

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION

No. SCI 2012 4538

BETWEEN:

KATHERINE ROWE

Plaintiff

and

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

Defendants

(by original proceeding)

AND BETWEEN:

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

Plaintiff by Counterclaim

And

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

Defendants by Counterclaim

(by counterclaim)

AFFIDAVIT OF ANDREW JOHN WATSON

Date of Document: 12th September 2016

Filed on behalf of: The Plaintiff

Prepared by:

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Ref: AW/3052534

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

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

2. I make this affidavit from my own knowledge unless otherwise stated. Where statements are not made from my own knowledge, they are made to the best of my information and belief after due enquiry and I have set out the source of my information.
3. I make this affidavit for the purpose of:
 - (a) providing the Court with an update in relation to the progress made in establishing the processes and mechanisms for the assessment of group member claims under the Settlement Distribution Scheme (**SDS**);
 - (b) providing the Court with an update in relation to the number of assessments completed and/or underway;
 - (c) providing the Court with an update in relation to work performed by the Scheme Administrator and the Settlement Distribution Scheme team (**SDS Team**);
 - (d) providing the Court with an update in relation to interim payments;
 - (e) providing the Court with an update in relation to group member communications;
 - (f) applying to the Court for the SDS to be amended so as to specify that where an error has been identified by an assessor after an assessment has been issued, the assessment can be corrected and an amended assessment re-issued; and
 - (g) applying to the Court for the SDS to be amended so as to specify that where a group member provides an election in writing to waive a right to review an assessment, that group member will be bound by such election.

A handwritten signature in blue ink, appearing to read 'R. G. J. M. K. D. J.', is located in the bottom right corner of the page.

PERSONAL INJURY AND DEPENDENCY CLAIMS

A. OVERVIEW OF THE PERSONAL INJURY AND DEPENDENCY CLAIMS ASSESSMENT PROCESS

4. As at 8 September 2016, there are in total 425 personal injury and dependency group members.
5. The steps being taken to assess each of these 425 personal injury and dependency claims and to address bottlenecks identified in the assessment process are detailed in my previous affidavits dated 16 March 2016 and 16 June 2016.

B. THE SDS TEAM

6. Since the last Case Management Conference (**CMC**), the following changes have been made to the SDS Team:
 - (a) Fraser Argus, Business Analyst, has been employed on a full time basis in the SDS Team to develop and maintain the IT requirements needed to prepare for settlement distribution. Approximately one third of his time is directed towards the Murrindindi Settlement Administration.
7. The SDS Team members who are responsible for the administration for personal injury and dependency claims assessment under the SDS in this proceeding is currently comprised of:
 - (a) Andrew Watson, Scheme Administrator. Approximately 5 per cent of his time is directed towards the Murrindindi settlement administration.
 - (b) Kimi Nishimura, Senior Associate, engaged three days per week. Approximately 50 per cent of her time is directed towards the Murrindindi settlement administration.
 - (c) Elizabeth Mukherji, Senior Associate, engaged three days per week. Approximately 50 per cent of her time is directed towards the Murrindindi settlement administration.



- (d) Simba Makoni, Associate, engaged on a full-time basis. Approximately 40 per cent of his time is directed towards the Murrindindi settlement administration.
- (e) Megan Greaves, Lawyer, engaged on a full time basis. Approximately 40 per cent of her time is directed towards the Murrindindi settlement administration.
- (f) Timothy Dionyssopoulos, Principal, engaged on a full time basis. Approximately 40 per cent of his time is directed towards the Murrindindi settlement administration.
- (g) Patricia McMullan, Associate, engaged on a full time basis. Approximately 40 per cent of her time is directed towards the Murrindindi settlement administration.
- (h) Seven paralegals working an equivalent of 5 full time positions. Approximately one third of their time is directed towards the Murrindindi settlement administration.
- (i) Four full time administrative assistance. Approximately one third of their time is directed towards the Murrindindi settlement administration.

C. CHANGES TO THE TEAM OF ASSESSORS

8. I refer to paragraph 8 of my affidavit dated 16 June 2016. Since the swearing of that affidavit no changes have been made to the team of assessors and all remaining group members have attended a conference with an assessor.

D. SUMMARY OF ASSESSMENT PROCESS TO DATE

9. As at 8 September 2016, 382 of the 425 registered personal injury and dependency group members are proceeding with the assessment of their claim. The remaining 43 group members have either instructed us that they do not wish to proceed with their claim or are uncooperative. Of the 382 group members proceeding with the assessment of their personal injury and dependency claims:
- (a) 382 detailed personal injury questionnaires have been completed which equates to 100 per cent of registered personal injury and dependency group members.



- (b) 382 group members have attended a conference with assessing counsel which equates to 100 per cent of registered personal injury and dependency group members.
- (c) 2 Notices of Assessments and Statements of Reasons are currently outstanding from assessing counsel. The SDS Team is in regular contact with the assessors who have assessments outstanding and are confident based on their discussions with the assessors that the remaining assessments will be returned by the end of September 2016.
- (d) 380 Notices of Assessments and Statements of Reasons have been received from assessing counsel to date and 8 are currently being reviewed by the SDS Team.
- (e) 372 Notices of Assessments and Statements of Reasons have been reviewed by the SDS Team and have been sent to group members.
- (f) 6 requests for review have been received from group members to date. Of these, 3 are quantum reviews and 3 are threshold reviews. 1 of the 3 quantum reviews has been determined, being in favour of the group member. 2 quantum reviews remain to be determined by reviewing counsel. 1 of the 3 threshold reviews has been determined, being in favour of the group member. 2 threshold reviews remain to be determined by a medicolegal specialist.

E. CHANGES TO THE ASSESSMENT PROCESS

10. Data in relation to the assessment process is reviewed by senior SDS Team members on an approximately weekly basis in order to identify as early as possible any significant delays or potential delays in the assessment process. As a result, since the last CMC, we have made the following changes to the assessment process:

Outstanding Further Material

11. As at 8 July 2016 the SDS team stopped the process of pursuing further material that remained outstanding. The majority of further material that remained outstanding at this date had been outstanding for an extended period of time and multiple requests had been made by mail, phone and email to obtain the material.



12. The SDS team consulted with assessing counsel regarding the need for the outstanding further material. In all but a small number of instances, assessing counsel formed the view that they were able to complete the assessment without the further material.
13. If assessing counsel formed the view they were unable to make a threshold assessment without obtaining further material that could not be obtained, medico-legal assessments were arranged.
14. In the case of outstanding taxation documents, group members were given an opportunity to obtain this information from another source if we were unable to obtain them directly from the ATO.

