. Given that I am to report on the Plaintiff's reasonable costs and disbursements of the proceeding for the rather confined period of 1 May 2015 to 27 May 2015 I have determined to do a manual audit of the professional charges claimed by Maurice Blackburn. A manual audit of professional charges is simply a "line by line" assessment of the work noted as done in the relevant bill of costs/tax invoice.
108. The nature of work done over the period 1 May 2015 to 27 May 2015 is canvassed in the paragraphs 79 to 94 of the Affidavit of Andrew John Watson sworn 16 March 2016. My examination of the material provided indicates that a significant amount of work was done by Maurice Blackburn over the period 1 May 2015 to 12 May 2015 in preparation for the hearing on 13 May 2015 including review of Ms Dealehr's expert report, preparation of the extensive Affidavit of Ms Dellavedova, preparation of the extensive submissions in response to the Notices of Objection (in particular to the Notice of Objection of HVP Plantation), preparation of briefs to Mr R Attiwill QC, Ms F McLeod SC, Ms M Szydzik, Mr A Fraatz and Ms F Forsyth of Counsel (each of these barristers had addressed different issues of liability risk), correspondence with the Defendants' solicitors Herbert Smith Freehills, Norton Rose Fullbright and Holman Fenwick Willian and the like. In addition both Ms Dellavedova and Ms Brown of Maurice Blackburn, reasonably in my view, attended at Court on 13 May 2015 to instruct Counsel.
109. In my view the index to the brief delivered to each of the barristers referred to above is a good indication of the work involved in preparing for the hearing on 13 May 2015. The index to the brief is noted as **Attachment K** to this report.
110. It is clear that costs for all of the work done over the period 1 May 2015 to 27 May 2015 have been claimed in accordance with the hourly rates detailed in the relevant Costs Agreement as amended on 26 October 2014. Whilst there is some suggestion in interstate caselaw that there is inherent scope for error in time costing (see the decision of the Supreme Court of Queensland in *Re Morris Fletcher & Cross' Bills of Costs* [1997] 2 Qd.R 228) I am not certain that observation should be fairly applied to this matter – it seems to me that the observation was made in the context of the facts of the particular case in an era when time costing was not the usual or common method of charging legal costs. In any event, having now completed a "line by line" assessment of the work noted as done in the bill of costs/tax invoice for the period 1 May 2015 to 27 May 2016, which claims the sum of \$185,280.96 inclusive a

25% uplift and inclusive of GST for professional charges, I am of the view that the amount claimed, including the uplift, is reasonable.

111. In respect of disbursements, according to the bill of costs/tax invoice for the period 1 May 2015 to 27 May 2016 the total of disbursements incurred between 1 May 2015 and 31 May 2016 was \$249,169.51 inclusive of GST where appropriate comprised as follows :

- (a) \$62,606.25 for Mr R Attiwill QC including uplift fees;
- (b) \$68,850.00 for Ms F McLeod SC including uplift fees
- (c) \$35,690.62 for Ms M Szydzik of Counsel including uplift fees;
- (d) \$12,656.00 for Mr A Fraatz of Counsel including uplift fees;
- (e) \$15,390.00 for Ms F Forsyth of Counsel including uplift fees;
- (f) \$5,459.52 to Law in Order Pty Ltd for electronic document processing charges;
- (g) \$422.35 to Morgan Consulting Australia Pty Ltd for the transcription charges;
- (h) \$519.68 to Victorian Transcript Services Pty Ltd for the transcript fees;
- (i) \$880.00 to NuLegal for web-hosting fees;
- (j) \$8,680.68 to e.law International Pty Ltd for web-hosting fees;
- (k) \$27,500.00 to the Australian Legal Costing Group for expert report fees
- (l) \$3,073.47 to RMCG for expert witness fees;
- (m) \$2,062.50 to The University of Melbourne for statistical consulting;
- (n) \$4,840.00 to RMIT University for expert witness consulting; and
- (o) miscellaneous disbursements being in-house photocopying, cabcharge, courier and search agent's charges totalling \$538.44 inclusive of GST.

112. A number of small disbursements included in the bill of costs/tax invoice for the period 1 May 2015 to 27 May 2015 had not been provided to Ms Dealehr and consequently they had been omitted from her report. Nevertheless those disbursements are recoverable and they are, in my view, reasonable.

113. In addition, at paragraph 94 of his Affidavit of 16 March 2016 Mr Watson deposes to the position in respect of two larger disbursements included in the bill of costs/tax invoice, these being the University of Melbourne account for statistical consulting and the RMIT account for expert witness consulting. I have reviewed those accounts and am satisfied that they should be allowed as claimed.

114. In respect of the hourly and daily rates marked by Mr R Attiwill QC, Ms F McLeod SC, Ms M Szydzik, Mr A Fraatz and Ms F Forsyth of Counsel over the period 1 May 2015 to 27 May 2015 I agree with and adopt the matters canvassed by Ms Dealehr at paragraphs 144, 145 and 149 of her report. In respect of the reasonableness of the fees marked by each of Mr R Attiwill QC, Ms F McLeod SC, Ms M Szydzik, Mr A Fraatz and Ms F Forsyth of Counsel over

the relevant period I have examined the feeslips of each barrister in detail and conclude that the fees marked for the work done are reasonable and accordingly no reduction is warranted.

115. As to the remainder of the disbursements claimed for the period 1 May 2015 to 27 May 201 I have examined the copy accounts provided and am of the view that they were reasonably incurred and are reasonable in amount.

CONCLUSIONS

116. Having regard to the matters canvassed in this report and the reasons expressed in paragraphs 16 to 50 and 70 to 76 above the quantum of the Administrator's costs claimed in the bills of costs/tax invoices covering the period 1 May 2016 to 30 September 2016 is reasonable.
117. Having regard to the matters canvassed in this report and the reasons expressed in paragraphs 16 to 34, 51 to 69 and 77 above the quantum of disbursements claimed in the bills of costs/tax invoices covering the period 1 May 2016 to 30 September 2016 is reasonable.
118. Further, having regard to the matters canvassed in paragraphs 78 to 91 above I am of the opinion that the estimate of the Administrator's likely costs and disbursements for the period 1 October 2016 to 31 January 2017 is a reasonable estimate.
119. In addition, having regard to the matters canvassed in paragraphs 92 to 95 above I am of the opinion that the proposed transfer payment and the arithmetic calculations underlying it are reasonable.
120. Finally, having regard to the matters canvassed in paragraphs 96 to 115 above I am of the opinion that the Plaintiff's reasonable legal costs and disbursements of the proceeding for the period 1 May 2015 to 27 May 2015 should be allowed as claimed.
121. Should however the Court require any further information or analysis I would of course be most pleased to oblige.

DATED : 21 November 2016



JOHN D WHITE