F. ASSESSORS WITH A LARGE BACKLOG OF ASSESSMENTS AND/OR LONG OUTSTANDING ASSESSMENTS:

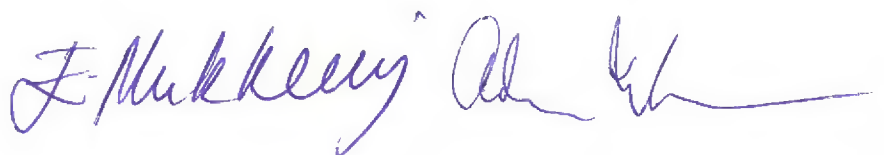
15. I refer to the confidential exhibit to my affidavit of 22 March 2016 and 20 June 2016 which identified assessing counsel who had as at that date a large backlog of outstanding assessments and / or long outstanding assessments. Since the June CMC those assessors identified have now submitted all of those outstanding assessments.
16. Based on assessing counsels' advice, the SDS Team is confident that all current outstanding assessments will be submitted by the end of September 2016.

G. GROUP MEMBERS WHO HAVE INSTRUCTED THEY DO NOT WISH TO PROCEED

17. There are 38 personal injury or dependency claim group members who have instructed the SDS Team that they do not wish to proceed with their personal injury claims. All of these group members have had their instructions confirmed in writing and have been provided with nil assessments.

H. UNCOOPERATIVE GROUP MEMBERS

18. There are five group members who have refused to provide instructions or information necessary to have their claims assessed. The SDS Team has reviewed each of these files and determined that sufficient attempts were made via telephone, email and post to try and obtain the necessary instructions. Each of these group members was sent correspondence giving them an opportunity to



meet with an assessor to discuss their claim but did not respond to such correspondence.

19. Of the five uncooperative group members, one group member had minimal documentation on file and was assessed by an assessor on the basis of the documentation on file. The remaining four group members did not have any documentation on file and as such were issued with nil assessments by the Scheme Administrator.
20. All assessments issued to uncooperative group members were sent via registered post. One of these assessments was returned to sender. We have completed a recent search of the Australian Electoral Commission roll and we have no alternative contact details for this group member. The review period for this assessment has now lapsed and the SDS Team does not propose to take any further steps in relation to this group members' claim.

I. STEPS TAKEN TO PREPARE FOR DISTRIBUTION

21. In order to prepare for final distribution the following processes are now being undertaken:

Updated Personal Injury Brochure (Section D and Attachment D)

22. Section D and Attachment D of the Personal Injury Brochure has been updated and sent to all group members. The purpose of this update was to:
 - (a) Inform group members of developments in the arrangements reached with various third parties and statutory bodies regarding deductions and repayments which may apply to group members' settlement monies.
 - (b) Request that group members advise the SDS Team of any recent bushfire-related medical treatment funded by a private health insurer in order to enable the SDS Team to obtain updated repayment information on their behalf.
 - (c) Request that group members advise the SDS Team of any previously undisclosed third party interests in their anticipated settlement monies.

The Victorian WorkCover Authority, the Transport Accident Commission & the Country Fire Authority

23. The SDS Team has formalised agreements with the Victorian WorkCover Authority, the Transport Accident Commission and the Country Fire Authority. These agreements provide that group members who received statutory benefits will retain those benefits and that they will be offset in their assessment of damages under the bushfires settlement. The SDS Team has been in contact with each of these authorities to advise them that we anticipate that final distribution will occur towards the end of this year or early next year. The SDS Team has commenced preparing to undertake the steps required under each of these agreements.

Centrelink

24. The SDS Team has been working closely with the Department of Human Services (Centrelink) to develop procedures so as to ensure that any payments made to group members are not delayed by Centrelink's processes for calculating preclusion periods and paybacks. To this end:

- (a) The SDS Team has provided Centrelink with an updated list of group members to enable Centrelink to identify all group members they have an interest in.
- (b) The SDS Team will notify Centrelink of the anticipated final distribution payments to such group members.
- (c) Centrelink will provide the SDS Team with a list of applicable preclusion periods and any paybacks arising as a result of the interim payments and/or anticipated final distribution payments.
- (d) The SDS Team will communicate Centrelink's advice to the group members and provide information regarding their rights to seek a review of Centrelink's determination regarding the calculation of preclusion periods and payback amounts.
- (e) The SDS Team will withhold and repay any paybacks calculated by Centrelink from applicable group members' final distribution payments.



25. Consistent with the procedures agreed to, the SDS Team regularly provides Centrelink with information regarding interim payments made to any relevant group members. Centrelink regularly determines repayments and preclusion periods applying to affected group members as a result of such interim payments. Any payback amount arising from an interim payment is made to Centrelink from the group members' assessed losses by the Scheme Administrator. Group members are advised of Centrelink's decisions regarding payback amounts and preclusion periods and their rights to review such determinations.

Private Health Insurers

26. We have obtained repayment information from identified private health insurers throughout the assessment process. The SDS Team is continuing to work with group members and private health funds to ensure accurate repayment figures are obtained prior to distribution.
27. The SDS Team is presently in discussions with some of the major private health insurers with a view to determining whether they will accept repayment figures which are proportionately reduced to reflect group members' recovery.

Department of Veteran's Affairs (DVA)

28. The SDS Team has been in contact with the Department of Veterans' Affairs (DVA) regarding individual group members' claims over the course of the Kilmore and Murrindindi settlement administration processes.
29. In the early part of this year, the SDS Team engaged with the DVA with a view to streamlining the treatment of DVA claimants. In response to repeated attempts by the SDS Team, the DVA has evidenced a reluctance to engage in discussions about reaching an agreement regarding all DVA claimants.
30. In response to our enquiries, the DVA has indicated:
- (a) The effect of an award of compensation from the Distribution Sum will vary from group member to group member. Individual paybacks, preclusion periods and the ability to make elections depend upon which DVA statutory schemes apply to a group member, the nature of the group member's DVA and bushfire-related injuries and the specifics of the group member's assessment under the SDS.

- (b) The determination of the effect of such awards is handled by multiple different DVA departments and locations. The specific department(s) and location(s) will vary from group member to group member, depending upon where he or she lives and the DVA scheme(s) which apply to that group member.
 - (c) The DVA is very busy. Affected group members' claims will be processed by the relevant department and location but are not being prioritised.
31. In addition to our direct communications with the DVA, we have received advice from various group members that includes that the DVA has said it is not sure at this point in time what effect the settlement distribution will have on a particular group member's DVA entitlements.
32. In order to ensure that the DVA position in relation to individual group members can be determined as swiftly as possible, the SDS Team has provided the DVA with:
- (a) the details of the known affected group members;
 - (b) DVA-specific signed consent forms in relation to the 2 affected group members who have consented to us dealing with the DVA;
 - (c) with details of the assessed losses and likely in hand amount for consenting affected group members on a rolling basis as these have been returned by assessing counsel.
33. Based on the SDS Team's communications with the DVA, and the advice received by such group members, it is apparent that the DVA issues are complex and that they are unlikely to be resolved in the short-term. Rather, the effect of settlement distribution on each affected claimant will need to be determined on a case-by-case basis once the final in-hand amount for such claimants is known. Further, it appears likely that the DVA may take some time to consider and finalise its position in relation to all such group members.
34. It is possible that upon resolution by the DVA of these issues, some affected group members may have an option to elect not to receive compensation under the SDS for some or all of their assessed losses. Senior members of the I-D SDS Team who are familiar with the affected claims and claimants consider it unlikely that any such group member will so elect.




35. In order to ensure that final distribution to all I-D claimants is not delayed by the DVA's consideration of these issues, I propose to treat the assessed losses for the affected group members as final, notwithstanding the possibility that such group members may ultimately elect not to take a portion of such losses. In the event that any residual amount is left in the I-D Distribution Fund as a result of such election, I propose that:
- (a) If the amount is less than or equal to \$30,000, and the ELPD Distribution Fund has not yet been distributed, such amount be treated as part of the ELPD Distribution Fund.
 - (b) If the amount is less than or equal to \$30,000, and the ELPD Distribution Fund has been distributed, such amount be donated to the Red Cross.
 - (c) If the amount exceeds \$30,000, the treatment of such amounts be determined by way of further Court order.

IT reporting and infrastructure

36. The SDS Team has been working with Maurice Blackburn's IT department to ensure that the reporting and infrastructure systems are ready for final distribution. This includes:
- (a) the development of various reports to assist with the auditing processes discussed below; and
 - (b) implementing various configuration changes to the Matter Centre client database to ensure that data is being accurately captured.

Auditing processes

37. The SDS Team is currently in the process of undertaking an internal audit of all data relevant to final distribution. The audit has been broken into the following sub audits:
- (a) Assessment Data – the purpose of this audit is to ensure that the assessment data contained in the Notice of Assessment sent to the group member matches the assessment data in the Matter Centre client database. This audit is necessary to ensure that where such data has been manually



entered no data entry error has occurred and that where such data has been imported via an automatic tool no importing error has occurred;

- (b) Third Party Audit – the purpose of this audit is to ensure consistency in the application of the various statutory schemes and the SDS by assessing counsel and the consistency of such assessments with any agreements reached with such statutory authorities;
- (c) Centrelink – the purpose of this audit is to ensure that any repayment figure and preclusion period recorded in the Matter Centre client database matches the most recent data provided by Centrelink;
- (d) Private health insurance – The purpose of this audit is to ensure that the repayment figure contained in the Matter Centre client database reflects the figure in the most up to date Notice of Charge provided by the private health insurer;
- (e) Senior Master’s Office (SMO) - The purpose of this audit is to ensure that all group members under a legal disability are accurately recorded in the Matter Centre client database and that all steps required under the SDS have been taken in relation to such claimants. This audit is also designed to ensure that any claimants who are no longer minors / under a legal disability are removed from the SMO processes;
- (f) Reviews – The purpose of this audit is to ensure that any changes to assessment figures and bond payments made in relation to a review are accurately recorded in the Matter Centre client database and to ensure that where necessary all bond refunds have been processed;
- (g) Dependency claims - The purpose of this audit is to ensure that all dependency claims have been accurately recorded in the Matter Centre client database;
- (h) Undertakings – The purpose of this audit is to ensure that where necessary undertakings to third parties regarding payment of settlement money have been recorded correctly in the Matter Centre client database;
- (i) Interim Payments – The purpose of this audit is to ensure that all interim payment amounts are accurately recorded in the Matter Centre client database;



- (j) Not Proceeding / Uncooperative Assessments – The purpose of this audit is to ensure that appropriate steps have been taken for all group members in these categories and that these steps have been accurately recorded in the Matter Centre client database;

38. The SDS Team expects to have this internal audit completed by September 2016.

External review of assessment data

39. I refer to paragraph 107 of my affidavit dated 16 June 2016 in which I stated that I intended to engage an external consulting firm to audit the proposed schedule of payments to ensure its accuracy prior to final distribution occurring.

40. On 15 July 2016, Senior Members of the SDS Team met with Maurice Blackburn's auditors, KPMG, to discuss this potential audit. During the meeting:

- (a) Senior SDS Team members detailed the assessment process for both I-D and ELPD claims to KPMG and explained that the purpose of the proposed audit was to ensure that each proposed payment was referable to an assessment made under the Settlement Distribution Scheme.

- (b) The representatives from KPMG stated their view that given the requirements described, the exercise would be best undertaken as an "agreed-upon procedures" engagement. Such engagements are governed by the ASRS 4400.

41. Following this meeting, KPMG agreed to draft the proposed agreed-upon procedures for review by the SDS Team. A set of draft procedures and draft terms of engagement were provided to the SDS Team on 28 July 2016. These draft documents made it clear that the process as envisaged by KPMG would result in a document which Maurice Blackburn could not disclose to any other party.

42. On 5 August 2016, we wrote to KPMG requesting confirmation that the findings made by KPMG could be disclosed to the Court and to group members. Since this time, the SDS Team has engaged in a series of communications with KPMG regarding the release of the proposed report. The outcome of these discussions is that it is likely that an appropriately-qualified KPMG employee will undertake the review as an expert witness.



J. ESTIMATED COMPLETION

43. Based on the information set out in this affidavit, the SDS Team remains confident that the distribution of settlement monies will take place in the final quarter of 2016, or in the first quarter of 2017.

ECONOMIC LOSS AND PROPERTY DAMAGE (ELPD) CLAIMS**A. THE SDS TEAM**

44. The SDS Team members who are responsible for the administration of ELPD claims assessment under both the Murrindindi SDS and under the SDS in this proceeding is currently comprised of:
- (a) Andrew Watson, Scheme Administrator. Approximately 5% of his time is directed towards the Murrindindi settlement administration.
 - (b) Kimi Nishimura, Senior Associate, engaged three days per week. Approximately 50 per cent of her time is directed towards the Murrindindi settlement administration.
 - (c) Helen Leaf, Senior Associate, engaged on a part-time basis. Approximately 30 per cent of her time is directed towards the Murrindindi settlement administration.
 - (d) Claire Brown, Associate, engaged on a full-time basis. Approximately 30 per cent of her time is directed towards the Murrindindi settlement administration.
 - (e) Kate McFarlane, Associate, engaged on a full-time basis. Approximately 30 per cent of her time is directed towards the Murrindindi settlement administration.
 - (f) Samantha Camilleri, Lawyer, engaged on a full-time basis. Approximately 30 per cent of her time is directed towards the Murrindindi settlement administration.
 - (g) Roisin Lyng, Lawyer, engaged on a full-time basis. Approximately 30% of her time is directed towards the Murrindindi settlement administration.



- (h) Justin Boyd, Trainee Lawyer, engaged on a full-time basis. Approximately 40 per cent of his time is directed towards the Murrindindi settlement administration.
- (i) 13 paralegals working an equivalent of 10.6 full time positions. Approximately one of their time is directed towards the Murrindindi settlement administration.
- (j) Laura Opperman, Data Analyst, engaged three days per week. Approximately 30 per cent of her time is directed towards the Murrindindi settlement administration.

B. ROLE OF THE ELPD SDS TEAM

45. Since the last CMC, the ELPD SDS Team has made significant progress in issuing Final Notices of Assessment. In order to assist with the increased workload associated with reviewing and issuing Final Notices of Assessment, the following changes have been made to the ELPD SDS Team:

- (a) Samantha Camilleri, Lawyer, has joined the ELPD SDS Team on a full-time basis;
- (b) Roisin Lyng, Lawyer, has joined the ELPD SDS Team and approximately 95% of her full-time capacity is directed towards both the Kilmore and Murrindindi settlement administrations;
- (c) An additional four part-time paralegals have been employed; and
- (d) The ELPD SDS Team is currently recruiting for a further full-time lawyer to assist with the issuing of Final Notices of Assessment.

46. The roles of paralegals and lawyers on the ELPD SDS team are outlined in paragraphs 35 and 36 of my affidavit sworn on 16 June 2016.

C. SUMMARY OF ELPD ASSESSMENT PROGRESS TO DATE

Allocation to ELPD loss assessors

47. As at 9 September the following mix of properties have been allocated for assessment:

- (a) 100% of properties with an above-insurance claim have been allocated for assessment to the ELPD Assessors; and
- (b) 100% of properties which involve the assessment of subrogated-only claims have been allocated for assessment to ELPD Assessors.

PNOAs completed as at 29 August 2016

48. As at 29 August, as reported to the SDS Team by ELPD Loss Assessors approximately 71% of Provisional Notices of Assessment (**PNOAs**) have been completed. The completed PNOAs are comprised of:
- (a) PNOAs which have been or are ready to be issued to above-insurance group members. There are approximately 460 PNOAs which fall within this category; and
 - (b) PNOAs which assess subrogated-only losses. There are approximately 270 PNOAs which fall within this category.

PNOAs issued to above-insurance group members

49. I refer to my affidavit dated 16 March 2016 regarding the progress of the preparation of PNOAs, as well as my affidavits dated 9 October 2015 and 18 March 2016 filed in the Kilmore proceeding.
50. As at 29 August 2016, approximately 61% of PNOAs have been issued to group members.
51. Pursuant to E4.2 of the SDS, a group member then has 14 days to consider the PNOA, and identify any errors or omissions. If a group member wishes to raise any errors or omissions with their PNOA, they are directed to deliver to the ELPD Assessor a written statement outlining the error or omission (**Dispute Notice**).
52. The PNOAs are accompanied by a pro forma letter, Dispute Notice and brochure drafted by the SDS Team which explain how to interpret the PNOA and advise group members of their rights under the SDS.
53. The ELPD Assessors have received only a small number of Dispute Notices in response to the PNOAs which they have issued to date, being approximately 10% of all PNOAs issued to date. The ELPD Assessors have reviewed all such



Dispute Notices received to date and in approximately 94% of such cases (about 7% of assessments overall), the ELPD Assessors have revised their assessment to accommodate the new information received from the group member by way of Dispute Notice.

PNOAs assessing subrogated-only losses

54. The ELPD Assessors have a larger number of outstanding assessments which involve the assessment of subrogated-only losses. The ELPD assessors have been instructed to prioritise the assessment of properties involving the assessment of above-insurance properties as such claims require ELPD Assessors to consult with group members about their uninsured losses and are more time-intensive to complete. It is anticipated that once the PNOAs assessing above-insurance losses are complete it will not take long for the ELPD assessors to finalise these PNOAs.
55. To date, no PNOAs have been issued to any insurers in this proceeding. The ELPD SDS Team will commence issuing tranches of PNOAs this month to the insurers.
56. The process for issuing PNOAs for subrogated-only losses was outlined broadly in my affidavit dated 16 June 2016. Section E4.2 of the SDS contemplates that the ELPD Assessor will deliver a PNOA directly to the ELPD claimant. In order to facilitate the process of issuing PNOAs to insurers in the most efficient way possible, I have instructed ELPD Assessors to provide PNOAs pertaining to subrogated claims directly to the ELPD SDS Team. The SDS Team will collate these claims by insurer and issue a single PNOA to each insurer on behalf of multiple ELPD Assessors. The PNOA for insurers contains:
 - (a) The loss address as recorded by the SDS Team and confirmed by the ELPD Assessor;
 - (b) The loss address originally registered by the insurer;
 - (c) The insured's name;
 - (d) The identity of the ELPD Assessor who assessed each registered subrogated claim;



- (e) The amount registered by the insurer in this proceeding in accordance with Order 4 of the class closure orders dated 4 March 2014 as varied by Order 2 of the orders dated 30 May 2014; and
 - (f) The assessed amount.
57. Should an insurer identify an error or omission with any of the ELPD claims assessed, they have 14 days to deliver a statement with an explanation of the perceived error or omission. We will ask insurers to deliver notice of any dispute to the ELPD SDS Team with the following:
- (a) A summary spreadsheet indicating all ELPD claims affected by a perceived error or omission; and
 - (b) A written statement for each ELPD claim which affected by a perceived error or omission.
58. The ELPD SDS Team will then deliver the above information to the relevant ELPD Assessor for investigation.
59. In the course of assessing subrogated claims, the ELPD Assessors and the ELPD SDS Team have identified a number of instances where insurers failed to accurately register payments made to their insured at the time of class closure. In the Kilmore proceeding we have also identified a number of subrogated claims where the total assessed value exceeds the amount registered by the insurer. In these instances, the PNOA issued to the insurer limits the assessment to the amount as registered. The same limitation will be applied to subrogated claims registered in this proceeding.

Anticipated timeline for issuing of remaining PNOAs

60. Senior members of the ELPD SDS Team are in daily contact with the ELPD Assessors regarding the completion of the remaining PNOAs. Based on recent discussions with the ELPD Assessors, we estimate that the remaining PNOAs will be issued by mid to late October.

Progress of issuing finalised assessments

61. As at 7 September 2016, the SDS Team estimates it has received finalised assessments for 39% of properties with an above insurance claim.



62. The procedure developed by the ELPD SDS Team for issuing FNOAs is set out in extensive detail in paragraphs 47 to 60 of my affidavit dated 16 June 2016.
63. In paragraphs 65 to 69 of my affidavit dated 17 June 2016 filed in the Kilmore proceeding, I alerted the Court to the unexpectedly high number and technically complex nature of the errors encountered by the ELPD SDS Team in the course of the initial check and software review process which were causing delays to the process of issuing FNOAs in that proceeding. These errors largely fall into two categories: minor data or administrative errors, or more substantive errors potentially affecting the value of the assessment. We anticipate that the ELPD SDS Team will encounter errors of a similar nature and distribution in the process of issuing FNOAs in this proceeding.
64. Since the 21 June 2016 CMC, we have increased ELPD SDS Team resourcing and refined our existing processes to increase FNOA throughput and reduce delays caused by the investigation and correction of the issues identified in the assessments.
65. The ELPD SDS Team recently commenced issuing FNOAs to group members in this proceeding. As at 7 September 2016, the SDS Team has issued Final Notices of Assessment to a small number of properties with an above insurance claim, resulting in 42 members having now been issued with Final Notices of Assessment. In addition to this, the ELPD SDS Team is preparing to send out additional FNOAs to an estimated 82 properties. By the end of next week, the ELPD SDS Team anticipates that 17% of FNOAs will have been sent.
66. In light of the increased resourcing and refinement of these processes, the ELPD SDS Team estimates that it will be able to finalise sending out Final Notices of Assessment by early November.
67. In order to assist the SDS Team to achieve the above timeframe, the SDS Team is recruiting an additional solicitor to increase the volume of FNOAs being reviewed by the SDS Team.

Minor data or administrative errors identified by ELPD SDS Team in process of issuing finalised assessments

68. The SDS Team are currently reviewing assessments in accordance with the processes discussed above and detailed in paragraphs 47 to 60 of my affidavit



dated 16 June 2016. Based on comparable data from the SDS Team's review of Kilmore assessments, we anticipate that 56% of assessments will be affected by minor data or administrative errors. Whilst these errors might be minor in the sense that they can be corrected relatively easily it is important that they be corrected in order to ensure that the correct claimant receives the correct payment when the settlement funds are distributed.

69. The ELPD SDS Team reviews every error detected by the First Upload software and initiates appropriate steps to rectify the error. These errors are typically minor in nature and relatively straightforward to correct: for example, rectifying typographical errors in a group member's name, correcting an incorrectly transcribed Matter Centre ID, or checking that every claim registered for the address which is the subject of the assessment has been assessed within the file. As referred to at paragraph 70 of my affidavit dated 7 September 2016 filed in the Kilmore proceeding, the SDS Team is also checking to whether any assessments have been affected by a template formula error.

Substantive errors identified by ELPD SDS Team in process of issuing finalised assessments

70. In the process of issuing finalised assessments, the SDS Team anticipates, based on their experience in the Kilmore proceeding that a very small number of assessments may contain errors which affect assessment values. In the Kilmore proceeding, approximately 3% of assessments have been affected by such errors.
71. Further information regarding these errors is contained at paragraphs 110 to 117 below in support of my application to amend the SDS.

D. ELPD REVIEW PROCESS

72. Under section E5.1 of the SDS, group members may request a review of the FNOA within 42 days after the date shown on the assessment.
73. Under section E5.3 of the SDS, where a request for review has been received, I must give notice to the group member seeking the review and providing 21 days to provide materials in support of the review application.
74. To date, no application for review has been received in respect of any issued FNOA.



E. WEEKLY MONITORING OF ELPD ASSESSORS

75. ELPD Assessors continue to submit weekly progress reports in accordance with paragraph 73 of my 16 June 2016 affidavit.
76. We have identified some discrepancies between the total number of PNOAs uploaded to Collaborate and the numbers as reported by certain ELPD Assessors. The ELPD SDS Team is working with those ELPD Assessors to reconcile these discrepancies.

F. INCENTIVE PAYMENTS TO EXISTING ELPD ASSESSORS

77. In my 16 June 2016 affidavit I outlined the proposed conditional rate increase payment offered to Hall & Wilcox and Crawfords should they meet specified stretch targets. A similar offer was made to RMCG after this affidavit was filed.
78. The invoices for the specified four-week cycles are still being received and reviewed by the ELPD SDS Team and to date no incentive payments have been made to Hall & Wilcox, Crawfords or RMCG.

G. ELPD ASSESSOR AUDIT

79. I refer to paragraphs 76 to 80 of my affidavit dated 9 October 2015 and paragraphs 86 to 90 of my affidavit dated 17 June 2016 filed in the Kilmore proceeding which describes the ELPD Assessor audit procedure established by the ELPD SDS Team to ensure that group members are being assessed on a consistent basis, regardless of which ELPD Assessor is conducting the assessment.
80. In addition to these steps, we routinely correspond with ELPD Assessors regarding the nature of any assessment errors encountered and direct ELPD Assessors to take any steps identified as necessary to improve their internal quality assurance processes. Now produced and shown to me marked 'AJW-1' are copies of our correspondence to ELPD Assessors dated 21 April 2016 and 15 July 2016.
81. Since the 21 June 2016 Case Management Conference, we have undertaken an additional spot audit of assessments prepared by ELPD Assessors. Each ELPD Assessor was directed to provide the ELPD SDS Team with 10 PNOAs that were ready for issue to group members registered in the Kilmore proceeding. We



conducted a review of these PNOAs to ensure that they were consistent with the SDS and all instructions previously provided to ELPD Assessors prior to issuing. The audit detected some minor errors and we provided detailed feedback to each ELPD Assessor.

82. I refer to paragraph 68 of my 16 June 2016 affidavit regarding the appointment of Cunningham Lindsey as an additional ELPD Assessor. Since this affidavit, we have allocated properties to Cunningham Lindsey for assessment pursuant to both the Kilmore and Murrindindi SDS. We have also audited a set of assessments prepared by the Cunningham Lindsey prior to any PNOAs being issued. This audit detected a number of issues requiring rectification before they could be issued. As a consequence, all assessments completed by Cunningham Lindsey are currently being reviewed by the ELPD SDS Team prior to being issued to group members. We anticipate that this will significantly reduce the time required to prepare these assessments for issuing as FNOAs once they are finalised and uploaded to Collaborate by Cunningham Lindsey.
83. I refer to paragraph 81 of my affidavit dated 9 October 2015 filed in the Kilmore proceeding regarding the engagement of Mr David Geddes, the director of an independent management consultancy specialising in plantation forestry, to assess registered forestry and plantation losses. As at 9 September 2016, 8plantation and forestry claims have been allocated to Mr Geddes for assessment. The ELPD SDS Team is auditing all assessments completed by Mr Geddes prior to any PNOAs being issued. For many loss addresses which involve plantation or forestry losses, there are also additional subrogated and above insurance claims which have been assessed by other ELPD Assessors. The audit process includes the review of all assessments completed per loss address to confirm that no losses have been double-counted or inadvertently excluded by Mr Geddes or the relevant ELPD Assessor. As at 9 September 2016, the ELPD SDS Team has completed audits of 8 plantation and forestry assessments and returned these assessments to Mr Geddes for issuing to claimants.

H. ESTIMATED DURATION

84. Senior members of the ELPD SDS Team continue to closely monitor the progress of the ELPD loss assessments and the performance of each of the ELPD Assessors. Based on recent discussions with the ELPD Assessors, we anticipate that the remaining assessments will be issued as PNOAs by mid to late October



and that all Final Notices of Assessment will be completed by early November. The SDS team is doing all it can to advance these timelines if possible. It has become apparent that one of our newly engaged ELPD Assessors may not be able to complete all of their assessments in the timeframes referred to above. Hall and Wilcox have indicated they have additional capacity. We will consult with this ELPD Assessor, and if necessary, consider re-allocating assessments that have not yet been commenced. Given the small number of assessments this affects, we anticipate that this will not significant impact on the above timeframes, however the SDS Team are continuing to monitor the progress of each ELPD Assessor.

85. As noted above to date no group member has sought a review of a FNOA. The Settlement Distribution Scheme provides relatively generous periods in relation to seeking a review of FNOAs (42 days with a further 21 days to provide materials to the ELPD review assessor). If a very small number of group members exercise rights of review and (at least for those FNOAs issued in October and November 2016) exercise any rights of Review sufficiently early in the 42 day period it may still be possible to complete a distribution to ELPD claimants **late in 2016**. Such an outcome would also be dependent on finalisation of PNOAs and FNOAs within the timeframes described above, completion of internal and external audit processes (which can be commenced as soon as all FNOAs are issued), resolution of tax issues with the ATO and finalisation of cheques by an external mailing house. Otherwise I remain of the view that final distribution to property damage claimants will occur in **early 2017**.
86. In order to maximise the chance of a distribution at the earliest possible time I seek an amendment to the Settlement Distribution Scheme to facilitate an early election by ELPD claimants in relation to their review rights. This proposed amendment is set out at paragraph 110 below.

I. ELPD GROUP MEMBERS WHO HAVE INSTRUCTED US THEY DO NOT WISH TO PROCEED

87. As of 7 September 2016, 23 group members have advised the SDS Team that they do not wish to proceed with an ELPD claim for compensation.
88. These group members fall into two categories:
- (a) Group members who lodged an ELPD claim in error; and



- (b) Group members who have an ELPD claim but do not want to proceed.
89. As of 7 September 2016, the SDS Team has contacted 22 of these group members in order to explain the settlement process, ensure those group members are not overwhelmed by the process, to offer additional assistance where appropriate and to confirm the group member's instructions.
90. Following these calls, correspondence has been sent to 20 group members confirming their instructions that they do not wish to be assessed and allowing a period of time for them to change their instructions.
91. We have informed these group members that we will be issuing them with \$Nil assessments. To date, 20 \$Nil assessments have been issued.

J. UNCONTACTABLE GROUP MEMBERS

92. The SDS Team has identified a small number of ELPD claims where we have been unable to contact the relevant person. This may be for the following reasons:
- (a) The contact person's contact details are out of date; and/or
- (b) The contact person has since passed away.
93. There are presently 9 registered ELPD group members who are uncontactable. The SDS Team has sent a letter to the address of one of these group members, requesting that they contact Maurice Blackburn in relation to their claim. Australian Electoral Commission (AEC) records have been searched for one group member.
94. As at 7 September 2016, we have been unsuccessful in our attempts to contact one group member. In respect of this group member, I have determined that there is insufficient evidence on file to support a claim and have caused a \$Nil assessment to be issued to their last known address.
95. The additional investigations undertaken by the ELPD SDS Team in attempt to locate uncontactable group members are detailed in paragraph 96 of my affidavit dated 16 June 2016. We will conduct further investigations to locate the remaining uncontactable group members in the coming weeks.



LATE REGISTRANTS

96. I refer to paragraphs 109 to 113 my affidavit dated 16 June 2016 in relation to the consideration of applications for late registration to participate in this settlement distribution.
97. I have now considered the evidence of all late registration applicants.
98. In addition to the 66 accepted late registrants, a number of group members whose claims were intended to be covered by an existing registration have also been discovered in the process of reviewing the finalised ELPD assessments and registered pursuant to section A7.2 of the SDS.

INTERIM PAYMENTS

99. As at 7 September 2016, I have received 36 applications for interim payment on the basis of exceptional need pursuant to sections D1.4 and F1.4 of the SDS.
100. All of these applicants have been assessed as being eligible to receive compensation from the settlement sum.
101. I have considered all 36 applications for interim payments received to date. 35 of these group members have been successful in their applications for an interim payment and one has been unsuccessful.

SENIOR MASTERS OFFICE

102. I refer to paragraphs 120 to 122 of my affidavit dated 16 June 2016 in respect of the register of Order 15 Claimants and the process for facilitating approval of the assessments of Order 15 claimants by the Senior Master.
103. The SDS Team is currently completing an audit of the PI and ELPD Matter Centre client databases to ensure:
- (a) There is consistency between individuals marked as Order 15 claimants across these databases and that the register of Order 15 claimants is accurate;
 - (b) Any minors who have turned 18 or will turn 18 prior to distribution are removed from the register of Order 15 claimants; and



- (c) We have sufficient evidence on file (for example, medical reports, Enduring Powers of Attorney, and Guardianship Orders) supporting the lack of capacity for people identified as Order 15 claimants who are not minors.

ESTATE CLAIMS

104. As at 7 September 2016, we have identified 44 registered ELPD and/or PI claims made on behalf of estates. While a number of these claims were originally registered in the proceeding as estate claims, in the course of the assessment process we are continually identifying additional estate claims where group members have passed away.
105. The processes for managing the assessment of claims made by estates and the distribution of any compensation payable to estates were outlined in paragraphs 124 to 129 of my affidavit dated 16 June 2016.
106. As a general rule, if no grant of representation has been obtained at the time of settlement distribution, the compensation payable to the Estate will be held on trust by Maurice Blackburn in accordance with sections D2.2 and F3.1 of the Settlement Distribution Scheme until a grant of representation has been made and is presented to Maurice Blackburn.
107. There are a small number of estates without a grant of representation where the total compensation payable to the estate is likely to be less than \$10,000. In consideration of the costs involved in obtaining a grant of representation and the anticipated level of recovery, I have decided that I will accept a statutory declaration from the contact person with a copy of the deceased's will if available and a death certificate identifying the nature of their relationship to the deceased and indemnifying Maurice Blackburn in lieu of a grant of representation. I will also extend this process to other estates without a grant of representation in limited circumstances where I deem it appropriate.

GROUP MEMBER COMMUNICATIONS

General updates on settlement administration progress

108. I refer to paragraph 143 of my affidavit dated 16 June 2016. The SDS Team continues to update group members on the progress and conduct of the settlement administration on a periodic basis. Since the time of swearing my last affidavit, the following updates have been provided to group members:

- (a) Update letter sent via email or post on 8 July 2016;
- (b) Update letter sent via email or post on 8 August 2016;
- (c) Update letter and revised Personal Injury Brochure (Section D and Attachment D) sent to all group members with a registered personal injury claim via email or post on 12 August 2016; and
- (d) Update letter to group members sent via email or post on 6 September 2016.

TAXATION ISSUES

109. I refer to paragraphs 147 to 151 of my affidavit dated 9 October 2015 filed in the Kilmore proceeding, to paragraph 94 of my affidavit dated 18 March 2016 filed in the Kilmore proceeding and to paragraph 144 of my affidavit dated 16 June 2016 filed in this proceeding regarding the steps taken as at that date to reduce the taxation liability of the Distribution Sum. The following steps have been taken to advance this issue since the time of swearing that affidavit:

- (a) On 23 June 2016, the ATO granted a further 3-month extension to lodge the FY15 taxation return for the Distribution Fund. As this extension is due to expire in the middle of September and the taxation issues surrounding the fund are unlikely to be resolved before this time, I have instructed PwC to request a further extension of time within which to lodge the FY15 taxation return.
- (b) In July and August 2016, Kimi Nishimura and I engaged in a series of discussions with PwC regarding the taxation issues pertinent to the Distribution Fund and, together with PwC, prepared a briefing note for the ATO regarding such issues. This briefing note raised the following questions for the ATO to determine and provided an analysis as to why the ATO should respond in the negative to each such:
 - i) Is the interest received on the ELPD Distribution Sum exempt income under the *Income Taxation Assessment Act 1997*?
 - ii) Is the interest received on the I-D Distribution Sum exempt income under the *Income Taxation Assessment Act 1997*?



- (c) On 3 August 2016, together with Kimi Nishimura and our taxation advisors from PwC, I met with representatives from the ATO to discuss the taxation issues surrounding the fund and the best way to resolve such issues. During this meeting, I emphasised the importance of the ATO making a swift determination in relation to such issues so as to ensure that the settlement distribution would not be delayed by any uncertainty surrounding any taxation payable by the Distribution Fund. During that meeting, the ATO representatives conveyed their understanding of the importance of a timely resolution, their intention to resolve such issues as swiftly as possible and their hope that they could provide me with a formal response to the matters raised in advance of the September Case Management Conference.
- (d) Since this meeting, our taxation advisors from PwC have continued to engage with the relevant representatives from the ATO. Unfortunately, the internal ATO processes necessary for the resolution of the questions raised have taken longer than initially anticipated. On 6 September 2016 PwC advised that the ATO anticipate that they are unlikely to resolve these questions prior to the September Case Management Conference, however that a response by this date was still possible. Senior members of the SDS Team are working closely with PwC in order to ensure a timely resolution of these issues.

APPLICATION TO AMEND THE SDS

Application to amend SDS to bind group members to written elections

110. I anticipate that final distribution to ELPD claimants could be delayed merely because of the timeframes allowed for responding to PNOAs (14 days), seeking a review of an FNOA (42 days) and providing further materials in response to such any such review (21 days). In order to maximise the chances of a distribution at the earliest possible time, I make application for the SDS to be amended by inserting a new section **J2.3 and J2.4** in the following terms:

J2.3 *The Scheme Administrator may send a Claimant a notice of election in relation to a (Non-Provisional) Notice of ELPD Assessment in which a Claimant may make an election not to exercise any rights of Review prior to the expiration of the time in clause E5.1.*



J2.4 *Where a Claimant makes an election pursuant to a notice under the previous clause no rights of Review may subsequently be exercised by the Claimant in respect of the (Non-Provisional) Notice of ELPD Assessment. .*

111. If the amendment is made it is my intention to commence distributing FNOAs (which in the Scheme are called (non- Provisional) Notices of Assessment) with a letter explaining that if the group member is not proposing to exercise a right of Review it is in their interests and in the interests of all group members to advise the Scheme Administrator of that as soon as possible and that conversely if they do wish to exercise it is equally in their interests and the interests of all group members to exercise that right as soon as is practicable. .

Application to amend SDS to permit assessments to be reissued where an assessor identifies an assessment error

112. Above I note that there have been issues with errors in PNOAs and FNOAs. In addition as part of the audit of Notice of Injury/Dependency Claim Assessments a small number of matters which require amendment of the notice of assessment have been identified.

113. In relation to errors identified in ELPD assessments I have instructed the members of the SDS team as follows:

- (a) where the error affects a matter of significance in order to ensure a proper distribution (i.e. the spelling of the claimant's name or address details) to amend those errors;
- (b) where the error has resulted in the Claimant being assessed for less than their proper entitlement to amend the assessment (unless the error is genuinely de minimis);
- (c) where the error has resulted in the Claimant being assessed for more than their proper entitlement:
 - i) to take no further action where the error is less than \$5,000 on the basis that once adjustment is made for likely recovery rates the impact of such an error is likely to be of the same order or less than the costs associated with correcting it;

- ii) to take no further action where the error is less than 5% of the total assessed value on the basis that the ELPD assessors advise that assessments have a plus or minus 5% error margin in any event;
- iii) to correct errors which do not fall into category (i) or (ii) above.

114. In my view it is important that the errors in paragraphs (b) and (c)(iii) be corrected in circumstances where group members are participating pro rata in the distribution. As noted above we anticipate that a very small proportion of assessments fall into this category (approximately 3%). It should also be noted that in correcting for such errors assessors will not receive any extra payment for the assessment above the fixed price fee which has been stipulated.
115. To date of the approximately 368 assessments which have been audited there are 4 Notice of Injury/ Dependency Claim Assessments requiring quite minor amendments.
116. The terms of the proposed amendment are to insert the following additional paragraphs in section A7 of the Settlement Distribution Scheme:

A7.6 *If the Scheme Administrator becomes aware of an error affecting a Notice of Injury/Dependency Claim Assessment which has already been issued to a claimant, the Scheme Administrator may in his absolute discretion:*

- (a) *direct an I-D Assessor to correct the error and then re-issue a Notice of Injury/Dependency Claim Assessment to the claimant; or*
- (b) *direct a member of the Administrator Staff to amend the assessment and re-issue a Notice of Injury/Dependency Claim Assessment to the claimant.*

A7.7 *Where a notice is re-issued pursuant to A7.6 and:*

- (a) *the Assessed I-D Value is:*
 - (i) *not altered;*
 - (ii) *increased; or*
 - (iii) *reduced from the original notice by less \$5000;**any time limits for Review shall be in accordance with the times prescribed in clause C5.1 for the original Notice of Injury/Dependency Claim Assessment and the re-issued Notice shall be ignored for those purpose;*
- (b) *the Assessed I-D Value is reduced from the original notice by more than \$5000 the provisions of C5 Review of I-D Assessments shall apply to the re-issued Notice of Injury/Dependency Claim Assessment save that the Scheme Administrator shall not require any bond under clause C5.4.*

- A7.8** *If the Scheme Administrator becomes aware of an error affecting a Provisional Notice of ELPD Assessment which has already been issued to a claimant, the Scheme Administrator may in his absolute discretion:*
- (a) *direct an ELPD Assessor to correct the error and then re-issue a Provisional Notice of ELPD Assessment to the claimant;*
 - (b) *direct an ELPD Assessor to amend an error or provide instructions to the Administrator Staff to amend an error in any (Non-Provisional) Notice of ELPD Assessment which is given to the claimant.*
 - (c) *direct a member of the Administrator Staff to correct the error in any (Non-Provisional) Notice of ELPD Assessment which is given to the claimant.*
- A7.9** *If the Scheme Administrator becomes aware of an error affecting a (Non-Provisional) Notice of ELPD Assessment which has already been issued to a claimant, the Scheme Administrator may in his absolute discretion:*
- (a) *direct an ELPD Assessor to correct the error and then re-issue a Provisional Notice of ELPD Assessment to the claimant;*
 - (b) *direct an ELPD Assessor to amend an error or provide instructions to the Administrator Staff to amend an error in any (Non-Provisional) Notice of ELPD Assessment which is given to the claimant.; or*
 - (c) *direct a member of the Administrator Staff to correct the error and re-issue a (Non-Provisional) Notice of ELPD Assessment to the claimant.*
- A7.10** *Where a Provisional Notice of ELPD Assessment is re-issued under clause A7.8 or A7.9 the provisions of clauses E4.2 and E4.3 shall apply.*
- A7.11** *Where a (Non-Provisional) Notice of ELPD Assessment is issued under clause A7.8 the provisions of E5 Review of ELPD Assessments shall apply.*
- A7.12** *Where a (Non-Provisional) Notice of ELPD Assessment is re-issued under clause A7.9 and:*
- (a) *the Assessed ELPD Value is:*
 - (i) *not altered;*
 - (ii) *increased; or*
 - (iii) *reduced from the original notice by less than 5% or \$5000;**any time limits for Review shall be in accordance with the times prescribed in clause E5.1 for the original (Non-Provisional) Notice of ELPD Assessment and the re-issued Notice shall be ignored for those purposes.*
 - (b) *the Assessed ELPD Value is reduced from the original notice by more than 5% or by more than \$5000 (whichever is the lesser) the provisions of E5 Review of ELPD Assessments shall apply to the re-issued (Non-Provisional) Notice of ELPD Assessment save that the Scheme Administrator shall not require any bond under clause E5.2;*

A7.13 *If a Notice of Assessment is issued or re-issued pursuant to clauses A7.6, A7.8 or A7.9 the ID Assessor, the ELPD Assessor or the Scheme Administrator (as the case may be) shall advise the claimant of the nature of the error identified, its impact on any previously advised assessment and any further rights of Review.*

117. As a result of the internal audit which has been conducted I do not think it is likely that the circumstances for the exercise of the power in clause 7.7(b) will arise but if they do it will only apply to a very small number of assessments. In light of the direction I have given staff referred to in paragraph 113 above it is unlikely the circumstances in 7.12(a)(iii) will ever apply. I would only envisage a reduction of an assessment in those circumstances where there was evidence that the claimant's conduct had contributed to the assessor's error.

COSTS

118. I propose to seek the approval of further costs incurred in the Administration at the time of the finalisation of the I-D or ELPD distribution (whichever comes first). This time frame will allow:

- (a) finalisation of the taxation discussions with the ATO;
- (b) an audit of remaining costs by Mr John White the Special Referee; and
- (c) consideration of an equalisation charge as between the Murrindindi and Kilmore East Kinglake Settlement Administrations in order to ensure each bears an appropriate proportionate share of costs common to both administrations, including overall set up and development costs. As presently advised it is my view that it is quite likely that the Kilmore East Kinglake Settlement Administration bears a disproportionate share of these costs and that it may be appropriate and in the interests of fairness as between the two schemes for the Murrindindi Settlement Administration to make a greater contribution to those costs. I will be in a better position to calculate the extent to which such a charge is warranted in a few months.

119. It is my view that the interest earned on the Settlement funds will possibly be sufficient to defray all of the Administration Costs if there is an appropriate resolution of the matters referred to in the previous paragraph.

120. On 21 June 2016, the Honourable Justice Dixon approved settlement administration costs in the amount of \$1,100,000.00 being the anticipated administration costs and

disbursements to be incurred between 1 May 2016 and 30 June 2016. Subject to the audit of Mr White, the final settlement administration costs incurred between 1 May 2016 and 30 June 2016 totalled \$2,052,099.14. The difference between the estimated figure and the current actual figure relates to disbursement payments to third parties which totalled approximately \$900,000.00 in those months. My view expressed in the previous paragraph takes account of these additional disbursements costs.

121. On 27 July 2016, I was notified that, that 21 disbursement charges from the ELPD Assessor Crawfords which should have been billed to the Murrindindi Distribution Fund for ELPD costs and disbursements in April 2016 had been billed to the Kilmore Distribution Fund. The total value of the amounts involved was \$26,425.17.
122. When I was made aware of this issue I directed that the disbursement charges be reversed and the money paid back to the Kilmore Distribution Fund with interest. This occurred on 29 July 2016. Approval for payment of these disbursements will ultimately be sought in this matter.

CONCLUSION

123. Very significant progress has been made on each of the I-D and ELPD distributions since my last affidavit. Whilst significant challenges remain before distributions can occur and the timing of a number of matters (particularly finalisation of discussion with the ATO) are outside the control of the SDS Team it does now appear very likely that distributions will occur in the previously advised time frame of by the end of this year or in the early part of next year.

SWORN by the deponent at)
Melbourne in the State of Victoria)
this 12th day of September 2016)
)



Before me:



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

FILED on behalf of the Plaintiff